STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) IN THE NINTH JUDICIAL CIRCUIT

Personal Care, Inc.,) Civil Action No. 2013-CP-10-1396

Plaintiff,

v.

Jerry N. Theos; Uricchio, Howe, Krell, Johnson, Toporek, Theos and Keith, PA; Cheryl D. Shoun; and Taylor, Shoun, Bowley and Byrd, LLC,

Defendants.

MODIFIED ORDER ON PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT

This matter is before this Court on Plaintiff Personal Care, Inc.'s (hereinafter "Personal Care") Motion to Alter or Amend Judgment, filed on March 16, 2015 ("Motion to Amend"). The Motion seeks to amend this Court's Order Denying Plaintiff's Motion to Restore, filed on March 3, 2015. Defendants Jerry N. Theos and Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, PA (hereinafter collectively referred to as "Theos"); Cheryl D. Shoun (hereinafter "Shoun"); and Taylor, Bowley and Byrd (hereinafter "TBB")[1] oppose Plaintiff's Motion. After review of the entire Record, including, but not limited to, the motions, the memoranda and affidavits submitted by the parties, the original Orders filed by this Court, and the relevant case law, this Court hereby modifies its March 3, 2015 Order and makes the following findings of fact and conclusions of law.

Procedural Background

This case arises from events that occurred in 2009 and early 2010. Beginning in 2009, Theos and Taylor, Shoun, Bowley, and Byrd, LLC, were retained by Personal Care to pursue a

[1] After Defendant Cheryl Shoun left the law firm of Taylor, Shoun, Bowley, and Byrd, LLC, in April 2010, the firm became Taylor, Bowley and Byrd, LLC.

EXHIBIT
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potential claim against one of its competitors. Two former employees of Personal Care went to work for the competitor and allegedly disclosed and otherwise utilized protected client information, gained while in Personal Care's employ, to the advantage of the competitor. On or about September 14, 2009, at the direction of Personal Care, Theos sent a letter to the competitor (**Exhibit A**), with a copy allegedly sent to a third-party dialysis clinic, addressing the competitor's alleged wrongful use of the protected information. On December 10, 2009, Theos and Shoun filed the underlying lawsuit on behalf of Personal Care against the competitor. On March 9, 2010, the defendant in the underlying suit filed a counterclaim for defamation against Personal Care based solely on the September 2009 letter (**Exhibit B**).

On March 8, 2013, Personal Care filed the instant action against Theos, Shoun, and TBB[2] (**Exhibit C**).[3] In its Verified Complaint, Personal Care asserted that its failure to attach the required S.C. Code Ann. § 15-36-100(B) Expert Affidavit for a legal malpractice claim was excused "because this Complaint is being filed when there is a good faith basis to believe the expiration of the statute of limitations is imminent."

Personal Care filed a Verified Amended Complaint on April 19, 2013 (**Exhibit D**). In its Verified Amended Complaint, Personal Care alleges causes of action for breach of fiduciary duties and legal professional negligence against Theos and Shoun and for breach of contract against the Defendant law firms. All claims purportedly arose from the allegedly defamatory letter drafted by Theos and dated September 14, 2009. Personal Care alleges that Shoun and Theos were negligent and breached their fiduciary duties to it by sending the allegedly defamatory letter and by failing to inform Personal Care of the counterclaim for over two years

[2] Shoun continued to represent Personal Care after her departure from TBB in April, 2010. TBB had no contact with Personal Care after Shoun's departure from the firm.

[3] On March 7, 2013, the day before, Personal Care's counsel expressed his concerns that the statute of limitations may bar his client's litigation if it were commenced after March 8, 2013: "We also discussed my concerns about an argument that the statute of limitations might expire on Friday, March 8."

after it had been filed. As to the Defendant law firms, Personal Care alleges that they breached their contract with Personal Care when they sent out the allegedly defamatory letter.

After filing the Verified Amended Complaint, Personal Care took no action via formal discovery (written discovery or depositions) to prosecute its claims before the matter was administratively dismissed by an order dated August 28, 2013. Personal Care's counsel requested a Consent Order Striking the Case from the Docket pursuant to Rule 40(j), SCRCP. All of the Defendants agreed to the Consent Order, which Judge Dennis executed on August 27, 2013 (**Exhibit E**). Pursuant to its express terms, the Consent Order (hereinafter the "2013 Judge Dennis Order") set forth the following:

> IT FURTHER APPEARING that each party agrees that if the claim is restored within one year from the date of this Order, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations as of the date of this Order shall remain and begin to run on the date the claim is restored. (Emphasis added).

The 2013 Judge Dennis Order was filed on August 28, 2013, and thereafter the status of the case was shown as "Dismissed."

Approximately one year later, on August 22, 2014, Personal Care's counsel contacted Theos's counsel to request his consent to a proposed Consent Order Restoring Case to Docket (Rule 40(j), SCRCP), (hereinafter "2014 Proposed Consent Order") (**Exhibit F**), which purported to reinstate the case pursuant to the 2013 Judge Dennis Order. On August 26, 2014, Theos did not have an overt reason not to consent to the 2014 Proposed Consent Order. Defense counsel for Theos signed the 2014 Proposed Consent Order and forwarded it to Personal Care's counsel on August 26, 2014. The other co-Defendants, Shoun and TBB, however, did not consent to the 2014 Proposed Consent Order. In fact, TBB did not receive a copy of the 2014 Proposed Consent Order until September 17, 2014.

Despite the fact that Personal Care's counsel did not have the consent of all the parties to submit the 2014 Proposed Consent Order to the Court, on or about August 27, 2014, Personal Care's counsel mailed the partial consent to the 2014 Proposed Consent Order to the clerk of court, requesting that the clerk present it to Judge Dennis for his consideration. The clerk returned the mailing unfiled because Personal Care did not include a proper cover sheet and filing fee. Personal Care submitted the 2014 Proposed Consent Order on September 4, 2014, along with the requisite fee and cover sheet. On September 15, 2014, Judge Dennis and his law clerk received the 2014 Proposed Consent Order. Upon review, Judge Dennis's clerk noted that the 2014 Proposed Consent Order did not have the consent of all of the parties. The clerk contacted Personal Care's counsel to inquire about the missing consents. During the email exchange between Judge Dennis's clerk and Personal Care's counsel, Personal Care's counsel asserted that Shoun's failure to object to his 2014 Proposed Consent Order was tantamount to consent and that counsel for all of the other defendants had consented. On September 17, 2014, TBB contacted Judge Dennis's clerk to inform her that Personal Care had never given TBB notice of its intent to restore nor asked TBB to consent to restoration. Shortly thereafter, Personal Care's counsel withdrew the 2014 Proposed Consent Order via his communication with the Court on September 17, 2014 (**Exhibit G**), wherein Personal Care's counsel stated:

> Please extend my apologies to Judge Dennis for the circumstances, but **Personal Care is withdrawing the proposed Consent Order to restore** the case to the active trial roster as not all parties have consented to the restoration. . . . It is also my understanding from the telephone call with Ms. Byrd that Taylor, Bowley & Byrd, LLC has not consented to Personal Care's proposed consent Motion to restore the case to the active trial roster. As such, a formal motion to restore will be filed. ... Again, under the circumstances the proposed Consent Order is being withdrawn, and we will proceed with a formal motion to restore. (Bold in the original; underline added).

After withdrawal of the 2014 Proposed Consent Order, on September 22, 2014, over three weeks after the one-year deadline pursuant to the 2013 Judge Dennis Order and SCRCP Rule 40(j), Personal Care's counsel subsequently filed a formal Motion to Restore the case to the active roster. Defendants opposed Personal Care's Motion to Restore. In support of its Motion to Restore, in addition to other arguments, Personal Care argued that the Proposed Order Restoring the Case to the Docket, arguably filed one day before the one-year anniversary of the Consent Order Striking the Case from the Active Roster, should be treated as a Motion to Restore and should be granted based on that timeline. Defendants disagreed, arguing that, in addition to other arguments, the Proposed Order was not signed by all parties and therefore was invalid and, further, that the proposed Order had been voluntarily withdrawn and was void. Defendants also argued that the formal Motion to Restore, filed on September 22, 2014, should be denied because the statute of limitations had run on this action.

This Court heard oral arguments on the Motion to Restore on November 19, 2014, and took the matter under advisement. After reviewing the Motion to Restore and the memoranda in support of and in opposition to the motion, and considering the arguments of counsel, the Court issued its Order on March 3, 2015, denying Personal Care's Motion to Restore. In the Order, the Court agreed with Defendants and held that the Proposed Order was invalid because it lacked a signature and that the Proposed Order was not a Motion to Restore. The Court also held that the formal Motion to Restore must be denied because the statute of limitations on this action had run.

On March 16, 2015, Personal Care filed the instant Motion to Amend, arguing that Rule 40(j) does not provide for or allow Defendants to assert affirmative defenses nor does it allow the Court the authority to evaluate the merits of a statute of limitations defense. Defendants filed memoranda in opposition to the Motion to Amend. As a result of Personal Care's Motion to

Amend, the Court requested additional briefing addressing whether Rule 40(j) requires the Court to perfunctorily restore a case to the active roster without considering the statute of limitations issue.

Following receipt of the parties' additional briefing, the Court issued an Order dated June 19, 2015 (the "June Order"), modifying its prior March 3, 2015 order. In the June Order, the Court held that, pursuant to Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (2003), a party may challenge a motion to restore on grounds of the expiration of the statute of limitations. See Maxwell, 356 S.C. at 622 n.2 (rejecting plaintiff's argument that since defendants agreed to the Rule 40(j) dismissal after the statute of limitations had expired, they waived their right to oppose the motion to restore on grounds of the expiration of the statute of limitations). The Court further found that the issue of whether a plaintiff is entitled to the tolling of the statute of limitations is one that must be addressed at the hearing for a motion to restore. The Court reasoned that, if a court cannot address the statute-of-limitations issue at the hearing, then there would be no reason to hold a hearing in the first place, because the court would be required to automatically grant all motions to restore and address issues such as the statute of limitations at later motion hearings. The Court concluded that such outcome would be nonsensical from a judicial economy standpoint.

However, because the Court found that it did not afford Personal Care an opportunity to address the statute of limitations issue at the motion hearing on November 19, 2014, the Court announced that it would hold this matter in abeyance to allow all parties to present live testimony and affidavits as to the statute of limitations issue, thereby providing the parties an additional opportunity to provide additional evidence that any party wished to present to the Court prior to

its issuing a decision. The parties were given fourteen days from the date of the Order to notify the Court as to whether they wished to supplement the Record with affidavits or live testimony.

Defendants thereafter informed the Court that they did not wish to supplement the Record further with either affidavits or live testimony, although they did reserve the right to cross-examine witnesses called by Personal Care or to submit response affidavits. On July 9, 2015, Personal Care filed Plaintiff's Memorandum as Directed by Court's Order on Plaintiff's Motion to Alter or Amend Judgment, in which it informed the Court that it intended to submit additional affidavit testimony. The Court gave the parties a deadline of September 4, 2015, by which to submit affidavits. On September 2, 2015, Personal Care mailed a letter to the Clerk of Court with a copy of an Affidavit of Bernard Cignavitch for filing. However, the affidavit was not filed at that time. Personal Care resubmitted the affidavit to the Clerk of Court for filing on January 7, 2016, at which time the affidavit was properly filed and made part of the Record.

On April 15, 2016, this Court held a telephonic status conference with counsel for all of the parties. Upon hearing from the parties that the Record was complete, the Court informed the parties that it would review the entire Record and issue a final order on Personal Care's Motion to Amend.

Findings of Fact and Conclusions of Law

Pursuant to the procedural background set forth above, which the Court finds to be accurate and hereby incorporates as the procedural facts of the case, this case was dismissed by the 2013 Judge Dennis Order. In South Carolina, unless a party seeks rehearing or appeals a court decision, the party is bound by the previous order as the law of the case. See Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 525 S.E.2d 869 (2000) (finding that an unappealed ruling, right or wrong, is the law of the case and requires affirmance). Stated

differently, a prior order of the Court issued by a Circuit Court Judge may not be reversed or modified by another Circuit Court Judge. See Maxwell v. Genez, 350 S.C. 563, 567 S.E.2d 496 (Ct. App. 2002) (quoting Judge Dennis and stating that "it is the long-standing rule in this State that a Circuit Judge cannot modify or reverse an Order of another Circuit Judge."), reversed on other grounds by 356 S.C. 617, 591 S.E.2d 26 (2004). Because no party challenged the 2013 Judge Dennis Order, either by requesting a hearing or appealing the decision, the 2013 Judge Dennis Order is the law of the case.

Under the express terms of the 2013 Judge Dennis Order, the statute of limitations was not tolled after the case was dismissed in 2013. That Order required the case to be restored within one year of the date of the Order (i.e., by August 28, 2014) in order for the statute of limitations to be tolled during the period of dismissal. However, it is undisputed that Personal Care failed to restore the case within the one-year deadline. Thus, the statute of limitations was not tolled following the entry of the 2013 Judge Dennis Order.

Similarly, the statute of limitations was not tolled under Rule 40(j). Unlike the 2013 Judge Dennis Order, which required the case to be restored within one year in order for the statute of limitations to be tolled, Rule 40(j) provides that the statute will be tolled "if the claim is restored upon motion made within 1 year of the date stricken."[4] Although a party can move to restore a case to the docket more than one year after the claim was stricken without running afoul

[4] SCRCP Rule 40(j) sets forth the following:

> **(j) Case Stricken From Docket by Agreement**
> A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. (Emphasis added).

of Rule 40(j), the party "cannot take advantage of the one year tolling period provided by the rule." Maxwell v. Genez, 356 S.C. at 620-621. It is undisputed that the Motion to Restore currently pending in this Court was not filed until September 22, 2014, long after the expiration of the one-year period. Therefore, the statute of limitations cannot be tolled by Rule 40(j).

At oral argument, Personal Care conceded as much to the Court when it acknowledged that it did not restore or move to restore its case within the timeframe set forth in either the 2013 Judge Dennis Order or SCRCP Rule 40(j). Personal Care further conceded that it should not receive the benefit of the tolling provision of SCRCP Rule 40(j). Instead, Personal Care argued that there is still time left on the statute of limitations because the statute did not begin to run until the summer of 2012. However, Personal Care subsequently reversed course, asserting in its Memorandum submitted to the Court after the hearing that the withdrawn 2014 Proposed Consent Order is equivalent to and should be treated as a Motion to Restore. There is no merit to either argument.

The Court finds that the 2014 Proposed Consent Order is a nullity. It is undisputed that not all of the parties consented to the proposed order. Moreover, Personal Care did not comply with SCRCP Rule 5 and Rule 7, which govern the filing and service of motions. Finally, and most importantly, Personal Care withdrew the 2014 Proposed Consent Order, rendering it a nullity. Thus, even if the 2014 Proposed Consent Order could have been construed as a Motion to Restore, it no longer is before this Court. Therefore, if this case is restored, it will not be restored "upon motion made within one year of the date stricken." SCRCP Rule 40(j). The Court concludes that Personal Care did not file the instant Motion to Restore within one year after the case was stricken from the docket.

Accordingly, in regard to Personal Care's 2014 Proposed Consent Order submitted to the Court, the Court finds that (1) all parties had not consented to the Order and the Order was defective on its face; (2) the case had not been "restored" by August 28, 2014, as the 2013 Judge Dennis Order striking it required; and (3) Personal Care withdrew the 2014 Proposed Consent Order, so it is not properly before the Court and is a nullity. The Court further finds that Personal Care filed its Motion to Restore approximately three weeks after August 28, 2014. Accordingly, under the terms of either the 2013 Judge Dennis Order or Rule 40(j), the statute of limitations was not tolled following the dismissal of the case.

Personal Care argues that it is of no consequence that the statute of limitations was not tolled because, according to Personal Care, the statute of limitations did not start running until July 2012.[5] At the hearing, although Personal Care's counsel conceded that Personal Care knew both about the Counterclaim and that there were alleged issues with the defense of the case, Personal Care's counsel asserted that the statute of limitations did not begin to run until Personal Care experienced, in the summer of 2012, the "first financial consequence" caused by Defendants' alleged errors. The Court finds Personal Care's argument wholly unpersuasive and concludes that the statute of limitations has expired.

"South Carolina's statute of limitations requires very little to start the clock." Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (internal quotation marks omitted). South Carolina follows the discovery rule, which means that the statute of limitations begins to run from the date the injured party either knows or should have known, by the exercise of reasonable diligence, that a cause of action arises from the wrongful conduct. Stokes-Craven

[5] All of the claims in this action are governed by a three-year statute of limitations. S.C. Code Ann. § 15-3-530(1) (governing contract claims); Stokes-Craven Holding Corp. v. Robinson, No. 2013-001452, 2015 WL 5247124, at *4 (S.C. Sept. 9, 2015) (applying three-year statute of limitations in legal malpractice action); Mazloom v. Mazloom, 382 S.C. 307, 323, 675 S.E.2d 746, 755 (Ct. App. 2009), aff'd, 392 S.C. 403, 709 S.E.2d 661 (2011) (citing three-year statute of limitations in breach of fiduciary duty action).

Holding Corp. v. Robinson, No. 2013-001452, 2015 WL 5247124, at *4 (S.C. Sept. 9, 2015); see S.C. Code Ann. § 15-3-535. "Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist." Id. (emphasis added). Moreover, in a legal malpractice action, "[i]f it appears that the client knew of the harm before the case is finally determined on appeal, the statute of limitations begins to run from the time the underlying injury occurs or upon the client's awareness of the alleged negligence." Id. at *10 (explaining that "this rule advances the purpose of the statute of limitations, which is to punish plaintiffs who sleep on their rights, protect defendants from stale claims, and lend order to the judicial system").

The date on which discovery of the cause of action should have been made is an objective question. Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). In Young v. South Carolina Department of Corrections, the Court of Appeals stated:

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999); Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

"Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." Stokes-Craven Holding Corp., 2015 WL 5247124, at *4.

Importantly, under South Carolina law, "[a] cause of action accrues at the moment when the plaintiff has a legal right to sue on it." Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962). The law presumes at least nominal damages at that point. Livingston v. Sims, 197 S.C.

458, 15 S.E.2d 770 (1941), modified by Santee Portland Cement v. Daniel Int'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (discovery rule applies to contract statute of limitations). The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose. Livingston, 197 S.C. 458, 15 S.E.2d 770; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3, 7 (S.C. 1997).

Here, based on the allegations in the Amended Complaint and the clear evidence in the Record, the Court finds that the statute of limitations has expired on Personal Care's claims against Defendants. According to Paragraph 18 of the Amended Complaint, the first act of alleged negligence occurred in September 2009 when Theos allegedly sent a defamatory letter to a third party. Paragraph 20 alleges that, on March 9, 2010, the underlying defendant filed an Answer and Counterclaim asserting a claim for defamation based on the allegedly defamatory statements in the letter published by Theos in September 2009. Finally, Paragraph 40 alleges that Personal Care was damaged by Theos and Shoun's errors when "it was forced to spend additional funds and commit time and other resources to mitigate the damages caused as a direct and proximate result of Defendants' errors." Based on such allegations and the clear evidence in the Record, the Court finds Personal Care suffered damages as soon as it was forced to incur costs to defend against the competitor's counterclaim.

Once the counterclaim was filed on March 9, 2010, Personal Care became obligated to expend additional monies, including the additional attorney's fees in responding to and defending against the counterclaim, and to otherwise contend with the inconvenience of the counterclaim. Accordingly, as a cause of action accrues at the moment when the plaintiff has a legal right to sue on it, and the law presumes at least nominal damages at that point, the Court

finds that Personal Care's causes of action accrued and Personal Care had a legal right to sue Defendants on March 9, 2010.

Moreover, Defendants notified Personal Care multiple times of the counterclaim in the spring of 2010. Plaintiff's position with respect to when it received notice has shifted over time. In Paragraph 21 of its Verified Amended Complaint, Personal Care alleges that Defendants did not inform Personal Care about the counterclaim until over two years after the counterclaim had been filed. Personal Care's expert repeated such assertion in his Affidavit supporting Personal Care's legal malpractice claim. However, at the hearing, Personal Care's counsel conceded that his client knew about the counterclaim "throughout the course of this entire . . . underlying case." (Hrg. Tr. at 23; id. at 24 ("Certainly he knew about the counterclaim.").) Therefore, Personal Care's sworn allegation in the Verified Amended Complaint not only is belied by the overwhelming evidence in the Record, but also has been subsequently acknowledged by Personal Care's counsel to be a misrepresentation.

The Court finds that Personal Care (and Mr. Cignavitch in particular) was notified of the underlying Counterclaim multiple times beginning on March 19, 2010. Overwhelming evidence refutes Mr. Cignavitch's original sworn assertions to the Court including, but limited to, the following:

1. Email from Shoun to Cignavitch dated March 19, 2010: "Hey Bernie: Hope this finds you well. We have received an Answer and Counterclaim on behalf of the Defendant in this action. I need to get a copy of the Counterclaim to you; a response is due April 9th. May I fax to you? Will you provide the correct number? Also, if you will please provide your insurance information, we will submit the Counterclaim to your carrier, asking it to defend and indemnify you. We will need a copy of the policy if you have it. Thanks. I look forward to hearing from you." **(Exhibit H)**.

2. Email from Smith to Cignavitch dated March 19, 2010: "Mr. Cignavitch, attached please find a filed copy of the Answer and Counterclaim." **(Exhibit I)**.

3. Email from Shoun to Cignavitch dated March 26, 2010: "I am attaching a copy of a letter I am sending to Askew's counsel requesting an extension of time in which to respond to the Counterclaim. As I think we discussed earlier, when we granted an extension to Askew's attorneys, this is a routine practice, and I have no reason to think it will not be granted. You will see, if granted, our response will be due mid-May giving us plenty of time to talk over the allegations. Even if it is not granted, the response isn't due until mid-April. ... I sincerely appreciate your patience in this matter, and look forward to talking with you regarding the Counterclaim." (**Exhibit J**).

4. Email from Shoun to Cignavitch dated April 6, 2010: "Bernie: Hey. I am back in the office today and have received confirmation of our 30-day extension to respond to the Counterclaim in this case. Our reply is due on or before May 13, 2010. Please let me know a time that is good for you for us to get together to talk over our response. We may even be able to do it by phone if your schedule is full. In the meantime, I will probably prepare a draft and send it to you as a starting point." (**Exhibit K**).

5. Email from Shoun to Cignavitch dated April 6, 2010: "Bernie: I forgot to mention this again – please get your insurance information to me as quickly as you can. Thanks." (**Exhibit L**).

6. Email from Shoun to Cignavitch dated April 13, 2010: "Please remember that a reply to the Counterclaim by Ms. Askew will have to be served by the latter part of May." (**Exhibit M**).

7. Invoice from Nexsen Pruet to Personal Care dated June 2, 2010: Charging $1440 for services related to answering counterclaim (**Exhibit N**).

8. Email from Kerr to Cignavitch dated June 7, 2010: "Bernie: Attached please find for your review and file a filed stamped copy of the Reply to Counterclaim in the above-referenced matter. Should you have any questions or concerns, please let us know." (**Exhibit O**).

9. Affidavit of Jerry N. Theos (**Exhibit P**).

10. Affidavit of Cheryl D. Shoun (**Exhibit Q**).

Based on these communications alone, the Court finds that Theos and Shoun unequivocally and timely informed Mr. Cignavitch of the counterclaim asserted against Personal Care and advised Personal Care to put its insurance carrier on notice in order to defend and indemnify Personal Care against the counterclaim. The Court further finds that Personal Care was first billed for charges resulting from the counterclaim no later than June 2, 2010.

The Court hereby concludes that, upon receiving a copy of the counterclaim, multiple e-mails referencing the counterclaim, a request for insurance information so that the client could get coverage for defense of the counterclaim, an invoice charging for services rendered to reply to the counterclaim, and a copy of the Reply to the Counterclaim, a person of common knowledge and experience would have been put on notice that claims against his lawyer might exist as a result of the letter and Counterclaim. See Stokes-Craven Holding Corp., 2015 WL 5247124, at *4. Therefore, the Court finds that Personal Care had both knowledge of the alleged negligence and present damage by the first half of 2010. Accordingly, the Court hereby concludes that the three-year statute of limitations on Plaintiff's claims began to run in the spring of 2010.

Furthermore, the Court finds that, based on the Verified Complaint's S.C. Code Ann. § 15-36-100 (c)(1) Expert Affidavit verification, Personal Care has also admitted that the statute of limitations expired, at the latest, on March 18, 2013.[6] Paragraph 97 of the Complaint, filed on March 8, 2013, takes advantage of the provision of South Carolina Code Section 15-36-100(b), (c)(1): "Pursuant to the code, because this complaint is being filed when there is a good faith basis to believe the expiration of the statute of limitations is imminent, it is filed without an affidavit by an expert licensed by the Supreme Court of the State of South Carolina." S.C. Code Ann. § 15-36-100 (c)(1), sets forth the following: "The contemporaneous filing requirements of Subsection (b) do not apply to any case in which the period of limitations will expire or there is a good faith basis to believe it will expire on a claim stated in the complaint within 10 days of filing." Personal Care verified for this Court that the statute of limitations would likely expire

[6] Personal Care's Verified Complaint's expert affidavit verification is consistent with Personal Care's counsel's March 7, 2013 email raising his concerns that the statute of limitations would run the following day, March 8, 2013.

within ten days of filing, i.e., on March 18, 2013.[7] The Court agrees that the statute of limitations, which began to run in the spring of 2010, was set to expire in the spring of 2013. Because Personal Care cannot benefit from the tolling provision of either the 2013 Judge Dennis Order or Rule 40(j), the Court concludes that the statute of limitations on Personal Care's claims expired prior to the filing of the formal Motion to Restore.

In summary, the Court finds that the 2014 Proposed Consent Order is a nullity. Moreover, the Court finds that Personal Care failed to restore the case within the one-year timeframe provided in the 2013 Judge Dennis Order. Furthermore, Personal Care did not file a timely Motion to Restore, which Rule 40(j) requires in order to benefit from the tolling provision of Rule 40(j). The Court further finds that at no point did any of the Defendants agree that the statute of limitations would be further tolled above and beyond the parameters set forth in the 2013 Judge Dennis Order or SCRCP Rule 40(j). As Personal Care did not file its Motion to Restore the case within one year of the administrative dismissal, the Court hereby finds that the statute of limitations was not tolled following entry of the 2013 Judge Dennis Order and thus had expired prior to the filing of the formal Motion to Restore. Accordingly, Personal Care's claims against Defendants are time-barred.

Conclusion

Based on the foregoing discussion, I hereby Order that Personal Care's Motion to Restore Case is denied. The Exhibits are attached and made a part of this Order by reference.

IT IS SO ORDERED!

Dated: 5/19/16

J. C. Nicholson, Jr., Judge
Ninth Judicial Circuit

[7] At the hearing, Personal Care sought to undo his prior verified admission. This Court rejects Personal Care's attempt to retract via argument that to which it admitted via its verified Complaint. Mere self-serving arguments of counsel do not trump Personal Care's sworn admissions, which were previously submitted to the Court.

Exhibit A

URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS & KEITH, P.A.
ATTORNEYS AT LAW
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September 14, 2009

Low Country Medical Transport
61 Hickory Hill Road
Varnville, South Carolina 29944

RE: Personal Care, Inc.

To Whom It May Concern:

This law firm, along with the law firm of Taylor, Shoun, Bowley & Bryd, LLC, has been retained by Personal Care, Inc., to investigate certain wrongful conduct on the part of Low Country Medical Transport and pursue appropriate legal remedies.

On January 9, 2009, Low Country Medical Transport was sent a letter on behalf of Personal Care requesting that it cease and desist from soliciting Personal Care's patients through the use of confidential information obtained from patients' medical records. Employees of Low Country Medical Tranport, previously employed by Personal Care, were utilizing confidential information accessed from Personal Care's patient files, for the purpose of soliciting Personal Care's patients.

While Personal Care had hoped that the correspondence sent earlier this year would result in the cessation of this wrongful conduct, it has not. In fact, it appears as though the wrongful activity has accelerated and expanded in scope. Low Country Medical Transport continues to utilize personal health information taken from Personal Care's files. As Low Country Medical Transport has been previously advised, this constitutes an impermissible disclosure of information pursuant to the Health Insurance Portability and Accountability Act (HIPAA). Such violations can result in a myriad of penalties. We understand further that some patients have filed formal complaints against and/or with Low Country Medical Transport.

Moreover, Low Country Medical Transport is engaging in the tortuous interference of Personal Care's business relationships and, in at least one instance, the tortuous interference of a contract. We have confirmed that Low Country Medical Transport, through its employees, has engaged in the direct, as well as indirect, solicitation of patients from Bay View Manor in Beaufort, South Carolina. Personal Care operates under a written contract with that entity. As such, we hereby demand that this tortuous conduct, as well as the direct solicitation of Personal Care patients, cease immediately.

Furthermore, we have information that, in some instances when Low Country Medical Transport has been successful in wrongfully procuring the transfer of Personal Care's patients, unnecessary wheelchair patients have been redesignated as stretcher transfers, in the absence of a legitimate medical need or basis. Unwarranted and baseless reclassifications such as this, which result in significantly higher costs, constitute insurance fraud.

We hereby recommend that this letter be forwarded to your legal counsel, requesting that they contact us immediately. Please be advised that if we do not receive contact on behalf of Low Country Medical Transport by Monday, September 28, 2009, we will institute appropriate legal action to address the aforementioned misconduct, and protect Personal Care and the patients they service.

Sincerely,

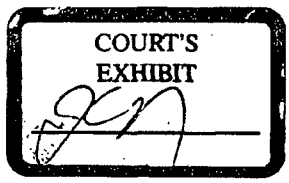
URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS, & KEITH, P.A.

Jerry N. Theos

JNT/jss

cc: Low Country Dialysis
Ms. Tanekia Miller
Ms. Patricia Shelton
Mr. Bernie Cignavitch
Ms. Cheryl D. Shoun, Esquire

Exhibit B



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 09-CP-10-7692
PERSONAL CARE, INC.,	)	
	)	
Plaintiff,	)	
	)	**ANSWER AND COUNTERCLAIM**
v.	)	*(Jury Trial Demanded)*
	)	
HATTIE M. ASKEW d/b/a LOW COUNTRY MEDICAL TRANSPORT, f/k/a LOW COUNTRY MEDICAL TRANSPORT, INC.,	)	
Defendants.	)	

The Defendant, Hattie M. Askew d/b/a Low Country Medical Transport, f/k/a Low Country Medical Transport, Inc., answer the Complaint as follows:

1. The Defendant denies each and every allegation of the Complaint that is not expressly admitted, modified, or explained.

2. Defendant admits the allegations of paragraphs 1, 2, 3, 4, 5, 8, and 35.

3. Defendant denies the allegations of paragraphs 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 36.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 6, 7, 9, 12, and 21, and therefore, denies those allegations.

5. Defendant admits the allegations of paragraph 10 to the extent Defendant hired two of Plaintiff's former employees. The remaining allegations of paragraph 10 are expressly denied.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

5. Defendant realleges and incorporates its responses above as if repeated verbatim.

6. The Complaint fails to state a claim upon which relief can be based and the Defendant is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND AFFIRMATIVE DEFENSE
(Punitive Damages)

7. Defendant realleges and incorporates its responses above as if repeated verbatim.

8. Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eight, and Fourteenth Amendments to the United States Constitution.

FOR A THIRD AFFIRMATIVE DEFENSE
(Improper Venue)

9. Venue is improper in Charleston County and must be transferred to Hampton County, where the Defendant is a citizen and resident, and maintains an office and agent for the transaction of business.

FIRST COUNTERCLAIM
(Defamation)

10. Defendant realleges and incorporates its responses above as if repeated verbatim.

11. On or about September 14, 2009, a lawyer representing Plaintiff, and acting as its agent, wrote Defendant and informed her that two law firms were retained to "investigate certain wrongful conduct on the part of Low Country Medical Transport and pursue appropriate legal remedies."

12. Also receiving the letter, by way of carbon copy, were four individuals and Low Country Dialysis. Low Country Dialysis is a Beaufort County based dialysis center that often employs the use of private medical transportation services, which Plaintiff and Defendant both provide.

13. The letter falsely accused Defendant of utilizing "personal health information taken from Personal Care's files."

14. The letter falsely accused Defendant of "engaging in the tortuous interference of Personal Care's business relationships. . . ."

15. The letter also falsely accused Defendant and asserted that "[u]nwarranted and baseless reclassifications [of wheelchair patients], which result in significantly higher costs, constitute insurance fraud."

16. The above described statements about Defendant were false and published by Plaintiff to Low Country Dialysis.

17. These false and malicious statements made by Plaintiff are defamatory per se and constitute libel and slander. These false statements damaged Defendant's professional and personal reputation as a provider of medical transportation. Because of Plaintiff's conscious disregard for Defendant's rights, Defendant is entitled to actual and punitive damages.

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

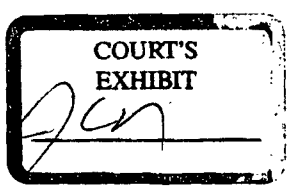
BY: _____

John E. Parker
William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR DEFENDANT

March 8, 2010
Hampton, South Carolina

Exhibit C



STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2013-CP-10- 1396

PERSONAL CARE, INC.,

Plaintiff,

vs.

Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC,

Defendants.

VERIFIED COMPLAINT
(Jury Trial Demanded)

1. Professional Negligence;
2. Breach of Fiduciary Duty;
3. Breach of Contract.

Plaintiff, PERSONAL CARE, INC., on information, belief, and established facts, by and through their undersigned counsel, complaining of Defendants, Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, would respectfully show to this Honorable Court the following:

SUMMARY OF THE CASE

1. This legal malpractice Complaint centers upon the Defendant lawyers' approximate two (2) year delay in telling Plaintiff, their client in an underlying lawsuit, that a defamation counterclaim had been filed against Plaintiff based on alleged defamatory statements in a letter one of the Defendant lawyers sent prior to filing the underlying lawsuit. Defendants accepted the representation of Plaintiff on its' claims against a former employee for breaching her duty of loyalty and profiting from use of Plaintiff's propriety client lists. Prior to suit being filed, one of the Defendant lawyers published a letter to third-parties—on behalf of Plaintiff—containing allegedly defamatory statements about the former employee, and not

long after that the Defendant lawyers filed suit on behalf of Plaintiff against the employee. Based on the Defendant lawyer's allegedly defamatory statements, the former employee filed an answer and *counterclaim for defamation* against Plaintiff. On top of the damage from the liability exposure, another damage caused by the counterclaim is that it does, of course, takes away from a jury's full attention to Plaintiff's claims, which the Defendant lawyers had agreed to pursue. Further compounding the error, the Defendant lawyers and law firms neglected to tell their client, Plaintiff, *for more than two years* about the fact the Plaintiff was being sued for money damages because of their own allegedly defamatory statements. Defendants also neglected to tell Plaintiff that the Defendant lawyers were "necessary witnesses" because the Defendant lawyers' alleged tortious conduct took place prior to suit being filed and that those circumstances created a non-waiveable conflict of interest and an immediate need for substitute counsel. At the trial-ripe age of about 2 ½+ years, the Defendant lawyers' filed a motion to be relieved based on that non-waiveable conflict, which was granted, causing the need for other lawyers to be engaged and compensated to take over the representation to defend the counterclaim. Plaintiff's insurance coverage would not pay for a lawyer to take over the representation on *Plaintiff's* claims, only for defense of the counterclaim. With no lawyer at the helm for Plaintiff's claims, Plaintiff was tasked with the difficult challenge considering the age of the underlying case to find replacement counsel to finish the job on its claims against the employee. The underlying case remains pending. Because the three year anniversary of the counterclaim is approaching, because Defendants may claim the statute of limitations on Plaintiff's malpractice claims runs on that date, and because Defendants have not agreed to Plaintiff's proposal to toll the statute of limitations, the circumstances created by

Defendants require Plaintiff to commence this lawsuit and simultaneously move to stay this case until the underlying lawsuit has been resolved as per the Supreme Court's instructions in *Epstein v. Brown*, 363 S.C. 372, 610 S.E.2d 816, 821 (2005) (citing cases and other authorities commenting on motions to stay legal malpractice cases while underlying matter is pending and tolling agreements between the parties to toll the statute of limitations).

PARTIES

2. Defendant, Jerry N. Theos, is, upon information and belief, a citizen and resident of Charleston County, South Carolina, and is licensed to practice law and render legal services in South Carolina.

3. Defendant, URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA, is, upon information and belief, a Professional Association organized and existing under the laws of South Carolina, with its principal place of business in Charleston County, South Carolina.

4. Defendant, Cheryl D. Shoun, is, upon information and belief, a citizen and resident of Charleston County, South Carolina, and is licensed to practice law and render legal services in South Carolina.

5. Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, is or was, upon information and belief, a Limited Liability Corporation organized and existing under the laws of South Carolina, with its principal place of business in Charleston County, South Carolina.

6. Plaintiff, PERSONAL CARE, INC., is a Corporation organized and existing under the laws of South Carolina, providing ambulance services for the community in Beaufort, Charleston, Colleton, Hampton, and Jasper counties in South Carolina.

JURISDICTION

7. This Court has jurisdiction over these matters based upon Article V of the South

Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

8. Venue in this Court is proper as Defendant, Jerry N. Theos, and Defendant, Cheryl D. Shoun, are, upon information and belief, citizens and residents of Charleston County, South Carolina. Upon information and belief, Defendant, Jerry N. Theos, Defendant, URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA, Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, maintain offices in and provide legal services for clients in Charleston County, South Carolina.

FACTS

9. At all relevant times, Defendant, Jerry N. Theos ("Theos"), was, upon information and belief, a Member and owner of Defendant, URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA ("URICCHIO, HOWE"), and was acting as its agent.

10. At all relevant times, the acts, omissions, and liability of URICCHIO, HOWE includes the acts and/or omissions of its agents, principals, employees and/or servants, including but not limited to those by Theos, both directly and vicariously, as well as jointly and severally, pursuant to principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency, and/or *respondeat superior*.

11. At all relevant times, URICCHIO, HOWE acted by and through its employees and agents, including but not limited to Theos, who acted within the course and scope of his employment and/or agency with all implied, inherent, apparent and express authority to so bind his master and principal by his willful, wanton and reckless actions and/or omissions making URICCHIO, HOWE vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency

and/or *respondeat superior*.

12. At all relevant times, Defendant, Cheryl D. Shoun ("Shoun"), was, upon information and belief, a Member and owner of Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC ("TAYLOR, SHOUN"), and was acting as its agent.

13. At all relevant times, the acts, omissions, and liability of TAYLOR, SHOUN includes the acts and/or omissions of its agents, principals, employees and/or servants, including but not limited to those by Shoun, both directly and vicariously, as well as jointly and severally, pursuant to principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency, and/or *respondeat* superior.

14. At all times relevant, TAYLOR, SHOUN acted by and through its employees and agents, including but not limited to Shoun, who acted within the course and scope of her employment and/or agency with all implied, inherent, apparent and express authority to so bind her master and principal by their her willful, wanton and reckless actions and/or omissions making TAYLOR, SHOUN vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

15. At all relevant times, and upon information and belief, Theos and Shoun (collectively "Defendant Lawyers") acted as co-counsel for Plaintiff, PERSONAL CARE, INC., ("PERSONAL CARE").

16. Defendant Lawyers accepted the representation of PERSONAL CARE to pursue claims against its former employee, Hattie M. Askew ("Askew"), who resided in Hampton County, South Carolina, for her allegedly tortious activities in violation of her contract with PERSONAL CARE, a majority of which took place and/or had consequences in Beaufort County, South

Carolina.

17. As an integral part of the Defendant Lawyers' acceptance of the representation, a contract of representation was entered by and between URICCHIO, HOWE and TAYLOR, SHOUN, on the first part, and PERSONAL CARE, on the second part. URICCHIO, HOWE and TAYLOR, SHOUN will be referred to as the "Defendant Law Firms."

18. On September 14, 2009, Theos sent a letter, as agent for PERSONAL CARE, to counsel for Askew and a simultaneous copy to third-parties containing statements about Askew that Askew later claimed were allegedly defamatory about her.

19. On December 10, 2009, the Defendant Lawyers commenced an action in Charleston County, styled *Personal Care, Inc. vs. Hattie M. Askew d/b/a Lowcountry Medical Transport, Inc.*, Civil Action No. 2010-CP-23-626 ("the *Askew* lawsuit").

20. On March 9, 2010, Askew filed an Answer and Counterclaim asserting a claim for defamation ("*Askew* counterclaim") against PERSONAL CARE based on the alleged defamatory statements in the letter published by Theos.

21. Defendants did not inform PERSONAL CARE about the *Askew* counterclaim until May 2012, more than two years after the counterclaim had been filed.

22. Defendants did not inform PERSONAL CARE for more than two years that because the *Askew* counterclaim was based on the letter written by Theos, a conflict of interest had arisen between Defendants, on the one hand, and their client, PERSONAL CARE, on the other.

23. Defendants did not to inform PERSONAL CARE for more than two years that because the *Askew* counterclaim was based on the letter written by Theos, it was highly likely that they would be called at trial as witnesses and therefore would not be able to serve as trial

counsel, which would cause substantial prejudice to *Askew* counterclaim.

24. The existence of the *Askew* counterclaim, the factual basis for that counterclaim, and the prosecution of that counterclaim at the trial of *Askew* lawsuit will, as a matter of necessity, require the jury to reduce its focus from 100% on PERSONAL CARE' claims against Askew and direct attention to the *Askew* counterclaim, thereby causing injury to PERSONAL CARE and reducing the chances of success on its claims.

25. On March 12, 2010, Askew's counsel filed a motion to change venue from Charleston County to Hampton County, which was heard and granted in July 2010.

26. At the time of the July 2010 hearing, Defendants were required to, but did not, produce evidence showing that venue was proper in some county other than Hampton County.

27. At the *Askew* lawsuit was filed and at time of the July 2010 hearing, evidence was available to establish venue in Beaufort County, South Carolina.

28. Prior to filing the *Askew* lawsuit, Defendants knew or should have known that Beaufort County was where the most substantial part of the Askew's acts or omissions occurred, where PERSONAL CARE primarily operates, and where a substantial number of witnesses resided.

29. Defendants should have filed the *Askew* lawsuit in Beaufort County, or prior to the hearing in July 2010, submitted affidavits and other evidence opposing the motion to transfer venue to Hampton County.

30. Shortly after May 2012, after the Defendant Lawyers first disclosed to PERSONAL CARE the existence of the *Askew* counterclaim, new lawyers were retained on an hourly fee basis plus expenses to take over the representation of PERSONAL CARE in defense of the

Askew counterclaim.

31. The Defendant lawyer's errors proximately caused the *Askew* counterclaim and their delay in informing their client about it caused new lawyers to be retained on an hourly fee basis plus expenses to take over the representation of PERSONAL CARE in defense of that counterclaim.

32. In August 2012, in the *Askew* lawsuit, Defendants filed a motion to be relieved as counsel for PERSONAL CARE based on a conflict of interest under Rule 1.7, RPC.

33. By August 2012, PERSONAL CARE had already paid Defendants approximately $40,000 in legal fees and expenses. Additional legal fees and expenses continue to be incurred to defend PERSONAL CARE against the *Askew* counterclaim.

34. After August 2012, the Defendants prepared a proposed Order granting their motion to be relieved as *Personal Care*' counsel.

35. On November 1, 2012, the trial court signed the proposed Order prepared by Defendants granting their motion to be relieved almost three (3) years after Defendants filed the *Askew* lawsuit.

36. The Order granting Defendants' motion to be relieved only allowed PERSONAL CARE sixty (60) days, until December 31, 2012, to obtain new counsel.

37. The Order goes on to state that PERSONAL CARE would be required to proceed *pro se* if new counsel was not obtained, even though Defendants knew or should have known that a corporation cannot represent itself and Mr. Cignavitch, PERSONAL CARE' representative, is not licensed to practice law.

38. After November 1, 2012, a hearing was held on PERSONAL CARE' second motion to change venue.

39. The court denied PERSONAL CARE' second motion to change venue on the grounds that the Defendants failed to submit evidence supporting venue in Beaufort County when the first venue motion was heard in July 2010.

40. As a direct and proximate result of the Defendants' errors, PERSONAL CARE was forced to spend additional funds and commit time and other resources to mitigate the damages caused as a direct and proximate result of Defendants' errors.

41. The claims and counterclaims in the *Askew* lawsuit remain unresolved.

42. As a direct and proximate result of the Defendants' errors, PERSONAL CARE is at substantial risk of a verdict on the *Askew* counterclaim.

43. Had Defendants followed the rules for client safety and protection followed by all reasonably prudent lawyers in South Carolina and thereby meeting the standard of care for lawyers in South Carolina handling the same or similar matters, PERSONAL CARE would not have suffered the financial losses it incurred, including actual damages, consequential damages, and prejudgment interest.

44. Defendants have refused to admit their fault for the financial losses they caused to PERSONAL CARE.

45. Defendants have refused to accept their responsibility to make PERSONAL CARE whole for the financial losses they caused to PERSONAL CARE.

46. Defendants have refused to offer even one penny to make PERSONAL CARE whole for the financial losses they caused to PERSONAL CARE.

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)
(Against Theos and Shoun Only)

47. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

48. At all relevant times, a client-lawyer relationship existed between PERSONAL CARE and the Defendant Lawyers.

49. The scope of the client-lawyer relationship required the Defendant Lawyers, among other things, to protect PERSONAL CARE' interests and pursue its claims against its former employee, Hattie M. Askew, for her allegedly tortious activities in violation of her duties of loyalty and in violation of her contract with PERSONAL CARE.

50. Upon agreeing to represent PERSONAL CARE, Defendant Lawyers impliedly represented that they (a) possessed the requisite degree of learning, skill, and ability necessary to the practice of the profession that other lawyers ordinarily possess; (b) would exercise the best professional judgement; and (c) would exercise reasonable and ordinary care and diligence in the use and application of skill and knowledge to their pursuit of PERSONAL CARE' claims against Askew.

51. By virtue of their client-lawyer relationship, Defendant Lawyers owed duties to PERSONAL CARE, including the duty to protect, preserve and advance PERSONAL CARE' rights and interests by possessing and exercising that degree of care, skill and learning which other reasonable and competent lawyers would be expected to possess and exercise under the same or similar circumstances.

52. The standards by which the Defendant Lawyers' satisfaction of their professional duties are measured are referred to as "the standard of care," which can also be described as "client safety rules."

53. The "client safety rules" are general principals by which competent and reasonably prudent lawyers carry out their duties in handling their client's matter so their client's interests are protected.

54. It is a client safety rule that a lawyer should be trained on how to handle their client's matter so their client's interests are protected.

55. It is a client safety rule that a lawyer should follow the requirements of the law when handling the client's matter so their client's interests are protected.

56. It is a client safety rule that a lawyer should avoid doing or saying things that create legal claims against their client so their client's interests are protected.

57. It is a client safety rule that a lawyer should avoid doing or saying things that cause the client to spend more money on legal fees so their client's interests are protected.

58. It is a client safety rule that a lawyer should keep the client informed on all matters concerning the client so their client's interests are protected.

59. It is a client safety rule that a lawyer should avoid saying or doing things that create a conflict of interest between the lawyer and the client so that the client's interests are protected.

60. It is a client safety rule that no lawyer should ever needlessly endanger their client.

61. When a lawyer breaks a client safety rule the client is needlessly endangered.

62. When a lawyer breaks a client safety rule the client's interests are at risk.

63. When a lawyer breaks a client safety rule that causes harm to the client, the lawyer should pay the client for the damages.

64. The Defendant lawyers violated the client safety rule to follow the requirements of the law when handling the client's matter when they sent a letter to a third party containing

allegedly defamatory statements about Askew.

65. The Defendant lawyers violated the client safety rule to avoid doing or saying things that create legal claims against PERSONAL CARE.

66. The Defendant lawyers violated the client safety rule to avoid doing or saying things that cause PERSONAL CARE to spend more money on legal fees.

67. The Defendant lawyers violated the client safety rule to keep PERSONAL CARE informed on all maters concerning PERSONAL CARE, including the *Askew* counterclaim.

68. The Defendant lawyers violated the client safety rule to avoid saying or doing things that create a conflict of interest between the Defendant Lawyers and PERSONAL CARE.

69. Because the Defendant Lawyers violated the client safety rules, the Defendant Lawyers needlessly endangered their client, PERSONAL CARE, to a risk of an adverse verdict on the *Askew* counterclaim.

70. Because the Defendant Lawyers violated the client safety rules, the Defendant Lawyers needlessly endangered their client, PERSONAL CARE, causing it to incur thousands of dollars in legal fees to defend against the *Askew* counterclaim.

71. The obligation to inform PERSONAL CARE about the *Askew* counterclaim did not involve Defendant Lawyers' exercise of professional judgment.

72. Defendant Lawyers' errors in failing to inform PERSONAL CARE about the *Askew* counterclaim were not a result of the exercise of professional judgement, but were instead errors resulting from Defendant Lawyers' failure to exercise ordinary skill and knowledge.

73. Based on the foregoing, Defendant Lawyers failed to meet the minimum standard of care and thereby breached their duties to perform competent and prudent legal services to PERSONAL CARE as would ordinary and reasonable lawyers under similar circumstances.

74. Defendant Lawyers failed to meet the minimum standard of care and thereby breached their duties to perform competent and prudent legal services and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner in such other particulars as the evidence in this case may demonstrate.

75. It is reasonably foreseeable that PERSONAL CARE would incur substantial damages in the event Defendant Lawyers failed to meet the minimum standard of care in handling the *Askew* lawsuit.

76. As a direct and proximate cause of Defendant Lawyers' actions, PERSONAL CARE incurred actual damages; special damages; and incidental damages, all in an amount to be more specifically proven at trial.

77. WHEREFORE, PERSONAL CARE prays for judgment on its professional negligence cause of action against Defendant Lawyers for actual damages; special damages; and incidental damages, and such other relief as the Court may deem reasonable and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duties)
(Against Theos and Shoun Only)

78. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

79. At all relevant times, Defendant Lawyers had and owed fiduciary duties to PERSONAL CARE.

80. Defendant Lawyers' fiduciary duties to PERSONAL CARE included, but were not limited to, the duties of competence and loyalty, as well as the duty to act single-mindedly in preserving, protecting and advancing the rights and interests of PERSONAL CARE.

81. Defendant Lawyers had a duty to keep PERSONAL CARE fully informed on all facts material to the *Askew* lawsuit.

82. Defendant Lawyers had a duty to inform PERSONAL CARE about the *Askew* counterclaim promptly upon learning it had been filed.

83. Defendant Lawyers had a duty to avoid continuing to represent PERSONAL CARE once a conflict of interest arose based on the factual basis for the *Askew* counterclaim alleged in the *Askew* lawsuit.

84. Defendant Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to provide competent and prudent legal services to PERSONAL CARE as would ordinary and reasonable fiduciaries under similar circumstances.

85. Defendant Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to PERSONAL CARE, when, among other things, the Defendant Lawyers did not inform PERSONAL CARE in a timely manner about the *Askew* counterclaim.

86. Defendant Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to PERSONAL CARE in such other particulars as the evidence in this case may demonstrate.

87. As a direct and proximate cause of Defendant Lawyers' conduct in breach of their fiduciary duties, PERSONAL CARE sustained compensatory damages in an amount to be more specifically proven at trial.

88. Based upon Defendant Lawyers' conduct in breach of their fiduciary duties of loyalty, PERSONAL CARE should be entitled to an Order requiring Defendant Lawyers and Defendant Law Firms to disgorge all fees and other benefits obtained from their relationship with PERSONAL CARE.

89. WHEREFORE, PERSONAL CARE prays for judgment on this breach of fiduciary duty

cause of action against Defendant Lawyers for actual compensatory damages, disgorgement of legal fees and all other benefits from their relationship with PERSONAL CARE, and such other relief as the Court may deem reasonable and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)
(Against DEFENDANT LAW FIRMS Only)

90. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

91. Defendant Law Firms entered into a contract with PERSONAL CARE, the terms of which Defendant Law Firms agreed and contracted to provide competent and prudent legal services to pursue recovery on PERSONAL CARE' claim against its former employee, Askew.

92. PERSONAL CARE fulfilled all necessary preconditions of the contract and escrow contract, if any, with Defendant Law Firms.

93. Defendant Law Firms breached the contract with PERSONAL CARE when Defendant Law Firms sent a letter containing allegedly defamatory statements about Askew to third-parties and when they failed to inform PERSONAL CARE about the *Askew* counterclaim in a timely manner.

94. As a direct and proximate result of Defendant Law Firms' breach of contract, PERSONAL CARE sustained actual damages in an amount to be more specifically proven at trial.

95. WHEREFORE, PERSONAL CARE prays for judgment on this cause of action against Defendant Law Firms for actual damages suffered and such other relief as the Court may deem reasonable and proper.

TRIAL BY JURY

96. Plaintiff demands a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

97. Pursuant to S.C. Code Ann. §15-36-100(B) (2006), because this Complaint is being filed when there is a good faith basis to believe the expiration of the statute of limitations is imminent, it is filed without an affidavit by expert licensed by the Supreme Court of the State of South Carolina specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. Plaintiff intends to file an Amended Complaint with an expert affidavit within forty-five (45) days.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PERSONAL CARE, LLC, prays for a judgment against Defendants, Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, as follows:

1. As to the Professional Negligence cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more specifically proven at trial; the costs of this lawsuit; and such other relief as the Court may deem reasonable and proper.

2. As to the Breach of Fiduciary Duty cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more

specifically proven at trial; for an order for disgorgement of all legal fees and other benefits; for punitive damages; the costs of this lawsuit; and such other relief as the Court may deem reasonable and proper.

3. As to the Breach of Contract cause of action, for a judgment against Defendant URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, jointly and severally, for actual damages suffered and such other relief as the Court may deem reasonable and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis (SC Bar # 064918)
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Lawyers for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

March 4, 2013

Exhibit D

COURT'S
EXHIBIT
#C1

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2013-CP-10-1396

PERSONAL CARE, INC.,

Plaintiff,

vs.

Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC,

Defendants.

VERIFIED AMENDED COMPLAINT
(Jury Trial Demanded)

1. Professional Negligence;
2. Breach of Fiduciary Duty;
3. Breach of Contract.

FILED
2013 APR 19 PM 3:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff, PERSONAL CARE, INC., on information, belief, and established facts, by and through their undersigned counsel, complaining of Defendants, Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, would respectfully show to this Honorable Court the following:

SUMMARY OF THE CASE

1. This legal malpractice Amended Complaint centers upon the Defendant lawyers' approximate two (2) year delay in telling Plaintiff, their client in an underlying lawsuit, that a defamation counterclaim had been filed against Plaintiff based on alleged defamatory statements in a letter one of the Defendant lawyers sent prior to filing the underlying lawsuit. Defendants accepted the representation of Plaintiff on its' claims against a former employee for breaching her duty of loyalty and profiting from use of Plaintiff's propriety client lists. Prior to suit being filed, one of the Defendant lawyers published a letter to third-parties–on behalf of Plaintiff–containing allegedly defamatory statements about the former

employee, and not long after that the Defendant lawyers filed suit on behalf of Plaintiff against the employee. Based on the Defendant lawyer's allegedly defamatory statements, the former employee filed an answer and *counterclaim for defamation* against Plaintiff. On top of the damage from the liability exposure, another damage caused by the counterclaim is that it does, of course, takes away from a jury's full attention to Plaintiff's claims, which the Defendant lawyers had agreed to pursue. Further compounding the error, the Defendant lawyers and law firms neglected to tell their client, Plaintiff, *for more than two years* about the fact the Plaintiff was being sued for money damages because of their own allegedly defamatory statements. Defendants also neglected to tell Plaintiff that the Defendant lawyers were "necessary witnesses" because the Defendant lawyers' alleged tortious conduct took place prior to suit being filed and that those circumstances created a non-waiveable conflict of interest and an immediate need for substitute counsel. At the trial-ripe age of about 2 ½+ years, the Defendant lawyers' filed a motion to be relieved based on that non-waiveable conflict, which was granted, causing the need for other lawyers to be engaged and compensated to take over the representation to defend the counterclaim. Plaintiff's insurance coverage would not pay for a lawyer to take over the representation on *Plaintiff's* claims, only for defense of the counterclaim. With no lawyer at the helm for Plaintiff's claims, Plaintiff was tasked with the difficult challenge considering the age of the underlying case to find replacement counsel to finish the job on its claims against the employee. The underlying case remains pending. Because the three year anniversary of the counterclaim is approaching, because Defendants may claim the statute of limitations on Plaintiff's malpractice claims runs on that date, and because Defendants have not agreed to Plaintiff's proposal to toll the statute of limitations, the circumstances

created by Defendants require Plaintiff to commence this lawsuit and simultaneously move to stay this case until the underlying lawsuit has been resolved as per the Supreme Court's instructions in *Epstein v. Brown*, 363 S.C. 372, 610 S.E.2d 816, 821 (2005) (citing cases and other authorities commenting on motions to stay legal malpractice cases while underlying matter is pending and tolling agreements between the parties to toll the statute of limitations).

PARTIES

2. Defendant, Jerry N. Theos, is, upon information and belief, a citizen and resident of Charleston County, South Carolina, and is licensed to practice law and render legal services in South Carolina.

3. Defendant, URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA, is, upon information and belief, a Professional Association organized and existing under the laws of South Carolina, with its principal place of business in Charleston County, South Carolina.

4. Defendant, Cheryl D. Shoun, is, upon information and belief, a citizen and resident of Charleston County, South Carolina, and is licensed to practice law and render legal services in South Carolina.

5. Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, is or was, upon information and belief, a Limited Liability Corporation organized and existing under the laws of South Carolina, with its principal place of business in Charleston County, South Carolina.

6. Plaintiff, PERSONAL CARE, INC., is a Corporation organized and existing under the laws of South Carolina, providing ambulance services for the community in Beaufort, Charleston, Colleton, Hampton, and Jasper counties in South Carolina.

JURISDICTION

7. This Court has jurisdiction over these matters based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

8. Venue in this Court is proper as Defendant, Jerry N. Theos, and Defendant, Cheryl D. Shoun, are, upon information and belief, citizens and residents of Charleston County, South Carolina. Upon information and belief, Defendant, Jerry N. Theos, Defendant, URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA, Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, maintain offices in and provide legal services for clients in Charleston County, South Carolina.

FACTS

9. At all relevant times, Defendant, Jerry N. Theos ("Theos"), was, upon information and belief, a Member and owner of Defendant, URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA ("URICCHIO, HOWE"), and was acting as its agent.

10. At all relevant times, the acts, omissions, and liability of URICCHIO, HOWE includes the acts and/or omissions of its agents, principals, employees and/or servants, including but not limited to those by Theos, both directly and vicariously, as well as jointly and severally, pursuant to principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency, and/or *respondeat superior*.

11. At all relevant times, URICCHIO, HOWE acted by and through its employees and agents, including but not limited to Theos, who acted within the course and scope of his employment and/or agency with all implied, inherent, apparent and express authority to so

bind his master and principal by his willful, wanton and reckless actions and/or omissions making URICCHIO, HOWE vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior.*

12. At all relevant times, Defendant, Cheryl D. Shoun ("Shoun"), was, upon information and belief, a Member and owner of Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC ("TAYLOR, SHOUN"), and was acting as its agent.

13. At all relevant times, the acts, omissions, and liability of TAYLOR, SHOUN includes the acts and/or omissions of its agents, principals, employees and/or servants, including but not limited to those by Shoun, both directly and vicariously, as well as jointly and severally, pursuant to principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency, and/or *respondeat* superior.

14. At all times relevant, TAYLOR, SHOUN acted by and through its employees and agents, including but not limited to Shoun, who acted within the course and scope of her employment and/or agency with all implied, inherent, apparent and express authority to so bind her master and principal by their her willful, wanton and reckless actions and/or omissions making TAYLOR, SHOUN vicariously liable for same under the principles and doctrines of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior.*

15. At all relevant times, and upon information and belief, Theos and Shoun (collectively "Defendant Lawyers") acted as co-counsel for Plaintiff, PERSONAL CARE, INC., ("PERSONAL CARE").

16. Defendant Lawyers accepted the representation of PERSONAL CARE to pursue claims

against its former employee, Hattie M. Askew ("Askew"), who resided in Hampton County, South Carolina, for her allegedly tortious activities in violation of her contract with PERSONAL CARE, a majority of which took place and/or had consequences in Beaufort County, South Carolina.

17. As an integral part of the Defendant Lawyers' acceptance of the representation, a contract of representation was entered by and between URICCHIO, HOWE and TAYLOR, SHOUN, on the first part, and PERSONAL CARE, on the second part. URICCHIO, HOWE and TAYLOR, SHOUN will be referred to as the "Defendant Law Firms."

18. On September 14, 2009, Theos sent a letter, as agent for PERSONAL CARE, to counsel for Askew and a simultaneous copy to third-parties containing statements about Askew that Askew later claimed were allegedly defamatory about her.

19. On December 10, 2009, the Defendant Lawyers commenced an action in Charleston County, styled *Personal Care, Inc. vs. Hattie M. Askew d/b/a Lowcountry Medical Transport, Inc.*; Civil Action No. 2010-CP-23-626 ("the *Askew* lawsuit").

20. On March 9, 2010, Askew filed an Answer and Counterclaim asserting a claim for defamation ("*Askew* counterclaim") against PERSONAL CARE based on the alleged defamatory statements in the letter published by Theos.

21. Defendants did not inform PERSONAL CARE about the *Askew* counterclaim until May 2012, more than two years after the counterclaim had been filed.

22. Defendants did not inform PERSONAL CARE for more than two years that because the *Askew* counterclaim was based on the letter written by Theos, a conflict of interest had arisen between Defendants, on the one hand, and their client, PERSONAL CARE, on the other.

23. Defendants did not to inform PERSONAL CARE for more than two years that because the *Askew* counterclaim was based on the letter written by Theos, it was highly likely that they would be called at trial as witnesses and therefore would not be able to serve as trial counsel, which would cause substantial prejudice to *Askew* counterclaim.

24. The existence of the *Askew* counterclaim, the factual basis for that counterclaim, and the prosecution of that counterclaim at the trial of *Askew* lawsuit will, as a matter of necessity, require the jury to reduce its focus from 100% on PERSONAL CARE' claims against Askew and direct attention to the *Askew* counterclaim, thereby causing injury to PERSONAL CARE and reducing the chances of success on its claims.

25. On March 12, 2010, Askew's counsel filed a motion to change venue from Charleston County to Hampton County, which was heard and granted in July 2010.

26. At the time of the July 2010 hearing, Defendants were required to, but did not, produce evidence showing that venue was proper in some county other than Hampton County.

27. At the *Askew* lawsuit was filed and at time of the July 2010 hearing, evidence was available to establish venue in Beaufort County, South Carolina.

28. Prior to filing the *Askew* lawsuit, Defendants knew or should have known that Beaufort County was where the most substantial part of the Askew's acts or omissions occurred, where PERSONAL CARE primarily operates, and where a substantial number of witnesses resided.

29. Defendants should have filed the *Askew* lawsuit in Beaufort County, or prior to the hearing in July 2010, submitted affidavits and other evidence opposing the motion to

transfer venue to Hampton County.

30. Shortly after May 2012, after the Defendant Lawyers first disclosed to PERSONAL CARE the existence of the *Askew* counterclaim, new lawyers were retained on an hourly fee basis plus expenses to take over the representation of PERSONAL CARE in defense of the *Askew* counterclaim.

31. The Defendant lawyer's errors proximately caused the *Askew* counterclaim and their delay in informing their client about it caused new lawyers to be retained on an hourly fee basis plus expenses to take over the representation of PERSONAL CARE in defense of that counterclaim.

32. In August 2012, in the *Askew* lawsuit, Defendants filed a motion to be relieved as counsel for PERSONAL CARE based on a conflict of interest under Rule 1.7, RPC.

33. By August 2012, PERSONAL CARE had already paid Defendants approximately $40,000 in legal fees and expenses. Additional legal fees and expenses continue to be incurred to defend PERSONAL CARE against the *Askew* counterclaim.

34. After August 2012, the Defendants prepared a proposed Order granting their motion to be relieved as *Personal Care* counsel.

35. On November 1, 2012, the trial court signed the proposed Order prepared by Defendants granting their motion to be relieved almost three (3) years after Defendants filed the *Askew* lawsuit.

36. The Order granting Defendants' motion to be relieved only allowed PERSONAL CARE sixty (60) days, until December 31, 2012, to obtain new counsel.

37. The Order goes on to state that PERSONAL CARE would be required to proceed *pro*

se if new counsel was not obtained, even though Defendants knew or should have known that a corporation cannot represent itself and Mr. Cignavitch, PERSONAL CARE' representative, is not licensed to practice law.

38. After November 1, 2012, a hearing was held on PERSONAL CARE' second motion to change venue.

39. The court denied PERSONAL CARE' second motion to change venue on the grounds that the Defendants failed to submit evidence supporting venue in Beaufort County when the first venue motion was heard in July 2010.

40. As a direct and proximate result of the Defendants' errors, PERSONAL CARE was forced to spend additional funds and commit time and other resources to mitigate the damages caused as a direct and proximate result of Defendants' errors.

41. The claims and counterclaims in the *Askew* lawsuit remain unresolved.

42. As a direct and proximate result of the Defendants' errors, PERSONAL CARE is at substantial risk of a verdict on the *Askew* counterclaim.

43. Had Defendants followed the rules for client safety and protection followed by all reasonably prudent lawyers in South Carolina and thereby meeting the standard of care for lawyers in South Carolina handling the same or similar matters, PERSONAL CARE would not have suffered the financial losses it incurred, including actual damages, consequential damages, and prejudgment interest.

44. Defendants have refused to admit their fault for the financial losses they caused to PERSONAL CARE.

45. Defendants have refused to accept their responsibility to make PERSONAL CARE whole for the financial losses they caused to PERSONAL CARE.

46. Defendants have refused to offer even one penny to make PERSONAL CARE whole for the financial losses they caused to PERSONAL CARE.

FOR A FIRST CAUSE OF ACTION
(Legal Professional Negligence)
(Against Theos and Shoun Only)

47. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

48. At all relevant times, a client-lawyer relationship existed between PERSONAL CARE and the Defendant Lawyers.

49. The scope of the client-lawyer relationship required the Defendant Lawyers, among other things, to protect PERSONAL CARE' interests and pursue its claims against its former employee, Hattie M. Askew, for her allegedly tortious activities in violation of her duties of loyalty and in violation of her contract with PERSONAL CARE.

50. Upon agreeing to represent PERSONAL CARE, Defendant Lawyers impliedly represented that they (a) possessed the requisite degree of learning, skill, and ability necessary to the practice of the profession that other lawyers ordinarily possess; (b) would exercise the best professional judgement; and (c) would exercise reasonable and ordinary care and diligence in the use and application of skill and knowledge to their pursuit of PERSONAL CARE' claims against Askew.

51. By virtue of their client-lawyer relationship, Defendant Lawyers owed duties to PERSONAL CARE, including the duty to protect, preserve and advance PERSONAL CARE' rights and interests by possessing and exercising that degree of care, skill and learning which other reasonable and competent lawyers would be expected to possess and exercise under the same or similar circumstances.

52. The standards by which the Defendant Lawyers' satisfaction of their professional

duties are measured are referred to as "the standard of care," which can also be described as "client safety rules."

53. The "client safety rules" are general principals by which competent and reasonably prudent lawyers carry out their duties in handling their client's matter so their client's interests are protected.

54. It is a client safety rule that a lawyer should be trained on how to handle their client's matter so their client's interests are protected.

55. It is a client safety rule that a lawyer should follow the requirements of the law when handling the client's matter so their client's interests are protected.

56. It is a client safety rule that a lawyer should avoid doing or saying things that create legal claims against their client so their client's interests are protected.

57. It is a client safety rule that a lawyer should avoid doing or saying things that cause the client to spend more money on legal fees so their client's interests are protected.

58. It is a client safety rule that a lawyer should keep the client informed on all matters concerning the client so their client's interests are protected.

59. It is a client safety rule that a lawyer should avoid saying or doing things that create a conflict of interest between the lawyer and the client so that the client's interests are protected.

60. It is a client safety rule that no lawyer should ever needlessly endanger their client.

61. When a lawyer breaks a client safety rule the client is needlessly endangered.

62. When a lawyer breaks a client safety rule the client's interests are at risk.

63. When a lawyer breaks a client safety rule that causes harm to the client, the lawyer should pay the client for the damages.

64. The Defendant lawyers violated the client safety rule to follow the requirements of the law when handling the client's matter when they sent a letter to a third party containing allegedly defamatory statements about Askew.

65. The Defendant lawyers violated the client safety rule to avoid doing or saying things that create legal claims against PERSONAL CARE.

66. The Defendant lawyers violated the client safety rule to avoid doing or saying things that cause PERSONAL CARE to spend more money on legal fees.

67. The Defendant lawyers violated the client safety rule to keep PERSONAL CARE informed on all maters concerning PERSONAL CARE, including the *Askew* counterclaim.

68. The Defendant lawyers violated the client safety rule to avoid saying or doing things that create a conflict of interest between the Defendant Lawyers and PERSONAL CARE.

69. Because the Defendant Lawyers violated the client safety rules, the Defendant Lawyers needlessly endangered their client, PERSONAL CARE, to a risk of an adverse verdict on the *Askew* counterclaim.

70. Because the Defendant Lawyers violated the client safety rules, the Defendant Lawyers needlessly endangered their client, PERSONAL CARE, causing it to incur thousands of dollars in legal fees to defend against the *Askew* counterclaim.

71. The obligation to inform PERSONAL CARE about the *Askew* counterclaim did not involve Defendant Lawyers' exercise of professional judgment.

72. Defendant Lawyers' errors in failing to inform PERSONAL CARE about the *Askew* counterclaim were not a result of the exercise of professional judgement, but were instead errors resulting from Defendant Lawyers' failure to exercise ordinary skill and knowledge.

73. Based on the foregoing, Defendant Lawyers failed to meet the minimum standard

of care and thereby breached their duties to perform competent and prudent legal services to PERSONAL CARE as would ordinary and reasonable lawyers under similar circumstances.

74. Defendant Lawyers failed to meet the minimum standard of care and thereby breached their duties to perform competent and prudent legal services and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner in such other particulars as the evidence in this case may demonstrate.

75. It is reasonably foreseeable that PERSONAL CARE would incur substantial damages in the event Defendant Lawyers failed to meet the minimum standard of care in handling the *Askew* lawsuit.

76. As a direct and proximate cause of Defendant Lawyers' actions, PERSONAL CARE incurred actual damages; special damages; and incidental damages, all in an amount to be more specifically proven at trial.

77. WHEREFORE, PERSONAL CARE prays for judgment on its professional negligence cause of action against Defendant Lawyers for actual damages; special damages; and incidental damages, and such other relief as the Court may deem reasonable and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duties)
(Against Theos and Shoun Only)

78. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

79. At all relevant times, Defendant Lawyers had and owed fiduciary duties to PERSONAL CARE.

80. Defendant Lawyers' fiduciary duties to PERSONAL CARE included, but were not limited to, the duties of competence and loyalty, as well as the duty to act single-mindedly

in preserving, protecting and advancing the rights and interests of PERSONAL CARE.

81. Defendant Lawyers had a duty to keep PERSONAL CARE fully informed on all facts material to the *Askew* lawsuit.

82. Defendant Lawyers had a duty to inform PERSONAL CARE about the *Askew* counterclaim promptly upon learning it had been filed.

83. Defendant Lawyers had a duty to avoid continuing to represent PERSONAL CARE once a conflict of interest arose based on the factual basis for the *Askew* counterclaim alleged in the *Askew* lawsuit.

84. Defendant Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to provide competent and prudent legal services to PERSONAL CARE as would ordinary and reasonable fiduciaries under similar circumstances.

85. Defendant Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to PERSONAL CARE, when, among other things, the Defendant Lawyers did not inform PERSONAL CARE in a timely manner about the *Askew* counterclaim.

86. Defendant Lawyers failed to meet the minimum standard of conduct and thereby breached their fiduciary duties to PERSONAL CARE in such other particulars as the evidence in this case may demonstrate.

87. As a direct and proximate cause of Defendant Lawyers' conduct in breach of their fiduciary duties, PERSONAL CARE sustained compensatory damages in an amount to be more specifically proven at trial.

88. Based upon Defendant Lawyers' conduct in breach of their fiduciary duties of loyalty, PERSONAL CARE should be entitled to an Order requiring Defendant Lawyers and

Defendant Law Firms to disgorge all fees and other benefits obtained from their relationship with PERSONAL CARE.

89. WHEREFORE, PERSONAL CARE prays for judgment on this breach of fiduciary duty cause of action against Defendant Lawyers for actual compensatory damages, disgorgement of legal fees and all other benefits from their relationship with PERSONAL CARE, and such other relief as the Court may deem reasonable and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)
(Against DEFENDANT LAW FIRMS Only)

90. The foregoing Paragraphs are reiterated and realleged as though set forth verbatim.

91. Defendant Law Firms entered into a contract with PERSONAL CARE, the terms of which Defendant Law Firms agreed and contracted to provide competent and prudent legal services to pursue recovery on PERSONAL CARE' claim against its former employee, Askew.

92. PERSONAL CARE fulfilled all necessary preconditions of the contract and escrow contract, if any, with Defendant Law Firms.

93. Defendant Law Firms breached the contract with PERSONAL CARE when Defendant Law Firms sent a letter containing allegedly defamatory statements about Askew to third-parties and when they failed to inform PERSONAL CARE about the *Askew* counterclaim in a timely manner.

94. As a direct and proximate result of Defendant Law Firms' breach of contract, PERSONAL CARE sustained actual damages in an amount to be more specifically proven at trial.

95. WHEREFORE, PERSONAL CARE prays for judgment on this cause of action against

Defendant Law Firms for actual damages suffered and such other relief as the Court may deem reasonable and proper.

TRIAL BY JURY

96. Plaintiff demands a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

97. Pursuant to S.C. CODE ANN. § 15-36-100(B) (2006), attached hereto and incorporated herein by reference as **Exhibit 1**, is the affidavit of Robert D. Dodson, J.D., an expert witness and lawyer licensed to practice law in South Carolina, which specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PERSONAL CARE, LLC, prays for a judgment against Defendants, Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, as follows:

1. As to the Professional Negligence cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more specifically proven at trial; the costs of this lawsuit; and such other relief as the Court may deem reasonable and proper.

2. As to the Breach of Fiduciary Duty cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more

specifically proven at trial; for an order for disgorgement of all legal fees and other benefits; for punitive damages; the costs of this lawsuit; and such other relief as the Court may deem reasonable and proper.

3. As to the Breach of Contract cause of action, for a judgment against Defendant URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, jointly and severally, for actual damages suffered and such other relief as the Court may deem reasonable and proper.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

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Lawyers for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

April 18, 2013

Exhibit E

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Personal Care, Inc., Plaintiff, vs. Jerry N. Theos, Uricchio, Howe, Krell, Johnson, Toporek, Theos & Keith, P.A., Cheryl D. Shoun, and Taylor, Shoun, Bowley & Byrd, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2013-CP-10-1396 **CONSENT ORDER STRIKING CASE FROM DOCKET [RULE 40(j), SCRCP]**

IT APPEARING to the Court that Plaintiff Personal Care Inc. ("Plaintiff") and Defendants Jerry N. Theos, Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, P.A., Cheryl D. Shoun, and Taylor Shoun, Bowley & Byrd, LLC ("Defendants"), pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, agree to strike the above-captioned case from the docket.

IT FURTHER APPEARING that each party agrees that if the claim is restored within one year from the date of this Order, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations as of the date of this Order shall remain and begin to run on the date the claim is restored.

IT IS HEREBY ORDERED that the above-captioned case be stricken from the docket in accordance with the agreement of the parties pursuant to Rule 40(j), SCRCP.

[SIGNATURES ON FOLLOWING 4 PAGES]

IT IS SO ORDERED.

Chief ~~Administrative~~ Judge
Ninth Judicial Circuit

Charleston, South Carolina
August 27, 2013

WE SO CONSENT:

Catherine B. Kerney

Thomas A. Pendarvis, Esq.
Catherine B. Kerney, Esq.
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(843) 524-9500
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Counsel for the Plaintiff

2007

WE SO CONSENT:

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Barnwell Whaley Patterson & Helms, LLC
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Charleston, SC 29402
(843) 577-7700
(843) 577-7708 fax

Counsel for Defendants Jerry N. Theos and Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, P.A.

RWD/4

WE SO CONSENT:

David W. Overstreet, Esq.
Amanda K. Dudgeon, Esq.
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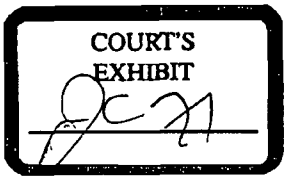
(843) 727-0307
(843) 727-2995 fax

Counsel for Defendants Cheryl D. Shoun and Taylor, Shoun, Bowley & Byrd, LLC

Exhibit F



STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2013-CP-10-1396
PERSONAL CARE, INC., Plaintiff, vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC, Defendants.	**CONSENT ORDER RESTORING CASE TO DOCKET (RULE 40(j), SCRCP)**

IT APPEARING to the Court that Plaintiff Personal Care Inc. ("Plaintiff") and Defendants Jerry N. Theos, Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, P.A., Cheryl D. Shoun, and Taylor Shoun, Bowley & Byrd, LLC ("Defendants"), pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, agree to restore the above-captioned case to the docket, which was removed by Consent Order on August 28, 2013.

IT IS HEREBY ORDERED that the above-captioned case be restored to the docket in accordance with the agreement of the parties pursuant to Rule 40(j), SCRCP.

AND IT IS SO ORDERED.

_____
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

_____, 2014

WE SO CONSENT:

Thomas A. Pendarvis (SC Bar # 064918)
Catherine "Carey" B. Kerney (SC Bar # 81429)
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Counsel for Plaintiff, PERSONAL CARE, INC.

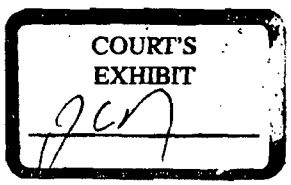
Phillip S. Ferderigos, J.D.
BARNWELL WHALEY PATTERSON & HELMS, LLC
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700
(843) 577-7708 fax

Counsel for Defendants Jerry N. Theos and
URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS & KEITH, P.A.

Cheryl D. Shoun, J.D.
NEXSEN PRUET, LLC
PO Box 486
Charleston SC 29402
cshoun@nexsenpruet.com
(843)720-1762

Pro se for Cheryl D. Shoun
and Counsel for TAYLOR, SHOUN, BOWLEY & BYRD, LLC

Exhibit G



---------- Forwarded message ----------
From: **Thomas A. Pendarvis** <tpendarvis@pendarvislaw.com>
Date: Wed, Sep 17, 2014 at 12:55 PM
Subject: RE: 2013-CP-10-1396
To: "Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)" <MDennisLC@sccourts.org>
Cc: "M. Dawes Cooke" <mdc@barnwell-whaley.com>, Phillip Ferderigos <pferderigos@barnwell-whaley.com>, Andrea Goodreau <AGoodreau@pendarvislaw.com>, Leslie Toia <LToia@pendarvislaw.com>, "cshoun@nexsenpruet.com" <cshoun@nexsenpruet.com>, Catherine Byrd <catherine@tbbesq.com>, "Don Michel (DMichel@charlestoncounty.org)" <DMichel@charlestoncounty.org>

Ms. Coffey,

Please extend my apologies to Judge Dennis for the circumstances, but **Plaintiff is withdrawing the proposed Consent Order to restore** the case to the active trial roster as not all parties have consented to the restoration.

I called Ms. Byrd on the telephone after she forwarded to me a copy of her message to you and Judge Dennis, and apologized for not including her in the recent correspondence related to the proposed Consent Order to restore this case to the active trial roster. I was under the mistaken understanding that Ms. Shoun was communicating information about this matter to her former law firm, Taylor, Bowley & Byrd, LLC. In the future, we will be sure to have Taylor, Bowley & Byrd, LLC served with all materials requiring service and included in all communications, both electronic and written.

It was also my understanding from the telephone call with Ms. Byrd that Taylor, Bowley & Byrd, LLC has not consented to Personal Care's proposed consent Motion to restore the case to the active trial roster. As such, a formal motion to restore will be filed and, as stated earlier, Taylor, Bowley & Byrd, LLC will be included on the service list. Again, under the circumstances the proposed Consent Order is being withdrawn, and we will proceed with a formal motion to restore.

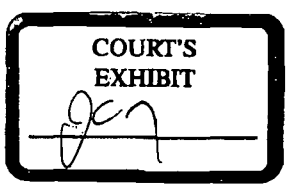
Thank you very much for your time and attention to this matter.

Regards,

Thomas A. Pendarvis

Pendarvis Law Offices, P.C.

Exhibit H



Janet Smith

From: Cheryl Shoun [cherylshoun@bellsouth.net]
Sent: Friday, March 19, 2010 4:00 PM
To: Janet Smith
Subject: Fw: Personal Care vs. Askew (could u please call me 568 0236)
Janet if you're still there could you e-mail the Answer and Counterclaim to Bernie? If not I'll do it Monday.

Have a great weekend.
----- Original Message -----
From: bcignavitch@comcast.net
To: Cheryl Shoun
Sent: Friday, March 19, 2010 2:06 PM
Subject: Re: Personal Care vs. Askew (could u please call me 568 0236)

----- Original Message -----
From: "Cheryl Shoun" <cherylshoun@bellsouth.net>
To: bcignavitch@comcast.net
Cc: "Jerry" <Jerry@urlcchio.com>
Sent: Friday, March 19, 2010 1:00:00 PM GMT -05:00 US/Canada Eastern
Subject: Personal Care vs. Askew

Hey Bernie: Hope this finds you well.

We have received an Answer and Counterclaim on behalf of the Defendant in this action. I need to get a copy of the Counterclaim to you; a response is due April 9. May I fax to you? Will you provide the correct number?

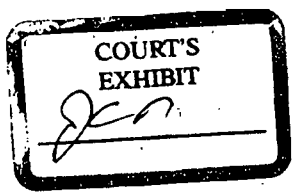
Also, if you will please provide your insurance information, we will submit the Counterclaim to your carrier, asking it to defend and indemnify you. We will need a copy of the policy if you have it.

Thanks. I look forward to hearing from you.

Cheryl

Cheryl D. Shoun
TAYLOR, SHOUN, BOWLEY & BYRD, LLC
39 Broad Street, Suite 101
Charleston, S.C. 29401
(843) 723-4020
(843) 723-4021 Fax

Exhibit I



Janet Smith

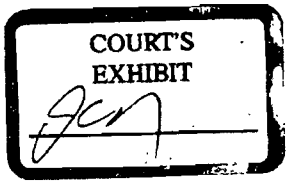
From: Janet Smith
Sent: Friday, March 19, 2010 4:19 PM
To: bcignavitch@comcast.net
Cc: Cheryl Shoun; Janet Smith
Subject: Answer and Counterclaim
Attachments: 4481_001.pdf

Mr. Cignavitch: Attached please find a filed copy of the Answer and Counterclaim. Janet

---

From: Copier
Sent: Friday, March 19, 2010 4:26 PM
To: Janet Smith
Subject: Attached Image

Exhibit J



Janet Smith

From: Cheryl Shoun [cherylshoun@bellsouth.net]
Sent: Friday, March 26, 2010 10:23 AM
To: bcignavitch@comcast.net
Cc: Jerry Theos; Janet Smith
Subject: Personal Care v. Askew
Attachments: personal care extension ltr..tif

Bernie:

I am so sorry that I have not had the opportunity to call and discuss the pleadings sent to you last week. I am going to be out of town next week, and as usual, everything seems to fall on my desk when that happens.

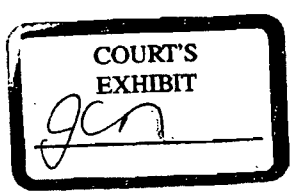
I am attaching a copy of a letter I am sending to Askew's counsel requesting an extension of time in which to respond to the Counterclaim. As I think we discussed earlier, when we granted an extension to Askew's attorneys, this is a routine practice, and I have no reason to think it will not be granted. You will see, if granted, our response will be due mid-May, giving us plenty of time to talk over the allegations. Even if it is not granted, the response isn't due until mid-April. I will be back in my office on April 6, 2010.

I sincerely appreciate your patience in this matter, and look forward to talking with you regarding the Counterclaim. I hope all else is well with you.

Cheryl

Cheryl D. Shoun
TAYLOR, SHOUN, BOWLEY & BYRD, LLC
39 Broad Street. Suite 101
Charleston, S.C. 29401
(843) 723-4020
(843) 723-4021 Fax

Exhibit K



Jerry Theos

From: Cheryl Shoun [cherylshoun@bellsouth.net]
Sent: Tuesday, April 06, 2010 12:50 PM
To: bcignavitch@comcast.net
Cc: Jerry Theos; Janet Smith
Subject: Personal Care v. Hattie Askew

Bernie: Hey. I am back in my office today, and have received confirmation of our thirty day extension to respond to the Counterclaim in this case. Our Reply is due on or before May 13, 2010.

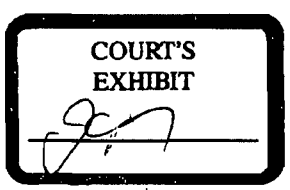
Please let me know a time that is good for you for us to get together to talk over our response. We may even be able to do it by phone if your schedule is full. In the meantime I will probably prepare a draft and send it to you as a starting point.

Thanks.

Cheryl

Cheryl D. Shoun
TAYLOR, SHOUN, BOWLEY & BYRD, LLC
39 Broad Street, Suite 101
Charleston, S.C. 29401
(843) 723-4020
(843) 723-4021 Fax

Exhibit L



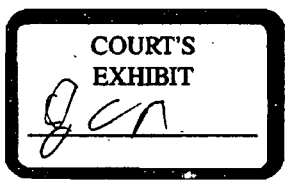
Jerry Theos

From: Cheryl Shoun [cherylshoun@bellsouth.net]
Sent: Tuesday, April 06, 2010 12:54 PM
To: bcignavitch@comcast.net
Cc: Jerry Theos; Janet Smith

Bernie: I forgot to mention this again – please get your insurance information to me as quickly as you can. Thanks.

Cheryl D. Shoun
TAYLOR, SHOUN, BOWLEY & BYRD, LLC
39 Broad Street, Suite 101
Charleston, S.C. 29401
(843) 723-4020
(843) 723-4021 Fax

Exhibit M



Janet Smith

From: Cheryl Shoun [cherylshoun@bellsouth.net]
Sent: Tuesday, April 13, 2010 9:51 AM
To: bclgnavitch@comcast.net
Cc: Jerry Theos; Janet Smith

Bernie: Good morning. Hope this finds you well.

I want to let you know that I have withdrawn from my former firm, and have begun practicing with Nexsen Pruet, LLC. I wanted to be able to give that news to you, rather than have you hear the news via the form letter to clients.

Nexsen Pruet has offices throughout South Carolina and North Carolina, and enjoys a wonderful reputation. Of course you will have the choice of whether you wish for me to take this matter or whether you wish for it to remain at my former firm. If you choose to have me take the file with me, it will be handled at Nexsen Pruet on the same terms and conditions under which it is currently pending.

You should be receiving a letter in the immediate future, perhaps as early as today, advising you of this change and requesting that you indicate your choice. Hopefully the letter gives you the option of returning it to me as well as to my former firm. It can be faxed directly to me at 414-8238. If you want me to continue handling your matters, please return the letter as quickly as possible; I can not physically removed the file from my old office until your designation is received.

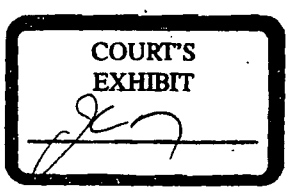
You may reach me at this e-mail address or at cshoun@nexsenpruet.com. You may also feel free to call my office at 720-1762. And, of course, you can discuss this matter with Jerry.

Thanks so much, and I hope to hear from you in the immediate future. Please remember that a Reply needs to the Counterclaim by Ms. Askew will have to be served by the latter part of May.

Cheryl

Cheryl D. Shoun

Exhibit N



NEXSEN | PRUET

IRS #[redacted]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, ESQUIRE
URICCHIO, HOWE, KRELL, JACOBSAON,
TOPOREK, THEOS & KEITH, PA
17 1/2 BROAD STREET
CHARLESTON, SC 29401

Remit Address:
Post Office Drawer 2426
Columbia, SC 29202

Matter No.	047020-00001
Invoice No.	53368064
Invoice Date	June 2, 2010
Attorney	CD SHOUN

Re: PERSONAL CARE, INC. - VS. HATTIE M. ASKEW D/B/A LOW COUNTRY MEDICAL TRANSPORT, F/K/A LOW COUNTRY MEDICAL TRANSPORT, INC.

For Professional Services Rendered Through May 18, 2010.
PLEASE SEE REVERSE FOR DETAILS.

Current Charges	$1,444.88
New Balance	$1,444.88

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE BILLING DATE.

NEXSEN|PRUET

Invoice Date: 6/2/10 Invoice No. 53368064 Matter No. 047020-00001

FEES

Date	Timekeeper	Description	Hours	Amount
04/27/10	CDS	PERSONAL CARE - CONFERENCE WITH MR. CIGNAVITCH REGARDING MEETING TO DISCUSS COUNTERCLAIM AND PREPARATION OF REPLY THERETO; DISCUSS DEFENDANT'S MOTION TO CHANGE VENUE.	0.20	80.00
05/03/10	CDS	REVIEW COUNTERCLAIM; CONDUCT RESEARCH AS TO ELEMENTS OF DEFAMATION AND AFFIRMATIVE DEFENSES THERETO; FORWARD TO MR. THEOS FOR REVIEW AND COMMENT. CONFERENCE WITH MR. THEOS REGARDING MERIT OF DEFAMATION CLAIM. LETTER TO DEFENDANT'S COUNSEL REQUESTING DEFENDANT'S RESPONSES TO DISCOVERY WHICH ARE OVERDUE. REVIEW FILE NOTES AND BEGIN DRAFTING ADDITIONAL INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT.	2.60	1,040.00
05/04/10	CDS	FILE AND SERVE REPLY TO COUNTERCLAIM.	0.20	80.00
05/05/10	CDS	REVIEW FILE NOTES; PREPARE ADDITIONAL INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS; FORWARD TO MR. THEOS FOR REVIEW AND COMMENT.	0.60	240.00
Total Fees:				$1,440.00

EXPENSES

Date	Description	Amount
05/04/10	COPIES	2.00
05/05/10	COURIER SERVICES	2.00
05/05/10	POSTAGE	0.88
Total Expenses:		$4.88

NEXSEN|PRUET

TIME SUMMARY RECAP

Timekeeper	Title	Hours	Rate	Amount
CD SHOUN	COUNSEL	3.60	$400.00	$1,440.00
Total:		3.60		**$1,440.00**

NEXSEN | PRUET

IRS # [redacted]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, ESQUIRE
URICCHIO, HOWE, KRELL, JACOBSAON,
TOPOREK, THEOS & KEITH, PA
17 1/2 BROAD STREET
CHARLESTON, SC 29401

Remit Address:
Post Office Drawer 2426
Columbia, SC 29202

Matter No.	047020-00001
Invoice No.	53368064
Invoice Date	June 2, 2010
Attorney	CD SHOUN

Re: PERSONAL CARE, INC. - VS. HATTIE M. ASKEW D/B/A LOW COUNTRY MEDICAL TRANSPORT, F/K/A LOW COUNTRY MEDICAL TRANSPORT, INC.

For Professional Services Rendered Through May 18, 2010
PLEASE SEE REVERSE FOR DETAILS

REMITTANCE

Current Charges	$1,444.88
New Balance	$1,444.88

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE BILLING DATE.

NEXSEN | PRUET

IRS # [redacted]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, ESQUIRE
URICCHIO, HOWE, KRELL, JACOBSAON,
TOPOREK, THEOS & KEITH, PA
17 1/2 BROAD STREET
CHARLESTON, SC 29401

Remit Address:
Post Office Drawer 2426
Columbia, SC 29202

Matter No.	047020-00001
Invoice No.	53368064
Invoice Date	June 2, 2010
Attorney	CD SHOUN

Re: PERSONAL CARE, INC. - VS. HATTIE M. ASKEW D/B/A LOW COUNTRY MEDICAL TRANSPORT, F/K/A LOW COUNTRY MEDICAL TRANSPORT, INC.

For Professional Services Rendered Through May [illegible]
PLEASE SEE REVERSE FOR DETAILS

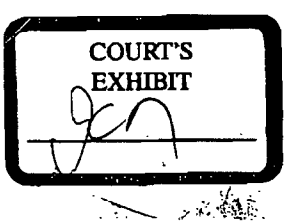
FILE COPY

Current Charges	$1,444.88
New Balance	$1,444.88

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE BILLING DATE.

#3226-47700
Shoun 00357

Exhibit O



Kerr, Michelle T.

From:	Kerr, Michelle T.
Sent:	Monday, June 07, 2010 10:20 AM
To:	'bcignavitch@comcast.net'
Cc:	Shoun, Cheryl D.; 'jerry@uricchio.com'; 'janet@uricchio.com'
Subject:	Personal Care, Inc. v. Hattie M. Askew = Attached filed Reply for your review
Attachments:	576585_1.PDF

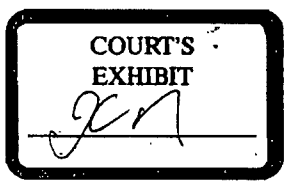
Bernie:

Attached please find for your review and file a Filed Stamped copy of the Reply to Counterclaim in the above-referenced matter. Should you have any questions or concerns, please let us know.

Thanks,
Michelle

Michelle T. Kerr
Assistant to Cherie W. Blackburn, Paul A. Dominick, Cheryl D. Shoun and Marilyn Trevino
NEXSEN PRUET
205 King Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 486 (29402)
DD: 843.720.1780, F: 843.720.1777
mkerr@nexsenpruet.com
www.nexsenpruet.com

Exhibit P



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NO. 2013-CP-10-1396
PERSONAL CARE, INC.	)	
	)	
Plaintiff,	)	
	)	**AFFIDAVIT OF JERRY N. THEOS**
vs.	)	
	)	
JERRY N. THEOS; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK, THEOS & KEITH, PA; CHERYL D. SHOUN; AND TAYLOR, SHOUN, BOWLEY & BYRD, LLC,	)	
	)	
Defendant.	)	

The undersigned, Jerry N. Theos, having been duly sworn, hereby deposes and says that:

1. I am a partner of Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, P.A.
2. I am over the age of eighteen, I am a party in this action, and I am competent to testify concerning the matters contained in this Affidavit, and I submit this Affidavit with information based on my personal knowledge, and, if called as a witness, could or would testify to the truth of the facts stated here.
3. That, prior to representing Personal Care, I met with Bernie Cignavitch to discuss Askew's actions and the harm her actions caused Personal Care; at our meeting, Mr. Cignavitch insisted that I write the allegedly defamatory letter (attached as Exhibit 1) and to copy the letter to a third party (a dialysis clinic) in order to ensure that the dialysis clinic was aware of Ms. Askew's actions which Mr. Cignavitch alleged caused Personal Care harm; I advised Mr. Cignavitch that sending such a letter to a third party could expose Personal Care to a defamation counterclaim, but Mr. Cignavitch insisted that the letter be sent to the dialysis clinic as well.
4. Further, before the allegedly defamatory letter was sent, Mr. Cignavitch and his manager Tim Pitko were again advised of the potential of a defamation counterclaim arising out of the allegedly defamatory letter. Again, my co-counsel Shoun and I expressed our concerns about forwarding the letter to a third party: See Email from Shoun to Theos dated September 4, 2009 stating: "I told Tim I am hesitant to write the dialysis clinic ..." Bates numbers Theos 12 and 13.
5. Despite these warnings, Mr. Cignavitch insisted that I forward the letter to a third party, and the letter was prepared with information that Mr. Cignavitch provided to Ms. Shoun and me.

6. Initially, as sworn to in both his initial Verified Complaint and Amended Verified Complaint, the gravamen of Mr. Cignavitch's claim was that Shoun and I did not advise Cignavitch of the counterclaim for over two years. In his verified Complaint, Mr. Cignavitch swore: "This legal malpractice Complaint centers upon the Defendant Lawyers' approximate two (2) year delay in telling the Plaintiff, their client in an underlying lawsuit, that a defamation counterclaim had been filed against the Plaintiff." Mr. Cignavitch's sworn allegation is repeated by his expert Robert D. Dodson, J.D., where, in his sworn Affidavit, he asserts:

> "I am also extremely critical of Theos and Shoun for not timely advising their client about the counterclaims against it." According to the Verified Complaint Theos and Shoun 'neglected to tell their client, Plaintiff, for more than two years about the fact the Plaintiff was being sued for money damages because of their own allegedly defamatory statements.' ... Theos and Shoun's conduct in not telling their client about the counterclaims, the very counterclaims that were created because of their own incompetence, negligence and recklessness, violated theses provisions and were also contradictory to what reasonably prudent lawyers would do under like or similar circumstances. These omissions (failing to timely inform their client about the counterclaims) were significant for numerous reasons."

However, the following emails (attached as Exhibits 3 to 8) refute Mr. Cignavitch's and his expert's original sworn assertions:

1. Email from Shoun to Cignavitch dated March 19, 2010: "Hey Bernie: Hope this finds you well. We have received an Answer and Counterclaim on behalf of the Defendant in this action. I need to get a copy of the Counterclaim to you; a response is due April 9th. May I fax to you? Will you provide the correct number? ... Thanks, I look forward to hearing from you." Bates number: Theos 56.

2. Email from Smith to Cignavitch dated March 19, 2010: "Mr. Cignavitch, attached please find a filed copy of the Answer and Counterclaim." Bates number Theos 54 - 55.

3. Email from Shoun to Cignavitch dated March 26, 2010: "I am attaching a copy of a letter I am sending to Askew's counsel requesting an extension of time in which to respond to the Counterclaim. As I think we discussed earlier, when we granted an extension to Askew's attorneys, this is a routine practice, and I have no reason to think it will not be granted. You will see, if granted, our response will be due mid-May giving us plenty of time to talk over the allegations. Even if it is not granted, the response isn't due until mid-April. ... I sincerely appreciate your patience in this matter, and look forward to talking with you regarding the Counterclaim." Bates number Theos 57 - 58.

4. Email from Shoun to Cignavitch dated April 6, 2010: "Bernie: Hey. I am back in the office today and have received confirmation of our 30-day extension to respond to the Counterclaim in this case. Our reply is due on or before May 13, 2010. Please let me know a time that is good for you for us to get together to talk over our response. We may even be able to do it by phone if your schedule is full.

In the meantime, I will probably prepare a draft and send it to you as a starting point." Bates number Theos 59.

5. Email from Shoun to Cignavitch dated April 13, 2010: "Please remember that a reply to the Counterclaim by Ms. Askew will have to be served by the latter part of May." Bates number Theos 61.

6. Email from Kerr to Cignavitch dated June 7, 2010: "Bernie: Attached please find for your review and file a filed stamped copy of the Reply to Counterclaim in the above-referenced matter. Should you have any questions or concerns, please let us know." Bates number Theos 72.

Based on these email communications alone, Shoun and I unequivocally and timely informed Mr. Cignavitch of the Askew counterclaim asserted against Personal Care. However, when I attended the hearing for Personal Care's Motion to Restore, which Your Honor presided over, I was stunned when Tom Pendarvis cavalierly told the Court: "And there's just simply fact questions that are all throughout this. Certainly he knew about the counterclaim. Certainly he knew there were issues with the defense of the case, but he's being told the whole time this is, you know, I have a meritorious claim." (Transcript of Hearing, p. 22, l. 7 – 11).

With Pendarvis' statement to the Court, he admitted to the Court that Personal Care's central allegation in its Verified Complaint – sworn to by Mr. Cignavitch – was a lie.

7. As Mr. Cignavitch's central assertion was easily proved to be false, Mr. Cignavitch has now shifted gears alleging that he did not fully understand and comprehend what the counterclaim meant (i.e., that Personal Care was being sued for money damages) until some time between the first mediation of the underlying case (which was May, 2012) to August, 2012 (when he alleges was the first time he was notified a conflict of interest had arisen). Indeed, Mr. Cignavitch's Affidavit (submitted to the Court in regard to his Motion to Restore) states that Theos and Shoun did not explain the legal nature of Askew's counterclaim or that it was a separate lawsuit seeking money damages against Personal Care. Now Mr. Cignavitch swears that he was unaware of the "true nature of the counterclaim" and thus "began to realize the adverse circumstances" after the first mediation in May of 2012. However, as before, such sworn assertion, is also patently false.

8. Indeed, Shoun and I explained to Mr. Cignavitch that Askew had filed a counterclaim for defamation (the exact type of counterclaim Mr. Cignavitch was warned might occur). Mr. Cignavitch was advised to put his insurance carrier on notice of the Askew Counterclaim and Shoun and I asked Cignavitch to provide his insurance carrier information to us (attached as Exhibits 9 to 10), but he refused to do so:

1. Email from Shoun to Cignavitch dated March 19, 2010: "Also, if you will please provide your insurance information, we will submit the Counterclaim to your carrier, asking it to defend and indemnify you. We will need a copy of the policy if you have it. Thanks. I look forward to hearing from you." Bates number Theos 54.

2. Email from Shoun to Cignavitch dated April 6, 2010: "Bernie: I forgot to mention this again – please get your insurance information to me as quickly as you can. Thanks."

Mr. Cignavitch decided he did not want to put his insurance carrier on notice of the Askew counterclaim and expressly told us that he did not want to put his insurance carrier on notice, despite being advised to do so. Instead, Mr. Cignavitch told us to also defend against Ms. Askew's counterclaim allegations. Again, as of March 19, 2010, Mr. Cignavitch was notified that Askew's counterclaim was seeking money damages and that he should put his insurance carrier on notice to defend and indemnify Personal Care.

9. Mr. Cignavitch was made aware that Ms. Askew had filed a counterclaim and was seeking damages against Personal Care based on the allegedly defamatory letter and, at Mr. Cignavitch's direction, Shoun and I began defending against the counterclaim as well, including preparing a Reply with Mr. Cignavitch's input.

10. Significantly, Personal Care's Complaint specifically alleges negligence against Shoun and me for sending the alleged defamatory letter. The Complaint alleges that the counterclaim was filed in 2010, and one of the elements of damage that Mr. Cignavitch is seeking is our attorneys' fees incurred in defending against the counterclaim; accordingly, based on Personal Care's own Complaint, the damages of Personal Care are alleged to have begun at the latest by May of 2010.

11. As set forth in Cheryl Shoun's exhibits I, J and K to her Memorandum, Ms. Shoun discussed the counterclaim with Cignavitch in May of 2010, so Mr. Cignavitch was aware of the counterclaim and he was aware he was incurring additional attorneys' fees because of the counterclaim, i.e., Mr. Cignavitch was aware of the damages he is now claiming in his present lawsuit in May of 2010.

12. I was also copied on Mr. Cignavitch's counsel Tom Pendarvis' email on March 7, 2013, attached as Exhibit 11, where Mr. Pendarvis admitted that he had concerns that the statute of limitations on Mr. Cignavitch's claim would run on March 8, 2013; further, Mr. Pendarvis filed an initial Verified Complaint where, under oath, his client verified that the statute of limitations was going to expire within 10 days, thereby excusing Personal Care's requirement to have an expert affidavit with the filing.

13. It is unbelievable for Mr. Pendarvis, Mr. Cignavitch's counsel, to miss the specific time period deadline set forth in the Order of Judge Dennis and, after having confirmed in writing that the statute of limitations was going to expire on March 8, 2013, and he and his client filing a verified complaint to the same effect, Mr. Pendarvis now asserts that the statute of limitations has not run based on a subjective belief of Mr. Cignavitch not fully grasping his full damages until a mediation of the underlying case.

FURTHER, AFFIANT SAYETH NOT.

Jerry N. Theos

Sworn to and subscribed before me
This 2nd day of December, 2014

Janet Scott Smith
Notary Public for South Carolina
My Commission expires: 6/17/17

CERTIFICATE OF SERVICE

I hereby certify that, this 4TH day of DECEMBER, 2014, I served a copy of the foregoing Affidavit on counsel of Record via U.S. Mail, with sufficient postage affixed thereto, properly addressed as follows:

PENDARVIS LAW OFFICES, P.C.
Thomas A. Pendarvis, Esq.
Catherine B. Kerney, Esq.
500 Carteret Street, Ste. A
Beaufort, SC 29902-5066

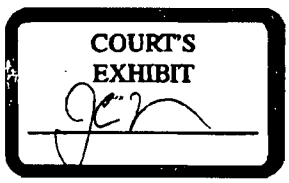
GEORGE J. KEFALOS, PA
Oana Dobrescu Johnson, Esq.
46A State Street
Charleston, SC 29401

K & L GATES, LLP
Richard A. Farrier, Jr., Esq.
134 Meeting Street, Suite 200
Charleston, SC 29401

Barnwell Whaley Patterson & Helms, LLC

By: [signature]
Legal Assistant

Exhibit Q



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Personal Care, Inc.,	)	Case No.: 2013-CP-10-1396
Plaintiff,	)	
v.	)	**AFFIDAVIT OF CHERYL D. SHOUN**
Jerry N. Theos, et al.	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, Cheryl D. Shoun, who first being duly sworn states and deposes as follows:

1. That she is over the age of eighteen years, is otherwise competent to make this Affidavit, submits this Affidavit with information based on her personal knowledge, and if called as a witness, could and would testify to the truth of the facts stated herein;
2. That she was one of the attorneys representing Personal Care in the action titled *Personal Care, Inc. v. Hattie M. Askew*;
3. As one of the attorneys for Personal Care she did, on or about March 19, 2010, advise Bernie Cignavitch, a principal of Personal Care, that an Answer and Counterclaim had been served in this matter, as evidenced by the email attached hereto as Exhibit 1 and made a part hereof by reference;
4. That, pursuant to the request of Mr. Cignavitch, evidenced in his email found in Exhibit 1 hereto, she called and spoke with Mr. Cignavitch, during which call she reiterated the receipt of the Answer on behalf of Hattie M. Askew, and advised that

a copy of said Answer and Counterclaim would be sent to Mr. Cignatvitch in the immediate future;

5. That on or about March 19, 2010, she caused to be forwarded to Mr. Cignavitch a copy of the Answer and Counterclaim entered against Personal Care by Hattie M. Askew, as evidenced by the emails found in Exhibit 1 hereto;

6. On or about March 19, 2010, the undersigned also requested of Personal Care the contact information for its insurance carrier, which would allow counsel to submit the Counterclaim to Personal Care's carrier, requesting a defense and indemnification therefor;

7. That on or about March 26, 2010, she once again communicated with Mr. Cignavitch, as the principal of Personal Care, concerning the Counterclaim filed against it, as evidenced by Exhibit 2 attached hereto and made a part hereof by reference. Further, that in that communication, she advised Mr. Cignavitch that she was going to request an extension of time in which to respond to said Counterclaim, and she attached a copy of her letter to opposing counsel, requesting such extension of time. Finally, in that communication to Mr. Cignavitch, she emphasized the date a response would be required to the Counterclaim;

8. On or about April 6, 2010, Ms. Shoun notified Bernie Cignavitch that she was in receipt of the letter, signed by opposing counsel, confirming an extension of time in which to enter a Reply to the Counterclaim. She further requested that Mr. Cignavitch advise when he and Ms. Shoun could discuss the allegations of the Counterclaim so to formulate the Reply thereto, all as evidenced by Exhibit 3 attached hereto and made a part hereof by reference;

9. Further, on April 6, 2010, Ms. Shoun again requested Personal Care's insurance information so as to allow for the submission of the Counterclaim, together with a request for defense and indemnity, to Personal Care's insurance carrier, as evidenced by Exhibit 4 attached hereto and made a part hereof by reference;

10. That prior to May 5, 2010, counsel for Personal Care spoke with a representative of that entity, confirming that the information previously provided to counsel concerning Hattie M. Askew, and the business practices in which she had allegedly engaged were true and accurate and further, that the contents of the letter dated September 14, 2009, and sent on behalf of Personal Care to Low Country Medical Transport was correct and accurate;

11. That prior to May 7, 2010, a draft of the Reply to the Counterclaim filed against Personal Care was forwarded to that entity for review and consideration;

12. That on or about June 7, 2010, a copy of the filed Reply to the Counterclaim was provided to Personal Care, as evidenced by Exhibit 5 attached hereto and made a part hereof by reference;

13. That on or about June 7, 2010, a copy of the Second Request for Production served on behalf of Personal Care upon the Defendant Hattie M. Askew was forwarded to Mr. Cignavitch and that the first item included in the Second Request for Production sought from the Defendant the following, as evidenced by Exhibit 6 attached hereto and made a part hereof by reference:

> Each and every document, which supports the Defendants claim that it was damaged as a result of the letter dated September 14, 2009, as alleged in the Defendant's Counterclaim. This shall include, without limitation, any and all letters or memoranda or other written documents pursuant to which any business contracts were cancelled or otherwise modified as a result of the referenced letter; written documents

pursuant to which the Defendant was advised that any third party changed its position with the Defendant, either personally or professionally, as a result of the referenced letter; and, all other documents which support Defendants claim for damages.

14. That Personal Care was and had been made aware on several occasions, of the Counterclaim filed against it by Hattie M. Askew; that in that Counterclaim Ms. Askew was seeking damages from Personal Care, and that counsel for Personal Care sought to secure documentation of the damages allegedly suffered by Hattie M. Askew as a result of the letter written on behalf of Personal Care on September 19, 2009;

15. That prior to the expiration of June 2010, Personal Care was billed for attorneys' fees incurred in defending the Counterclaim, as evidenced by Exhibit 7 attached hereto and made a part hereof by reference, and that, upon information and belief, Personal Care paid these charges in full by the end of March 2011.

AFFIANT FURTHER SAYETH NOT.

Cheryl D. Shoun

Cheryl D. Shoun

Sworn to and subscribed before me

This 3rd day of December, 2014.

Marion Parish

Notary Public for South Carolina

My Commission expires: 3/8/22