

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-001266

PERSONAL CARE, INC.,

Appellant,

vs.

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

Respondents.

RECEIVED
JUN 08 2017
SC Court of Appeals

RECORD ON APPEAL

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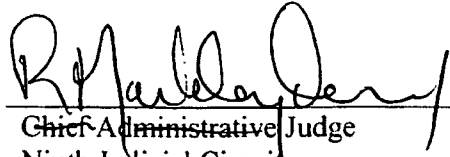
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ORDERS, JUDGMENTS, DECREES AND DECISIONS

IT IS SO ORDERED.



Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

August 27, 2013

RWJ 2

WE SO CONSENT:

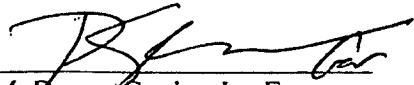
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RW 7

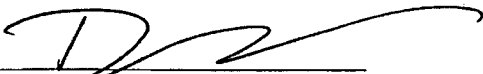
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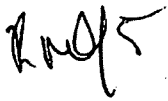
RW/4

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

FILED

CASE NO. 2013-CP-10-1396

2015 MAR -3 PM 2:31

Personal Care, Inc.
PLAINTIFF(S)

Jerry N. Theos, et al.

DEFENDANT(S)

JULIE J. ARMSTRONG
CLERK OF COURT

Submitted by:

BY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

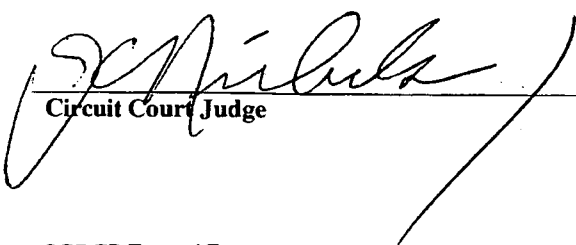
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

3/2/15
Date

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

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,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO. 2013-CP-10-1396

**ORDER DENYING PLAINTIFF'S
MOTION TO RESTORE AND
DENYING DEFENDANTS' MOTION
FOR SANCTIONS**

FILED
2015 MAR -3 PM 2:31
JULIE J. ALEXANDER
CLERK OF COURT
BY _____



THIS MATTER came before me on the 19th day of November 2014 for a hearing on Plaintiff Personal Care Inc.'s (hereinafter "Personal Care") Motion to Restore. Present in the courtroom were Thomas A. Pendarvis, Esquire, counsel for Personal Care and its representative Bernie Cignavitch; M. Dawes Cooke, Esquire, counsel for Defendants Jerry N. Theos and Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, PA (hereinafter collectively referred to as "Theos"); Oana Dobrescu Johnson, Esquire, counsel for Defendant Taylor, Bowley and Byrd (hereinafter "TBB");¹ and Richard A. Farrier, Jr., Esquire, counsel for Defendant Cheryl D. Shoun (hereinafter "Shoun").

After reviewing Personal Care's Motion to Restore and the memoranda in support of and in opposition to the motion, and considering the arguments of counsel, the Court makes the following findings of fact and conclusions of law.²

Procedural Background

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

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.

² Also before the Court are two Motions for Sanctions against Personal Care's counsel, filed by Defendants Shoun and TBB. The Court denies these Motions for Sanctions.

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 (**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 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), SCRCPP. 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 "2013 Judge Dennis Order") set forth the following:

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."

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 and 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 SCRCR Rule 40(j), Personal Care's counsel subsequently filed the instant Motion to Restore the case.

Findings of Fact and Conclusions of Law



Pursuant to the procedural background set forth above, which I find to be accurate and hereby incorporate 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 and/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 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. 617, 620-621, 591 S.E.2d 26, 28 (2003). 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 SCRCF Rule 40(j). Personal Care further conceded that it should not receive the benefit of the tolling provision of SCRCF 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 has 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 this argument.

I find 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 SCRCF Rule 5 and Rule 7, which govern the filing and service of motions. Finally, and most

⁴ SCRCF Rule 40(j) sets forth:

(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).

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." SCRCF Rule 40(j). Accordingly, I conclude 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, I find 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. I further find that Personal Care filed its Motion to Restore 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 unpersuasive and concludes that the statute of limitations has expired.

"South Carolina's statute of limitations requires very little to start the clock." Maier 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. Holmes v. Haynsworth, Sinkler & Boyd, PA, 408 S.C. 620, 632, 760 S.E.2d 399, 405 (2014); see S.C. Code

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); Holmes v. Haynsworth, Sinkler & Boyd, PA, 408 S.C. 620, 632, 760 S.E.2d 399, 405 (2014) (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).

Ann. § 15-3-535. “The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury 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.” Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005) (emphasis in original). The statute of limitations begins to run from this point of discovery and “**not when advice of counsel is sought or a full-blown theory of recovery developed.**” Id. (emphasis in original). Moreover, in a legal malpractice action, the statute begins to run upon discovery of the cause of action and is not tolled during the period the attorney continues to represent the client on the matter that forms the basis for the malpractice action. Id. at 377, 610 S.E.2d at 818 (declining to adopt the continuous representation rule in the context of a legal malpractice claim).

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).

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). Thus, in a legal malpractice case, “a client sustains an injury as soon as he or she is forced to incur costs” as a result of counsel’s alleged negligence. Epstein, 363 S.C. at 380, 610 S.E.2d 816 (quoting Laird v. Blacker, 7 Cal. Rptr. 2d 550, 828 P.2d 691, 696 (1992)).

Here, based on the allegations in the Amended Complaint and the clear evidence in the record, I find that the statute of limitations has run on Personal Care’s claims against Defendants.

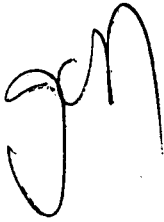
According to Paragraph 18 of the Amended Complaint, the first act of alleged negligence occurred in September 2009 when Theos allegedly sent a defamatory letter to a third party. Paragraph 20 alleges that, on March 9, 2010, the underlying defendant filed an Answer and Counterclaim asserting a claim for 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, I find Personal Care suffered damages as soon as it was forced to incur costs to defend against the competitor's counterclaim.

gen
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 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, I find 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.

I hereby find 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, I find 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. I further find 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 *Epstein*, 363 S.C. at 376, 610 S.E.2d at 818. Therefore, I find 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 statute of limitations on Plaintiff's claims began to run in the spring of 2010.

Furthermore, I find 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 ran, 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.” Accordingly,

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.

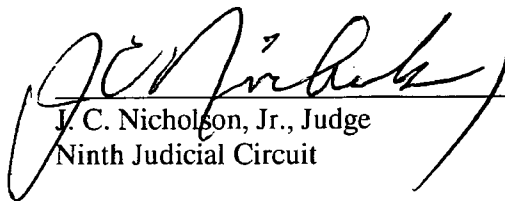
Personal Care verified for this Court that the statute of limitations would likely expire within ten days of filing, i.e., on March 18, 2013.⁷

In summary, I find that the 2014 Proposed Consent Order is a nullity. Moreover, I find 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). I further find 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, I hereby find that the statute of limitations is not tolled, and, 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 hereby denied. In addition, I hereby deny Shoun's and TBB's Motion for Sanctions. The Exhibits are attached and made a part of this Order by reference.

IT IS SO ORDERED!


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

Dated: 3/2/15

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
17^{1/2} BROAD STREET
CHARLESTON, SC 29401

PAUL N. URICCHIO, JR. (1922-2000)
ARTHUR G. HOWE (1927-2004)
BARRY KRELL
CARL H. JACOBSON
ALAN D. TOPOREK
JERRY N. THEOS
GREGORY D. KEITH
JAMES R. BRAUCHLE
JONATHAN F. KRELL

September 14, 2009

MAILING ADDRESS:
P.O. BOX 399
CHAS., SC 29402-0399

TELEPHONES:
(843) 723-7491
1-800-899-1683
FAX (843) 677-4179

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 Transport, 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.

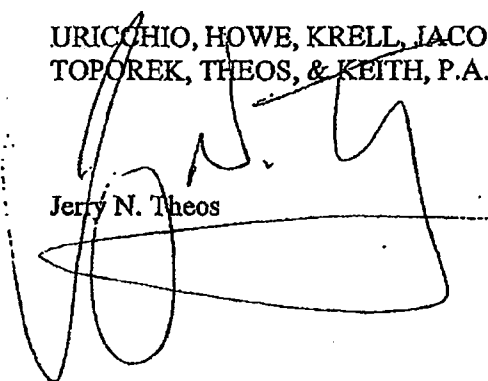
THEOS 0014

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

THEOS 0016

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONAL CARE, INC.,

Plaintiff,

v.

HATTIE M. ASKEW d/b/a LOW
COUNTRY MEDICAL TRANSPORT,
f/k/a LOW COUNTRY MEDICAL
TRANSPORT, INC.,
Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 09-CP-10-7692

ANSWER AND COUNTERCLAIM
(Jury Trial Demanded)

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)

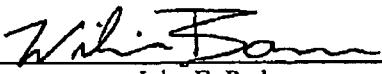
10. Defendant realleges and incorporates its responses above as if repeated verbatim.
11. On or about September 14, 2009, a lawyer representing Plaintiff, and acting as its agent, wrote Defendant and informed her that two law firms were retained to "investigate certain wrongful conduct on the part of 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-10-13016

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.

2013 MAR -8 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

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's 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 matters 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's 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:

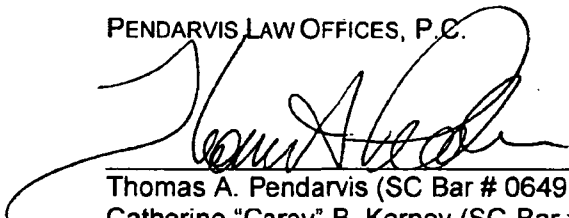
1. As to the Professional Negligence cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more specifically proven at trial; the costs of this lawsuit; and 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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www.PendarvisLaw.com

Lawyers for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

March 4, 2013

Exhibit D

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.

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 APR 19 PM 3:00

FILED

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 matters 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 judgment, 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's 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.

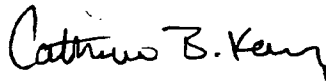
2. As to the Breach of Fiduciary Duty cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more

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.



Thomas A. Pendarvis (SC Bar # 064918)
Catherine "Carey" B. Kerney (SC Bar #)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Lawyers for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

April 18, 2013

Exhibit E

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-10-1396

CASE NO.: 2013-CP-10-1396

)

)

)

)

)

**CONSENT ORDER
STRIKING CASE FROM DOCKET
[RULE 40(j), SCRCP]**

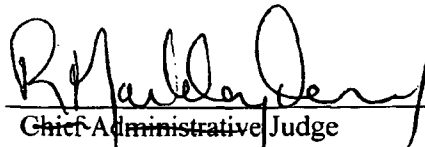
FILED
2013 AUG 28 PM 12:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____
DER
M DOCKET
RCP]

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]

22/1

IT IS SO ORDERED.


Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

August 27, 2013

RWJ 2

WE SO CONSENT:

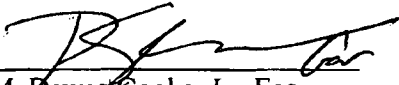
Catherine B. Kerney

Thomas A. Pendarvis, Esq.
Catherine B. Kerney, Esq.
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902-5066
(843) 524-9500
(843) 524-9501 fax

Counsel for the Plaintiff

RNA/7

WE SO CONSENT:


M. Dawes Cooke, Jr., Esq.
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.**

RW/4

WE SO CONSENT:



David W. Overstreet, Esq.
Amanda K. Dudgeon, Esq.
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
(843) 727-2995 fax

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

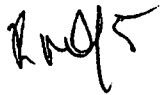


Exhibit F

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.

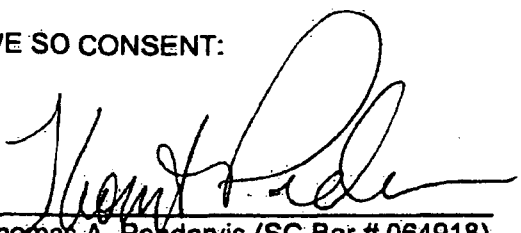
AND IT IS SO ORDERED.

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)
PENDARVIS LAW OFFICES, P.C.
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
Thomas@PendarvisLaw.com

Counsel for Plaintiff, PERSONAL CARE, INC.



Phillip S. Ferdengos, 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>

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 668 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 668 0236)

----- Original Message -----

From: "Cheryl Shoun" <cherylshoun@bellsouth.net>
To: bcignavitch@comcast.net
Cc: "Jerry" <Jerry@uricchio.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

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THEOS 0054

3/19/2010

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

THEOS 0055

3/19/2010

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

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THEOS 0057

3/26/2010

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. Hattle 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

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THEOS 0059

4/6/2010

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

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THEOS 0060

4/6/2010

Exhibit M

Janet Smith

From: Cheryl Shoun {cherylshoun@bellsouth.net}

Sent: Tuesday, April 13, 2010 9:51 AM

To: bcignavitch@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 remove 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

This e-mail, as well as any information transmitted with it, is confidential attorney-client communication or may otherwise be privileged or confidential and is intended solely for the individual or entity to whom it is addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying is strictly prohibited.

THEOS 0081

4/13/2010

Exhibit N

NEXSEN|PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, BSQUIRE
URICCHIO, HOWE, KRELL, JACOBSON,
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 1/2% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE
BILLING DATE.

OFFICES IN:

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00353

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

OFFICES IN:

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00354

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

OFFICES IN:

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00355

NEXSEN/PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, ESQUIRE
URICCHIO, HOWE, KRELL, JACOBSON,
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

REMITTANCE

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE
OF 1 1/2% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE
BILLING DATE.

OFFICES IN:

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00356

NEXSEN PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, ESQUIRE
URICCHIO, HOWE, KRELL, JACOBSON,
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 15, 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 1/2% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE
BILLING DATE.**

OFFICES IN:

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00357

Exhibit O

Kerr, Michelle T.

From: Kerr, Michelle T.
Sent: Monday, June 07, 2010 10:20 AM
To: 'bcdgnavitch@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: 576565_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

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6/7/2010

#3226-47700
Shoun 00666

Exhibit P

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

C/A NO. 2013-CP-10-1396

AFFIDAVIT OF JERRY N. THEOS

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."

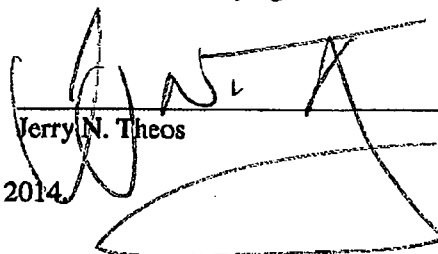
Mr. Cignavitch decided he did not want to put his insurance carrier on notice of the Askew counterclaim and expressly told us that he did not want to put his insurance carrier on notice, despite being advised to do so. Instead, Mr. Cignavitch told us to also defend against Ms. Askew's counterclaim allegations. 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.

Sworn to and subscribed before me

This 2nd day of December, 2014.


Jerry N. Theos


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: Bruce Mutton

Legal Assistant

Exhibit Q

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personal Care, Inc.,

Plaintiff,

v.

Jerry N. Theos, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2013-CP-10-1396

AFFIDAVIT OF CHERYL D. SHOUN

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. Cignavitch 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;

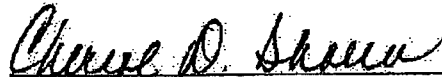
9. Further, on April 6, 2010, Ms. Shoun again requested Personal Care's insurance information so as to allow for the submission of the Counterclaim, together with a request for defense and indemnity, to Personal Care's insurance carrier, as evidenced by Exhibit 4 attached hereto and made a part hereof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

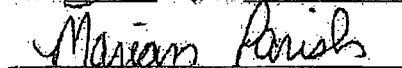
14. That Personal Care was and had been made aware on several occasions, of the Counterclaim filed against it by Hattie M. Askew; that in that Counterclaim Ms. Askew was seeking damages from Personal Care, and that counsel for Personal Care sought to secure documentation of the damages allegedly suffered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

Sworn to and subscribed before me

This 3rd day of December, 2014.


Notary Public for South Carolina

My Commission expires: 3/8/22

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-1396

Personal Care, Inc.
PLAINTIFF(S)

Jerry N. Theos, et al.
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117
Judge Code

6/23/15
Date

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & S.C.
By: [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Personal Care, Inc.,

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.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-10-1396

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

FILED
2015 JUN 22 PM 1:15
JULIE S. HARRIS
CLERK OF COURT

This Matter is before this Court on Plaintiff Personal Care, Inc.'s Motion to Alter or Amend Judgment, filed on March 16, 2015. The Motion seeks to amend this Court's Order Denying Plaintiff's Motion to Restore, filed on March 3, 2015. After review of the Motion, the memoranda submitted by the parties, and the original Order filed by this Court, this Court hereby modifies its March 3, 2015 Order and will hold this matter in abeyance to allow the parties the opportunity to present live testimony and submit affidavits as to the statute of limitations issue. The parties shall have fifteen days from the date of this Order to notify the Court whether they would like to present live testimony or present additional affidavits for this issue.

PROCEDURAL REVIEW

This matter was before this Court on a Plaintiff's Motion to Restore, filed on September 22, 2014. As a brief procedural history, Plaintiff Personal Care initially filed this action against the Defendants for legal malpractice on March 8, 2013. On August 27, 2013, the parties submitted and Judge R. Markley Dennis signed a Consent Order Striking this Case from the

Active Docket. The Order was filed the next day on August 28, 2013. The Order specifically stated that "if the claim is restored within one year . . . the statute of limitations shall be tolled as to all consenting parties." On August 27, 2014, the Plaintiff submitted a Proposed Consent Order Restoring the Case to the Docket under Rule 40(j) to the clerk of court to present it to Judge Dennis for his consideration. The Proposed Order lacked the signature of Co-Defendants Cheryl Shoun and Taylor, Shoun Bowley and Byrd, LLC.

The clerk of court returned the Proposed Order to the Plaintiff because it did not have a proper cover sheet and filing fee. On September 4, 2014, the Plaintiff resubmitted the Proposed Order with the correct sheet and filing fee. Upon review, Judge Dennis's law clerk noted the missing signature and contacted the Plaintiff on September 15, 2014 to inquire about the missing signature. There was a discussion over whether the Defendants failure to object to the Proposed Order was tantamount to consent. The missing Defendants stated that they did not receive notice of the intent to restore nor were they asked to give consent. Several days later, the Plaintiff stated in an email that it was withdrawing the Proposed Order and filed a formal Motion to Restore the Case to the active roster on September 22, 2014.

The Plaintiff argues 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 disagree, arguing that the Proposed Order was not signed by all parties, and therefore is invalid. Defendants then argue that the present Motion to Restore, filed on September 22, 2015, should be denied because the statute of limitations had run on this action. This Court heard oral arguments on this matter on November 19, 2014, took the matter under advisement and issued its Order on March 3, 2015.

In the Order, this Court agreed with the Defendants, and held that the Proposed Order was not a Motion to Restore and was invalid because it lacked a signature. It then held that the present Motion to Restore must be denied because the statute of limitations on this action had run. The Plaintiff then filed a Motion to Alter or Amend, arguing that Rule 40(j) does not provide for or allow the Defendants to assert affirmative defenses nor does it allow the Court the authority to evaluate the merits of the claims of the lawsuit. As a result of the Plaintiff's Motion to Alter or Amend, the Court requested additional briefing on the issue of whether Rule 40(j) requires the Court to restore a case to the active roster without considering the statute of limitations issue.

CONCLUSIONS OF LAW

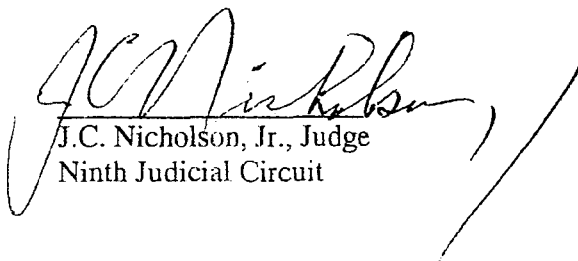
Upon careful reflection and consideration, this Court is of the opinion that it did not afford the Plaintiff an opportunity to address the statute of limitations issue at the November 19, 2014 motion hearing, and hereby holds the matter in abeyance for the parties to address this issue. The Court is still of the opinion that the Proposed Order submitted to Judge Dennis was not a Motion to Restore, but rather an invalid and incomplete Proposed Consent Order that lacked the consent of one of the parties. However, this Court finds that it made an error when it denied the Motion to Restore based on the statute of limitations without giving the Plaintiff the opportunity to properly address the issue at the motion hearing. The Court will therefore hold this matter in abeyance to allow both parties to present live testimony and affidavits as to the statute of limitations issue.

This ruling follows Maxwell v. Genez 356 S.C. 617, 621 (2003), which held that a "party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); the party simply cannot take advantage of the one year tolling period

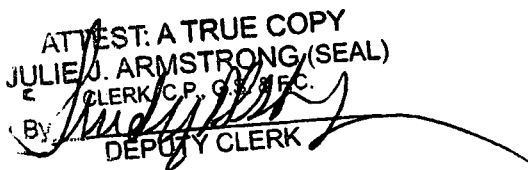
provided by the rule." As stated in the Defendant's brief, Maxwell specifically allows that a party may challenge a motion to restore, but the case does not address the procedural point for doing so. Therefore, this Court finds that the issue of whether the Plaintiff is entitled to the tolling of the statute of limitations is one that must be addressed at the hearing for a Motion to Restore. If the Court cannot address this issue at the hearing, then there would be no reason to hold a motion hearing in the first place. The Court would be required to automatically grant all Motions to Restore, and deal with issues such as the statute of limitations at later motion hearings. From a judicial economy standpoint, this does not make sense.

However, the Court finds that in the instant circumstance, the Court did not allow the Plaintiff a proper opportunity to address the statute of limitations issue at the November 19, 2014 motion hearing. Therefore, it is ordered that the parties shall have 14 days from the date of this Order to notify the Court whether they wish to supplement the record with affidavits or present live testimony as to the statute of limitations issue. After hearing from the parties, this Court will either set a date to resume the motion hearing to take live testimony, or it will make a decision based on the materials that have been submitted to the Court. This Order modifies the previous Order as of March 3, 2015 as to the findings and rulings on the statute of limitations issue.

AND IT IS SO ORDERED!


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

Dated June 19, 2015

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK/C.P. G.S. REC.
BY  DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FILED

2016 MAY 23 AM 9:43

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Personal Care, Inc.,

JULIE J. ARMSTRONG
CLERK OF COURT

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.

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**).

gcn
On March 8, 2013, Personal Care filed the instant action against Theos, Shoun, and TBB² (**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), SCRCF. 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), SCRCF), (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.

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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.

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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 SCRCF 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**).

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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.

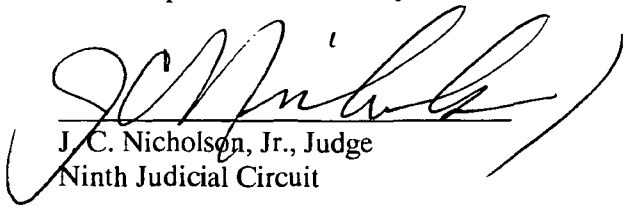
In summary, the Court finds that the 2014 Proposed Consent Order is a nullity. Moreover, the Court finds that Personal Care failed to restore the case within the one-year timeframe provided in the 2013 Judge Dennis Order. Furthermore, Personal Care did not file a timely Motion to Restore, which Rule 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.

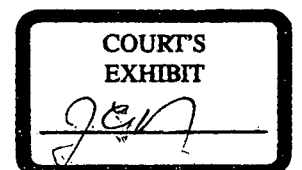
IT IS SO ORDERED!

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
17th BROAD STREET
CHARLESTON, SC 29401

PAUL H. URICCHIO, JR. (1922-2000)
ARTHUR G. HOWE (1927-2004)
BARRY KRELL
CARL H. JACOBSON
ALAN O. TOPOREK
JERRY R. THEOS
GREGORY D. KEITH
JAMES R. BRAUCHLE
JONATHAN F. KRELL

September 14, 2009

MAILING ADDRESS:
P.O. BOX 308
CHAS., SC 29402-0308

TELEPHONES:
(843) 723-7491
1-800-889-1803
FAX (843) 677-4178

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 Transport, 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 tortious interference of Personal Care's business relationships and, in at least one instance, the tortious 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 tortious conduct, as well as the direct solicitation of Personal Care patients, cease immediately.

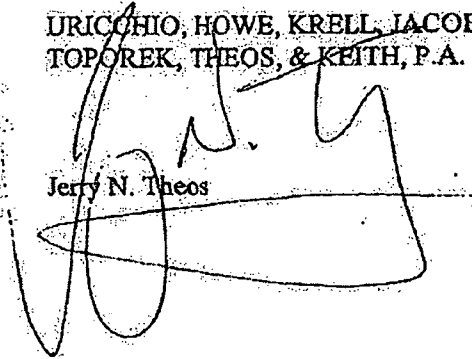
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Furthermore, we have information that, in some instances when Low Country Medical Transport has been successful in wrongfully procuring the transfer of Personal Care's patients, unnecessary wheelchair patients have been redesignated as stretcher transfers, 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.

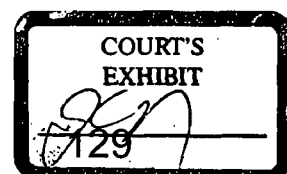

Jerry N. Theos

JNT/jss

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

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Exhibit B



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONAL CARE, INC.,

Plaintiff,

v.

HATTIE M. ASKEW d/b/a LOW
COUNTRY MEDICAL TRANSPORT,
f/k/a LOW COUNTRY MEDICAL
TRANSPORT, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 09-CP-10-7692

ANSWER AND COUNTERCLAIM

(Jury Trial Demanded)

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, Eighth, 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)

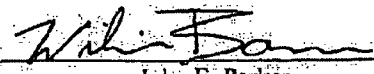
10. Defendant realleges and incorporates its responses above as if repeated verbatim.
11. On or about September 14, 2009, a lawyer representing Plaintiff, and acting as its agent, wrote Defendant and informed her that two law firms were retained to "investigate certain wrongful conduct on the part of 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 tortious 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.

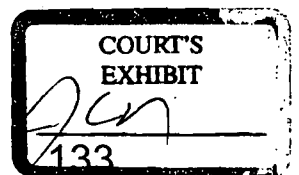
BY: 

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-10-13916

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.

2013 MAR -8 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

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, P.A. 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's 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's 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's 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's 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 matters 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's 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:

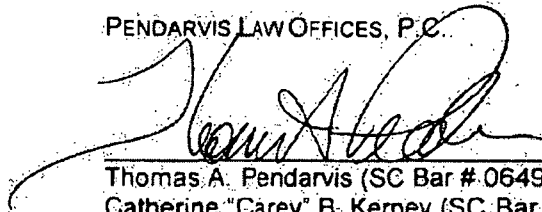
1. As to the Professional Negligence cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more specifically proven at trial; the costs of this lawsuit; and 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)
Catherine "Carey" B. Kerney (SC Bar #)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
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Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Lawyers for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

March 4, 2013

Exhibit D

COURT'S
EXHIBIT

ACZ
151

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.

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 APR 19 PM 3:00

FILED

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 1/2+ 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's second motion to change venue.

39. The court denied PERSONAL CARE's 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's 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's 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's 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 matters 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's 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:

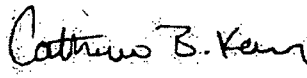
1. As to the Professional Negligence cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more specifically proven at trial; the costs of this lawsuit; and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



Thomas A. Pendarvis (SC Bar # 064918)
Catherine "Carey" B. Kerney (SC Bar #)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Lawyers for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

April 18, 2013

Exhibit E

COURT'S
EXHIBIT

[Signature]
169

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]**

FILED
2013 AUG 28 PM 12:54
JULIE J. ARFSTRONG
CLERK OF COURT
BY [Signature]
DER
M DOCKET
RCP]

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.

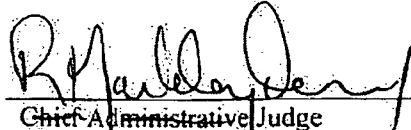
IT FURTHER APPEARING that each party agrees that if the claim is restored within one year from the date of this Order, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations as of the date of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

[SIGNATURES ON FOLLOWING 4 PAGES]

2021/1

IT IS SO ORDERED.



Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

August 27, 2013

RMA 2

WE SO CONSENT:

Catherine B. Kerney

Thomas A. Pendarvis, Esq.
Catherine B. Kerney, Esq.
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902-5066
(843) 524-9500
(843) 524-9501 fax

Counsel for the Plaintiff

RAG/7

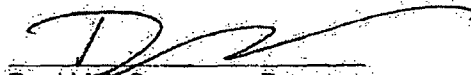
WE SO CONSENT:


M. Dawes Cooke, Jr., Esq.
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.

RWD/4

WE SO CONSENT:



David W. Overstreet, Esq.
Amanda K. Dudgeon, Esq.
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
(843) 727-2995 fax

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

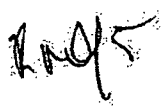
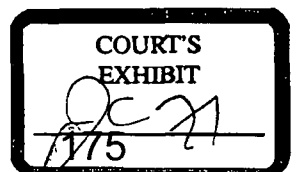


Exhibit F



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), SCRPC)**

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), SCRPC.

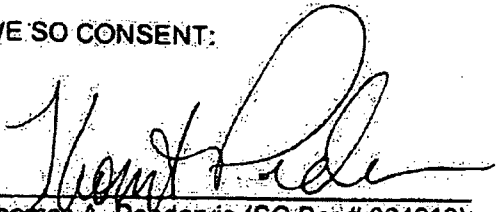
AND IT IS SO ORDERED.

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)
PENDARVIS LAW OFFICES, P.C.
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
Thomas@PendarvisLaw.com

Counsel for Plaintiff, PERSONAL CARE, INC.



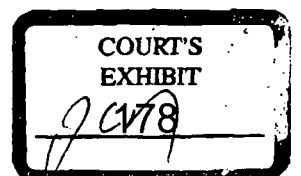
Phillip S. Ferdengos, J.D.
BARNWELL WHALEY PATTERSON & HELMS, LLC
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700
(843) 577-7708 fax

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 <L.Toia@pendarvislaw.com>, "cshoun@nexsenpruet.com"
<cshoun@nexsenpruet.com>, Catherine Byrd <catherine@tbbsq.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.

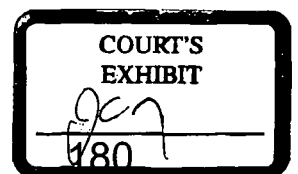
Thank you very much for your time and attention to this matter.

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 668 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 668 0236)

----- Original Message -----

From: "Cheryl Shoun" <cherylshoun@bellsouth.net>
To: bcignavitch@comcast.net
Cc: "Jerry" <Jerry@urlicchio.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

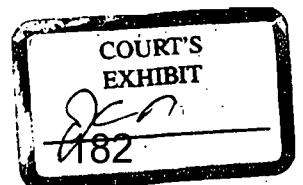
Cheryl D. Shoun
TAYLOR, SHOUN, BOWLEY & BYRD, LLC
39 Broad Street, Suite 101
Charleston, S.C. 29401
(843) 723-4020
(843) 723-4021 Fax

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THEOS 0054

3/19/2010

Exhibit I



Janet Smith

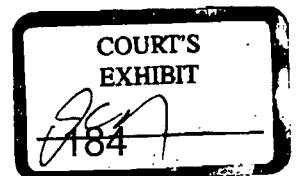
From: Janet Smith
Sent: Friday, March 19, 2010 4:19 PM
To: belgnavitch@comcast.net
Cc: Cheryl Shoun; Janet Smith
Subject: Answer and Counterclaim
Attachments: 4481_001.pdf
Mr. Cignavitch: Attached please find a filed copy of the Answer and Counterclaim. Janet

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

THEOS 0055

3/19/2010

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

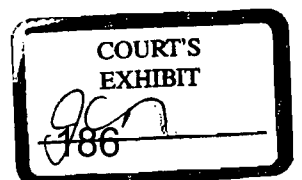
Cheryl D. Shoun
TAYLOR, SHOUN, BOWLEY & BYRD, LLC
39 Broad Street, Suite 101
Charleston, S.C. 29401
(843) 723-4020
(843) 723-4021 Fax

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THEOS 0057

3/26/2010

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

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THEOS 0059

4/6/2010

Exhibit L

COURT'S
EXHIBIT

188

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

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

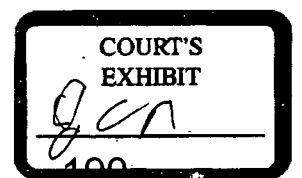
Cheryl D. Shoun
TAYLOR, SHOUN, BOWLEY & BYRD, LLC
39 Broad Street, Suite 101
Charleston, S.C. 29401
(843) 723-4020
(843) 723-4021 Fax

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THEOS 0060

4/6/2010

Exhibit M



Janet Smith

From: Cheryl Shoun (cherylshoun@bellsouth.net)

Sent: Tuesday, April 13, 2010 9:51 AM

To: bcignavitch@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

This e-mail, as well as any information transmitted with it, is confidential attorney-client communication or may otherwise be privileged or confidential and is intended solely for the individual or entity to whom it is addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying is strictly prohibited.

THEOS 0081

4/13/2010

Exhibit N

COURT'S
EXHIBIT

[Signature]
192

NEXSEN PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, ESQUIRE
URICCHIO, HOWE, KRELL, JACOBSON,
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 1.5% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE
BILLING DATE.

OFFICES IN:
CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00353

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

OFFICES IN:

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00354

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

OFFICES IN

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00355

NEXSEN|PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, ESQUIRE
URICCHIO, HOWE, KRELL, JACOBSON,
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

REMITTANCE

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE
OF 1 1/2% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE
BILLING DATE.

OFFICES IN:
CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00356

NEXSEN/PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.
C/O JERRY N. THEOS, ESQUIRE
URICCHIO, HOWE, KRELL, JACOBSON,
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 1, 2010
PLEASE SEE REVERSE FOR DETAILS

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

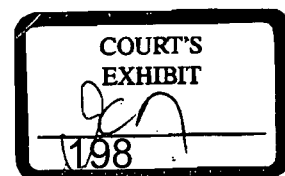
FILE

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE
OF 1 1/2% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE
BILLING DATE.

OFFICES IN:
CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

#3226-47700
Shoun 00357

Exhibit O



Kerr, Michelle T.

From: Kerr, Michelle T.
Sent: Monday, June 07, 2010 10:20 AM
To: 'bdignavitch@comcast.net'
Cc: Shoun, Cheryl D.; 'jerry@uricchio.com'; 'janet@uricchio.com'
Subject: Personal Care, Inc. v. Hallie 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 488 (29402)
DD: 843.720.1780, F: 843.720.1777
mkerr@nexsenpruet.com
www.nexsenpruet.com

Printed	Not for Release	Approved	Other

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6/7/2010

#3226-47700
Shoun 00666

Exhibit P



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO. 2013-CP-10-1396

AFFIDAVIT OF JERRY N. THEOS

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 these 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."

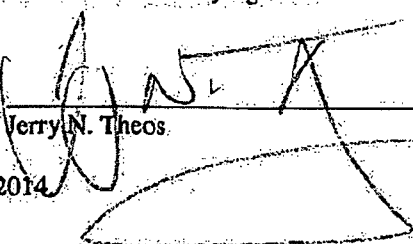
Mr. Cignavitch decided he did not want to put his insurance carrier on notice of the Askew counterclaim and expressly told us that he did not want to put his insurance carrier on notice, despite being advised to do so. Instead, Mr. Cignavitch told us to also defend against Ms. Askew's counterclaim allegations. 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.

Sworn to and subscribed before me

This 2nd day of December, 2014.


Jerry N. Theos

Janet Scott Smith
Notary Public for South Carolina
My Commission expires: 6/14/17

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: Randy Minton
Legal Assistant

Exhibit Q

COURT'S
EXHIBIT

JE
207

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Personal Care, Inc.,

Plaintiff,

v.

Jerry N. Theos, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2013-CP-10-1396

AFFIDAVIT OF CHERYL D. SHOUN

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. Cignavitch 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.

Marian Parish
Notary Public for South Carolina

My Commission expires: 3/8/22

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Personal Care, Inc.,

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.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-10-1396

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

Basis of Substitution of Order Entered May 23, 2016

 This Order is substituted for the Court's Modified Order on Plaintiff's Motion to Alter or Amend Judgment ("Prior Order") entered May 23, 2016 in order to comport with and properly cite to the latest opinion in Stokes-Craven Holding Corp. v. Robinson, No. 27572, 2016 WL 3040160 (May 25, 2016). On April 22, 2016, defendants were requested to submit a proposed order consistent with the Court's ruling on the motion described herein. The Court on May 23, 2016 entered as an order the proposal submitted by Defendants. The Prior Order was in part premised upon the recent Supreme Court opinion of Stokes-Craven. On May 25, 2016, the Supreme Court, in response to a petition for rehearing in Stokes Craven issued a substituted opinion in Stokes-Craven. While the substituted opinion in Stokes-Craven does not have any substantive impact upon the outcome of the matters pending before the Court, it is issuing this Substituted Order to conform the references to the substituted Opinion in Stokes-Craven and clarify those references.


2016 JUN 14 AM 11:03
JULIE J. ARYSTROM
CLERK OF COURT
FILED

Introduction

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 Prior Order of March 3, 2015 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 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 or

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.

about 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 or about March 8, 2013, Personal Care filed the instant action against Theos, Shoun, and TBB² (**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 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), SCRCF. All of the Defendants agreed to the Consent Order, which Judge Dennis executed on August 27, 2013

² Shoun continued to represent Personal Care after her departure from TBB in April, 2010. TBB ended its representation of and 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.”

(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).

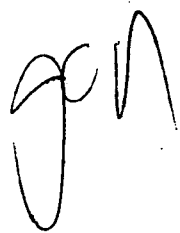
The 2013 Judge Dennis Order was filed on August 28, 2013, and thereafter the status of the case was shown as “Dismissed.”



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.

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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 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

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).

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. 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.⁵ The Court finds Personal Care's argument wholly unpersuasive and concludes that the statute of limitations has expired.

As set forth in the recent *Stokes-Craven Holding Corp. v. Robinson*, No. 27572, 2016 WL 3040160 (May 25, 2016), the Supreme Court held:



The Statute of Limitations for a legal malpractice action is three years. S.C. Code Ann. § 15-3-530(5) (2005) (stating the statute of limitations for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" is three years); see *Berry v. McLeod*, 328 S.C. 435, 444-445, 492 S.E.2d 794, 799 (Ct. App. 1997) (concluding that section 15-3-530(5) of the South Carolina Code provides a three-year statute of limitations for legal malpractice actions). 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. *Burgess v. Am. Cancer Soc'y, S.C. Div., Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989); see S.C. Code Ann. § 15-3-535 (2005) ("[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). "This standard as to when the limitations period begins to run is objective rather than subjective." *Burgess*, 300 S.C. at 186, 386 S.E.2d at 800. "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." *Id.*

"Statutes of limitations are not simply technicalities." *Kelly v. Logan, Jolley & Smith, L.L.P.*, 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009). "On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *Id.* Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Id.* "One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a

⁵ In essence, Plaintiff desires this Court to adopt a version of the continuous representation rule which the *Stokes-Craven* court declines to adopt and cites as "problematic."

plaintiff has slept on his or her rights.” Id. (citations omitted). “Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.” Id. “Statutes of limitations are, indeed, fundamental to our judicial system.” Id. (citation omitted).

The Supreme Court further stated:

As legislatively mandated, we being our analysis with the well-established discovery rule. Pursuant to this rule, all legal malpractice actions must be commenced within three years after the claimant knew or by the exercise of reasonable diligence should have known that he or she had a cause of action. See S.C. Code Ann. § 15-3-535 (2005) (“[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action”).

Thus, a claimant seeking recovery for a legal malpractice claim is constrained by two constants: (1) filing the claim within the statute of limitations,⁶ and (2) establishing the four requisite elements of his or her claim. Because a statute of limitations operates on remedies, the limitation period cannot start until the client has a cause of action that has accrued. See 3 Ronald E. Mallen & Allison Martin Rhodes, Legal Malpractice § 23:14 (2015) (“Since a statute of limitations operates on remedies, the limitation period cannot start until the client has a cause of action that has accrued. Thus, ‘accrual’ means the existence of a legally cognizable cause of action.”).

As evidenced by this case, the key question is when the claimant’s cause of action accrues to trigger the running of the three-year statute of limitations. The answer to this question is complicated by the seemingly endless factual scenarios surrounding the underlying claim of a legal malpractice cause of action.

While this approach may be perceived as impermissibly requiring a person to have actual knowledge of a potential claim before the statute of limitations begins to run, we find that it is mandated by our appellate court rules and, as a result, effectuates the objective standard provided by the Legislature. See Black’s Law Dictionary 1624 (10th ed. 2014) (An objective standard is defined as “[a] legal standard that is based on conduct and perceptions external to a particular person.” (emphasis added)); Id. at 1529 (A rule is generally defined as “an established and authoritative standard or principle; a general norm mandating or guiding conduct or action in a given type of situation.”).

⁶ “A legal malpractice cause of action is governed by the applicable statute of limitations whether it sounds in tort, contract or fraud.” 1 S.C. Jur. Attorney & Client, § 69 (Supp. 2016) (citing section 15-3-530 of the South Carolina Code).

In so doing, the Supreme Court affirmed an objective standard for the discovery rule in legal malpractice cases. Finally, the Stokes-Craven court also found that, “based upon existing appellate court rules,” an appeal tolls the statute of limitations for a legal malpractice action, stating:

“In doing so, we hold that the statute of limitations for a legal malpractice cause of action may be tolled if the client appeals the matter in which the alleged malpractice occurred. We conclude that this rule is mandated by our appellate court rules and, as a result, effectuates the objective standard provided by the Legislature.

Applying this rule to the facts of the instant case, we find the circuit court erred in granting Respondents’ motions for summary judgment because Stokes-Craven’s lawsuit was timely filed after this Court affirmed the verdict against Stokes-Craven. Additionally, we find the circuit court abused its discretion in denying Stokes-Craven’s motion to compel the production of communications between Respondents and their malpractice carrier given there was no evidence to support the court’s ruling.”

However, here, in the present case, there was no appeal to stay the statute of limitations in accordance with the Stokes-Craven decision.

Clearly, “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 Holding Corp. v. Robinson, No. 27572, 2016 WL 3040160 (May 25, 2016); 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, like other actions, 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., No. 27572, 2016 WL 3040160 (May 25, 2016).

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). Finally, both within and outside of the context of “existing appellate court rules” (which allows a stay of the statute of limitations for a legal malpractice claim, if an appeal is filed), an objective standard “based on the conduct and perceptions *external to a particular person*” (emphasis added by Supreme Court) applies when a party has actual knowledge of a potential legal malpractice claim before the statute of limitations begins to run.

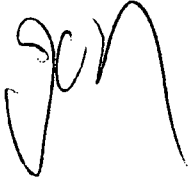
Here, based on the allegations in the Amended Complaint and the clear evidence in the Record, the Court finds that the statute of limitations has expired on Personal Care's claims against Defendants. According to Paragraph 18 of the Amended Complaint, the first act of alleged negligence occurred in September 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).

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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 and have actual knowledge that claims against his lawyer might exist as a result of the letter and Counterclaim. See Stokes-Craven

Holding Corp., No. 27572, 2016 WL 3040160 (May 25, 2016). Therefore, the Court finds that Personal Care had both knowledge of the alleged negligence, the adverse counterclaim, and present damage, and Plaintiff's legal malpractice claim accrued and Plaintiff's legally cognizable claim existed by the first half of 2010. Accordingly, the Court hereby concludes and finds that the three-year statute of limitations on Plaintiff's claims began to run in the spring of 2010. Further, no appeal or existing "appellate court rules" stayed or tolled the statute of limitations from running.

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, 2013.⁷ 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 within ten days of filing, i.e., on March 18, 2013.⁸ 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

⁷ 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.

⁸ 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.

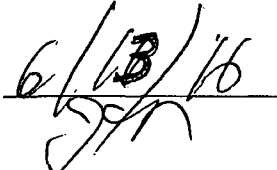
Order, Rule 40(j), or the existing appellate court rules, the Court concludes and finds that the statute of limitations on Personal Care's claims expired prior to the filing of the formal Motion to Restore.

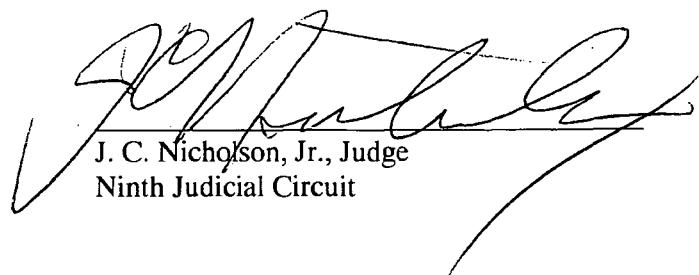
In summary, the Court finds that the 2014 Proposed Consent Order is a nullity. Moreover, the Court finds that Personal Care failed to restore the case within the one-year timeframe provided in the 2013 Judge Dennis Order. Furthermore, Personal Care did not file a timely Motion to Restore, which Rule 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: 6/13/16



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

PLEADINGS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-10-

PERSONAL CARE, INC.,

Plaintiff,

vs.

JERRY N. THEOS; URICCHIO, HOWE,
KRELL, JOHNSON, TOPOREK THEOS &
KEITH, PA; CHERYL D. SHOUND; AND
TAYLOR, SHOUN, BOWLEY & BYRD,

Defendants.

SUMMONS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

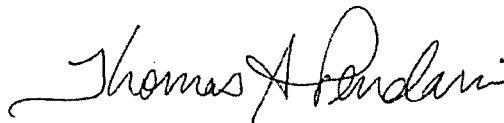
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FILED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Verified Complaint on the subscriber at their offices, 500 Carteret Street, Suite A, Beaufort, South Carolina, 29902-5066, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Complaint.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
Catherine B. Kerney (SC Bar # 81429)
500 Carteret St Ste A
Beaufort, SC 29902-5066
843.524.9500 Tel.
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www.PendarvisLaw.com

Lawyers for Plaintiff, PERSONAL CARE, Inc.

Beaufort, South Carolina
March 6, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-10-

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.

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JULIE J. ARMSTRONG
CLERK OF COURT

FILED

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 matters 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:

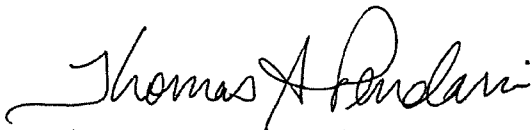
1. As to the Professional Negligence cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more specifically proven at trial; the costs of this lawsuit; and 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)
Catherine "Carey" B. Kerney (SC Bar #)
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
843.524.9501 Fax.
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Lawyers for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

March 4, 2013

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.

VERIFICATION OF
COMPLAINT

FILED
2013 MAR -8 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT

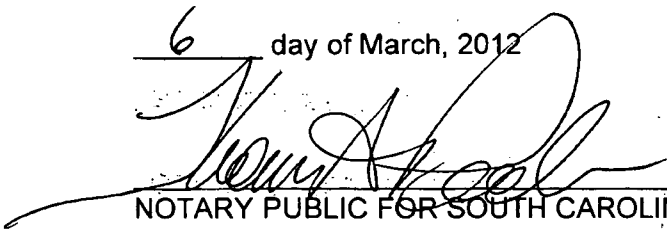
PERSONALLY appeared before me Bernie Cignavitch, who, first being duly sworn, says: that he owns a controlling interest in PERSONAL CARE, INC., the Plaintiff in the foregoing action; that he has read the foregoing Complaint; that the statements contained therein are true to the best of his knowledge except as to those stated to be based upon information and belief, as to which, he believes such matters to be true.

PERSONAL CARE, INC.

Bernie Cignavitch

SWORN to before me this

6 day of March, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires Feb. 12, 2023

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. SHOUND; AND
TAYLOR, SHOUN, BOWLEY & BYRD,

Defendants.

AMENDED SUMMONS

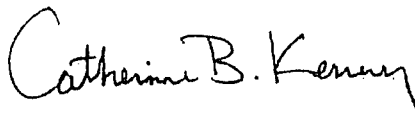
2013 APR 19 PM 3:01
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Verified Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Verified Amended Complaint on the subscriber at their offices, 500 Carteret Street, Suite A, Beaufort, South Carolina, 29902-5066, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Verified Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Verified Amended Complaint.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
Catherine B. Kerney (SC Bar # 81429)
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Beaufort, SC 29902-5066
843.524.9500 Tel.
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Lawyers for Plaintiff, PERSONAL CARE, Inc.

Beaufort, South Carolina
April 18, 2013

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.

2013 APR 19 PM 3:01
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

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.

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(Legal Professional Negligence)
(Against Theos and Shoun Only)

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

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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.

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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 matters 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.

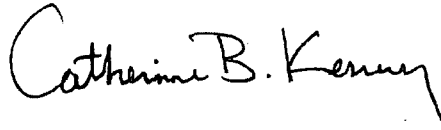
2. As to the Breach of Fiduciary Duty cause of action, for a judgment against Defendants, Jerry N. Theos and Cheryl D. Shoun, jointly and severally, for all actual damages, special damages, and incidental damages, all in an amount to be more

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.



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

Beaufort, South Carolina

April 18, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-10-

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.

**VERIFICATION OF
COMPLAINT**

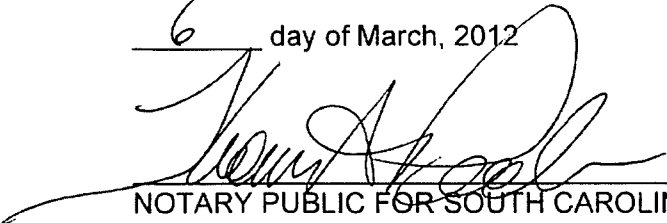
PERSONALLY appeared before me Bernie Cignavitch, who, first being duly sworn, says: that he owns a controlling interest in PERSONAL CARE, INC., the Plaintiff in the foregoing action; that he has read the foregoing Complaint; that the statements contained therein are true to the best of his knowledge except as to those stated to be based upon information and belief, as to which, he believes such matters to be true.

PERSONAL CARE, INC.

Bernie Cignavitch

SWORN to before me this

6 day of March, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires Feb. 12, 2023

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF ROBERT D. DODSON
COUNTY OF RICHLAND)

Robert D. Dodson, being first duly sworn and deposed testifies as follows:

1. My name is Robert D. Dodson and I am an attorney in good standing with both the South Carolina and North Carolina bars.
2. I attended Wofford College and graduated from Wofford in 1995, *magna cum laude*, with high honors in philosophy. I was awarded the philosophy Department award as the top student in philosophy as voted on by the faculty of that department. I was also a member of Phi Beta Kappa and was awarded the William Stanely Hoole award as the student athlete graduating with the highest cumulative grade point average.
3. I attended Tulane University School of Law and graduated in May, 1998, *cum laude*, with a juris doctor degree. I passed both the North Carolina and South Carolina bar exams in the Summer of 1998. I was admitted to the North Carolina Bar on or about August 29, 1998 and was admitted to the South Carolina Bar on or about November 16, 1998. Since my admission to the South Carolina and North Carolina bars, I have always been a member of both bars in good standing. I am also licensed in the Federal Courts for South and North Carolina as well as the Fourth Circuit Court of Appeals.
4. Since being admitted to the bars, I have maintained an active law practice and have handled dozens of cases involving legal and professional malpractice and legal ethics. I have advised other attorneys on compliance with the Rules of Professional Conduct and have also assisted attorneys in law firm break-ups and/or ethical and fiduciary duties when departing law firms. Approximately 25% of my legal practice is devoted

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to these areas of law. I have also lectured and/or taught continuing legal education seminars where a portion of the CLE was devoted to legal ethics.

5. I began my law practice as an associate at Barnes, Alford, Stork & Johnson where I worked from September, 1998 through August, 2001. In August, 2001, I joined the Strom Law Firm and worked at Strom until December, 2003 when I opened my own law practice where I have actively practiced law since that time.
6. During my professional career I have tried several cases in all the trial courts in this state. I have also argued and briefed multiple cases to the appellate courts in this state.
7. In addition to an active law practice, I have also taught law to law students and graduate students at the University of South Carolina. More specifically, I taught Health Law to graduate students in the University's School of Public Health and was an instructor in legal writing at the Law School for five (5) years. I have published multiple articles in various law reviews and law journals on a variety of topics. My publications include articles in the South Carolina Law Review and South Carolina Environmental Law Journal, among others.
8. I received a telephone call from Thomas Pendarvis who asked me if I would be willing to review a legal malpractice case and give an unbiased expert opinion. After he provided me with the names of the attorneys and law firms involved, I checked to ensure I had no conflicts of interest and agreed that I would be willing to review any materials he wanted me to review.
9. In connection with this matter, I have reviewed the following documents:

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- A. Letter from Atty. Jerry N. Theos to Low Country Medical Transport dated September 14, 2009;
- B. Civil Cover Sheet, Summons and Complaint in a lawsuit captioned Personal Care, Inc. Plaintiff vs. Hattie M. Askew, d/b/a Low Country Medical Transport, f/k/a Low Country Medical Transport, Inc., Defendant;
- C. Answer and Counterclaim in the same case;
- D. Letter from Atty. Charles J. Barker, III to Jerry Theos dated August 29, 2012;
- E. Notice of Motion and Motion to Be Relieved as Counsel in the same case;
- F. Affidavit of Bernard Cignavitch which is signed and dated October 10, 2012 and Exhibits 1-5 of this Affidavit;
- G. Memorandum in Opposition to Motion to Be Relieved in the same case;
- H. Cover letter from Atty. Theos to Judge Buckner with proposed Order relieving him as counsel dated October 17, 2012;
- I. Affidavit of John P. Freeman signed and dated on what appears to be September 4, 2012;
- J. Order Relieving Counsel signed by Judge Buckner in the same case; and
- K. Verified Complaint including signed and notarized Verification of Complaint in an action captioned Personal Care, Inc. vs. Jerry N. Theos; Uricchio, Howe, Krell, Johnson, Toporek Theos & Keith, PA; Cheryl D. Shoun; and Taylor, Shoun, Bowley & Byrd, LLC, Defendants.
10. Based on my review of the foregoing documents and based upon my education, training, knowledge and experience I believe the Defendants in the Personal Care, Inc. vs. Jerry N. Theos, et. al. case committed multiple acts and/or omissions which

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were below the standard of care for attorneys practicing law in South Carolina. The specific acts and/or omissions are detailed below. I give my opinions in this matter most probably and to a reasonable degree of certainty.

11. First, it was below the standard of care for Theos to send the letter of September 14, 2009 and copy that letter to third parties. To a lawyer exercising reasonable and ordinary diligence it would have been obvious that in copying third parties with this letter, he was setting his client up for a counterclaim for defamation based on the content of the letter that Theos authored. Theos could have avoided this in at least two ways. First, he could have sent the letter only to Low Country Medical Transport and co-counsel thereby avoiding any dissemination to third parties of the allegedly defamatory statements. The second thing he could and should have done is make clear that his client's position was that Low Country Medical Transport had engaged in unlawful practices that were tortious. Instead, however, he stated his client's position as undisputed facts and then disseminated this to third parties thereby giving rise to the defamation counterclaims. A reasonable and prudent attorney would have either not disseminated the letter of September 14, 2009 to third-parties and/or a reasonable and prudent attorney would have softened the tone of that letter to make clear that his client was alleging or contending that these things were true as opposed to stating them as absolute, undisputed facts. In reading the counterclaims that were asserted against Personal Care, Inc. it is clear that this letter formed the factual basis for these counterclaims and that was the direct and proximate result of the errors and omissions of Attorney Theos.

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12. Defendant Theos' duty of care stems not only from the common law duty of attorneys (what reasonable and prudent attorney under like or similar circumstances would do) but also stems from the Rules of Professional Conduct as adopted by the South Carolina Supreme Court through Rule 407 of the Rules of Appellate Procedure. More specifically, Rule 1.1 provides that a lawyer "shall provide competent representation to a client." Competent legal representation was not provided by Theos under these circumstances.
13. I am also critical of Shoun related to this letter. I see nothing in the file material that I was provided that indicates she limited the scope of her representation; nor do I see anything where the client agreed to limit the scope of her representation. Rule 1.2(c) of the Rules of Professional Conduct provides: "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent." I see nothing to suggest that Shoun attempted to limit the scope of her representation; nor do I see anything suggesting that the client consented to such a limitation. She is therefore liable for the acts and omissions of co-counsel.
14. As a practical matter, I believe she should have also reviewed the letter before it went out and had she properly and carefully reviewed this letter before it was disseminated to third parties she too would have realized that it should not be disseminated to third parties the way that it was written.
15. 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

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defamatory statements.” (Verified Complaint, Paragraph 1, page 2). If a jury or trier of fact were to find that these allegations in the Verified Complaint were true, it is inexcusable both as a matter of common practice and under the Rules of Professional Conduct for Theos and Shoun not to advise their client about the counterclaims.

16. Rule 1.4 of the Rules of Professional Conduct provides that a lawyer shall “(3) keep the client reasonably informed about the status of the matter” and “(5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.” 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 these 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.
17. First, a client needs to know when they have been sued. The counterclaims in this case had the potential to fundamentally change the outcome of the case. Before the counterclaims, the worst case scenario for Personal Care, Inc. was that it lost the case and therefore collected nothing from the Defendant, Low Country Medical Transport. However, after the counterclaims, the worst case scenario changed dramatically because now Personal Care, Inc. could face liability and have to pay substantial money damages to Low Country Medical Transport. This is particularly true when you consider the counterclaims were asserted by Attorney John E. Parker and Mr. Parker sought to transfer venue to Hampton County. Mr. Parker has an outstanding

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reputation as an excellent lawyer having received numerous large verdicts in Hampton County. In addition, he has obtained at least one multi-million dollar verdict on a defamation claim. Under these circumstances, a client needs to be informed and advised of the serious nature of the counterclaims against them.

18. There are other reasons Personal Care, Inc. needed to be timely advised of the counterclaims against them. One of those reasons has to do with seeing if there is a commercial general liability insurance policy or other insurance policy that will cover the cost of defending the counterclaim. In this case there was insurance to cover the cost of defense but because Theos and Shoun did not timely advise their clients about the counterclaims, their client was not able obtain this benefit for which it paid. Instead, Theos and Shoun apparently billed for time spent defending the counterclaims. These were the very same counterclaims that resulted because of their own tortuous conduct as detailed above but instead of advising their client about the counterclaims and seeing if the cost of defending these claims could be covered by insurance, they sought to capitalize on their own mistakes by billing their client for the counterclaims that they were responsible for creating in the first place. This action was in clear contradiction to how reasonably prudent lawyers in South Carolina practice law and was a clear breach of the standard of care.
19. The most troubling aspect of Theos and Shoun's omission to inform and advise their client about counterclaims against it, stems from the fact that it created a potential conflicts in representation. More specifically and as outlined above, the counterclaims arose out of the conduct of these two lawyers and centered around the letter that Theos copied to third-parties on September 14, 2009. By sending that letter

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to third-parties, these lawyers created the potential and likelihood that they would become fact witnesses in the underlying lawsuit. Under Rule 3.7 of the Rules of Professional Conduct a "lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness..." This conflict is well documented in the file material I reviewed and is explored in detail by Professor Freeman in his Affidavit. It is also addressed by the Court in Judge Buckner's Order relieving Theos and Shoun as counsel. I would concur with the opinions of Professor Freeman and Judge Buckner that the lawyers are potential fact witnesses and for purposes of this Affidavit I largely agree with the reasoning of Professor Freeman and Judge Buckner. What I would add is this: Theos and Shoun should have recognized this conflict when it arose; that is when the counterclaims were first filed and served on them. They should not have waited some two plus years to advise their client of this potential conflict, all the while billing their client for defending the counterclaim they created. From my review of the file material, this delay resulted in prejudice to the client. More specifically, the client had a difficult time finding other counsel to take over the case at the very late stages of the litigation and this difficulty was likely compounded because of the poor manner in which these lawyers handled the case.

20. Another thing that fell below the accepted standard of care for South Carolina lawyers is the way Theos and Shoun addressed (or more accurately failed to address) the venue issues raised by Mr. Parker in the counterclaims. From my review of the file, Mr. Parker sought to have venue transferred from Charleston County to Hampton County. However, I see nothing in the file materials I reviewed that indicates these lawyers timely and appropriately opposed this motion or submitted meaningful

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documentation to the Court to oppose this motion. Rule 6(d) of the South Carolina Rules of Civil Procedure provides that when a motion is to be opposed by affidavits “opposing affidavits may be served not later than two days before the hearing...” To be clear, transferring venue from Charleston to Hampton County likely hurt Personal Care, Inc. and any motion to transfer venue should have been vigorously opposed by these lawyers. From my review of the materials, it was not vigorously opposed or even meaningfully opposed because no supporting affidavits opposing the motion to transfer venue were submitted to the Court. This too, was a breach of the standard of care exercised by reasonably prudent lawyers practicing law in South Carolina.

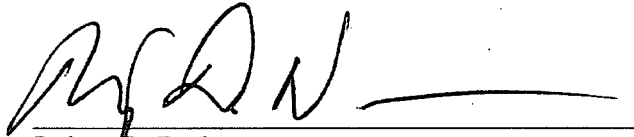
21. These breaches in the standard of care (as outlined more fully above) were the proximate cause of damages to Personal Care, Inc. More specifically, Personal Care, Inc. faces counterclaims and has had to pay lawyers to defend those counterclaims because its lawyers (Theos and Shoun) negligently and recklessly sent the letter of September 14, 2009 to third parties. It is this letter that resulted in the counterclaims and these lawyers then sought to profit by their own mistake by billing their client for defending the counterclaims that they were responsible for creating in the first place. Moreover, it appears Personal Care, Inc.’s insurance carrier would have paid for the cost of defense but Theos and Shoun failed to timely investigate or follow-up on this, instead billing the client directly for the mistakes they made. Once Theos and Shoun sought to be relieved as counsel (and that Motion was granted by the Court) Personal Care, Inc. was forced to hire another lawyer and pay that lawyer to defend the counterclaims against it that Theos and Shoun created. That would not have been necessary had Theos and Shoun practiced law within the applicable standard of care

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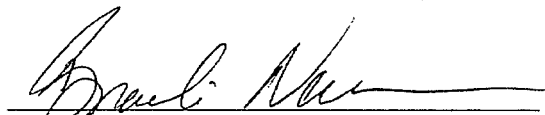
as outlined more fully above. In addition, I would expect that as the underlying case unfolds and is litigated to conclusion, the client may incur additional damages but because the underlying case is still being litigated, I cannot say to a reasonable degree of certainty what these damages will be at this time.

22. I specifically reserve the right to alter, amend, modify, change, retract and/or add to the opinions expressed in this Affidavit if and when additional information is presented to me to review. Such additional material may include but is not necessarily limited to such things as additional documents and sworn deposition testimony.

FURTHER DEPONENT SAYETH NOT!


Robert D. Dodson

Sworn to and Subscribed before me
This 17th day of April, 2013


Notary Public for South Carolina
My Commission Expires: 8/29/2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A 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,)
Defendant.)

**ANSWER OF JERRY N. THEOS
AND URICCHIO, HOWE, KRELL,
JACOBSON, TOPOREK, THEOS &
KEITH, PA TO VERIFIED AMENDED
COMPLAINT**
Jury Trial Demanded

FILED
13 JUL 10 PM 1:28
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THOMAS A. PENDARVIS, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15 (a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant Jerry N. Theos, and Defendant Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, PA (incorrectly named Uricchio, Howe, Krell, Johnson, Toporek, Theos & Keith, PA) (hereinafter collectively referred to as "Defendants"), answer the Verified Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Amended Complaint not hereinafter specifically and unconditionally admitted.
2. As for the "Summary of the Case" (paragraph 1 of the Amended Complaint) Defendants deny said paragraph and demand strict proof hereof. Defendant Theos admits that he

and Co-Defendant Shoun represented the Plaintiff in regard to litigation against a former employee. Defendant Theos admits he reviewed and signed a letter on behalf of the Plaintiff at the express direction and demand of the Plaintiff. Defendants crave reference to the underlying pleadings, motions and orders, and the letter itself in the action styled Personal Care, Inc. v. Hattie M. Askew d/b/a Lowcountry Medical Transport, Inc., Civil Action No. 2010-CP-23-626 and Defendants deny any remaining factual allegations inconsistent with such documents. Further, Plaintiff's remaining allegations consist of questions of law to which no response is necessary; to the extent any allegations are alleged against these Defendants, the allegations are denied.

PARTIES

3. Answering paragraphs 2 and 3, Defendants admit said paragraphs. Paragraphs 4 and 5 are alleged against other Defendants, therefore no response is necessary. To the extent any allegation in said paragraphs is alleged against these Defendants, those allegations are denied.

4. Answer paragraph 6 of the Amended Complaint, Defendants, upon information and belief, admit said paragraph.

JURISDICTION & VENUE

5. Answering paragraphs 7 and 8, these allegations allege questions of law to which no response is necessary.

FACTS

6. Answering paragraph 9, 10 and 11, Defendants admit that Defendant Jerry N. Theos is a member of Defendant Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, PA; the remaining allegations of said paragraph consist of legal conclusions to which no response is necessary.

7. Answering paragraphs 12, 13 and 14, said paragraphs are alleged against other Defendants and not alleged these Defendants, therefore, no response is necessary.

8. Answering paragraph 15, Defendants admit that Theos and Shoun acted as co-counsel for the Plaintiff Personal Care, Inc. in regard to the underlying litigation previously referenced in paragraph 2 of this Answer until such time as they were relieved by the Court of their representation of the Plaintiff.

9. Answering paragraph 16, Defendants admit that Theos and Shoun accepted representation of Personal Care, Inc. to pursue claims against its former employee Hattie M. Askew who resided in Hampton County, South Carolina. Defendants crave reference to the underlying pleadings of the litigation previously mentioned in paragraph 2 of this Answer and deny any remaining allegations not admitted herein.

10. Answering paragraph 17, Defendants crave reference to the retainer agreements themselves and deny any remaining allegations of said paragraph.

11. Answering paragraph 18, Defendants admit that Theos sent a letter as the agent of Personal Care, Inc. and at the insistence of Personal Care to Askew. Defendants crave reference to the actual letter and deny any remaining allegations.

12. Answering paragraph 19, Defendants crave reference to the pleadings of the underlying litigation previously referenced in paragraph 2 of this Answer and deny any allegations inconsistent with such pleadings.

13. Answering paragraph 20, Defendants crave reference to the Answer and Counterclaim pleadings of the underlying litigation previously referenced in paragraph 2 of this Answer and deny any allegations inconsistent with such pleadings.

14. Answering paragraphs 21, 22, 23 and 24, Defendants deny said paragraphs and demand strict proof herein. Answering paragraph 24, said paragraph alleges legal conclusions to which no response is necessary; to the extent any factual allegations are alleged against these Defendants, these Defendants deny the same.

15. Answering paragraph 25, Defendants crave reference to the motions and court docket of the underlying litigation previously referenced in paragraph 2 of this Answer and deny any allegations inconsistent with such documentation.

16. Answering paragraph 26, Defendants deny said paragraph; further, to the extent said paragraph alleges legal conclusions, no response is necessary.

17. Answering paragraphs 27, 28 and 29 said paragraphs allege questions of law to which no response is necessary; to the extent any factual allegations are alleged against these Defendants, these Defendants deny the same.

18. Answering paragraph 30, Defendants deny said paragraph, but admit that upon information and belief, new lawyers were retained to take over the representation of Personal Care, Inc. after the Court granted Defendants' Motion to Be Relieved as Counsel.

19. Answering paragraph 31, Defendants deny said paragraph.

20. Answering paragraph 32, Defendants admit said paragraph and crave reference to the Motion to Be Relieved as Counsel filed in the underlying litigation previously referenced in paragraph 2 of this Answer and, to the extent the allegation is inconsistent with said motion, Defendants would deny any factual allegations inconsistent with the motion.

21. Answering paragraph 33, Defendants' attorneys are unable to admit or deny said paragraph, therefore Defendants deny said paragraph and demand strict proof hereof.

22. Answering paragraph 34, Defendants admit Theos and Shoun prepared a proposed Order granting their Motion to Be Relieved as Counsel for Personal Care, Inc.

23. Answering paragraphs 35, 36 and 37, Defendants admit that, on or about November 1, 2012, the trial court signed an Order granting their Motion to Be Relieved as Counsel. Defendants crave reference to the proposed Order as drafted by Defendants that was forwarded to Judge Buckner, as well as the final Order, with Judge Buckner's revisions, which was signed by Judge Buckner and entered into the Record. Defendants deny any factual allegations inconsistent with the proposed Order sent to Judge Buckner and the actual Order signed by Judge Buckner. Defendants deny any remaining allegations of said paragraphs. Further, to the extent said paragraphs allege questions of law, no response is necessary.

24. Answering paragraphs 38 and 39, Defendants admit that on or about November 1, 2012, a hearing was held in regard to Personal Care's Second Motion to Change Venue and Defendants crave reference to the Motion to Change Venue, the accompanying Affidavits and the Order adopted by the Court; Defendants deny any remaining allegations inconsistent with those documents.

25. Answering paragraph 40, Defendants deny said paragraph.

26. Upon information and belief, Defendants admit paragraph 41.

27. Answering paragraph 42, Defendants deny said paragraph and demand strict proof hereof.

28. Answering paragraph 43, said paragraph alleges questions of law to which no response is necessary. To the extent said paragraph alleges any allegations against these Defendants, Defendants would deny said paragraph and demand strict proof hereof.

29. Answering paragraphs 44, 45 and 46, Defendants deny that they “caused” any “financial losses” that were “Defendants’ fault.” Defendants did not breach any standard of care and, to the extent Plaintiff alleges otherwise, Defendants deny the same and demand strict proof hereof. Further, to the extent said paragraphs allege questions of law, no response is necessary.

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

30. Answering paragraph 47, Defendants repeat and reallege their responses to paragraphs 1 through 46 above.

31. Answering paragraph 48, Defendant Theos admits that a client-lawyer relationship existed between Personal Care, Inc. and Theos until such time as the Court entered its Order granting Theos’s Motion to Be Relieved as Counsel in the underlying litigation.

32. Answering paragraphs 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76 and 77, Defendant Theos alleges that said paragraphs allege questions of law to which no response is necessary; to the extent that any factual allegations are alleged against Defendant Theos, said allegations are denied.

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

33. Answering paragraph 78, Defendants repeat and reallege their responses to paragraphs 1 through 77.

34. Answering paragraphs 79, 80, 81, 82, 83, 84, 85, 86, 87, 88 and 89, Defendant Theos alleges that said paragraphs allege questions of law to which no response is necessary; to the extent that any factual allegations are alleged against Defendant Theos, said allegations are denied.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)
(Against Defendant Law Firms Only)

35. Answering paragraph 90, Defendants repeat and reallege their responses to paragraphs 1 through 89.

36. Answering paragraphs 91 and 92, Defendant Law Firm Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, PA, craves reference to the retainer agreement itself and deny any factual allegations inconsistent with said agreement. To the extent any remaining allegations are alleged, said allegations are denied.

37. Answering paragraphs 93, 94 and 95, Defendant Law Firm Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith, PA alleges said paragraphs allege questions of law to which no response is necessary; to the extent factual allegations are asserted against this Defendant, said allegations are denied.

TRIAL BY JURY

38. Answering paragraph 96, Defendants admit that Plaintiff demands a jury trial on all claims and issues so triable.

EXPERT AFFIDAVIT

39. Answering paragraph 97, Defendants admit that Plaintiff has incorporated by reference Exhibit 1, the affidavit of Robert D. Dodson, J.D. Said paragraph and Exhibit 1 contain questions of law to which no response is necessary. To the extent that any factual allegations or legal conclusions are alleged against these Defendants, these Defendants deny said allegations and demand strict proof hereof.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations)

40. The Plaintiff's claims may be barred by the applicable statute of limitations, and, Defendants hereby file a Motion to Dismiss pursuant to SCRCP Rule 12(b)(4) and (5) to dismiss this case based on the statute of limitations.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Laches)

41. The Plaintiff's claims are barred by the doctrine of laches.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

42. The Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver/Estoppel)

43. The Plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Comparative/Contributory Negligence and/or Assumption of the Risk)

44. The injuries and damages allegedly suffered by the Plaintiff in this action, if any, were due to and caused by the negligence, carelessness, recklessness, gross negligence, willfulness, and/or wantonness of the Plaintiff, and/or the alleged damages are barred by Plaintiff's assumption of the risk, and the Plaintiff's recovery, if any, should be reduced in proportion to the amount of the Plaintiff's negligence or barred completely, if the Plaintiff's negligence is found to exceed any negligence of the Defendants.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Lack of Proximate Cause/ No Breach of Standard Care)

45. No act or omission on the part of the Defendants either caused or contributed to any alleged injury or damage Plaintiff may have sustained. Defendants did not breach the standard of care.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation of Additional Defenses)

46. The Defendants reserve the right to assert any additional and further defenses and/or affirmative defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

FOR A NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

47. Plaintiff has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to SCRCF Rules 12(b)(2), (6) and (c) and Plaintiff's claim should be dismissed.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

48. Plaintiff has failed to mitigate its damages as required by law.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third Parties)

49. Plaintiff's damages, if any, may be the direct and proximate result of intervening and superseding acts of third parties not affiliated with these Defendants and not under these Defendants' domain or control.

FOR A TWELFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages)

50. The Defendant would show that the claim of the Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of the action have been found would violate Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

The Defendant would show that the claim of the Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a pre-determined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by the United States Constitution and The South Carolina Constitution and would violate the common law of the State of South Carolina.

The Defendant alleges that the Complaint of the Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not: a) provided with sufficiently clear standards for determining the appropriateness of the punitive damages award or size of such award; b) provided with accurate instructions as to the limits of punitive damages awards as determined by the principals underlying such an award; c) instructed that awarding punitive damages on invidiously discriminatory characteristics of the Defendant is improper; d) instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; e) subjected to judicial review at both the trial and appellate court level under objective standards for

determining appropriateness and reasonableness; and f) instructed that an award of punitive damages based on anything other than Defendant's conduct in connection with this alleged incident that is the subject of this lawsuit is forbidden; would violate the Defendant's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

The Defendant alleges and says that the imposition of punitive damages on the basis of Plaintiff's claims giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of cruel and unusual punishment and excessive fines and deny the equal protection of the laws and violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to The Constitution of the United States and the comparable provisions of the State of South Carolina.

WHEREFORE, having fully answered the Plaintiff's Complaint this Defendant prays that the same be dismissed with costs and for such other and further relief as the court may deem just and proper.

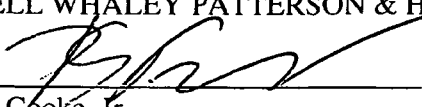
PRAYER

WHEREFORE, having fully answered Plaintiff's Complaint in this matter, the Defendants respectfully pray:

- a. That Plaintiff's claims be dismissed;
- b. That Plaintiff take nothing by reason of his suit;
- c. That the Defendants recover their costs;
- d. For trial by jury; and
- e. For any such further relief to which they may be entitled.

Jury Trial Demanded

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: 

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Phillip S. Ferderigos
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July 9, 2013
Charleston, South Carolina

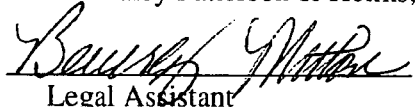
CERTIFICATE OF SERVICE

I hereby that on the 9th day of July, 2013, I mailed a true and correct copy of the foregoing Answer to counsel of Record with sufficient postage, addressed as follows:

Pendarvis Law Offices, P.C.
Thomas A. Pendarvis, Esq.
Catherine B. Kerney, Esq.
500 Carteret Street, Ste. A
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Charleston, SC 29401

Barnwell Whaley Patterson & Helms, LLC

By: 

Legal Assistant

TRANSCRIPTS

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) Court of Common Pleas
 3 PERSONAL CARE, INC.) Case No. 2013-CP-10-1396
 4 Plaintiff)
 5 vs.) Transcript of Record
 6 JERRY N. THEOS, Cheryl Shoun,)
 7 and TAYLOR, BOWLEY AND BYRD, LLC.)
 8 Defendants.)
 9 DATE: November 19, 2014

10 B E F O R E:

11 THE HONORABLE J.C. NICHOLSON

12 A P P E A R A N C E:

13 THOMAS A. PENDARVIS
 14 Attorney for Personal Care

15 RICHARD ASHBY FARRIER, JR.
 16 Attorney for Cheryl D. Shoun

17 OANA DOBRESU JOHNSON
 18 Attorney for Taylor, Shoun, Bowley & Byrd

19 M. DAWES COOKE, JR.
 20 Attorney for Jerry N. Theos

21 Karen V. Andersen, RMR, CRR, CSR
 22 Circuit Court Reporter

23 **ORIGINAL**
 24
 25

INDEX

EXHIBITS

Exhibit	Description	Identification	Evidence
Court's Exhibit 1	Memorandum in Opposition to Plaintiff's Motion to Restore Pursuant to Prior Order of the Court and SCRCP Rule 40(j)	35	
Court's Exhibit 2	Affidavit of Bernard Cignavitch	35	
Court's Exhibit 3	Defendant Shoun's Motion for Sanctions and Expedited Hearin	35	
Court's Exhibit 4	Defendant's Shoun's Memorandum in Opposition to Plaintiff's Motion to restore	35	
Court's Exhibit 5	Defendant Taylor Bowley and Byrd's memorandum in opposition to plaintiff's motion to restore	36	
Court's Exhibit 6	Defendant Shoun's Memorandum in Support of Her Motion for sanctions	36	
Court's Exhibit 7	Defendant Taylor Bowley and Byrd's Motion for Sanctions and Expedited Hearing	36	

1 THE COURT: Personal Care Incorporated vs. Jerry
2 Theos, etc., anybody here on that?

3 You've got a motion to restore. First of all, let
4 me just ask you a couple of questions to make sure I've got
5 the dates straight.

6 Judge Dennis signed the order on August the 27th,
7 2013; is that correct?

8 MR. PENDARVIS: Correct, Your Honor.

9 THE COURT: You filed your motion to restore it on
10 September 17th, 2014; is that correct?

11 MR. PENDARVIS: Correct, Your Honor.

12 THE COURT: You had proposed a consent order to
13 Judge Dennis on September the 4th, 2014; is that correct?

14 MR. PENDARVIS: Correct, but in error, Your Honor.
15 I made a mistake, Your Honor. The Court's proposed order
16 didn't have the consent of all the parties; error on my part.
17 So it was withdrawn and this motion was filed.

18 THE COURT: I'm sorry. What?

19 MR. PENDARVIS: That proposed consent order was
20 withdrawn and this motion was filed, and this case was filed.
21 And you are going to hear some opposition, I see.

22 THE COURT: Are those dates correct?

23 MR. PENDARVIS: Those dates are correct, Your Honor.
24 In fact, I've got something that might be a little convenient
25 for everybody.

1 THE COURT: Well, I mean, I guess the question then
2 is why -- on what authority can I restore it after the one
3 year has run?

4 MR. PENDARVIS: Maxwell vs. Genez, Your Honor. This
5 is a quote from the Supreme Court case. And I will give the
6 Court the cite. It's cited in the defendant's own materials.
7 But 591 S.E. 2nd 26, a 2003 case from the Supreme Court, on
8 Page 28, the Court states that: A party can move to restore
9 more than one year after the case was stricken.

10 THE COURT: For good cause shown.

11 MR. PENDARVIS: No, Your Honor. It's -- what it
12 means is that there is no tolling available under the statute
13 of limitations if the case is restored after the one-year
14 period. That's all it means.

15 And so the point we are making is, as a matter of
16 law, all the motions and all the arguments you are going to
17 hear are Rule 12, Rule 56 motions, and the case isn't timely.
18 We disagree. And the facts before the Court show this case
19 was timely filed.

20 And the statute of limitations argument that this is
21 objectively improper do not reconcile with the verified
22 complaint and allegations in the complaint.

23 So the point I'm making is, it matters not that the
24 one-year tolling under Rule 40(j) is not available based on
25 the date the motion was filed. And if Your Honor would like

1 to get into the substance of the verification --

2 THE COURT: The date the motion was filed?

3 MR. PENDARVIS: The motion to restore the case under
4 Rule 40(j), in light of the date of the order striking the
5 case, it clearly was more than 12 months, clearly.

6 THE COURT: Right.

7 MR. PENDARVIS: It matters not, because that Maxwell
8 v. Genez case says that doesn't matter. The case does not
9 yet dismiss -- or better way to say it would be, it's
10 restored as a matter of right. And if you look at the Rule
11 40(j), there's simply no room for an objection.

12 THE COURT: Restored as a matter of right if it's
13 filed within a year. Now, I know Judge Dennis's order said
14 it had to be restored within a year, but the rule says if the
15 motion is filed within a year. Now, the motion was not filed
16 within a year.

17 MR. PENDARVIS: That's correct, Your Honor.

18 THE COURT: You are saying that doesn't make any
19 difference; is that what you are telling me?

20 MR. PENDARVIS: That's not what I'm telling you.

21 THE COURT: What are you telling me?

22 MR. PENDARVIS: That's what the Supreme Court of
23 South Carolina says in Maxwell vs. Genez.

24 THE COURT: Do you have a copy of Maxwell v. Genez?

25 MR. PENDARVIS: In fact, out of all the materials I

1 copied left on my desk --

2 THE COURT: Does anybody have a copy?

3 MR. PENDARVIS: Six copies -- it's cited in their
4 briefs and ours.

5 THE COURT: I understand.

6 MR. PENDARVIS: In fact, the annotation in the Rules
7 of Civil Procedure Annotated says this, citing the Maxwell v.
8 Genez: Rule 40(j) does not require -- and "it requires" is
9 in bold -- does not require that a party move to restore the
10 case to the docket within one year after it was stricken.
11 Instead, the unambiguous language provides that if the claim
12 is restored within one year after it is stricken, the statute
13 of limitations is tolled for that period.

14 This conclusion is supported by the notes to Rule
15 40(j). (Rule 40(j) now requires all adverse parties to
16 consent to the dismissal in writing). But the consent also
17 operates to toll statute of limitations.

18 THE COURT: What rule are you reading from?

19 MR. PENDARVIS: This is Justin Kahn's Rules of Civil
20 Procedure annotated. And it's the very last --

21 THE COURT: Just tell me what rule it is.

22 MR. PENDARVIS: It's Rule 40(j). I'm sorry, Your
23 Honor.

24 And it goes on to say -- I'm not going to read the
25 comment, the cite to the comment, but it goes to say and also

1 references the Supreme Court's case in Graham v. Dorchester
2 County. It goes on to say, and I'm going to quote here: A
3 party can move to restore a case to the docket more than one
4 year after the claim is stricken without running afoul of
5 Rule 40(j).

6 The parties simply cannot take advantage of the
7 one-year tolling period provided by the rule. We believe we
8 are absolutely within all four squares of Rule 40(j). We
9 filed a motion to restore. We contend based on the language
10 in the rule that says "a party moving to restore a case
11 stricken from the docket shall provide all parties notice of
12 the motion to restore at least 10 days before it's heard."

13 The next sentence says: Upon being restored, the
14 case shall be placed on the general docket and proceed from
15 the date as provided by this rule.

16 We have satisfied every single piece of Rule 40(j).

17 THE COURT: That may be, but the case says if you
18 don't get the protection of the one year on the statute of
19 limitations. You don't go back to the filing date. You have
20 to go back to when it was restored; otherwise, there's no
21 sense in having 40(j) in one year. You can come in here 10
22 years from now and say, hey, I want to restore this case 10
23 years old.

24 MR. PENDARVIS: The injuries alleged that are
25 verified, and the only facts that are in front of this Court,

1 is this verified complaint, only facts.

2 That complaint alleges the first financial injury
3 claimed by the plaintiff occurred in September -- I will even
4 give it as early as July.

5 THE COURT: September what?

6 MR. PENDARVIS: I will even go up early as July,
7 Your Honor, of 2012. This case was filed in March of 2013.
8 If it's restored today, the statute doesn't run until July
9 15.

10 THE COURT: You are saying the cause of action arose
11 when, July when?

12 MR. PENDARVIS: The first injury occurred in the
13 beginning of the month of July. Reality of what the
14 allegations are is there was a conflict of interest caused by
15 some activities the lawyers took in representing Personal
16 Care, which, by the way, Your Honor, Personal Care is an
17 ambulance company. They are the plaintiffs. And their
18 owners are back in the back.

19 And there were errors made. The first financial
20 consequence to the Personal Care -- as Your Honor knows,
21 statute of limitations requires two things, an error in
22 damages and an objective party having -- should have known of
23 the injury caused by the error. The first injury caused by
24 the error, as alleged -- and I think it's paragraph 19 of the
25 verified complaint -- occurs in the summer of 2013. I will

1 go as early as June -- excuse me, 2012. I misspoke.

2 The case is filed March of 2013. The statute
3 doesn't even -- couldn't even be argued to expire until 2015.
4 It is unfortunate we are even getting into this, Your Honor.
5 Because if there are valid defenses available on statute of
6 limitations grounds, I said earlier, Your Honor, those are
7 available to the parties under Rules 12 and 56.

8 In fact, the answer asserted filed by Mr. Theos and
9 his law firm, they filed an answer, but haven't filed a
10 motion to dismiss based on statute of limitations grounds.

11 So our contention, Your Honor, is this case was
12 absolutely timely filed. I've got verified complaint
13 allegations and expert affidavit explaining these very same
14 things. If it would help, Your Honor, I've got --

15 THE COURT: What was the defamation in your
16 allegations against the defendants?

17 MR. PENDARVIS: The original errors, Your Honor --
18 here's the lawsuit. To make it make sense, Your Honor, let
19 me give you a quick rundown of what the underlying complaint
20 was.

21 THE COURT: First of all, answer my question. What
22 was the original defamation according to your position from
23 the defendants against the plaintiff?

24 MR. PENDARVIS: The defamation was an allegation by
25 Mr. Johnnie Parker on behalf of Ms. Askew, the underlying

1 defendant, that a letter sent by Mr. Theos that was copied to
2 a third-party was allegedly defamatory.

3 THE COURT: All right. What was the date of that
4 letter?

5 MR. PENDARVIS: The date of that letter was
6 September 19th, 2009 -- excuse me, 14th.

7 THE COURT: How do you stretch that -- if that's the
8 defamation, how do you stretch that to July 2012, some three
9 years -- almost three years later? We are two months short
10 of three years.

11 MR. PENDARVIS: There was no injury from that error.
12 The lawyers were hired to prosecute a claim. The lawyers
13 prosecuted that claim. This defamation -- September 14th,
14 2009, was the allegedly defamatory letter. The lawsuit was
15 filed in December of 2009. Mr. Parker, on behalf of his
16 client, filed an answer and a counterclaim in March of 2010.

17 The lawyers were doing -- prosecuting the case just
18 like they would do. There's alleged errors that these
19 lawyers were making, but there was no cost specific to the
20 mistake until these lawyers -- after a mediation in May of
21 2012, and during the mediation, the defendants are asking
22 Personal Care to pay money. And this is the plaintiff. And
23 he's saying, what do you mean? They are asking us for money.
24 And he leaves that.

25 And the developments of that case during the summer

1 of 2012 lead to the lawyers that were representing Personal
2 Care saying, we have a conflict of interest. They did not
3 tell Personal Care that they, under Rule 3.6, the Rules of
4 Professional Conduct, Your Honor, were prohibited from
5 prosecuting the case because they were witnesses.

6 In fact, they moved -- in the summer of 2012, they
7 moved to have themselves relieved as counsel. Professor John
8 Freeman files an affidavit identifying the conflict that he
9 says in Professor Freeman's affidavit, the conflict arose
10 back when the counterclaim was filed. None of this was
11 disclosed to the client.

12 The client -- to finish the damage, Your Honor, the
13 client then has to hire other counsel. And that's when they
14 spend money.

15 THE COURT: What's your complaint? Your first cause
16 of action is for what, professional negligence; is that
17 correct?

18 MR. PENDARVIS: Yes, sir.

19 THE COURT: And it looks like the second cause of
20 action is breach of fiduciary duty.

21 MR. PENDARVIS: Breach of fiduciary duty.

22 THE COURT: And third is breach of contract?

23 MR. PENDARVIS: Correct, Your Honor. So the point
24 I'm making, Your Honor, is --

25 THE COURT: What does this letter have to do with

1 the professional negligence?

2 MR. PENDARVIS: What does the letter?

3 THE COURT: Yes, 2009 letter have to do with
4 professional negligence?

5 MR. PENDARVIS: It is the beginning of a duty to
6 disclose and explain --

7 THE COURT: What's the letter say?

8 MR. PENDARVIS: The allegedly defamatory letter?

9 THE COURT: Right.

10 MR. PENDARVIS: It was written --

11 THE COURT: Does everybody have a copy of it?

12 MR. PENDARVIS: Not here, Your Honor. It was in the
13 original case. The former employees had left the company,
14 and Mr. Theos, on behalf of Personal Care, was writing to
15 counsel for this former employee and another employer of
16 these former employees saying, you've taken business and you
17 are interfering with the operations of your former employer.
18 And that letter was copied to a third-party. So the parties
19 didn't settle. When the lawsuit was filed --

20 THE COURT: What does that have to do with
21 professional negligence, the letter itself?

22 MR. PENDARVIS: Because the letter was copied to a
23 third-party, according to the expert who signed the letter in
24 this case, was below standard of care to have copied the
25 third-party, but certainly well within the duty of a lawyer

1 to write to the person that is alleged to be doing this bad
2 conduct and say, quit, cease and desist. But the fact that
3 it was copied to a third-party --

4 THE COURT: Who was the third-party?

5 MR. PENDARVIS: It was a company in Beaufort that
6 was -- it's an ambulance company. And it is one of the
7 facilities that had patients that the ambulance would pick
8 patients up. And, basically, it was a customer that used the
9 ambulance services. And so by Mr. Parker in the
10 counterclaim, by stating to this third-party that Ms. Askew,
11 the underlying defendant, and her ambulance company, were
12 doing tortious things, you defamed her. That was the basis
13 of the defamation claim.

14 So point I'm getting to, Your Honor, is that what
15 the problem is, none of this was explained to the client
16 until the summer of 2012, that we can't be your lawyers.
17 Instead, they worked the case for two years, billing, paying
18 money, understanding their case is getting prosecuted. And
19 they go to a mediation, and the other side and the mediator
20 said, you are going to have to pay them some money. And they
21 are like, what do you mean? We are the plaintiff. They took
22 our business. They took three patients.

23 THE COURT: Were there some counterclaims? Weren't
24 there some counterclaims?

25 MR. PENDARVIS: Certainly. And that's the point.

1 THE COURT: Had to be a counterclaim. The
2 plaintiffs in this action didn't know there were
3 counterclaims?

4 MR. PENDARVIS: The plaintiffs in this action didn't
5 know the nature of the counterclaim and why their own lawyers
6 weren't going to be able to prosecute the case, why they
7 labeled it, moved to be relieved as counsel. I regret we are
8 getting into all the merits of the case, but, Your Honor,
9 it's timely filed.

10 There's an affidavit of an expert saying these --
11 these folks aren't lawyers. They didn't know their own
12 lawyers couldn't prosecute the case because they were
13 witnesses. Their own -- they hired Professor Freeman to help
14 them be relieved as counsel, and their own expert says it.
15 But that wasn't mentioned to the client until the client is
16 having to go spend money to go find counsel to take over the
17 case.

18 And so we simply said motion should be restored. If
19 there's issues with the timeliness of the complaint, whether
20 it's statute of limitations problem, those are all matters
21 outside of Rule 40(j) motion that's before the Court.

22 THE COURT: Okay. Anything else?

23 MR. PENDARVIS: There's another motion we filed,
24 Your Honor, that's behind that.

25 THE COURT: Anything else on that motion?

1 MR. PENDARVIS: No, Your Honor.

2 THE COURT: Who wants to go first?

3 MR. COOKE: Your Honor, I will go first. I'm Dawes
4 Cooke. I represent Jerry Theos, who is here along with the
5 firm of Uricchio, Howe, Krell, Jacobson, Toporek, Theos &
6 Keith. And, Your Honor, we respectfully would oppose the
7 motion.

8 Speaking for ourselves, another counsel may have
9 different views, but I believe the Genez case does say that
10 if this case were not barred by the statute of limitations,
11 that they could move to restore more than a year later.

12 Now, it's not automatic. The rule specifically says
13 they file a motion and there will be a hearing. So it would
14 be within the Court's discretion to allow it to be restored.
15 But in the Genez case, Maxwell vs. Genez, that case, the
16 statute of limitations was not an issue.

17 Here, as a matter of law, this action is barred by
18 statute of limitations if they don't have the benefit of the
19 one-year tolling. And the reason for that is, in the
20 allegations of the complaint, begin on paragraph 18 of the
21 complaint, it says that on September 19th, 2009, Jerry Theos,
22 as an agent of Personal Care, who is the plaintiff in our
23 case, wrote a letter and a simultaneous copy to a third-party
24 containing statements about Askew, that Askew later claimed
25 were allegedly defamatory about her.

1 Now, that's the first act of negligence that the
2 plaintiffs allege. And as Mr. Theos --

3 THE COURT: I think said the damages didn't start
4 occurring until July 2012, which puts him within the three
5 years under the Maxwell case.

6 MR. COOKE: Well, follow me on that, if you would,
7 Your Honor. He said they filed their complaint, paragraph
8 19, on December 10th, 2009. And on paragraph 20, it says
9 that on March 9, 2010, Askew filed an Answer and Counterclaim
10 asserting a claim for defamation, askew counterclaim against
11 Personal Care, based on the alleged defamatory statements in
12 the letter published by Theos.

13 And then, Your Honor, on paragraph 97, the complaint
14 takes advantage of provision of South Carolina Code Section
15 15-36-100(b) that relates to expert witnesses. And I think
16 they are actually referring to Section C (1), because it
17 says: Pursuant to the code, because this complaint is being
18 filed when there is a good faith basis to believe the
19 expiration of the statute of limitations is imminent, it is
20 filed without an affidavit by an expert licensed by the
21 Supreme Court of the state of South Carolina.

22 Now, the actual code section is section 15-36-100
23 (C) (1). And it says: The contemporaneous filing
24 requirements of subsection (b) does not apply to any case in
25 which the period of limitations will expire or there's a good

1 faith basis to believe it will expire on a claim stated in
2 the complaint within 10 days of filing. So -- and that's
3 what imminent is. That's within 10 days.

4 So the plaintiff, in order to not have an expert
5 affidavit attached to this complaint, had to abhor under the
6 statute that the statute of limitations was about to expire
7 or he had a good faith belief that it was going to expire
8 within 10 days.

9 His claim that he did not know that there had been a
10 counterclaim filed against him is belied by evidence which is
11 now on the record. And it was attached as Exhibits I, J and
12 K to the response of the defendant Shoun. And I will let her
13 counsel address it in more detail. But she attaches a copy
14 of her e-mail to the plaintiff dated April 6th, 2010, in
15 which he -- she attaches the counterclaims and says, please
16 let me know a time that is good for you -- for us to get
17 together to talk over our response. We may even be able to
18 do it by phone if your schedule is full.

19 The next document, Exhibit J is where she has
20 attached the reply. And then beyond that is her itemized
21 statement of her time where she specifically has an entry for
22 a meeting with her client to discuss the counterclaim. So,
23 there's no issue but that they were aware that the
24 counterclaims had been filed.

25 In the case of Epstein vs. Brown, the statute begins

1 to run as soon as there is any injury -- not when a
2 full-blown injury and not when all the acts occurred -- but
3 when there's any act of negligence and the plaintiff has
4 suffered any damage whatsoever.

5 And one of the elements of damage that the plaintiff
6 claims in this case is incurring attorney's fees to defend
7 the counterclaim. So as of the time that counterclaim was
8 filed, the plaintiff had actual notice, not just constructive
9 notice, but actual notice that it was being sued on account
10 of the allegedly defamatory letter that my client sent on
11 their behalf.

12 MR. PENDARVIS: Your Honor --

13 THE COURT: Have a seat please, sir.

14 MR. PENDARVIS: I have an objection.

15 THE COURT: Have a seat.

16 Mr. Cooke, are you finished?

17 MR. COOKE: I'm finished. Thank you.

18 THE COURT: Now, I'm glad to hear your reply when I
19 hear from the other attorneys, but please don't interrupt
20 him. Okay? I want to hear what you have to say. I can't
21 listen to both parties when y'all are talking on top of each
22 other. She can't take it down. Before I make any ruling, I
23 will be glad to hear any reply.

24 MR. PENDARVIS: I just want to make an objection --

25 THE COURT: Have a seat. You can make an objection

1 after I heard all the arguments. Okay?

2 MR. FARRIER: I'm Richard Farrier, and I represent
3 Cheryl Shoun. I would adopt what Mr. Cooke just laid out. I
4 think clearly the statute has run. The actions of
5 Mr. Pendarvis in this matter are concession to that.

6 Only thing I would like to point out is a little
7 more detail about the time frame, more recent time frame. I
8 think what this really represents from a procedural
9 standpoints is dodges and feints by someone who knows the
10 statute has run, in order to revive a corpse, that is a case
11 barred by the statute of limitations.

12 The first feint was upon the Clerk of Court. Mr.
13 Pendarvis, after the one year passed, sought to file a
14 consent order for --

15 THE COURT: I don't want to get into all of that. I
16 know you've got a motion for sanctions, and I will hear all
17 that at the appropriate time. Right now I just want to hear
18 on whether it should be restored.

19 MR. FARRIER: It should not. The statute has run.

20 THE COURT: Okay. Anything you want to add to
21 Mr. Cooke's argument about the -- why the statute has run?
22 And I don't mean to cut you off, but I know you've got a
23 motion for sanctions. I will hear that at the appropriate
24 time. But I don't particularly want to hear it now when I'm
25 trying to decide if it should be restored or not restored.

1 MR. FARRIER: It's no more complicated from the fact
2 that the statute has run. The Court has discretion to
3 restore it or to not restore it. Restoring in this case
4 after the statute has run is --

5 THE COURT: What about his argument -- apparently,
6 his argument is, under the Maxwell case, I can restore it and
7 y'all are going to have to raise the issue of statute of
8 limitations. What about that argument? Do you agree with
9 that or disagree?

10 MR. FARRIER: I think that it could be raised during
11 this hearing. It could be raised -- the Court could have
12 three hearings. The Court could retain jurisdiction. We
13 could have hearing at four o'clock. We could have another
14 hearing at 4:30, hearing at 5, or the Court to hear all those
15 motions together.

16 THE COURT: I mean, the way I read Maxwell, it says
17 you can restore it after one year, but you don't get that
18 one-year protection. So I think the Court has to consider
19 the statute on restoring it, whether to restore it or not
20 restore it. That's the way I read it.

21 MR. FARRIER: I agree.

22 THE COURT: I know Mr. Pendarvis disagrees with
23 that.

24 MR. FARRIER: Thank you, Your Honor.

25 THE COURT: Anything else you want to add?

1 MR. FARRIER: We do believe there is a -- Judge
2 Dennis's order has become law of the case; has not been
3 appealed. There's no Rule 59 motion. And, therefore, the
4 time frames would be set forth in that order, as opposed to
5 the statute.

6 THE COURT: Okay. All right. Who else?

7 MS. JOHNSON: Your Honor, my name is Wanda Johnson,
8 and I represent Taylor, Bowley and Byrd now.

9 The only cause of action against my client is for
10 breach of contract. I'm not sure what that cause of
11 action -- where it arises from. It appears to arise from the
12 September 9 letter.

13 What happened in this case, Ms. Shoun and Mr. Theos
14 represented Patient (sic) Care. And Ms. Shoun left my
15 client's firm in April of 2010 and continued to represent the
16 plaintiff in this case. However, my client had nothing to do
17 with the representation. They didn't continue their
18 representation. So I don't believe Mr. Pendarvis's client
19 benefits from any continuous representation, because my
20 clients did not communicate with his client, did not
21 represent anything, did not explain the counterclaim.

22 Ms. Shoun did, obviously, as reflected on the
23 record. But after April 2010, nothing occurred in regard to
24 my client.

25 THE COURT: After April the 10th, 2010?

1 MS. JOHNSON: After April 2010.

2 THE COURT: What was your client's involvement prior
3 to that time?

4 MS. JOHNSON: Mr. Shoun was a partner at the law
5 firm of Taylor, Bowley, Shoun & Byrd (sic). And when she
6 left, she took this case with her.

7 THE COURT: When she left, your client had nothing
8 to do with it?

9 MS. JOHNSON: No, no. My client did not continue
10 representation of Mr. Pendarvis's client after April 2010,
11 which puts the statute of limitations at the latest April
12 2010, again, expiring. So I don't think Mr. Pendarvis's
13 client can revive this case after four years.

14 Other than that, I join in Mr. Cooke's and
15 Mr. Farrier's argument.

16 THE COURT: Anybody else? Does that cover
17 everybody?

18 All right. Mr. Pendarvis, you wanted to say
19 something earlier? I cut you off. Glad to hear you.

20 MR. PENDARVIS: No, you did not cut me off. I was
21 interrupting. My apologies.

22 We got the memorandum in opposition to this motion
23 for -- to restore last week, late in the week last week. And
24 we worked. And in light of the Court's investigation,
25 evaluation, inquiry into the merits of the claim, if there

1 are questions about what Mr. Cignavitch, the principal of
2 Personal Care, knew or should have known, I have an affidavit
3 on behalf of Bernie Cignavitch, on behalf of Personal Care,
4 I'd like to submit to the Court for consideration.

5 THE COURT: Okay. Thank you, sir.

6 MR. PENDARVIS: This affidavit outlines, Your Honor,
7 basically the thrust we've been making, that throughout the
8 course of this entire case -- underlying case, excuse me --
9 what was being represented was, there's nothing to the
10 counterclaim because the matter of truth, the fact that this
11 improper tortious activity that we alleged in the complaint
12 was being done, proves that there's no defamation claim.
13 Probably right on that. Don't know.

14 But the fact that the lawyers that wrote the letter
15 and represented Personal Care in causing that claim to arise
16 were going to be witnesses, according to Professor Freeman's
17 affidavit, which is attached here, the fact that it gave rise
18 to a conflict and that there were injuries coming from that
19 conflict that were manifested and became known to --

20 THE COURT: When did your client first know about
21 the conflict?

22 MR. PENDARVIS: In the summer of 2012.

23 THE COURT: Okay.

24 MR. PENDARVIS: First time it was mentioned to him.
25 And so the thrust of the underlying case was, Your Honor,

1 this is a throw-away. This counterclaim is nothing. We are
2 going to prove she was tortiously interfering with your
3 business, Ms. Askew, the defendant. This reply, I mean, this
4 counterclaim is nothing. My client's believing the whole
5 time the case is being prosecuted until it gets to a
6 mediation.

7 And the thrust of what you will see,
8 Mr. Cingovitch's affidavit was, I was being told everything
9 was fine. No one ever told me they couldn't even finish the
10 case. No one told me that. No one explained that it was --
11 we were about to pay money to Ms. Askew instead of vice versa
12 until this mediation.

13 And there's just simply fact questions that are all
14 throughout this. Certainly, he knew about the counterclaim.
15 Certainly, he knew there were issues with the defense of the
16 case. But he's being told the whole time this is -- you
17 know, I have a meritorious claim.

18 And the focus, the first true injury is when he
19 finds out he really doesn't have -- these lawyers can't
20 finish the representation, he's going to need other counsel.

21 He gets Mr. John Blincow. Actually, he contacts his
22 insurance company about the counterclaims, gets Mr. John
23 Blincow and Mr. Chuck Baker, who come in to help try to have
24 this -- this case is coming up for trial, by the way, in
25 summer 2012. And they were very fearful they were not going

1 to be able to find anybody to take it over for trial in
2 Hampton County in the fall of 2012 when their plaintiff's
3 counsel would be relieved in the summer. And it's risky to
4 expect another lawyer to come in to a fairly complicated
5 business tort case right as it's coming up for trial.

6 So the point I'm making, this affidavit establishes
7 the injury beginning in the summer of 2012. Case was filed
8 March 2013. There's ample time left on the statute to -- the
9 case hadn't been filed until today. So we feel like those
10 issues of fact that are bearing on the merits of the claim
11 and the timeliness of the claim are simply matters of fact
12 for a jury.

13 Now, the thrust of -- the complaint was filed. The
14 original complaint was filed. We intended to avoid all
15 arguments on statute of limitations, Your Honor, beginning
16 with the first knowledge of this counterclaim in March 2010.

17 It's actually -- these materials aren't in the
18 record before the Court, but there were attempts to resolve
19 this case. And I was -- the point we were making is, we
20 didn't want to hear arguments that you should have known.
21 And all these injuries occurred at the time of the
22 counterclaim. And without getting a tolling agreement in
23 place to try to resolve this dispute, we filed a complaint.

24 The expert's looking at materials and couldn't get
25 them until within the 45 days. And we had a valid argument.

1 And Your Honor raised it before the defense did today. Why
2 didn't the counterclaim assert?

3 Well, the truth is, the counterclaim did not start
4 the damages because there were no injuries from the error
5 that were known to the plaintiff or should have been known
6 until the summer of 2012.

7 So the suggestion that the original filing of the
8 complaint without an affidavit and the subsequent amended
9 complaint with an affidavit somehow is the plaintiff
10 conceding statute, it's not that at all. The effort was to
11 simply avoid even anyone raising an affirmative defense for
12 statute of limitations.

13 The affidavit before you, establishes the first date
14 of knowledge of the claim and injury from that claim from the
15 Brown vs. Epstein case that Mr. Cooke so aptly stated.

16 And so based on this affidavit, Your Honor, if the
17 Court is going to delve into the merits, we believe the case
18 is timely, that Rule 40 motion --

19 THE COURT: Whether you have merits or not, you are
20 the person that didn't file within the one year. And in my
21 opinion, under Maxwell, that exposes you. You don't get the
22 one-year protection under 40(j).

23 MR. PENDARVIS: Agreed.

24 THE COURT: So you are the one that didn't file it.
25 So, yes, how am I going to delve into the merits of the case

1 on whether it should be restored or not? So my question to
2 you is, why didn't you file it within a year? You had a
3 whole year to file it.

4 Whenever Judge Dennis's order was signed, I think it
5 was signed on August the 28th, the order says one year from
6 the date of this order. It was a consent order. You
7 consented to it. Why didn't you follow that order?

8 Now you are standing here trying to convince me to
9 restore it when you didn't follow the order to begin with.

10 MR. PENDARVIS: Your Honor, I sent a copy of the
11 proposed order to restore to opposing counsel prior to --

12 THE COURT: They didn't have to consent to it. The
13 rule says file a motion within a year. Now, I do know the
14 order says restore within one year. I mean, you had a year.
15 You could have filed it six months ago.

16 Now, I don't think the order supersedes 40(j). I
17 think if you had filed a motion within a year of Judge
18 Dennis's order, you would have been okay because the rule
19 says file the motion. I know Dennis's order says restore.
20 And their position follows Dennis's order. May be right, I
21 don't know, but the rule says file a motion. Why didn't you
22 file a motion within a year? That's what we are here for.

23 MR. PENDARVIS: I had a consent order circulating,
24 letter back from --

25 THE COURT: You didn't even mail the consent order

1 to the judge until September the 4th. That was outside the
2 year before the order even -- consent order even went. So
3 that's my question to you. Why didn't you do it within the
4 year? That's what we are here for today.

5 MR. PENDARVIS: There was time on the statute, Your
6 Honor.

7 THE COURT: Pardon?

8 MR. PENDARVIS: There was time on the statute of
9 limitations. Based on what I know of the law and what my
10 client signs in an affidavit and verified in the complaint,
11 the date of the injury was the summer of '12.

12 THE COURT: Well, you filed your complaint that said
13 you got -- I want the 45 days to file my affidavit because
14 the statute's getting ready to run. Now you are coming into
15 court saying the statute didn't run. Which am I supposed to
16 believe? When you filed the paperwork with the Court
17 erroneously saying, hey, the statute's about to run, now you
18 come into Court and say it hasn't run. Which is it? It's
19 like you take whatever position suits you at the particular
20 time.

21 MR. PENDARVIS: Your Honor, during the year, we got
22 production of thousands and thousands of pages of paper,
23 sorted and shuffled. I had to go through over 3,000
24 individual pages to find out what my client knew, what was
25 being told, what was being disclosed and what wasn't, to see

1 if there were merits to the claim. We worked through the
2 entire year of -- summer all the way through the time -- and
3 we made a demand letter. We tried to get this case resolved.

4 As it appeared that we weren't able to do it, I
5 proposed a consent order. I got a copy from Barnwell Whaley
6 firm saying they agreed to restore the case, their own
7 signature. And now we are hearing differently. August 26th,
8 I will happy to submit that up to the Court.

9 THE COURT: I'm familiar with it. I saw it in the
10 memos. All you had to do was file a motion.

11 MR. PENDARVIS: We did within a few weeks, Your
12 Honor, of this letter.

13 THE COURT: All you had to do was file a motion
14 within this year. The reason is you went through 3,000 pages
15 of discovery and you were trying to settle the case; is that
16 why you didn't file within the year?

17 MR. PENDARVIS: That and my understanding that we
18 were going to get consent to restore it and have it, rather
19 than a motion, a consent order. I've done countless of
20 these, quite a number. And we have an order signed by
21 opposing counsel and me --

22 THE COURT: I mean, if you just filed the motion, we
23 wouldn't be here today.

24 MR. PENDARVIS: I agree with you, Your Honor. I
25 wouldn't have to do a motion to restore on something that was

1 fairly perfunctory. But given the freshness of this injury,
2 based on the facts before the Court, the only facts before
3 the Court --

4 THE COURT: How many months do you get after it's
5 restored? How many months do you get to do the discovery? I
6 don't know what the rule says.

7 How much is it, Don?

8 CLERK OF COURT: Gets new case number, so they would
9 have another year.

10 THE COURT: You got another year before it's even
11 subject to being called. I'm just looking for a good reason
12 why you didn't file your motion within a year, Mr. Pendarvis,
13 because that's what we are here for.

14 MR. PENDARVIS: I did my very best to get a consent
15 order by all parties. I was going through all the documents
16 to finish --

17 THE COURT: But my question to you there, so what?
18 They don't have to consent to it. All you had to do was file
19 a motion with the clerk. That doesn't have anything to do
20 with these parties' consent.

21 MR. PENDARVIS: You are right, Your Honor. You are
22 right. The issue I'm getting to -- you are asking me why. I
23 am confident based on the facts before the Court and the
24 verified complaint that the first injury to Personal Care
25 that they objectively knew or should have known about

1 happened in 2012. I knew there was time on the statute.

2 THE COURT: Well, why didn't you file your complaint
3 saying, I need more time for my affidavit on legal
4 malpractice under that statute? Why didn't you do that then?

5 MR. PENDARVIS: Because I had a good faith belief it
6 was going to be raised as a defense, not that it was a
7 meritorious defense, but good faith belief it was going to be
8 raised as a defense, and it was.

9 THE COURT: Anything else?

10 MR. PENDARVIS: No, Your Honor.

11 THE COURT: All right. First of all, I would like
12 to mark all the memorandums that have been submitted to the
13 Court with the attachments as Court's exhibits. I do not
14 have clean copies. Do the parties have clean copies? Mr.
15 Pendarvis, you haven't filed anything?

16 MR. PENDARVIS: No, but I have copies.

17 THE COURT: I will give you time to file whatever
18 you want to file pursuant to the motion to restore. Okay?

19 Because I'm going to sit down and read these
20 affidavits and read these cases and think about it before I
21 rule on the motion. I want to give you ample opportunity to
22 give me whatever you want to file pursuant to the motion. Do
23 you understand?

24 MR. PENDARVIS: I do.

25 THE COURT: I would like for y'all to file clean

1 copies of your memorandums and your attachments to the
2 memorandums, because I have marked the ones y'all sent to me,
3 or at least e-mailed to my law clerk and made copies of, I
4 have marked up.

5 Anything else that you would like to attach, I will
6 be happy to receive, any affidavits. I just got an affidavit
7 from Cignavitch. I will happy to receive any affidavits you
8 want to submit.

9 MR. FARRIER: Your Honor, I believe they've already
10 been filed, but if not --

11 THE COURT: I just want to mark them as Court's
12 exhibit so down the road, somebody knows what I made my
13 decision on, not what's in the file, but what's been marked
14 as a Court's exhibit. I think there's a distinction there.

15 MR. FARRIER: Your Honor, just one point as to the
16 affidavit, we believe it's inadmissible, should not be
17 considered because it was not timely filed.

18 THE COURT: I understand, but I'm giving you time to
19 propose an affidavit. Okay? I'm giving you -- how much time
20 you need? I'm going to accept it today. I understand the
21 rule says five days, but I'm going to waive that and give you
22 an opportunity to give counter affidavits to this. Okay?

23 MR. FARRIER: Okay.

24 THE COURT: How much time do you need?

25 MR. FARRIER: I would say 10 days, but I think 10

1 days is Thanksgiving.

2 THE COURT: December 4th, how is that? We've been
3 giving everybody December 4th, so I won't take any
4 exception.

5 MR. FARRIER: It's a good day.

6 THE COURT: Anybody else need time to file
7 affidavits or whatever they would like to file?

8 MR. COOKE: Did you want us to mark these today?

9 THE COURT: Please, if you would.

10 MR. COOKE: Mine, I highlighted a couple of things.
11 Could I still use that?

12 THE COURT: Pardon?

13 MR. COOKE: Mine is clean except I highlighted a
14 couple of things.

15 THE COURT: I don't care if it's highlighted. I've
16 just been writing on mine.

17 MR. PENDARVIS: As for the materials in opposition
18 to the motion, we have -- plaintiffs contend the only parties
19 that are before the Court and filed an answer that are in the
20 case are Mr. Theos and his firm.

21 THE COURT: There is no case right now. The case
22 has been dismissed. It is a motion before the Court to
23 restore that case. So there's nobody in default. And I will
24 make that ruling from the bench. You can't have a default to
25 a dismissed case. There is no case. This case will be

1 restored. It will receive a new docket number. The old case
2 is gone. So you can't be in default to a dismissed case
3 because there's no case pending, Mr. Pendarvis. That's what
4 we are trying to decide, if I'm going to restore. And it
5 will be restored under a new docket number. Okay? So your
6 position of default is absolute poppycock. Do you
7 understand?

8 MR. PENDARVIS: I do.

9 THE COURT: Thank you very much.

10 Anything else?

11 MR. COOKE: That's all. Thank you.

12 MR. FARRIER: Your Honor, I assume the motion for
13 sanctions will be heard after that?

14 THE COURT: Yeah. I've got to rule on this. And if
15 I rule in your favor, I will listen to sanctions. I will
16 listen to sanctions regardless, but this is the crux of it.
17 I've got to rule on the motion to restore it or not restore
18 it, and then we can proceed from there.

19 THE COURT: Mr. Pendarvis, anything else from you?

20 MR. PENDARVIS: No, Your Honor.

21 THE COURT: Thank you all very much.

22 MR. PENDARVIS: Your Honor, did you have a date you
23 would like the materials -- is December 4th a common date
24 across the board for materials?

25 THE COURT: Yes.

1 MR. FARRIER: One other thing, to the extent that
2 motion for sanctions remains after this, we would ask,
3 because this Court has heard this motion, that the Court
4 retains jurisdiction.

5 THE COURT: I will retain jurisdiction over the
6 sanctions as well as any motion pending once I rule on this
7 motion. Okay? And I will hear it at the appropriate time.
8 But I need to get -- let me get this behind me first.

9 Will y'all mark whatever memorandums and exhibits
10 y'all have. If you don't have them, I will be happy to mark
11 them later if you want to bring them tomorrow or Friday.

12 (Court's Exhibit 1, Memorandum in Opposition to
13 Plaintiff's Motion to Restore Pursuant to Prior Order of the
14 Court and SCRCF Rule 40(j), was marked for identification.)

15 (Court's Exhibit 2, Affidavit of Bernard
16 Cignavitch, was marked for identification.)

17 (Court's Exhibit 3, Defendant Shoun's Motion for
18 Sanctions and Expedited Hearing, was marked for
19 identification.)

20 Court's Exhibit 4, Defendant's Shoun's Memorandum in
21 Opposition to Plaintiff's Motion to restore, was marked for
22 identification.)

23 (Court's Exhibit 5, Defendant Taylor Bowley and
24 Byrd's memorandum in opposition to plaintiff's motion to
25 restore, was marked for identification.)

1 (Court's Exhibit 6, Defendant Shoun's Memorandum in
2 Support of Her Motion for sanctions, was marked for
3 identification.)

4 (Court's Exhibit 7, Defendant Taylor Bowley and
5 Byrd's Motion for Sanctions and Expedited Hearing, was marked
6 for identification.)

7 (Proceedings are concluded.)

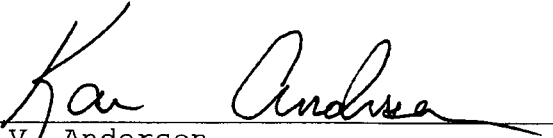
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 25th day of November, 2014, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

OTHER MATERIALS AND DOCUMENTS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-10-1396

FILED
2014 SEP 22 PM 2:33
JULIE J. ARMSTRONG
CLERK OF COURT

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,

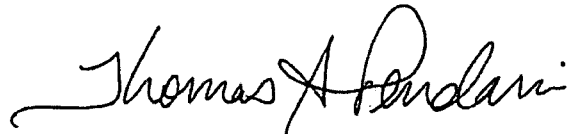
Defendants.

**MOTION TO RESTORE
PURSUANT TO RULE 40(J), SCRPC**

TO: M. Dawes Cooke, Jr. J.D. and Phillip S. Ferderigos, J.D., Lawyers for Defendants Jerry N. Theos and URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; and to Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, n/k/a TAYLOR, BOWLEY & BYRD, LLC :

YOU WILL PLEASE TAKE NOTICE the Plaintiff hereby moves for an Order restoring this action to the active jury trial docket. This Motion is based upon the grounds that with the consent of all parties, this action was stricken pursuant to Rule 40(j), SCRPC, as shown by the "Consent Order Striking Case From Docket [Rule 40(j), SCRPC]" entered on August 28, 2013, a copy of which is attached as Exhibit 1, and Plaintiff desires to restore this action to the active trial docket.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis
500 Carteret Street, Suite A
Beaufort, South Carolina 29902
(843) 524-9500 Tel.
(843) 524-9501 Fax.
Thomas@Pendarvislaw.com

Lawyer for Plaintiff PERSONAL CARE, INC.

Beaufort, South Carolina

September 17, 2014

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-1396

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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.

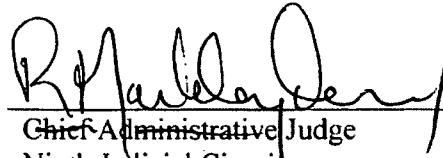
IT IS HEREBY ORDERED that the above-captioned case be stricken from the docket in accordance with the agreement of the parties pursuant to Rule 40(j), SCRCP.

[SIGNATURES ON FOLLOWING 4 PAGES]

22/1



IT IS SO ORDERED.



Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

August 27, 2013

RWJ/2

WE SO CONSENT:

Catherine B. Kerney

Thomas A. Pendarvis, Esq.
Catherine B. Kerney, Esq.
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902-5066
(843) 524-9500
(843) 524-9501 fax

Counsel for the Plaintiff

RW 7

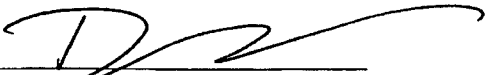
WE SO CONSENT:


M. Dawes Cooke, Jr., Esq.
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.**

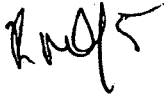
RW/4

WE SO CONSENT:



David W. Overstreet, Esq.
Amanda K. Dudgeon, Esq.
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
(843) 727-2995 fax

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



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, TOPEREK, THEOS &
KEITH, PA; Cheryl D. Shoun; and
TAYLOR, SHOUN, BOWLEY & BYRD, LLC,

Defendants.

**CERTIFICATE OF
SERVICE**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 SEP 22 PM 2:33

-ILED

I, Andrea L. Goodreau, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the document listed below upon counsel of record by e-mailing and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said Defendant at the following address:

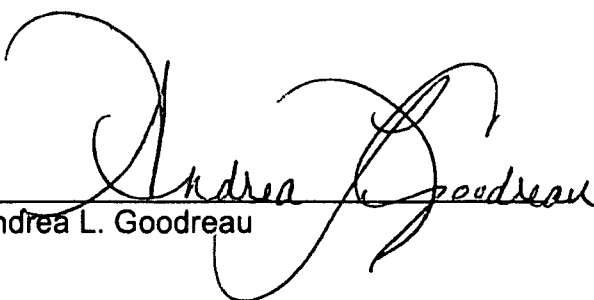
M. Dawes Cooke, Jr., J.D.
Phillip S. Ferderigos, J.D.
BARNWELL, WHALEY, PATTERSON & HELMS, LLC
PO. Drawer H
Charleston, SC 29402
mdc@barnwell-whaley.com
pferderigos@barnwell-whaley.com

Cheryl D. Shoun, J.D.
NEXSEN PRUET, LLC
PO. Box 486
Charleston, SC 29402
cshoun@nexsenpruet.com

Catherine D. Byrd, J.D.
Taylor, Bowley & Byrd, LLC
39 Broad Street, Ste. 101
Charleston, SC 29401
cbyrdtsbb@bellsouth.net

Documents Served: MOTION INFORMATION COVER SHEET; MOTION TO RESTORE
PURSUANT TO RULE 40(J), SCRCP.

Beaufort, South Carolina
September 17, 2014


Andrea L. Goodreau

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.

**APPLICATION FOR ENTRY OF
DEFAULT; MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANT
CHERYL D. SHOUN AND AGAINST
DEFENDANT TAYLOR, SHOUN,
BOWLEY & BYRD, LLC;
AND
REQUEST FOR DAMAGES HEARING**

FILED
2014 OCT 16 PM 2:16
JULIE ARISTRONG
CLERK OF COURT

TO: M. Dawes Cooke, Jr. J.D. and Phillip S. Ferderigos, J.D., Lawyers for Defendants Jerry N. Theos and URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; and to Defendant, Cheryl D. Shoun; and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, n/k/a TAYLOR, BOWLEY & BYRD, LLC:

NOTICE

PLEASE TAKE NOTICE THAT Plaintiff, PERSONAL CARE, INC., hereby moves pursuant to Rules 54, 55(a), and 55(b), SCRCP, 1) for the Clerk of Court to enter a default on the calendar (file book) against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; 2) for a default judgment against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, based on these Defendants' failure to serve counsel for Plaintiff with an Answer or otherwise responding to the CIVIL COVERSHEET, SUMMONS, AND AMENDED COMPLAINT, on which service was accepted on July 1, 2013, over Four Hundred (400) days ago; and 3) for a damages hearing to be set to establish the amount of damages to which Plaintiff is entitled.

MOTION

Based on the failure to file an Answer or otherwise respond, Plaintiff, PERSONAL CARE, INC., through its undersigned counsel, does hereby apply to the Honorable Clerk of Court for an entry of default pursuant to Rule 55(a), SCRPC, against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; and moves this Honorable Court for a judgment by default against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, pursuant to Rule 55(b), SCRPC, Civil Procedure; and for a hearing to determine and establish the amount of damages to which Plaintiff, PERSONAL CARE, INC., is entitled.

This application and motion are made and based upon the Affidavit of Default, attached hereto and incorporated by reference as **Exhibit 1**, demonstrating that good and valid service was obtained upon Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC on July 1, 2013. More than Four Hundred Sixty-Nine (469) days have passed and no Answer, Motion or other responsive pleading has been entered by Defendant, Cheryl D. Shoun, or by Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC.¹

In addition, on September 19, 2014, correspondence was sent to both Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, as a professional courtesy, reminding them that no Answer or other responsive motion had been filed in response to Plaintiff's Amended Complaint. This letter allowed these Defendants an additional Ten (10) days to file their Answer, and advised that if no Answer or responsive motion was served "on or before September 29, 2014, . . . PERSONAL CARE w[ould] pursue

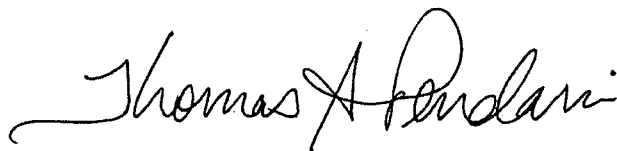
¹ These Defendants were given a Thirty (30) day extension to file their Answer or otherwise respond.

its remedies available under the Rules of Civil Procedure.” A copy of that letter is attached hereto and incorporated by reference as **Exhibit 2**.

WHEREFORE, Plaintiff, PERSONAL CARE, INC., respectfully requests the Clerk of Court enter a default on the calendar (file book) against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; that the Court issue an Order of default judgment be entered against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, based on these Defendants’ failure to serve counsel for Plaintiff with an Answer or otherwise responding to the CIVIL COVERSHEET, SUMMONS, AND AMENDED COMPLAINT, on which service was accepted on July 1, 2013, over Four Hundred (400) days ago; and that a damages hearing to be set to establish the amount of damages to which Plaintiff is entitled.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Thomas A. Pendarvis
500 Carteret Street, Suite A
Beaufort, South Carolina 29902
(843) 524-9500 Tel.
Thomas@Pendarvislaw.com

Lawyer for Plaintiff PERSONAL CARE, INC.

Beaufort, South Carolina

October 13, 2014

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.

**PLAINTIFF'S AFFIDAVIT OF
DEFAULT AND NON-MILITARY
SERVICE**

PERSONALLY APPEARED before me Thomas A. Pendarvis, who, being first duly sworn, swears as follows:

1. I am a lawyer for the Plaintiff in the above action.
2. A CIVIL COVERSHEET, SUMMONS, and AMENDED COMPLAINT were duly served on the Defendant, Cheryl D. Shoun, and on Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, on July 1, 2013, by personal service, as shown by the ACCEPTANCE OF SERVICE on behalf of Defendant, Cheryl D. Shoun, a copy of which is attached as **Exhibit A**, and the ACCEPTANCE OF SERVICE on behalf of Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, a copy of which is attached as **Exhibit B**.
3. On September 19, 2014, correspondence was sent to both Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, as a professional courtesy, reminding them that no Answer or other responsive motion had been filed in response to Plaintiff's Amended Complaint. This letter allowed these Defendants



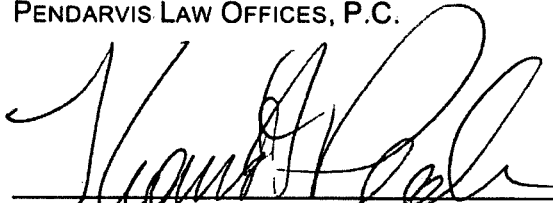
an additional Ten (10) days to file their Answer, and advised that if no Answer or responsive motion was served "on or before September 29, 2014, . . . PERSONAL CARE w[ould] pursue its remedies available under the Rules of Civil Procedure." A copy of that letter is attached hereto and incorporated by reference as **Exhibit C**.

4. More than Four Hundred (400) days have elapsed since service was accepted on behalf of these Defendants of the CIVIL COVERSHEET, SUMMONS, and AMENDED COMPLAINT.
5. Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, have not served an Answer, or other pleading in this matter or otherwise responded and now are and have been in default.
6. Upon information and belief, Defendant, Cheryl D. Shoun, is not in active military service allowing Defendant Shoun, to suspend enforcement of her civil liabilities pursuant to the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A. App. § 510 *et seq.*
7. Upon information and belief, Defendant Shoun, is not a minor or incompetent person.
8. Plaintiff hereby moves the Court, pursuant to Rule 55(b), SCRPC, for an Order adjudging Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, to be in Default and for judgment against both of these Defendants, and for a damages hearing to be set as soon as reasonably and practicably possible to establish the amount of damages.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

THE AFFIANT FURTHER SAYETH NOT.

PENDARVIS LAW OFFICES, P.C.



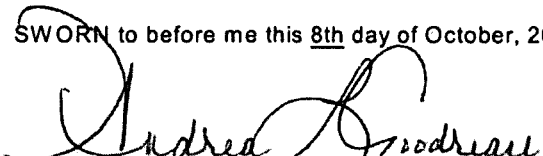
Thomas A. Pendarvis (SC Bar # 064918)

Lawyer for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

October 13, 2014d

SWORN to before me this 8th day of October, 2014



(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 3-8-2023.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-10-1396

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) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-10-1396

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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; Taylor,
Shoun, Bowley & Byrd, LLC,

Defendants.

ACCEPTANCE OF SERVICE

NOW COMES the undersigned, Officer and/or Managing or General Agent for Defendants, TAYLOR, BOWLEY & BYRD, LLC; F/K/A TAYLOR, SHOUN, BOWLEY & BYRD, LLC and accepts service of the Civil Cover Sheet, Amended Summons and Amended Verified Complaint on behalf of all Defendants this 2nd day of July, 2013.

TAYLOR, BOWLEY & BYRD, LLC


Donna Taylor, J.D.

Officer and/or Managing or General Agent
for Defendants, TAYLOR, BOWLEY & BYRD,
LLC; F/K/A TAYLOR, SHOUN, BOWLEY &
BYRD, LLC

Charleston, South Carolina

July 2nd 2013



PENDARVIS LAW OFFICES, PC



September 19, 2014

VIA E-MAIL

Cheryl D. Shoun, J.D.
NEXSEN PRUET, LLC
PO Box 486
Charleston SC 29402
cshoun@nexsenpruet.com

Catherine D. Byrd, J.D.
TAYLOR BOWLEY & BYRD, LLC
39 Broad St., Ste. 101
Charleston SC 29401
catherine@tbbesq.com

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

Dear Ms. Shoun and Ms. Byrd:

This is a reminder given to both of you as a professional courtesy.

As you know, on July 1, 2013, an Acceptance of Service form was signed on behalf of Defendant, TAYLOR, BOWLEY & BYRD, LLC, f/k/a TAYLOR, SHOUN, BOWLEY & BYRD, LLC, and an Acceptance of Service form was signed on behalf of Defendant, Cheryl D. Shoun, which made July 31, 2013, the due date for an Answer or responsive motion to Plaintiff's Amended Complaint. On July 30, 2013, a request was made for 30 day extension, which was granted making August 30, 2013, the due date for an Answer or responsive motion.

To date, PERSONAL CARE has not been served with an Answer or responsive motion for either Ms. Shoun or TAYLOR, BOWLEY & BYRD, which now are **385 days late**.

This is to advise that we expect to be served with Answer or responsive motion for Ms. Shoun and for TAYLOR, BOWLEY & BYRD on or before September 29, 2014. Otherwise, PERSONAL CARE will pursue its remedies available under the Rules of Civil Procedure.

Also, please allow this letter to confirm that I have not been informed of successor counsel for either Ms. Shoun or for TAYLOR, BOWLEY & BYRD. If counsel has been retained or is retained in the future, please have them contact me.

Please do not hesitate to call or contact me if you have any questions or concerns.

EXHIBIT

C

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
Thomas@PendarvisLaw.com
Board Certified by the American Board of
Professional Liability Attorneys in
Legal Malpractice

500 CARTERET ST., SUITE A
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F 843.524.9501

CATHERINE B. KERNEY, J.D.
ADMITTED IN SC, VA AND DC
Carey@PendarvisLaw.com

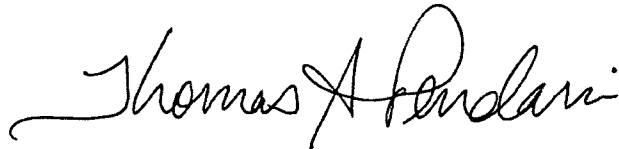
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Cheryl D. Shoun, J.D.
Catherine D. Byrd, J.D.
Page 2
September 19, 2014

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis

TAP/alg

cc: Bernard Cignavitch

PENDARVIS LAW OFFICES, PC



September 19, 2014

VIA E-MAIL

Cheryl D. Shoun, J.D.
NEXSEN PRUET, LLC
PO Box 486
Charleston SC 29402
cshoun@nexsenpruet.com

Catherine D. Byrd, J.D.
TAYLOR BOWLEY & BYRD, LLC
39 Broad St., Ste. 101
Charleston SC 29401
catherine@tbbesq.com

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

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As you know, on July 1, 2013, an Acceptance of Service form was signed on behalf of Defendant, TAYLOR, BOWLEY & BYRD, LLC, f/k/a TAYLOR, SHOUN, BOWLEY & BYRD, LLC, and an Acceptance of Service form was signed on behalf of Defendant, Cheryl D. Shoun, which made July 31, 2013, the due date for an Answer or responsive motion to Plaintiff's Amended Complaint. On July 30, 2013, a request was made for 30 day extension, which was granted making August 30, 2013, the due date for an Answer or responsive motion.

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Also, please allow this letter to confirm that I have not been informed of successor counsel for either Ms. Shoun or for TAYLOR, BOWLEY & BYRD. If counsel has been retained or is retained in the future, please have them contact me.

Please do not hesitate to call or contact me if you have any questions or concerns.

EXHIBIT

2

THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
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Board Certified by the American Board of
Professional Liability Attorneys in
Legal Malpractice

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CATHERINE B. KERNEY, J.D.
ADMITTED IN SC, VA AND DC
Carey@PendarvisLaw.com

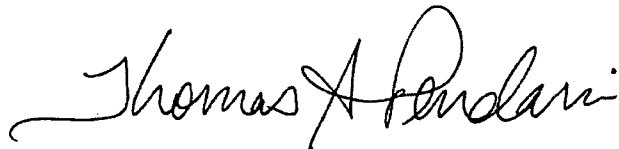
350

Cheryl D. Shoun, J.D.
Catherine D. Byrd, J.D.
Page 2
September 19, 2014

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis

TAP/alg

cc: Bernard Cignavitch

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A 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,)
)
Defendant.)

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION TO
RESTORE PURSUANT TO PRIOR
ORDER OF THE COURT AND SCRPC
RULE 40(j)**

FILED
2014 NOV 14 PM 2:55
JULIE J. ARISTON
CLERK OF COURT
BY [Signature]

TO: THOMAS A. PENDARVIS, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

Defendants Jerry N. Theos and Uricchio, Howe, Krell, Johnson, Toporek, Theos & Keith, PA (hereinafter collectively referred to as "Defendant Theos") hereby respectfully submit their Memorandum opposing Plaintiff's Motion to Restore Case pursuant to the prior Order of the Court and SCRPC Rule 40(j). Defendant Theos opposes Plaintiff's Motion to Restore on the grounds that (1) Plaintiff's motion fails to comply with the prior Order of the Court and (2) Plaintiff's claims are barred by SCRPC Rule 40(j) and the statute of limitations as a matter of law.

A. BACKGROUND

On March 8, 2013,¹ Plaintiff filed its initial Complaint alleged spurious claims of legal malpractice against Defendant Theos and other Defendants. Plaintiff's initial Complaint alleged Defendant Theos committed legal malpractice by sending an alleged defamatory letter on behalf of the Plaintiff to a third party on September 14, 2009 (Complaint, Par. 18) and Plaintiff's failure to attach the required S.C. Code Ann. § 15-36-100(B) Expert Affidavit for a legal malpractice

¹ On March 7, 2013, the day before, Plaintiff's counsel expressed his concerns that the statute of limitations may bar his client's litigation if it were commenced after March 8, 2013. See Exhibit 1, Email from Pendarvis to Cole, with copy to Plaintiff, stating "We also discussed my concerns about an argument that the statute of limitations might expire on Friday, March 8."

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.” (Complaint, Par. 97).

After filing an Amended Complaint on April 19, 2013, Plaintiff took no action via formal discovery (written discovery or depositions) to prosecute its claims until the matter was administratively dismissed on August 28, 2013. Plaintiff’s counsel requested and Defendant Theos and other Defendants agreed to a Consent Order Striking Case From Docket [Rule 40(j), SCRCF]. All Defendants’ counselors agreed to the Consent Order, which Judge Dennis executed on August 27, 2013 and was filed on August 28, 2013. Pursuant to its express terms, the Consent Order (hereinafter “prior Judge Dennis Order”) expressly set forth:

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).

Approximately one year later, on August 22, 2014, Plaintiff’s counsel contacted Defendant Theos’ counsel to request his consent to a proposed Consent Order Restoring Case to Docket (Rule 40(j), SCRCF), (hereinafter “new proposed Consent Order”) purporting to reinstate the case pursuant to the prior Judge Dennis Order. See Exhibit 2, Letter from Pendarvis, dated August 22, 2014. On August 26, 2014, Defendant Theos did not have an overt reason not to consent to the new proposed Consent Order. Defense counsel for Defendant Theos signed the new proposed Consent Order and forwarded it to Plaintiff’s counsel on August 26, 2014. See Exhibit 3, Letter from Ferderigos, dated August 26, 2014. The other Co-Defendants, however, did not consent to the new proposed Consent Order.

Despite the fact that Plaintiff’s counsel did not have the consent of all the parties to submit the new proposed Consent Order to the Court, on September 5, 2014, nine days after the one year deadline, Plaintiff’s counsel forwarded the new proposed Consent Order to the clerk for a judge’s signature. Upon review, Judge Dennis and the clerk’s office noted that all parties had not consented to the new proposed Consent Order and Judge Dennis would require a hearing to address the new proposed Consent Order. During the email exchanges between the Clerk of Court and Plaintiff’s counsel, Plaintiff’s counsel argued that Co-Defendant’s failure to object to his new proposed Consent Order was tantamount to consent, an argument the Court rejected. In

apparent frustration, Plaintiff's counsel subsequently withdrew the new proposed Consent Order via his email of September 17, 2014, wherein Plaintiff's counsel stated:

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 no 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. (Emphasis added). See Exhibit 4, Email exchange between Pendarvis and Charleston Clerk, dated September 15 – 17, 2014.

After withdrawal of the new proposed Consent Order, on September 17, 2014, 20 days after the one year deadline pursuant to the prior Judge Dennis Order and SCRPC Rule 40(j), Plaintiff's counsel subsequently filed its untimely motion to restore the case, which is the basis for this current hearing.

B. ARGUMENT

1. Plaintiff's Motion to Restore violates the prior Order of the Court.

The prior Judge Dennis Order striking the case is the “law of the case” and Plaintiff's request to have a subsequent judge undo Judge Dennis's Order is improper. In South Carolina, it is incumbent upon a party to seek rehearing and/or appeal a court decision or the party is bound by previous findings as the law of the case. Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 525 S.E.2d 869 (S.C. 2000); ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997) (unappealed ruling is law of the case); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, “right or wrong, is the law of this case and requires affirmance”); See Charleston Lumber Co. v. Miller Housing Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (finding that an unappealed ruling, right or wrong, is the law of the case and requires affirmance); Mid-South Mgt. Co. Inc. v. Sherwood Development Corp., 649 S.E.2d 135, (S.C. App. 2007) (“A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case.”) (quoting Austin v. Specialty Transp. Servs., 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004)); Bessinger v. BI-LO, Inc., 366 S.C. 426, 622 S.E.2d 564 (S.C. App. 2005). Stated differently, in South Carolina, 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) reversed on other grounds, by 356 S.C. 617, 591 S.E.2d 26 (S.C. 2004) (quoting Judge Dennis stating “it is the long-standing rule in this State that a Circuit Judge cannot modify or reverse an Order of another Circuit Judge.”).

Initially, Plaintiff’s motion is improper and untimely based on the express terms of the prior Judge Dennis Order itself which required that the case be restored by August 28, 2014.² Importantly, the express language of the prior Judge Dennis Order Striking the Case is not consistent with the language prescribed by Rule 40(j) in order to toll the statute of limitations. The Order deviated from the Rule in that, whereas the Rule requires that Plaintiff must move for the case to be restored within one year, Judge Dennis’s Order expressly requires that the case must be restored within one year (August 28, 2014). On April 26, 2014, two days before, Defendant Theos consented to restoring the case because there was no overt basis to object when the request was made. Defendant Theos consented to the case being restored if Plaintiff complied with the prior Judge Dennis Order; however, Plaintiff did not. As Plaintiff failed to have the case restored by August 28, 2014 pursuant to the prior Judge Dennis Order, Plaintiff’s proposed new Consent Order (which was forwarded to the Court late on September 5, 2014 and subsequently withdrawn), and Plaintiff’s untimely Motion to Restore the Case (filed late on September 17, 2014), are both untimely, improper, and violate the express terms of the prior Judge Dennis Order itself. For such reason alone, without having to resort to SCRPC Rule 40(j) or the dispositive statute of limitations defense, Plaintiff’s Motion to Restore should be denied.

Accordingly, in regard to Plaintiff’s proposed new Consent Order submitted to the Court, (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 Order striking it required, and (3) Plaintiff has withdrawn the prior Consent Order, so it is not properly before the Court. Further, Plaintiff withdrew its new proposed Consent Order and filed a Motion to Restore late. Defendant Theos has never consented to Plaintiff’s Motion to Restore as it comes approximately three weeks too

² Indeed, the proposed new Consent Order itself, drafted by the Plaintiff’s counsel, stated “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) SCRPC.” The agreement of the parties, which was adopted by the Court via the prior Judge Dennis Order, sets forth that the matter would be dismissed unless the Plaintiff actually restored the case within one year from the date of the Order, which would be August 28, 2014. As such, even pursuant to the proposed new Consent Order, as Plaintiff’s case was not restored on or before August 28, 2014, Plaintiff’s claims would still be barred pursuant to the prior Judge Dennis Order and/or by the statute of limitations (See Section 2 of this Memorandum).

late pursuant to the prior Judge Dennis Order. Based on the express terms of the prior Judge Dennis Order, Plaintiff's Motion should be denied.

2. Plaintiff's claims are barred by SCRCP Rule 40(j) and the statute of limitations.

SCRCP Rule 40(j) sets forth:

(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).

In South Carolina, a party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of SCRCP 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule. Maxwell v. Genez, 356 S.C. 617, 618, 591 S.E.2d 26, 27 (2003).³ Initially, in the Maxwell v. Genez matter, Judge Dennis held that Plaintiff's Motion to Restore was filed 19 days late after the one year time limit set forth in the Rule 40(j) Consent Order⁴ and SCRCP Rule 6(b) did not provide discretion to the Court to enlarge the one year period of time based upon "good cause." Subsequently, in Maxwell v. Genez, 350 S.C. 563, 567 S.E.2d 496 (Ct. App. 2002), the Court of Appeals held that Judge Dennis was in error and SCRCP Rule 6(b) did apply to the 40(j) time limit and a showing of

³ See South Carolina Rules of Civil Procedure Annotated, Rule 41: SCRCP Rule 40(j) does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period. This conclusion is supported by the Notes to Rule 40 ("Rule 40(j) now requires all adverse parties to consent to the dismissal in writing, but the consent also operates to toll the statute of limitations for one year after the case is stricken from the docket as to each consenting party") and language in Graham v. Dorchester County School Dist., 339 S.C. 121, 125, 528 S.E.2d 80, 82 (Ct. App. 2000) (Rule 40(j) requires motions to restore within one year of case being stricken "to take advantage of the tolling of the statute of limitations."). A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule. Maxwell v. Genez, 356 S.C. 617, 620-621, 591 S.E.2d 26, 28 (2003).

⁴ Importantly, the Order striking Maxwell's Complaint from the docket tracked the language of SCRCP Rule 40(j). In contrast, here, the prior Judge Dennis Order did not track SCRCP Rule 40(j), rather it expressly required Plaintiff to successfully restore the case within one year from the date of Judge Dennis's Order.

“good cause” pursuant to Rule 55(c) would excuse a late 40(j) motion to restore. Finally, in Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (S.C. 2004), the Supreme Court summarily reversed the Court of Appeals’ decision by affirming Judge Dennis’s dismissal, holding that SCRCF Rule 6(e) did not apply to a 40(j) motion to restore and the statute of limitations is tolled pursuant to SCRCF Rule 40(j) only if the claim is restored within one year after it is stricken. The Supreme Court expressly held that a party cannot take advantage of the one year tolling period provided by Rule 40(j) if a party moves to restore a case to the docket more than one year after the claim is stricken.

Moreover, in South Carolina law, the discovery rule applies to this action.⁵ According to the discovery rule, the statute 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. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).⁶ Under § 15-3-530 and the South Carolina common law, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). 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

⁵ See S.C. Code Ann. § 15-3-530 (2005) (applying the discovery rule to causes of action arising under § 15-3-530); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating “[i]n determining when a cause of action arose under § 15-3-530, we apply the ‘discovery rule’”).

⁶ 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 Internat’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 v. Sims, *supra*; Stephens v. Druffin, 327 S.C. 1, 488 S.E.2d 3 of 7 (S.C. 1997). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). 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.

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).

Furthermore, “[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to ‘act with some promptness.’” Maier v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).⁷

Here, based on the Complaint allegations paragraphs 18 and 97 and the email of Pendarvis attached as Exhibit 1, the statute of limitations has run on the Plaintiff as a matter of law. Moreover, Plaintiff did not file a timely Motion to Restore as Rule 40(j) requires in order to benefit from the tolling provision of Rule 40(j); instead, he forwarded a purported new proposed Consent Order after the deadline, which was in fact not fully consented to. Thereafter, Plaintiff withdrew the new proposed Consent Order to file a belated Motion to Reinstate. Simply put, Plaintiff failed to comply both with Judge Dennis’s Order and SCRPC Rule 40(j). Importantly, at no point did Defendant Theos agree that the statute of limitations would be further tolled above and beyond the parameters set forth in the prior Judge Dennis Order. As the case was not restored within one year per the requirements of the prior Judge Dennis Order, by its express terms, the prior Judge Dennis Order did not toll the statute of limitations. Similarly, as Plaintiff did not file its Motion to Restore the case within one year of the administrative dismissal, the statute of limitations is not tolled per the Supreme Court’s Maxwell decision. Accordingly, pursuant to both the prior Order of the Court and SCRPC Rule 40(j), Plaintiff’s legal malpractice claim is barred as a matter of law.

C. CONCLUSION

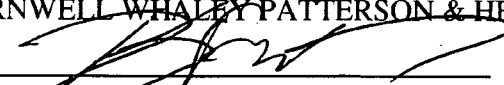
For the reasons stated above, Defendant Theos respectfully requests that this Honorable Court to deny Plaintiff’s untimely Motion to Restore Case pursuant to the prior Order of the

⁷ The courts of South Carolina apply the “discovery rule” to determine when a cause of action accrues. Bayle v. S.C. Dep’t of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct date either is discovered or may have been discovered by the exercise of reasonable diligence. Id. “The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question.” Id. “One purpose of a statute of limitations is to ‘relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.’” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v. CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). “Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation.” Moates, 322 S.C. at 176, 470 S.E.2d at 404.

Court and, *as an alternate sustaining ground*, to dismiss this case pursuant to SCRCP Rule 40(j) and the statute of limitations as a matter of law.

Respectfully Submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: 
M. Dawes Cooke, Jr.
Phillip S. Ferderigos
288 Meeting Street, Suite 200
Charleston, SC 29401
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700

November 13, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby that on the 13th day of November, 2014, I mailed a true and correct copy of the foregoing Memorandum to counsel of Record with sufficient postage, 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: 
Legal Assistant

-----Original Message-----

From: Thomas A. Pendarvis
Sent: Thursday, March 07, 2013 5:55 PM
To: 'Cole, Mary'
Cc: 'Andrea Goodreau'
Bcc: 'bcignavitch@comcast.net'

Hello Mary:

Thank you for the message this afternoon and revisions to the proposed Tolling Agreement.

When we spoke on Monday, you were not able to confirm whether Ms. Shoun and her law firm would agree to toll the statute. We also discussed my concerns about an argument that the statute of limitations might expire on Friday, March 8. Since we spoke on Monday you should have received my e-mail advising that we needed to have a signed tolling agreement in place by the close of business yesterday, otherwise we were putting a letter in the mail to the Charleston County Clerk of Court filing a Summons & Complaint to make sure it was filed on time. Receiving no response to the e-mail and no signed tolling agreement, attached please find a copy of the letter to the Clerk with enclosures that was mailed yesterday filing suit. We have not received the clocked copies of the pleadings back from the Clerk but should have them by sometime next week. Please remember that we sent the proposed tolling agreement to your insureds back in September.

Also attached please find the tolling agreement you sent this afternoon with a few additional changes to properly identify the law firm where Ms. Shoun practiced at the relevant times.

Please let me know of your thoughts on how your insureds, Ms. Shoun, and her former law firm wish to proceed now that suit has been filed. There are several options to be considered. Thank you for your attention to this matter.

Regards,

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret St., Ste. A
Beaufort, SC 29202-5066
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com
www.PendarvisLaw.com <<http://www.PendarvisLaw.com>>

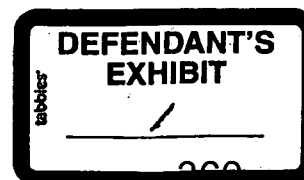
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-----Original Message-----



59.014
8-25-14

PENDARVIS LAW OFFICES, PC



August 22, 2014

VIA E-MAIL AND US MAIL

Phillip S. Ferderigos, J.D.
BARNWELL, WHALEY, PATTERSON & HELMS, LLC
PO Drawer H
Charleston, SC 29402-0197
pferderigos@barnwell-whaley.com

Cheryl D. Shoun, J.D.
NEXSEN PRUET, LLC
PO Box 486
Charleston SC 29402
cshoun@nexsenpruet.com

RE: *PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, P.A.; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396*

Counsel:

As discussed with Phillip earlier this morning, enclosed please find a proposed Consent Order Restoring Case to Docket for the above-referenced matter. Please let us know as soon as possible, and hopefully by next week, if you will consent to this Order. If not, we will be filing a motion to restore as of right per Rule 40(j), SCRCP.

Review of the 2000+ pages of material in his file has taken longer than expected, but now that this process is wrapping-up, the vitality of Personal Care's claims is much clearer. We are in the process of preparing a demand letter and should have the letter to you in the next few weeks.

Thank you for your time and attention to this matter, and if you and your clients agree with the proposed Consent Order, please execute it and return it to me next week. Otherwise, please call or contact me so we can discuss this matter further.

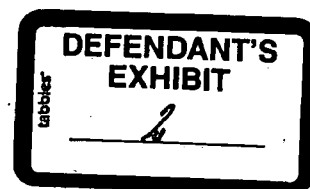
With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/lat
cc: Bernie Cignavitch
M. Dawes Cooke, Jr. J.D.



THOMAS A. PENDARVIS, J.D.
ADMITTED IN SC AND GA
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CATHERINE B. KERNEY, J.D.
ADMITTED IN SC, VA AND DC
Carey@PendarvisLaw.com

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)
PENDARVIS LAW OFFICES, P.C.
500 Carteret St., Suite A
Beaufort, SC 29902-5066
843.524.9500 Tel.
Thomas@PendarvisLaw.com

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



Phillip S. Ferderigos, Member
pferderigos@barnwell-whaley.com

August 26, 2014

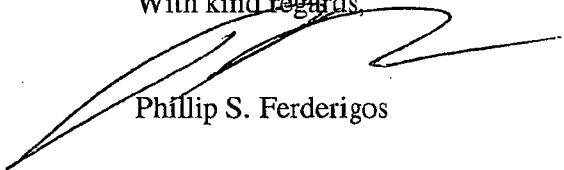
Pendarvis Law Offices, P.C.
Thomas A. Pendarvis, Esq.
Catherine B. Kerney, Esq.
500 Carteret Street, Ste. A
Beaufort, SC 29902-5066

RE: Personal Care, Inc. v Jerry N. Theos; Uricchio, Howe, Krell, Johnson, Toporek, Theos & Keith, PA; Cheryl D. Shoun; and Taylor, Shoun, Bowley & Byrd
C/A No. 2013-CP-10-1396
Our File No. 59.014

Dear Tom:

Please find enclosed the proposed Consent Order Restoring Case to Docket which I have signed indicating my consent.

With kind regards,



Phillip S. Ferderigos

Enc.

PSF/bbm

00485474.DOC.1

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield

William C. Helms, III*

* Registered patent attorney
* Retired

Ernest B. Lipscomb, III*
J. Gail Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan

288 Meeting Street, Suite 200, Charleston, SC 29401
Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com

**DEFENDANT'S
EXHIBIT**

tabbler

3 364

Subject: FW: 2013-CP-10-1396

From: Thomas A. Pendarvis [mailto:tpendarvis@pendarvislaw.com]
Sent: Wednesday, September 17, 2014 12:55 PM
To: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)
Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; cshoun@nexsenpruet.com; Catherine Byrd; Don Michel (DMichel@charlestoncounty.org)
Subject: RE: 2013-CP-10-1396

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.
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Beaufort, SC 29902-5066
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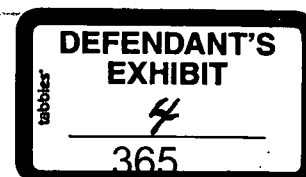
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From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [mailto:MDennisLC@sccourts.org]

11/13/2014



Sent: Wednesday, September 17, 2014 11:35 AM

To: Thomas A. Pendarvis

Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; cshoun@nexsenpruet.com; Catherine Byrd; Don Michel (DMichel@charlestoncounty.org)

Subject: RE: 2013-CP-10-1396

Thomas:

No order will not be signed until I discuss the matter fully with Judge Dennis. When he lets me know how to move forward, I will let everyone know. Thank you.

Lindsey M. Coffey

Law Clerk to the Honorable R. Markley Dennis, Jr.

100 Broad Street, Suite 439

Charleston, SC 29401

Phone: (843)958-5062

Email: MDennisLC@sccourts.org

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)

Sent: Tuesday, September 16, 2014 1:39 PM

To: Thomas A. Pendarvis

Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; cshoun@nexsenpruet.com

Subject: Re: 2013-CP-10-1396

No problem. I just wanted to verify this before presenting the order to Judge Dennis. Thank you.

Lindsey M. Coffey

Law Clerk to the Honorable R. Markley Dennis, Jr.

On Sep 16, 2014, at 1:26 PM, "Thomas A. Pendarvis" <tpendarvis@pendarvislaw.com> wrote:

Ms. Coffey:

Thank you very much for your message below.

As for your question on the missing consent for Ms. Shoun, it was not done in error. Ms. Shoun was originally represented by Amanda Dudgeon with Carlock Copeland & Stair, who on Ms. Shoun's behalf accepted service of the Summons and Complaint, consented to the Rule 40j Order striking the case of the active docket, but was later relieved as counsel. Ms. Shoun was included on all of the written or electronic communications leading to the purposed consent Order restoring the case and has not raised any objection. Counsel for all of the other defendants have consented. Therefore, we believe the Order restoring the case should be issued.

Notwithstanding the foregoing, we will be happy to attend a hearing on the motion to restore if Judge Dennis believes it is necessary. Again, thank you very much for your time and attention to this matter.

Regards,

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.

500 Carteret St., Ste. A
Beaufort, SC 29902-5066
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Admitted in South Carolina and Georgia

Board Certified by the American Board of Professional Liability Attorneys in Legal Malpractice

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, law-firm dissolutions, and lawyer moves between firms).

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From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]
Sent: Monday, e tem er ; : M
To: omas . endar is
Cc: M. Dawes Cooke
Subject: C

omas:

e recei ed your ro osed consent order restoring t e case to t e docket ursuant to rule on
a e re iewed t e order and noticed t at it is missing t e consent of Ceryl D. oun.
as t is done in error Just wanting to make sure all ro er consents are o tained. will rint a
co y of our corres ondence for Judge Dennis w en gi e im t is to e signed. ft is was an
accident, sim ly send me er signature y mail or courier to our office in t e C arleston County
Judicial Center and will attac it to t is order. lease let me know t ank you.

Lindsey M. Coffey
Law Clerk to t e onora le R. Markley Dennis, Jr.
road treet, uite
C arleston, C
one: ()
mail: MDennisLC@sccourts.org

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personal Care, Inc.,

☐ Plaintiffs

v.

Jerry N. Theos, et al.

☒ Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-10-1396

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiffs' Attorney:

Thomas A. Pendarvis, Esq.

Catherine B. Kerney, Esq.

PENDARVIS LAW OFFICES, P.C.

500 Carteret Street, Suite A

Beaufort, SC 29902-5066

phone: 843-524-9500 fax: 843-524-9501

e-mail: thomas@pendarvislaw.com

Defendants' Attorney:

Richard A. Farrier, Jr., Bar No. 1962

K&L GATES LLP

134 Meeting St., Ste. 200, Charleston, SC 29401

phone: 843-579-5600 fax: 843-579-5601

e-mail: [Richard.farrier@klgates.com](mailto:Richard.farrier@klgates.com)

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: DEFENDANT SHOUN'S MOTION FOR SANCTIONS AND EXPEDITED HEARING

Estimated Time Needed: 30 MIN

Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

\_\_\_\_\_  
Signature of Attorney for ☐ Plaintiff / ☐ Defendant

**SECTION III: Motion Fee**

☒ PAID - AMOUNT: 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

**JUDGE'S SECTION**

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

\_\_\_\_\_  
JUDGE

CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Date Filed: \_\_\_\_\_

Collected by: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \_\_\_\_\_



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personal Care, Inc.,

Plaintiff,

v.

Jerry N. Theos, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-1396

**DEFENDANT SHOUN'S**  
**MOTION FOR SANCTIONS AND**  
**EXPEDITED HEARING**

FILED  
2014 MAY 14 PM 4:46  
CLERK OF COURT  
ARMSTRONG

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Defendant Ceryll Shoun ("Shoun"), through undersigned counsel, hereby moves for sanctions against Plaintiff's counsel.

Over one year after striking this action from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, Plaintiff filed a motion seeking to restore the case to the docket. Prior to filing the Motion to Restore, Plaintiff's counsel made a series of misrepresentations to the Court regarding his consultation with opposing parties. Similarly, in his application for entry of default and motion for default judgment against Shoun and her former law firm, Plaintiff's counsel omitted material facts, including both that the status of the case was "Dismissed" and that the case had been stricken from the docket prior to the expiration of the Defendants' deadline to file their answers.

Plaintiff's counsel's conduct reveals a pattern of knowingly mischaracterizing the facts he presents to the Court. Plaintiff's counsel has attempted both to have the Court enter a consent order when counsel knew that not all parties had consented and to have the Court enter default against a party he knew could not have possibly defaulted. Defendant Shoun respectfully

requests that the Court sanction Plaintiff's counsel for filing motions and other papers with the Court that Plaintiff's counsel knew were frivolous.

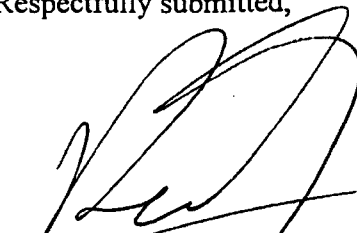
Given that the Plaintiff's Application for Entry of Default and Motion for Default Judgment are currently pending before the Court, Defendant Shoun respectfully requests an expedited hearing on this matter. On November 12, 2014, Defendant Shoun gave Plaintiff's counsel notice of her intent to file this Motion. Defendant Shoun respectfully requests that this Motion for Sanctions be heard at the Hearing on the Motion to Restore on Wednesday, November 19, 2014.

This Motion is supported by the pleadings, evidence of record, arguments of counsel, applicable law, and any memorandum or other supporting materials that may be submitted by Defendants at or before a hearing on this Motion.

WHEREFORE, Defendant Shoun respectfully requests that the Court enter an order granting SANCTIONS against Plaintiff's counsel.

**[SIGNATURE BLOCK ON NEXT PAGE]**

Respectfully submitted,



Charleston, South Carolina

Dated: November 14, 2014

---

Richard A. Farrier, Jr.  
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Facsimile: 843.579.5601

ATTORNEY FOR DEFENDANT SHOUN

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.:2013-CP-10-1396

CERTIFICATE OF SERVICE

FILED  
2014 NOV 14 PM 4:45  
JULIE J. ARMSTRONG  
CLERK OF COURT

I hereby certify that a copy of **DEFENDANT SHOUN'S MOTION FOR SANCTIONS AND EXPEDITED HEARING** was served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed as shown below this 14th day of November, 2014:

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Phillip S. Ferderigos, Esq.  
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Theos & Keith, P.A.*

Oana D. Johnson, Esq.  
George J. Kefalos, P.A.  
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*Attorneys for Defendants Taylor, Bowley &  
Byrd, LLC*



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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personal Care, Inc.,

Plaintiff,

v.

Jerry N. Theos, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-1396

**DEFENDANT SHOUN'S**  
**MEMORANDUM IN OPPOSITION TO**  
**PLAINTIFF'S MOTION TO RESTORE**

FILED  
2014 NOV 17 PM 2:36  
JULIE J. ARMSTRONG  
CLERK OF COURT

Defendant Cheryl D. Shoun ("Shoun"), through undersigned counsel, hereby submits this memorandum in opposition to Plaintiff's Motion to Restore Pursuant to Rule 40(J), SCRCP ("Motion to Restore").

**INTRODUCTION**

Over one year after striking this action from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, Plaintiff filed the instant motion seeking to restore the case to the docket. It is indisputable that the statute of limitations has long expired on all of the claims in Plaintiff's Amended Complaint. Moreover, Plaintiff cannot benefit from the tolling provision in Rule 40(j). Because Plaintiff has no viable claim, Plaintiff's Motion to Restore should be denied.

**PROCEDURAL BACKGROUND**

This case arises from events that occurred in 2009 and early 2010. Beginning in 2009, Defendants Jerry N. Theos ("Theos") and Shoun represented Plaintiff in an action against one of Plaintiff's former employees. On December 10, 2009, Defendants filed the underlying lawsuit on behalf of Plaintiff.

On March 8, 2013, Plaintiff filed this action against Theos; Shoun; the law firm of Uricchio, Howe, Krell, Johnson, Toporek, Theos & Keith, PA (“Uricchio Howe”); and the law firm of Taylor, Shoun, Bowley & Byrd, LLC (“TSBB”). Plaintiff filed an Amended Complaint on April 19, 2013. In its Amended Complaint, Plaintiff alleges causes of action for breach of fiduciary duties and legal professional negligence arising from an allegedly defamatory letter drafted by Defendant Theos and dated September 14, 2009. This letter was the basis of a counterclaim for defamation filed against Plaintiff on March 9, 2010. Plaintiff alleges that Defendants were negligent and breached their fiduciary duties to him by sending the allegedly defamatory letter and by failing to inform Plaintiff of the counterclaim until over two years after it had been filed. There is no merit to these claims.

Acceptance of Service forms were signed on behalf of Defendant Shoun and her former firm on July 1, 2013. Pursuant to a thirty-day extension, the deadline to file their Answer was August 30, 2013. (Exhibit A, July 30, 2013 e-mails). However, on August 27, 2013, Judge Markley Dennis signed a Consent Order Striking the Case from the Docket, pursuant to Rule 40(j), SCRCP. The Consent Order, which ordered that the “case be stricken from the docket in accordance with the agreement of the parties,” provided 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.

(Exhibit B, 2013 Consent Order). The Consent Order was filed on August 28, 2013, and thereafter the docket listed the status of the case as “Dismissed.” The underlying action was settled in late 2013. (Exhibit C, Hampton County Docket).

Over a year after the Consent Order was signed, on September 4, 2014, Plaintiff filed a purported proposed Consent Order Restoring the Case to the docket. (Exhibit D, Proposed "Consent" Order). Although Plaintiff represented that this was a consent order, neither Shoun nor TSBB had consented to the order. On September 15, 2014, the law clerk to Judge Dennis contacted Plaintiff's counsel to inquire about the missing consent from Shoun. In response, Plaintiff's counsel suggested that the consent was unnecessary because Shoun had been included on all of the written or electronic communications leading to the proposed consent and had not raised any objection. (Exhibit E, September 16, 2014 e-mail from Pendarvis). He further asserted that "Counsel for all of the other defendants have consented." (*Id.*).

On September 17, 2014, Plaintiff's counsel learned that Catherine Byrd of Defendant TSBB had contacted Judge Dennis's law clerk to inform her that Plaintiff's counsel had failed to give the firm notice of his intent to restore. (Exhibit F, E-mail from C. Byrd). Following receipt of an e-mail from the law clerk stating that the consent order would not be signed until the law clerk could discuss the matter with Judge Dennis, Plaintiff's counsel sent an e-mail to the law clerk stating in bold: "**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.**" (Exhibit G, Sept. 17, 2014 e-mail from Pendarvis). He further stated that he had spoken to Ms. Byrd, that he understood that her firm did not consent, and that he would file a formal motion to restore the case to the trial roster. (*Id.*).

On September 17, 2014, Plaintiff filed the instant Motion to Restore the Case to the Docket. This Motion was filed one year and twenty-one days after Judge Dennis had signed the Consent Order striking the case from the docket on August 27, 2013.

Despite the fact that the Motion to Restore is still pending and the docket clearly lists the status of this case as “Dismissed,” Plaintiff filed on October 13, 2014, an application for Entry of Default and a Motion for Default Judgment against Shoun and her former law firm. (Exhibit H, Filings for default). In its Motion for Default Judgment, Plaintiff asserts that more than four hundred sixty-nine days have passed since these Defendants were served and that the Defendants had not filed an answer, motion, or other responsive pleading. However, Plaintiff fails to state in its Motion for Default Judgment that the case is currently dismissed or that the Consent Order striking the case was signed days before the deadline governing the filing of the Defendants’ answer was to expire. Thus, Plaintiff’s Motion for Default Judgment and application for Entry of Default omitted material facts and misrepresented to this Court the status of this case.

### **LEGAL ANALYSIS**

#### **I. The statute of limitations for Plaintiff’s claims has expired.**

This action is governed by a three-year statute of limitations. S.C. Code Ann. § 15-3-530 (2005); *Holmes v. Haynsworth, Sinkler & Boyd, PA*, 408 S.C. 620, 632, 760 S.E.2d 399, 405 (2014) (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). Under the discovery rule, 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. *Holmes* 408 S.C. at 632, 760 S.E.2d at 405. “The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury 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.” *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). The statute of limitations begins to run from this point of discovery and “not when advice of counsel is sought or a full-blown theory of recovery developed.” *Id.* Moreover, “[t]he fact that the injured party may not comprehend the full extent of the damage is immaterial.” *Holmes*, 408 S.C. at 632, 760 S.E.2d at 405. Thus, in determining when the statute of limitations starts to run, courts are to apply an objective, rather than subjective, standard. *Kelly v. Logan, Jolley, & Smith, LLP*, 383 S.C. 626, 633, 682 S.E.2d 1, 4 (Ct. App. 2009).

There is no question that the statute of limitations on Plaintiff’s claims against Shoun has expired. Plaintiff’s claims arise from events that took place in 2009 and 2010, well over three years ago. Specifically, Plaintiff’s claims arise from an allegedly defamatory letter dated September 14, 2009, and a counterclaim against Plaintiff for defamation filed on March 9, 2010. In its original Complaint, Plaintiff all but stated that the statute of limitations would expire on March 9, 2013, when it asserted that its failure to file an affidavit by an expert should be excused because “there is a good faith basis to believe the expiration of the statute of limitations is imminent.” (Complaint ¶ 97). Thus, the statute of limitations began to run on March 9, 2010, and expired on March 9, 2013.

Even if Plaintiff were to argue that it did not discover until sometime after March 9, 2010, that a cause of action had arisen, evidence of communication between Shoun and Plaintiff makes clear that Plaintiff was on notice of the alleged claim by early June 2010. Shortly after the counterclaim had been filed, Shoun repeatedly informed Plaintiff of the counterclaim. (*See, e.g.,* Exhibit I, April 6, 2010 e-mail from Shoun to B. Cignavitch; Exhibit J, June 7, 2010 e-mail from Shoun’s assistant to B. Cignavitch with attached Reply to Counterclaim; Exhibit K, June 2, 2010 billing statement.) Thus, by June 2010, Plaintiff had been informed multiple times that a

counterclaim for defamation had been filed against it. Under the objective standard of the discovery rule, such facts and circumstances would put a person of common knowledge and experience on notice that some claim against counsel might exist. Therefore, at the latest, the statute of limitations began to run at the beginning of June 2010. Because all of Plaintiff's claims are governed by a three-year statute of limitations, the limitations period expired, at the latest, in June 2013. Thus, the statute of limitations has expired on all of Plaintiff's claims. Accordingly, restoration to the docket would be futile.

**II. The statute of limitations was not tolled following entry of the consent order striking this case from the docket pursuant to Rule 40(j).**

Rule 40(j) did not toll the statute of limitations on Plaintiffs' claims. Rule 40(j) of the South Carolina Rules of Civil Procedure provides the following:

**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. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule.

S.C. R. Civ. P. 40(j) (emphasis added). A party that moves to restore a case to the docket more than one year after the claim was stricken "cannot take advantage of the one year tolling period provided by the rule." *Maxwell v. Genez*, 356 S.C. 617, 621, 591 S.E.2d 26, 28 (2003). As explained above, Plaintiff did not file the instant Motion to Restore until one year and twenty-one days after Judge Dennis signed the Consent Order striking the case from the docket. Thus, the one-year tolling period provided by Rule 40(j) is inapplicable to Plaintiff's claims.

Moreover, the terms of the Consent Order signed by Judge Dennis are even more restrictive than those found in Rule 40(j). While Rule 40(j) provides for tolling so long as a motion is made within one year of the date the case is stricken, Judge Dennis's order provides for tolling only "if *the claim is restored* within one year from the date" of the order. (Exhibit B (emphasis added)). As this case has not yet been restored, it is indisputable that the statute of limitations cannot be tolled under the terms of Judge Dennis's order. Therefore, because the statute of limitations began to run no later than June 2010, and because the statute was not tolled following August 27, 2013, the statute of limitations has run on all of Plaintiff's claims.

#### **CONCLUSION**

All of Plaintiff's claims are objectively barred by the statute of limitations. Because Plaintiff does not have any viable claim against Shoun or any of the other Defendants, restoration of this case to the docket would be futile. Consequently, Plaintiff's Motion to Restore this case to the docket is moot. For these reasons, Defendant Shoun respectfully requests that this Court deny Plaintiff's Motion to Restore.

**SIGNATURE BLOCK ON NEXT PAGE**

Respectfully submitted,



Charleston, South Carolina

Dated: November 17, 2014

---

Richard A. Farrier, Jr.  
SC Bar No. 001962  
E-Mail: [richard.farrier@klgates.com](mailto:richard.farrier@klgates.com)  
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Charleston, SC 29401  
Telephone: 843.579.5600  
Facsimile: 843.579.5601

ATTORNEY FOR DEFENDANT SHOUN

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.:2013-CP-10-1396

CERTIFICATE OF SERVICE

FILED  
2014 NOV 17 PM 2:34  
JULIE J. ARNSTRONG  
CLERK OF COURT  
BY

I hereby certify that a copy of **DEFENDANT SHOUN'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO RESTORE** was served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed as shown below this 17th day of November, 2014:

Thomas A. Pendarvis, Esq.  
Catherine B. Kerney, Esq.  
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Beaufort, SC 29902-5066

*Attorneys for Plaintiff*

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Phillip S. Ferderigos, Esq.  
BARNWELL WHALEY PATTERSON &  
HELMS, LLC  
P.O. Drawer H  
Charleston, SC 29402

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

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46A State Street  
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*Attorneys for Defendants Taylor, Bowley &  
Byrd, LLC*

*Erin D. Shorter*

K&L GATES LLP  
134 Meeting Street, Suite 200  
Charleston, SC 29401  
Phone: 843.579.5600

**Terrien, Amanda M.**

---

**From:** Dudgeon, Amanda K.  
**Sent:** Tuesday, July 30, 2013 6:06 PM  
**To:** 'Thomas A. Pendarvis'  
**Cc:** Andrea Goodreau; Rash, Lindsey N.  
**Subject:** RE: Personal Care

Thanks, Thomas.

Mandi Dudgeon  
Carlock Copeland & Stair, LLP  
(843) 266-8207

---

**From:** Thomas A. Pendarvis [<mailto:tpendarvis@pendarvislaw.com>]  
**Sent:** Tuesday, July 30, 2013 5:49 PM  
**To:** Dudgeon, Amanda K.  
**Cc:** Andrea Goodreau  
**Subject:** RE: Personal Care

No problem. This will confirm a 30 day extension for your clients to file and serve an Answer to the Amended Complaint or otherwise respond.

Have a good evening.

Regards,

**Thomas A. Pendarvis**  
**Pendarvis Law Offices, P.C.**  
500 Carteret St., Ste. A  
Beaufort, SC 29202-5066  
843.524.9500 tel  
843.524.9501 fax  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
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Admitted in South Carolina and Georgia

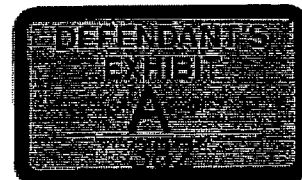
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Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, law-firm dissolutions, and lawyer moves between firms).

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---

**From:** Dudgeon, Amanda K. [<mailto:adudgeon@carlockcopeland.com>]  
**Sent:** Tuesday, July 30, 2013 4:19 PM



To: Thomas A. Pendarvis  
Subject: Personal Care

Thomas,

Since our Answer deadlines are based on the two executed Acceptance of Service, can I get a 30 day extension for both Cheryl Shoun and the firm to Answer or otherwise respond to the Amended Complaint while we wait for confirmation on the 40(j)?

Thanks,

Mandi

[website](#) | [bio](#) | [LinkedIn](#) | [vCard](#) | [map](#)



direct: 843.266.8207  
fax: 843.727.2995

**Amanda K. Dudgeon**  
Attorney

40 Calhoun Street, Suite 400 Charleston, SC 29401

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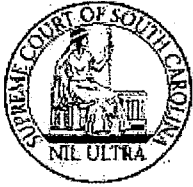




  
Chief Administrative Judge  
Ninth Judicial Circuit

August 27, 2013

RNY 2



## Hampton County Fourteenth Judicial Circuit Public Index



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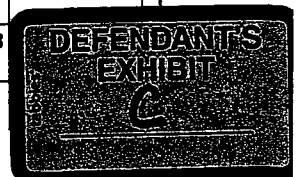
Switch View

### Personal Care Inc VS Hattie M Askew , defendant, et al

|                      |                                 |                   |                                           |                    |                   |
|----------------------|---------------------------------|-------------------|-------------------------------------------|--------------------|-------------------|
| Case Number:         | 2010CP2500626                   | Court Agency:     | Common Pleas                              | Filed Date:        | 12/29/2010        |
| Case Type:           | Common Pleas                    | Case Sub Type:    | Contract/Other 199                        | File Type:         | Jury              |
| Status:              | Settled                         | Assigned Judge:   | Clerk Of Court C P, G S, And Family Court |                    |                   |
| Disposition:         | Withdrawn or Settled by Parties | Disposition Date: | 11/18/2013                                | Disposition Judge: | Buckner, Perry M. |
| Original Source Doc: |                                 | Original Case #:  |                                           |                    |                   |
| Judgment Number:     |                                 | Court Roster:     |                                           |                    |                   |

Case Parties    Judgments    Tax Map Information    Associated Cases    Actions    Financials

| Name                         | Description                             | Type   | Motion Roster | Begin Date           | Completion Date      | Documents |
|------------------------------|-----------------------------------------|--------|---------------|----------------------|----------------------|-----------|
| Personal Care Inc            | Stipulation Of Dismissal                | Filing |               | 12/13/2013<br>-10:55 |                      |           |
| Personal Care Inc            | Order/Form 4C-Case Settled              | Order  |               | 11/18/2013<br>-11:46 | 11/18/2013<br>-10:16 |           |
| Theos, Jerry Nicholas        | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Barnes, William Franklin III | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Mikell, Amy Jowers           | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Blincow, John Keith Jr.      | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Shoun, Cheryl D.             | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Baker, Charles J. III        | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Holmes, Allan R.             | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Walters, Glenn Sr.           | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Personal Care Inc            | Order/Form 4C-Motions Resolved          | Order  |               | 10/16/2013<br>-08:58 | 11/18/2013<br>-10:24 |           |
| Personal Care Inc            | Affidavit/Affidavit of Miller & Shelton | Filing |               | 10/01/2013<br>-14:07 | 11/18/2013<br>-14:07 |           |
| Personal Care Inc            | Affidavit/Affidavit of Shelton          | Filing |               | 09/30/2013<br>-14:09 | 11/18/2013<br>-14:09 |           |
| Mikell, Amy Jowers           | Notice of Roster Publication Sent       | Action |               | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |           |
| Blincow, John Keith Jr.      | Notice of Roster Publication Sent       | Action |               | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |           |
|                              |                                         | Action |               |                      |                      |           |



|                              |                                           |        |  |                      |                      |  |
|------------------------------|-------------------------------------------|--------|--|----------------------|----------------------|--|
| Theos, Jerry Nicholas        | Notice of Roster Publication Sent         |        |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Barnes, William Franklin III | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Holmes, Allan R.             | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Walters, Glenn Sr.           | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Shoun, Cheryl D.             | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Baker, Charles J. III        | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Walters, Glenn Sr.           | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Walters, Glenn Sr.           | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Holmes, Allan R.             | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Holmes, Allan R.             | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Baker, Charles J. III        | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Baker, Charles J. III        | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Shoun, Cheryl D.             | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Shoun, Cheryl D.             | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Blincow, John Keith Jr.      | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Blincow, John Keith Jr.      | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Personal Care Inc            | Memo/Memo in Support                      | Filing |  | 09/06/2013<br>-15:51 | 11/18/2013<br>-15:51 |  |
|                              |                                           | Motion |  |                      |                      |  |

|                              |                                            |        |  |                      |                      |  |
|------------------------------|--------------------------------------------|--------|--|----------------------|----------------------|--|
| Personal Care Inc            | Motion/Summary Judgment                    |        |  | 08/29/2013<br>-10:47 | 11/18/2013<br>-16:27 |  |
| Personal Care Inc            | Motion/Compel                              | Motion |  | 08/13/2013<br>-10:34 | 11/18/2013<br>-10:05 |  |
| Personal Care Inc            | Amended Consent Scheduling Order           | Filing |  | 04/18/2013<br>-08:37 | 11/18/2013<br>-08:30 |  |
| Askew, Hattie M              | Notice/Notice of Apperance                 | Filing |  | 04/15/2013<br>-10:49 | 11/18/2013<br>-15:11 |  |
| Blincow, John Keith Jr.      | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Mikell, Amy Jowers           | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Theos, Jerry Nicholas        | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Barnes, William Franklin III | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Shoun, Cheryl D.             | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Baker, Charles J. III        | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Holmes, Allan R.             | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Personal Care Inc            | Notice/Notice of Appearance                | Filing |  | 01/04/2013<br>-11:36 | 11/18/2013<br>-14:08 |  |
| Personal Care Inc            | Order/Order Relieving Counsel              | Order  |  | 11/09/2012<br>-09:35 | 11/18/2013<br>-11:00 |  |
| Askew, Hattie M              | Order/Order Denying Motion to Change Venue | Filing |  | 11/07/2012<br>-16:45 | 11/18/2013<br>-11:42 |  |
| Personal Care Inc            | Order/Form 4C-Motions Under Advisement     | Order  |  | 10/12/2012<br>-09:50 | 11/18/2013<br>-12:35 |  |
| Personal Care Inc            | Letter/Letter-Notice of Hearing            | Filing |  | 10/12/2012<br>-09:48 | 11/18/2013<br>-15:13 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Blincow, John Keith Jr.      | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Blincow, John Keith Jr.      | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Askew, Hattie M              | Affidavit/Affidavit of Hattie Askew        | Filing |  | 09/14/2012<br>-12:14 | 11/18/2013<br>-15:17 |  |
| Personal Care Inc            | Notice/Notice of Appearance                | Filing |  | 09/06/2012<br>-11:15 | 11/18/2013<br>-16:03 |  |
| Askew, Hattie M              |                                            | Filing |  |                      |                      |  |

|                              |                                                          |        |  |                      |                      |  |
|------------------------------|----------------------------------------------------------|--------|--|----------------------|----------------------|--|
|                              | Affidavit/Affidavit of Rebecca Walker                    |        |  | 09/05/2012<br>-09:27 | 11/18/2013<br>-10:22 |  |
| Askew, Hattie M              | Affidavit/Affidavit of Belinda Housey                    | Filing |  | 09/05/2012<br>-09:26 | 11/18/2013<br>-10:22 |  |
| Personal Care Inc            | Motion/Relieve As Counsel                                | Motion |  | 08/31/2012<br>-11:40 | 10/12/2012<br>-11:40 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent                | Action |  | 08/20/2012<br>-11:01 | 11/18/2013<br>-11:01 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent                | Action |  | 08/20/2012<br>-11:01 | 11/18/2013<br>-11:01 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent                | Action |  | 08/20/2012<br>-11:01 | 11/18/2013<br>-11:01 |  |
| Personal Care Inc            | Order/Consent Scheduling Order                           | Order  |  | 08/06/2012<br>-10:45 | 11/18/2013<br>-11:17 |  |
| Personal Care Inc            | Motion/Change Venue                                      | Motion |  | 07/30/2012<br>-10:12 | 10/12/2012<br>-10:12 |  |
| Personal Care Inc            | Memo/Return Memo                                         | Filing |  | 07/23/2012<br>-11:05 | 11/18/2013<br>-11:05 |  |
| Theos, Jerry Nicholas        | Notice of Roster Publication Sent                        | Action |  | 07/02/2012<br>-11:49 | 11/18/2013<br>-11:49 |  |
| Barnes, William Franklin III | Notice of Roster Publication Sent                        | Action |  | 07/02/2012<br>-11:49 | 11/18/2013<br>-11:49 |  |
| Mikell, Amy Jowers           | Notice of Roster Publication Sent                        | Action |  | 07/02/2012<br>-11:49 | 11/18/2013<br>-11:49 |  |
| Personal Care Inc            | Affidavit/Affidavit of Geraldine Miller                  | Filing |  | 06/21/2012<br>-14:30 | 11/18/2013<br>-09:33 |  |
| Personal Care Inc            | ADR/Mediation Results Report-At an Impasse               | Filing |  | 05/14/2012<br>-10:57 | 05/14/2012<br>-11:22 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent                | Action |  | 04/25/2012<br>-09:01 | 11/18/2013<br>-09:01 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent                | Action |  | 04/25/2012<br>-09:01 | 11/18/2013<br>-09:01 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent                | Action |  | 04/25/2012<br>-09:01 | 11/18/2013<br>-09:01 |  |
| Personal Care Inc            | Sanction                                                 | Motion |  | 03/21/2012<br>-12:59 | 05/14/2012<br>-12:59 |  |
| Personal Care Inc            | Order/Order to Extend Mediation Deadline                 | Filing |  | 12/02/2011<br>-16:47 | 11/18/2013<br>-09:24 |  |
| Personal Care Inc            | ADR/Notice of ADR                                        | Filing |  | 08/30/2011<br>-11:09 | 05/14/2012<br>-15:25 |  |
| Personal Care Inc            | ADR/Alternative Dispute Resolution (Workflow)            | Filing |  | 12/29/2010<br>-15:14 | 08/23/2011<br>-10:51 |  |
| Personal Care Inc            | Summons & Complaint (Change of Venue From Charleston Co) | Filing |  | 12/29/2010<br>-15:14 | 11/18/2013<br>-15:14 |  |

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# PENDARVIS LAW OFFICES, PC



September 4, 2014

## VIA US MAIL

Ms. Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

Re: **Personal Care, Inc. V. Jerry N. Theos; Uricchio, Howe, Krell,  
Johnson, Toporek Theos & Keith, PA; Cheryl D. Shoun; and Taylor,  
Shoun, Bowley & Byrd, LLC.  
Civil Action No. 2013-CP-10-1396**

Dear Ms. Armstrong:

Enclosed for filing, please find an original and one copy of a proposed CONSENT ORDER RESTORING CASE TO DOCKET (RULE 40(J), SCRCP) along with our MOTION INFORMATION COVER SHEET. Please present this to Judge Dennis for consideration to restore the above-referenced matter to the active trial docket.

Also enclosed is our firms check in the amount of \$150.00 representing the filing fee. Please return clocked copies in the stamped, self-addressed return envelope enclosed for your convenience.

With kind regards, I remain

Sincerely,

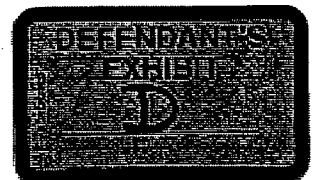
PENDARVIS LAW OFFICES, P.C.

A handwritten signature in cursive script that reads "Thomas A. Pendarvis".

Thomas A. Pendarvis

TAP/alg  
Enclosures  
cc w/enc:

Bernie Cignavitch  
Phillip S. Ferderigos, J.D.  
M. Dawes Cooke, Jr., J.D.  
Cheryl D. Shoun, J.D.



THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
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ADMITTED IN SC, VA AND DC  
[Carev@PendarvisLaw.com](mailto:Carev@PendarvisLaw.com)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE ☒ COURT OF COMMON PLEAS  
IN THE ☐ FAMILY COURT

Personal Care, Inc.,

Plaintiff,

vs.

Case No. 2013-CP-10-1396

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

**MOTION INFORMATION COVER SHEET**

Defendants.

name, S.C. Bar no. and address of Plaintiff's attorney

name, S.C. Bar no. and address of Defendant's attorney

Thomas A. Pendarvis, J.D.  
Catherine B. Kerney, J.D.  
Pendarvis Law Offices, PC  
500 Carteret Street, Suite A  
Beaufort, SC 29902  
telephone: 843.524.9500 fax: 843.524.9501  
e-mail: [thomas@pendarvislaw.com](mailto:thomas@pendarvislaw.com)  
e-mail: [carey@pendarvislaw.com](mailto:carey@pendarvislaw.com)

M. Dawes Cooke, Jr., J.D.  
Phillip S. Ferderigos, J.D.  
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e-mail: [pferderigos@barnwell-whaley.com](mailto:pferderigos@barnwell-whaley.com)

Cheryl D. Shoun, J.D.  
Nexsen Pruet, LLC  
PO. Box 486  
Charleston, SC 29402  
telephone: 843.577.9440 fax: 843.720.1777  
e-mail: [cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)

**SECTION I: Hearing Information**

Nature of Motion: **Consent Order Restoring Case To Docket (Rule 40(j), SCRCP)**

Estimated Time Needed: 15 Minutes

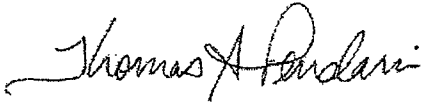
Court Reporter Needed: Yes / No

**SECTION II: Motion Type**

☒ Written motion attached

☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

09/04/2014

Date Submitted

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.

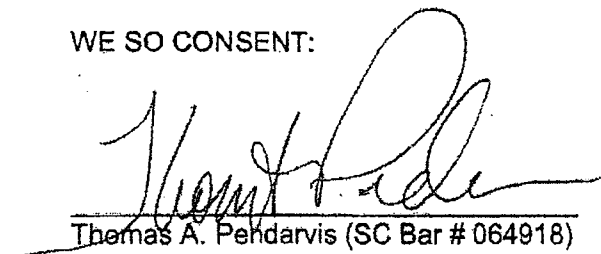
Charleston, South Carolina

\_\_\_\_\_  
Chief Administrative Judge  
Ninth Judicial Circuit

\_\_\_\_\_, 2014

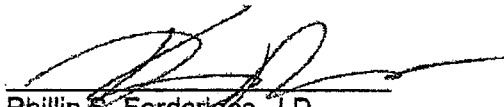


WE SO CONSENT:



Thomas A. Pendarvis (SC Bar # 064918)  
Catherine "Carey" B. Kerney (SC Bar # 81429)  
PENDARVIS LAW OFFICES, P.C.  
500 Carteret St., Suite A  
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[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)

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](mailto:cshoun@nexsenpruet.com)  
(843)720-1762

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

## Parish, Ruthie R.

---

**From:** Shoun, Cheryl D.  
**Sent:** Friday, October 24, 2014 12:26 PM  
**To:** Parish, Ruthie R.  
**Subject:** FW: 2013-CP-10-1396

**Cheryl D. Shoun**  
**Special Counsel**  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29401  
PO Box 486 (29402)  
T: 843.720.1762, F: 843.414.8238  
[CShoun@nexsenpruet.com](mailto:CShoun@nexsenpruet.com)  
[www.nexsenpruet.com](http://www.nexsenpruet.com)

## NEXSEN PRUET

|     |       |      |                |           |         |
|-----|-------|------|----------------|-----------|---------|
| Bio | vCard | Home | Practice Areas | Attorneys | Offices |
|-----|-------|------|----------------|-----------|---------|

**From:** Thomas A. Pendarvis [<mailto:tpendarvis@pendarvislaw.com>]  
**Sent:** Tuesday, September 16, 2014 1:26 PM  
**To:** Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)  
**Cc:** M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; Shoun, Cheryl D.  
**Subject:** RE: 2013-CP-10-1396

Ms. Coffey:

Thank you very much for your message below.

As for your question on the missing consent for Ms. Shoun, it was not done in error. Ms. Shoun was originally represented by Amanda Dudgeon with Carlock Copeland & Stair, who on Ms. Shoun's behalf accepted service of the Summons and Complaint, consented to the Rule 40j Order striking the case of the active docket, but was later relieved as counsel. Ms. Shoun was included on all of the written or electronic communications leading to the purposed consent Order restoring the case and has not raised any objection. Counsel for all of the other defendants have consented. Therefore, we believe the Order restoring the case should be issued.

Notwithstanding the foregoing, we will be happy to attend a hearing on the motion to restore if Judge Dennis believes it is necessary. Again, thank you very much for your time and attention to this matter.

Regards,

*Thomas A. Pendarvis*  
**Pendarvis Law Offices, P.C.**  
500 Carteret St., Ste. A  
Beaufort, SC 29902-5066  
843.524.9500 tel  
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[www.PendarvisLaw.com](http://www.PendarvisLaw.com)



Admitted in South Carolina and Georgia

Board Certified by the American Board of Professional Liability Attorneys in Legal Malpractice

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**From:** Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]

**Sent:** Monday, September 15, 2014 10:13 AM

**To:** Thomas A. Pendarvis

**Cc:** M. Dawes Cooke

**Subject:** 2013-CP-10-1396

Thomas:

We received your proposed consent order restoring the case to the docket pursuant to rule 40j on 9/5/14. I have reviewed the order and noticed that it is missing the consent of Cheryl D. Shoun. Was this done in error? Just wanting to make sure all proper consents are obtained. I will print a copy of our correspondence for Judge Dennis when I give him this to be signed. If this was an accident, simply send me her signature by mail or courier to our office in the Charleston County Judicial Center and I will attach it to this order. Please let me know—thank you.

*Lindsey M. Coffey*

Law Clerk to the Honorable R. Markley Dennis, Jr.

100 Broad Street, Suite 439

Charleston, SC 29401

Phone: (843)958-5062

Email: [MDennisLC@sccourts.org](mailto:MDennisLC@sccourts.org)

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Parish, Ruthie R.

From: Shoun, Cheryl D.
Sent: Friday, October 24, 2014 12:26 PM
To: Parish, Ruthie R.
Subject: FW: 2013-CP-10-1396

Cheryl D. Shoun
Special Counsel
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com

NEXSEN PRUET

Bio	vCard	Home	Practice Areas	Attorneys	Offices

From: Catherine Byrd [<mailto:catherine@tbbesq.com>]
Sent: Wednesday, September 17, 2014 11:24 AM
To: Shoun, Cheryl D.
Subject: Fwd: 2013-CP-10-1396

----- Forwarded message -----

From: Catherine Byrd <catherine@tbbesq.com>
Date: Wed, Sep 17, 2014 at 11:21 AM
Subject: Fwd: 2013-CP-10-1396
To: thomas@pendarvislaw.com, mdc@barnwell-whaley.com, cshoun@nexsunpruet.com

----- Forwarded message -----

From: Catherine Byrd <catherine@tbbesq.com>
Date: Wed, Sep 17, 2014 at 10:36 AM
Subject: 2013-CP-10-1396
To: MDennisLC@sccourts.org
Cc: "lynnbowley@netzero.net Bowley" <lynnbowley@netzero.net>, Donna Taylor <donna@tbbesq.com>

Dear Lindsey and Judge Dennis

It has come to our attention in a roundabout way that there has been an attempt to file a "consent order" restoring to the docket the above matter in which our firm is a defendant. Please be advised that :



1. Mr. Pendarvis did not give us notice of intent to restore and did not send us a consent order. In fact, he has not contacted us in any manner, whether directly or by copy of any of his correspondence with other defendants or the court..

2. Cheryl Shoun does not represent this firm, nor has she ever represented this firm.

3. Mr. Pendarvis is aware that we do not have counsel, there having been no notice of appearance on our behalf since the withdrawal of our counsel at the time of the 40 J more than a year ago.

--

Catherine Doscher Byrd
TAYLOR, BOWLEY & BYRD,LLC
39 Broad Street, Suite 101
Charleston, SC 29401
843-723-4020 (fax 4021)

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--

Catherine Doscher Byrd
TAYLOR, BOWLEY & BYRD,LLC
39 Broad Street, Suite 101
Charleston, SC 29401
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--

Catherine Doscher Byrd
TAYLOR, BOWLEY & BYRD,LLC
39 Broad Street, Suite 101

Charleston, SC 29401
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Parish, Ruthie R.

From: Shoun, Cheryl D.
Sent: Friday, October 24, 2014 12:24 PM
To: Parish, Ruthie R.
Subject: FW: 2013-CP-10-1396

Cheryl D. Shoun
Special Counsel
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com

NEXSEN PRUET

Bio	Card	Home	Practice Areas	Attorneys	Offices

From: Thomas A. Pendarvis [mailto:tpendarvis@pendarvislaw.com]
Sent: Wednesday, September 17, 2014 12:55 PM
To: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)
Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; Shoun, Cheryl D.; Catherine Byrd; Don Michel (DMichel@charlestoncounty.org)
Subject: RE: 2013-CP-10-1396

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.

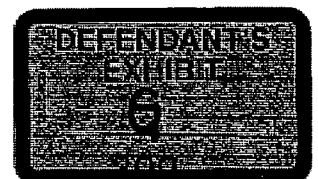
I called Ms. Byrd on the telephone after she forwarded to me a copy of her message to you and Judge Dennis, and apologized for not including her in the recent correspondence related to the proposed Consent Order to restore this case to the active trial roster. I was under the mistaken understanding that 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.
500 Carteret St., Ste. A
Beaufort, SC 29902-5066



843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Admitted in South Carolina and Georgia

Board Certified by the American Board of Professional Liability Attorneys in Legal Malpractice

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, law-firm dissolutions, and lawyer moves between firms).

The Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, applies to e-mail, prohibits unauthorized interception, unauthorized use, and unauthorized disclosure of an e-mail, of the contents of an e-mail, and of any attachments to the e-mail. 18 U.S.C. §§ 2510-2521, the Electronic Communications Privacy Act, provides for civil remedies, including an award of damages, in cases of unauthorized interception, unauthorized use, or unauthorized disclosure of an e-mail, of the contents of an e-mail, or of any attachments to the e-mail.

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]
Sent: Wednesday, September 17, 2014 11:35 AM
To: Thomas A. Pendarvis
Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; cshoun@nexsenpruet.com; Catherine Byrd; Don Michel (DMichel@charlestoncounty.org)
Subject: RE: 2013-CP-10-1396

Thomas:

No order will not be signed until I discuss the matter fully with Judge Dennis. When he lets me know how to move forward, I will let everyone know. Thank you.

Lindsey M. Coffey

Law Clerk to the Honorable R. Markley Dennis, Jr.
100 Broad Street, Suite 439
Charleston, SC 29401
Phone: (843)958-5062
Email: MDennisLC@sccourts.org

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)
Sent: Tuesday, September 16, 2014 1:39 PM
To: Thomas A. Pendarvis
Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; cshoun@nexsenpruet.com
Subject: Re: 2013-CP-10-1396

No problem. I just wanted to verify this before presenting the order to Judge Dennis. Thank you.

Lindsey M. Coffey
Law Clerk to the Honorable R. Markley Dennis, Jr.

On Sep 16, 2014, at 1:26 PM, "Thomas A. Pendarvis" <tpendarvis@pendarvislaw.com> wrote:

Ms. Coffey:

Thank you very much for your message below.

As for your question on the missing consent for Ms. Shoun, it was not done in error. Ms. Shoun was originally represented by Amanda Dudgeon with Carlock Copeland & Stair, who on Ms. Shoun's behalf accepted service of the Summons and Complaint, consented to the Rule 40j Order striking the case of the active docket, but was later relieved as counsel. Ms. Shoun was included on all of the written or electronic communications leading to the proposed consent Order restoring the case and has not raised any objection. Counsel for all of the other defendants have consented. Therefore, we believe the Order restoring the case should be issued.

Notwithstanding the foregoing, we will be happy to attend a hearing on the motion to restore if Judge Dennis believes it is necessary. Again, thank you very much for your time and attention to this matter.

Regards,

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret St., Ste. A
Beaufort, SC 29902-5066
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Admitted in South Carolina and Georgia

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Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, law-firm dissolutions, and lawyer moves between firms).

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From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]
Sent: Monday, September 15, 2014 10:13 AM
To: Thomas A. Pendarvis
Cc: M. Dawes Cooke
Subject: 2013-CP-10-1396

Thomas:

We received your proposed consent order restoring the case to the docket pursuant to rule 40j on 9/5/14. I have reviewed the order and noticed that it is missing the consent of Cheryl D. Shoun. Was this done in error? Just wanting to make sure all proper consents are obtained. I will print a copy of our correspondence for Judge Dennis when I give him this to be signed. If this was an accident, simply send me her signature by mail or courier to our office in the Charleston County Judicial Center and I will attach it to this order. Please let me know—thank you.

Lindsey M. Coffey
Law Clerk to the Honorable R. Markley Dennis, Jr.
100 Broad Street, Suite 439
Charleston, SC 29401

Phone: (843)958-5062
Email: MDennisLC@sccourts.org

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# PENDARVIS LAW OFFICES, PC



October 13, 2014

## VIA US MAIL

Ms. Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matter, please find an original and one copy of the following:

1. Motion Information Cover Sheet;
2. Application for Entry of Default; Motion for Default Judgment against Defendant Cheryl D. Shoun and against Defendant Taylor, Shoun, Bowley & Byrd, LLC; and Request for Damages Hearing; and
3. Certificate of Service.

Also enclosed please find a \$25 dollar check for the filing fee.

Please return clocked copies in the stamped, self-addressed return envelope enclosed for your convenience.

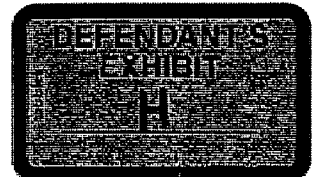
With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/alg  
Enclosures



THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
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500 CARTERET ST., SUITE A  
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[www.PendarvisLaw.com](http://www.PendarvisLaw.com)  
T 843.524.9500  
F 843.524.9501

CATHERINE B. KERNEY, J.D.  
ADMITTED IN SC, VA AND DC  
[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE [X] COURT OF COMMON PLEAS  
IN THE [] FAMILY COURT

Personal Care, Inc.,

Plaintiff,

vs.

Case No. 2013-CP-10-1396

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

**MOTION INFORMATION COVER SHEET**

Defendants.

name, S.C. Bar no. and address of Plaintiff's attorney

name, S.C. Bar no. and address of Defendant's attorney

Thomas A. Pendarvis, J.D.  
Catherine B. Kerney, J.D.  
Pendarvis Law Offices, PC  
500 Carteret Street, Suite A  
Beaufort, SC 29902  
telephone: 843.524.9500 fax: 843.524.9501  
e-mail: [thomas@pendarvislaw.com](mailto:thomas@pendarvislaw.com)  
e-mail: [carey@pendarvislaw.com](mailto:carey@pendarvislaw.com)

M. Dawes Cooke, Jr., J.D.  
Phillip S. Ferderigos, J.D.  
Barnwell, Whaley, Patterson & Helms, LLC  
PO. Drawer H  
Charleston, SC 29402  
telephone: 843.577.7700 fax: 843.577.7708  
e-mail: [mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)  
e-mail: [pferderigos@barnwell-whaley.com](mailto:pferderigos@barnwell-whaley.com)

Catherine D. Byrd, J.D.  
Taylor, Bowley & Byrd, LLC  
39 Broad Street, Ste. 101  
Charleston, SC 29401  
telephone: 843.723.4020 fax: 843.723.4000  
e-mail: [cbyrdtsbb@bellsouth.net](mailto:cbyrdtsbb@bellsouth.net)

Cheryl D. Shoun, J.D.  
Nexsen Pruet, LLC  
PO. Box 486  
Charleston, SC 29402  
telephone: 843.577.9440 fax: 843.720.1777  
e-mail: [cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)

**SECTION I: Hearing Information**

Nature of Motion: APPLICATION FOR ENTRY OF DEFAULT; MOTION FOR DEFAULT JUDGMENT AGAINST  
DEFENDANT CHERYL D. SHOUN AND AGAINST DEFENDANT TAYLOR, SHOUN, BOWLEY & BYRD, LLC; AND  
REQUEST FOR DAMAGES HEARING

Estimated Time Needed: 30 Minutes

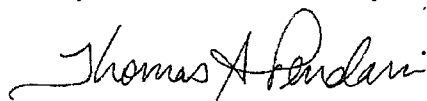
Court Reporter Needed: Yes / No

**SECTION II: Motion Type**

☒ Written motion attached

☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

10/13/2014

Date Submitted

**SECTION III: Motion Fee**

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support  
(check reason) ☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent Status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)  
☐ Proposed order submitted at request of the court; or, reduced to writing from  
motion made in open court per judge's instruction  
Name of Court Reporter: \_\_\_\_\_

☒ Other: MOTION TO RESTORE PURSUANT TO RULE 40(J), SCRCP

**JUDGE'S SECTION**

☐ Motion Fee to be paid upon filing of the attached order.  
☐ Other:

\_\_\_\_\_  
Judge

CODE: \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected By: \_\_\_\_\_

DATE FILED: \_\_\_\_\_  
(Print Name)

☐ MOTION FEE COLLECTED: \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \_\_\_\_\_

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.

**APPLICATION FOR ENTRY OF  
DEFAULT; MOTION FOR DEFAULT  
JUDGMENT AGAINST DEFENDANT  
CHERYL D. SHOUN AND AGAINST  
DEFENDANT TAYLOR, SHOUN,  
BOWLEY & BYRD, LLC;  
AND  
REQUEST FOR DAMAGES HEARING**

TO: M. Dawes Cooke, Jr. J.D. and Phillip S. Ferderigos, J.D., Lawyers for Defendants Jerry N. Theos and URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; and to Defendant, Cheryl D. Shoun; and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, n/k/a TAYLOR, BOWLEY & BYRD, LLC:

**NOTICE**

PLEASE TAKE NOTICE THAT Plaintiff, PERSONAL CARE, INC., hereby moves pursuant to Rules 54, 55(a), and 55(b), SCRCP, 1) for the Clerk of Court to enter a default on the calendar (file book) against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; 2) for a default judgment against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, based on these Defendants' failure to serve counsel for Plaintiff with an Answer or otherwise responding to the CIVIL COVERSHEET, SUMMONS, AND AMENDED COMPLAINT, on which service was accepted on July 1, 2013, over Four Hundred (400) days ago; and 3) for a damages hearing to be set to establish the amount of damages to which Plaintiff is entitled.

### MOTION

Based on the failure to file an Answer or otherwise respond, Plaintiff, PERSONAL CARE, INC., through its undersigned counsel, does hereby apply to the Honorable Clerk of Court for an entry of default pursuant to Rule 55(a), SCRCP, against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; and moves this Honorable Court for a judgment by default against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, pursuant to Rule 55(b), SCRCP, Civil Procedure; and for a hearing to determine and establish the amount of damages to which Plaintiff, PERSONAL CARE, INC., is entitled.

This application and motion are made and based upon the Affidavit of Default, attached hereto and incorporated by reference as **Exhibit 1**, demonstrating that good and valid service was obtained upon Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC on July 1, 2013. More than Four Hundred Sixty-Nine (469) days have passed and no Answer, Motion or other responsive pleading has been entered by Defendant, Cheryl D. Shoun, or by Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC.<sup>1</sup>

In addition, on September 19, 2014, correspondence was sent to both Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, as a professional courtesy, reminding them that no Answer or other responsive motion had been filed in response to Plaintiff's Amended Complaint. This letter allowed these Defendants an additional Ten (10) days to file their Answer, and advised that if no Answer or responsive motion was served "on or before September 29, 2014, . . . PERSONAL CARE w[ould] pursue

---

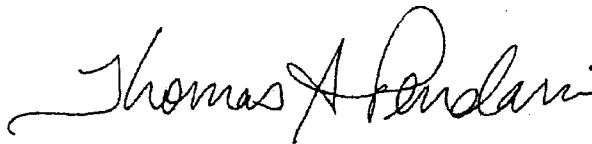
<sup>1</sup> These Defendants were given a Thirty (30) day extension to file their Answer or otherwise respond.

its remedies available under the Rules of Civil Procedure." A copy of that letter is attached hereto and incorporated by reference as **Exhibit 2**.

WHEREFORE, Plaintiff, PERSONAL CARE, INC., respectfully requests the Clerk of Court enter a default on the calendar (file book) against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; that the Court issue an Order of default judgment be entered against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, based on these Defendants' failure to serve counsel for Plaintiff with an Answer or otherwise responding to the CIVIL COVERSHEET, SUMMONS, AND AMENDED COMPLAINT, on which service was accepted on July 1, 2013, over Four Hundred (400) days ago; and that a damages hearing to be set to establish the amount of damages to which Plaintiff is entitled.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

---

Thomas A. Pendarvis  
500 Carteret Street, Suite A  
Beaufort, South Carolina 29902  
(843) 524-9500 Tel.  
[Thomas@Pendarvislaw.com](mailto:Thomas@Pendarvislaw.com)

Lawyer for Plaintiff PERSONAL CARE, INC.

Beaufort, South Carolina

October 13, 2014



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.

**PLAINTIFF'S AFFIDAVIT OF  
DEFAULT AND NON-MILITARY  
SERVICE**

PERSONALLY APPEARED before me Thomas A. Pendarvis, who, being first duly sworn, swears as follows:

1. I am a lawyer for the Plaintiff in the above action.
2. A CIVIL COVERSHEET, SUMMONS, and AMENDED COMPLAINT were duly served on the Defendant, Cheryl D. Shoun, and on Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, on July 1, 2013, by personal service, as shown by the ACCEPTANCE OF SERVICE on behalf of Defendant, Cheryl D. Shoun, a copy of which is attached as **Exhibit A**, and the ACCEPTANCE OF SERVICE on behalf of Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, a copy of which is attached as **Exhibit B**.
3. On September 19, 2014, correspondence was sent to both Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, as a professional courtesy, reminding them that no Answer or other responsive motion had been filed in response to Plaintiff's Amended Complaint. This letter allowed these Defendants



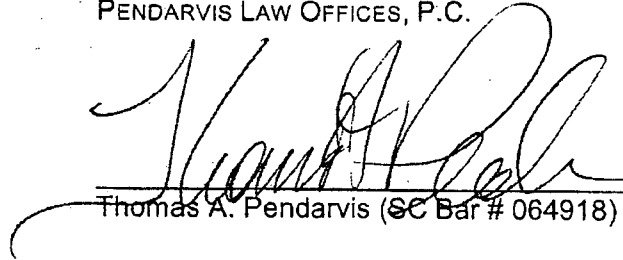
an additional Ten (10) days to file their Answer, and advised that if no Answer or responsive motion was served "on or before September 29, 2014, . . . PERSONAL CARE w[ould] pursue its remedies available under the Rules of Civil Procedure." A copy of that letter is attached hereto and incorporated by reference as **Exhibit C**.

4. More than Four Hundred (400) days have elapsed since service was accepted on behalf of these Defendants of the CIVIL COVERSHEET, SUMMONS, and AMENDED COMPLAINT.
5. Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, have not served an Answer, or other pleading in this matter or otherwise responded and now are and have been in default.
6. Upon information and belief, Defendant, Cheryl D. Shoun, is not in active military service allowing Defendant Shoun, to suspend enforcement of her civil liabilities pursuant to the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A. App. § 510 *et seq.*
7. Upon information and belief, Defendant Shoun, is not a minor or incompetent person.
8. Plaintiff hereby moves the Court, pursuant to Rule 55(b), SCRCPP, for an Order adjudging Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, to be in Default and for judgment against both of these Defendants, and for a damages hearing to be set as soon as reasonably and practicably possible to establish the amount of damages.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

THE AFFIANT FURTHER SAYETH NOT.

PENDARVIS LAW OFFICES, P.C.



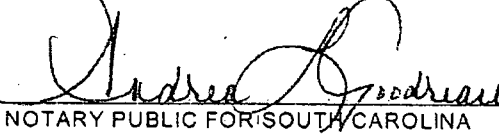
Thomas A. Pendarvis (SC Bar # 064918)

Lawyer for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

October 13, 2014d

SWORN to before me this 8th day of October, 2014



(L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 3-8-2013

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2013-CP-10-1396

)

)

1

)

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) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2013-CP-10-1396

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Tara MacKendrick

413

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; Taylor,  
Shoun, Bowley & Byrd, LLC,

Defendants.

### ACCEPTANCE OF SERVICE

NOW COMES the undersigned, Officer and/or Managing or General Agent for Defendants, TAYLOR, BOWLEY & BYRD, LLC; F/K/A TAYLOR; SHOUN, BOWLEY & BYRD, LLC and accepts service of the Civil Cover Sheet, Amended Summons and Amended Verified Complaint on behalf of all Defendants this 2nd day of July, 2013.

TAYLOR, BOWLEY & BYRD, LLC

  
Donna Taylor, J.D.

Officer and/or Managing or General Agent  
for Defendants, TAYLOR, BOWLEY & BYRD,  
LLC; F/K/A TAYLOR, SHOUN, BOWLEY &  
BYRD, LLC

Charleston, South Carolina

July 2nd 2013



414

# PENDARVIS LAW OFFICES, PC



September 19, 2014

## VIA E-MAIL

Cheryl D. Shoun, J.D.  
NEXSEN PRUET, LLC  
PO Box 486  
Charleston SC 29402  
[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

Catherine D. Byrd, J.D.  
TAYLOR BOWLEY & BYRD, LLC  
39 Broad St., Ste. 101  
Charleston SC 29401  
[catherine@tbbesq.com](mailto:catherine@tbbesq.com)

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

Dear Ms. Shoun and Ms. Byrd:

This is a reminder given to both of you as a professional courtesy.

As you know, on July 1, 2013, an Acceptance of Service form was signed on behalf of Defendant, TAYLOR, BOWLEY & BYRD, LLC, f/k/a TAYLOR, SHOUN, BOWLEY & BYRD, LLC, and an Acceptance of Service form was signed on behalf of Defendant, Cheryl D. Shoun, which made July 31, 2013, the due date for an Answer or responsive motion to Plaintiff's Amended Complaint. On July 30, 2013, a request was made for 30 day extension, which was granted making August 30, 2013, the due date for an Answer or responsive motion.

To date, PERSONAL CARE has not been served with an Answer or responsive motion for either Ms. Shoun or TAYLOR, BOWLEY & BYRD, which now are **385 days late**.

This is to advise that we expect to be served with Answer or responsive motion for Ms. Shoun and for TAYLOR, BOWLEY & BYRD on or before September 29, 2014. Otherwise, PERSONAL CARE will pursue its remedies available under the Rules of Civil Procedure.

Also, please allow this letter to confirm that I have not been informed of successor counsel for either Ms. Shoun or for TAYLOR, BOWLEY & BYRD. If counsel has been retained or is retained in the future, please have them contact me.

Please do not hesitate to call or contact me if you have any questions or concerns.



THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
Board Certified by the American Board of  
Professional Liability Attorneys in  
Legal Malpractice

500 CARTERET ST., SUITE A  
BEAUFORT, SC 29902-5066  
[www.PendarvisLaw.com](http://www.PendarvisLaw.com)  
T 843.524.9500  
F 843.524.9501

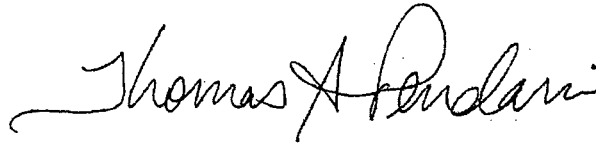
CATHERINE B. KERNEY, J.D.  
ADMITTED IN SC, VA AND DC  
[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

Cheryl D. Shoun, J.D.  
Catherine D. Byrd, J.D.  
Page 2  
September 19, 2014

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, reading "Thomas A. Pendarvis". The signature is fluid and cursive, with the first name "Thomas" and last name "Pendarvis" clearly legible.

Thomas A. Pendarvis

TAP/alg

cc: Bernard Cignavitch



# PENDARVIS LAW OFFICES, PC



September 19, 2014

## VIA E-MAIL

Cheryl D. Shoun, J.D.  
NEXSEN PRUET, LLC  
PO Box 486  
Charleston SC 29402  
[csoun@nexsenpruet.com](mailto:csoun@nexsenpruet.com)

Catherine D. Byrd, J.D.  
TAYLOR BOWLEY & BYRD, LLC  
39 Broad St., Ste. 101  
Charleston SC 29401  
[catherine@tbbesq.com](mailto:catherine@tbbesq.com)

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

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Also, please allow this letter to confirm that I have not been informed of successor counsel for either Ms. Shoun or for TAYLOR, BOWLEY & BYRD. If counsel has been retained or is retained in the future, please have them contact me.

Please do not hesitate to call or contact me if you have any questions or concerns.

**EXHIBIT**

**2**

THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
Board Certified by the American Board of  
Professional Liability Attorneys in  
Legal Malpractice

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[www.PendarvisLaw.com](http://www.PendarvisLaw.com)  
T 843.524.9500  
F 843.524.9501

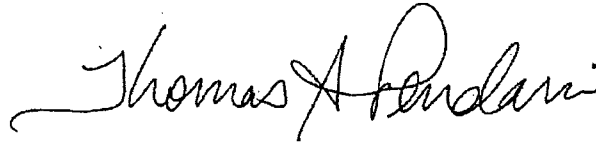
CATHERINE B. KERNEY, J.D.  
ADMITTED IN SC, VA AND DC  
[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

Cheryl D. Shoun, J.D.  
Catherine D. Byrd, J.D.  
Page 2  
September 19, 2014

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis

TAP/alg

cc: Bernard Cignavitch

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.

## **CERTIFICATE OF SERVICE**

I, Andrea L. Goodreau, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the document listed below upon counsel of record by e-mailing and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said Defendants at the following addresses:

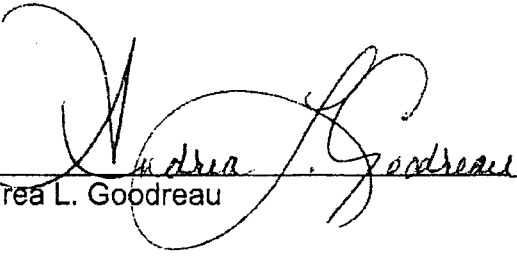
M. Dawes Cooke, Jr., J.D.  
Phillip S. Ferderigos, J.D.  
BARNWELL, WHALEY, PATTERSON & HELMS, LLC  
PO. Drawer H  
Charleston, SC 29402  
[mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)  
[pferderigos@barnwell-whaley.com](mailto:pferderigos@barnwell-whaley.com)

Catherine D. Byrd, J.D.  
TAYLOR, BOWLEY & BYRD, LLC  
39 Broad Street, Ste. 101  
Charleston, SC 29401  
[Cbyrdtsbb@bellsouth.net](mailto:Cbyrdtsbb@bellsouth.net)  
[Catherine@tbbesq.com](mailto:Catherine@tbbesq.com)

Cheryl D. Shoun, J.D.  
NEXSEN PRUET, LLC  
PO. Box 486  
Charleston, SC 29402  
[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

**Documents Served:** MOTION INFORMATION COVER SHEET; APPLICATION FOR ENTRY OF DEFAULT; MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT CHERYL D. SHOUN AND AGAINST DEFENDANT TAYLOR, SHOUN, BOWLEY & BYRD, LLC; AND REQUEST FOR DAMAGES HEARING.

Beaufort, South Carolina  
October 13, 2014

  
Andrea L. Goodreau

**Cheryl Shoun**

---

**From:** "Cheryl Shoun" <cherylshoun@bellsouth.net>  
**To:** <bcignavitch@comcast.net>  
**Cc:** "Jerry" <Jerry@uricchio.com>; "Janet" <janet@uricchio.com>  
**Sent:** Tuesday, April 06, 2010 12:50 PM  
**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

This e-mail, as well as any information transmitted with it, is confidential attorney-client communication or may otherwise be privileged or confidential and is intended solely for the individual or entity to whom it is addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying is strictly prohibited.



4/6/2010

#3226-47700  
421 Shoun 00671

**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:** 576565\_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](mailto:mkerr@nexsenpruet.com)  
[www.nexsenpruet.com](http://www.nexsenpruet.com)

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Attorneys

Offices

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6/7/2010



#3226-47700  
422 Jun 00666

**NEXSEN | PRUET**

June 2, 2010

Invoice No. 53368064

Matter: 047020-00001

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

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

Enclosed please find our statement for the period ending May 18, 2010. We trust that you will find this statement to be in order and will place it in line for payment.

If you have any questions, please do not hesitate to contact us. You can also reach our finance department at 803-253-8242.

Very truly yours,

Nexsen Pruet, LLC

PLEASE SEND REMITTANCE TO: **NEXSEN PRUET, LLC**  
Attorneys and Counselors at Law  
Post Office Drawer 2426  
Columbia SC 29202  
ID# 047020-00001

205 KING STREET, SUITE 400, CHARLESTON, SC (29401) ■ POST OFFICE BOX 488, CHARLESTON, SC (29402)  
843-577-9440 ■ FAX 843-720-1777  
www.NexsenPruet.com

OFFICES ALSO IN:

CHARLOTTE,  
NC

COLUMBIA,  
SC

GREENSBORO,  
NC

GREENVILLE,  
SC

HILTON HEAD,  
SC

MYRTLE BEACH,  
SC

RALEIGH,  
NC



#3226-47700  
429gun 00352

NEXSEN | PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.  
C/O JERRY N. THEOS, ESQUIRE  
URICCHIO, HOWE, KRELL, JACOBSON,  
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 1/2% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE  
BILLING DATE.

OFFICES IN:

CHARLESTON, SC    CHARLOTTE, NC    COLUMBIA, SC    GREENSBORO, NC    GREENVILLE, SC    HILTON HEAD, SC    MYRTLE BEACH, SC    RALEIGH, NC

#3226-47700  
424un 00353



# 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            |
| <b>Total Fees:</b> |            |                                                                                                                                                                                                                                                                                                                                                                                                                                              |       | <b>\$1,440.00</b> |

## EXPENSES

| Date                   | Description      | Amount        |
|------------------------|------------------|---------------|
| 05/04/10               | COPIES           | 2.00          |
| 05/05/10               | COURIER SERVICES | 2.00          |
| 05/05/10               | POSTAGE          | 0.88          |
| <b>Total Expenses:</b> |                  | <b>\$4.88</b> |

### OFFICES IN:

CHARLESTON, SC    CHARLOTTE, NC    COLUMBIA, SC    GREENSBORO, NC    GREENVILLE, SC    HILTON HEAD, SC    MYRTLE BEACH, SC    RALEIGH, NC

#3226-47700  
425un 00354

## NEXSEN | PRUET

### TIME SUMMARY RECAP

| Timekeeper    | Title   | Hours       | Rate     | Amount            |
|---------------|---------|-------------|----------|-------------------|
| CD SHOUN      | COUNSEL | 3.60        | \$400.00 | \$1,440.00        |
| <b>Total:</b> |         | <b>3.60</b> |          | <b>\$1,440.00</b> |

#### OFFICES IN:

CHARLESTON, SC   CHARLOTTE, NC   COLUMBIA, SC   GREENSBORO, NC   GREENVILLE, SC   HILTON HEAD, SC   MYRTLE BEACH, SC   RALEIGH, NC

#3226-47700  
426un 00355

NEXSEN | PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.  
C/O JERRY N. THEOS, ESQUIRE  
URICCHIO, HOWE, KRELL, JACOBSON,  
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.*

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OFFICES IN:

CHARLESTON, SC    CHARLOTTE, NC    COLUMBIA, SC    GREENSBORO, NC    GREENVILLE, SC    HILTON HEAD, SC    MYRTLE BEACH, SC    RALEIGH, NC

#3226-47700  
427un 00356

NEXSEN | PRUET

IRS # [REDACTED]

PERSONAL CARE, INC.  
C/O JERRY N. THEOS, ESQUIRE  
URICCHIO, HOWE, KRELL, JACOBSON,  
TOPOREK, THEOS & KEITH, PA  
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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.

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#3226-47700  
428 un 00357

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personal Care, Inc.,

Plaintiff,

v.

Jerry N. Theos, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-1396

**DEFENDANT SHOUN'S**  
**MEMORANDUM IN SUPPORT OF HER**  
**MOTION FOR SANCTIONS**

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Defendant Cheryl D. Shoun ("Shoun"), through undersigned counsel, hereby submits this memorandum in support of her Motion for Sanctions.

**INTRODUCTION**

Over one year after striking this action from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, Plaintiff filed a motion seeking to restore the case to the docket. Prior to filing the Motion to Restore, Plaintiff's counsel made a series of misrepresentations to the Court regarding his consultation with opposing parties. Similarly, in his application for entry of default and motion for default judgment against Shoun and her former law firm, Plaintiff's counsel omitted material facts, including both that the status of the case was "Dismissed" and that the case had been stricken from the docket prior to the expiration of the Defendants' deadline to file their answers.

Plaintiff's counsel's conduct reveals a pattern of knowingly mischaracterizing the facts he presents to the Court. Plaintiff's counsel has attempted both to have the Court enter a consent order when counsel knew that not all parties had consented and to have the Court enter default against a party he knew could not have possibly defaulted. Defendant Shoun respectfully

requests that the Court sanction Plaintiff's counsel for filing motions and other papers with the Court that Plaintiff's counsel knew were frivolous.

### **PROCEDURAL BACKGROUND**

This case arises from events that occurred in 2009 and early 2010. Beginning in 2009, Defendants Jerry N. Theos ("Theos") and Shoun represented Plaintiff in an action against one of Plaintiff's former employees. On December 10, 2009, Defendants filed the underlying lawsuit on behalf of Plaintiff.

On March 8, 2013, Plaintiff filed this action against Theos; Shoun; the law firm of Uricchio, Howe, Krell, Johnson, Toporek, Theos & Keith, PA ("Uricchio Howe"); and the law firm of Taylor, Shoun, Bowley & Byrd, LLC ("TSBB"). Plaintiff filed an Amended Complaint on April 19, 2013. In its Amended Complaint, Plaintiff alleges causes of action for breach of fiduciary duties and legal professional negligence arising from an allegedly defamatory letter drafted by Defendant Theos and dated September 14, 2009. This letter was the basis of a counterclaim for defamation filed against Plaintiff on March 9, 2010. It is undisputed that these claims are subject to a three-year statute of limitations. *See* S.C. Code Ann. § 15-3-530 (2005).

Acceptance of Service forms were signed on behalf of Defendant Shoun and TSBB on July 1, 2013. Pursuant to a thirty-day extension, the deadline to file their Answer was August 30, 2013. (Exhibit A, July 30, 2013 e-mails). However, on August 27, 2013, Judge Markley Dennis signed a Consent Order Striking the Case from the Docket, pursuant to Rule 40(j). The Consent Order, which ordered that the "case be stricken from the docket in accordance with the agreement of the parties," provided 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

(Exhibit B, 2013 Consent Order). The Consent Order was filed on August 28, 2013, and thereafter the docket listed the status of the case as "Dismissed." The underlying action was settled in late 2013. (Exhibit C, Hampton County Docket).

Over a year after the Consent Order was signed, on September 4, 2014, Plaintiff filed a purported proposed Consent Order Restoring the Case to the docket. (Exhibit D, Proposed "Consent" Order). Although Plaintiff represented that this was a Consent Order, neither Shoun nor TSBB had consented to the order. On September 15, 2014, the law clerk to Judge Dennis contacted Plaintiff's counsel to inquire about the missing consent from Shoun. In response, Plaintiff's counsel suggested that the consent was unnecessary because Shoun had been included on all of the written or electronic communications leading to the proposed consent and had not raised any objection. (Exhibit E, September 16, 2014 e-mail from Pendarvis). He further asserted that "Counsel for all of the other defendants have consented." (*Id.*).

On September 17, 2014, Plaintiff's counsel learned that Catherine Byrd of Defendant TSBB had contacted Judge Dennis's law clerk to inform her that Plaintiff's counsel had failed to give the firm notice of his intent to restore. (Exhibit F, E-mail from C. Byrd). Following receipt of an e-mail from the law clerk stating that the consent order would not be signed until the law clerk could discuss the matter with Judge Dennis, Plaintiff's counsel sent an e-mail to the law clerk stating in bold: "**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.**" (Exhibit G, Sept. 17, 2014 e-mail from Pendarvis). He further stated that he had spoken to Ms. Byrd, that he understood that TSBB did not consent, and that he would file a formal motion to restore the case to the trial roster. (*Id.*).

On September 17, 2014, Plaintiff filed its Motion to Restore the Case to the Docket. The Motion to Restore was filed one year and twenty-one days after Judge Dennis had signed the Consent Order striking the case from the docket on August 27, 2013.

Despite the fact that the Motion to Restore was still pending and the docket clearly listed the status of this case as "Dismissed," Plaintiff filed on October 13, 2014, an application for Entry of Default and a Motion for Default Judgment against Shoun and TSBB. (Exhibit H, Filings for default). In its Motion for Default Judgment, Plaintiff asserts that more than four hundred sixty-nine days have passed since these Defendants were served and that the Defendants had not filed an answer, motion, or other responsive pleading. However, Plaintiff fails to state either in its Affidavit of Default or its Motion for Default Judgment that the case is currently dismissed or that the Consent Order striking the case had been signed days before the deadline governing the filing of the Defendants' answer was to expire. Thus, Plaintiff's Motion for Default Judgment and application for Entry of Default omitted material facts and misrepresented to this Court the status of this case.

#### **LEGAL STANDARD**

"Under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). Rule 11 of the South Carolina Rules of Civil Procedure provides, in relevant part:

Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record . . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may



include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

S.C. R. Civ. P. 11. "The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it." *Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50.

"A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed." *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). Moreover, the award of sanctions is within the court's discretion. *Id.* An award of sanctions may include a reasonable fine to be paid to the court, an order to pay the reasonable costs and attorney's fees incurred by the party defending against the frivolous action or action brought in bad faith, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Furthermore, where appropriate, "the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith." *Id.*

### **LEGAL ANALYSIS**

- I. Plaintiff's counsel knowingly misrepresented to the Court that all parties had consented to a proposed "consent" order restoring the case to the docket.**

Plaintiff's counsel sought to have the Court sign a proposed consent order restoring the case to the docket when Plaintiff's counsel knew that not all parties had given their consent. On September 4, 2014, Plaintiff's counsel submitted a purported "consent" order stating that Plaintiff and Defendants Theos, Uricchio Howe, Shoun, and TSBB "agree to restore the above-captioned case to the docket." (Exhibit D). When Plaintiff's counsel submitted this purported

"consent" order to the Court, Plaintiff's counsel knew that he had not received consent from either Defendant Shoun or Defendant TSBB. Nonetheless, in response to an inquiry by the law clerk to Judge Dennis, Plaintiff's counsel suggested that Shoun's consent was unnecessary and that "Counsel for all of the other defendants have consented." (Exhibit E). Plaintiff's counsel withdrew the order only after learning that TSBB had informed the law clerk that it had never been given notice of this purported "consent" order. It is apparent from the record that at the time Plaintiff's counsel submitted the "consent" order to the Court, counsel knew that the filing affirmatively misrepresented that all parties gave their consent. Shoun respectfully submits that the filing was frivolous and that Plaintiff's counsel is subject to sanctions.

**II. Plaintiff's counsel filed with the Court a Motion for Default Judgment and an affidavit stating that Defendant Shoun was in default when Plaintiff's counsel knew that Shoun could not possibly be in default.**

On October 13, 2014, Plaintiff's counsel filed with the Clerk of Court an application for Entry of Default against Shoun and her former firm, TSBB. At the same time, Plaintiff filed a Motion for Default Judgment against Shoun and TSBB and requested a damages hearing. At the time Plaintiff's counsel signed an affidavit stating that Defendants Shoun and TSBB were in default, Plaintiff's counsel knew that the case had been dismissed days prior to the due date for Defendants to file their answer. Thus, Plaintiff's counsel knew that these Defendants were not in default at the time of dismissal. Moreover, Plaintiff's counsel knew that the case had not been restored at the time he executed the Affidavit of Default. Therefore, Plaintiff's counsel knowingly represented that Shoun was in default despite his knowledge that Shoun had never been in default at any time while the case was pending.

Although Plaintiff's counsel knew that the case had been stricken and that its docket status was listed as "Dismissed," Plaintiff's counsel failed to apprise either the Clerk or the Court of these material facts. More egregious was Plaintiff's omission of the fact that the case was stricken from the docket three days before the deadline for Defendants to file their answer to Plaintiff's Amended Complaint. Without mentioning that the case had been dismissed prior to the date on which Defendants were to file a responsive pleading, Plaintiff represented that "[m]ore than Four Hundred Sixty-Nine (469) days have passed [since Defendants were served] and no Answer, Motion or other responsive pleading has been entered" by either Defendant. (Exhibit H). This representation, coupled with the knowing omission about the status of the case and the dismissal prior to Defendants' deadline to file an answer, appears calculated to mislead the Clerk and the Court and to obtain a judgment where none is warranted.

It is worth repeating that Plaintiff's formal representations to various court officers of Shoun's status in the month leading up to the Application for Entry of Default and Motion for Default Judgment are completely inconsistent. In his first effort to have the case restored, Plaintiff represents that he has obtained Shoun and TSBB's consent, when he knows that is not true. Failing that, he alters course with Judge Dennis and asserts that, while he has not obtained their formal consent, Shoun and TSBB should be deemed to have waived through some sort of acquiescence. When that fails, Plaintiff withdraws the motion on the express basis that he had not obtained the consent. This is, of course, a concession that the consent of Shoun and TSBB were required. Within weeks of conceding Shoun was an active party whose consent Plaintiff needed to take action with the court, he now wishes to have the court declare Shoun to have waived the right to the defense of this (meritless and time-barred) case.

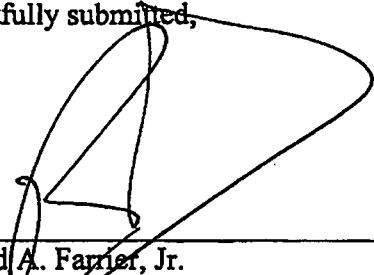
Defendant Shoun respectfully submits that such conduct is sanctionable.

### **CONCLUSION**

Plaintiff's counsel has made a series of frivolous filings with the Court that contain material misrepresentations and omissions. Despite his knowledge that not all parties had consented to a proposed consent order, Plaintiff's counsel affirmatively represented that all of the Defendants had given consent. Moreover, despite his knowledge that the case was dismissed prior to the deadline Shoun was to file her answer and that the case had never been restored, Plaintiff's counsel knowingly misrepresented that Shoun was in default. Because Plaintiff's counsel knew that these filings were untruthful and frivolous, Shoun respectfully requests that Plaintiff's counsel be sanctioned.

**SIGNATURE BLOCK ON NEXT PAGE**

Respectfully submitted,



Charleston, South Carolina

Dated: November 17, 2014

---

Richard A. Farrier, Jr.  
SC Bar No. 001962  
E-Mail: [richard.farrier@klgates.com](mailto:richard.farrier@klgates.com)  
K&L GATES LLP  
134 Meeting Street  
Suite 200  
Charleston, SC 29401  
Telephone: 843.579.5600  
Facsimile: 843.579.5601

ATTORNEY FOR DEFENDANT SHOUN

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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.

) IN THE COURT OF COMMON PLEAS

) FOR THE NINTH JUDICIAL CIRCUIT

) Case No.:2013-CP-10-1396

) CERTIFICATE OF SERVICE

BY

JULIE J. ARYSTROG  
CLERK OF COURT

2014 NOV 17 PM 2:34

FILED

I hereby certify that a copy of DEFENDANT SHOUN'S MEMORANDUM IN SUPPORT OF HER MOTION FOR SANCTIONS was served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed as shown below this 17th day of November, 2014:

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

*Attorneys for Plaintiff*

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Phillip S. Ferderigos, Esq.  
BARNWELL WHALEY PATTERSON &  
HELMS, LLC  
P.O. Drawer H  
Charleston, SC 29402

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

Oana D. Johnson, Esq.  
GEORGE J. KEFALOS, P.A.  
46A State Street  
Charleston, SC 29401

*Attorneys for Defendants Taylor, Bowley &  
Byrd, LLC*

*Erin B. Shorter*

K&L GATES LLP  
134 Meeting Street, Suite 200  
Charleston, SC 29401  
Phone: 843.579.5600

**Terrien, Amanda M.**

---

**From:** Dudgeon, Amanda K.  
**Sent:** Tuesday, July 30, 2013 6:06 PM  
**To:** 'Thomas A. Pendarvis'  
**Cc:** Andrea Goodreau; Rash, Lindsey N.  
**Subject:** RE: Personal Care

Thanks, Thomas.

Mandi Dudgeon  
Carlock Copeland & Stair, LLP  
(843) 266-8207

---

**From:** Thomas A. Pendarvis [<mailto:tpendarvis@pendarvislaw.com>]  
**Sent:** Tuesday, July 30, 2013 5:49 PM  
**To:** Dudgeon, Amanda K.  
**Cc:** Andrea Goodreau  
**Subject:** RE: Personal Care

No problem. This will confirm a 30 day extension for your clients to file and serve an Answer to the Amended Complaint or otherwise respond.

Have a good evening.

Regards,

Thomas A. Pendarvis  
Pendarvis Law Offices, P.C.  
500 Carteret St., Ste. A  
Beaufort, SC 29202-5066  
843.524.9500 tel  
843.524.9501 fax  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
[www.PendarvisLaw.com](http://www.PendarvisLaw.com)

Admitted in South Carolina and Georgia

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**From:** Dudgeon, Amanda K. [<mailto:adudgeon@carlockcopeland.com>]  
**Sent:** Tuesday, July 30, 2013 4:19 PM



To: Thomas A. Pendarvis  
Subject: Personal Care

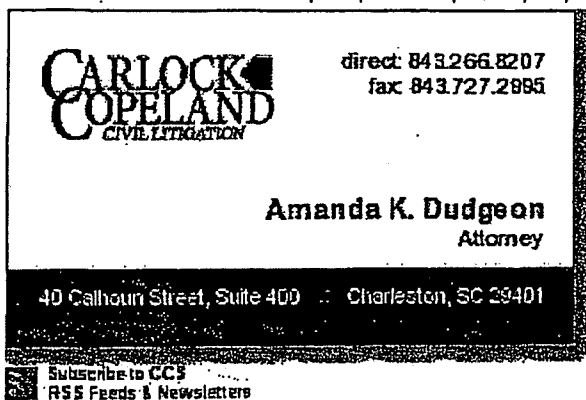
Thomas,

Since our Answer deadlines are based on the two executed Acceptance of Service, can I get a 30 day extension for both Cheryl Shoun and the firm to Answer or otherwise respond to the Amended Complaint while we wait for confirmation on the 40(j)?

Thanks,

Mandi

[website](#) | [bio](#) | [LinkedIn](#) | [vCard](#) | [map](#)



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) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2013-CP-10-1396

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**CONSENT ORDER  
STRIKING CASE FROM DOCKET  
[RULE 40(j), SCRCP]**

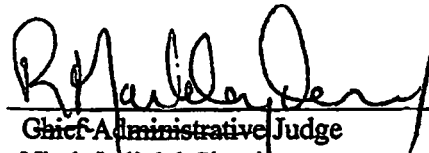
FILED  
2013 AUG 28 PM 12:54  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_  
DER  
M DOCKET  
RCP]

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), SCRPC.

2nd/7



IT IS SO ORDERED.

  
\_\_\_\_\_  
Chief Administrative Judge  
Ninth Judicial Circuit

Charleston, South Carolina

August 27, 2013

RW 2



## Hampton County Fourteenth Judicial Circuit Public Index



Hampton County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

### Personal Care Inc VS Hattie M Askew , defendant, et al

|                      |                                 |                   |                                           |                    |                   |
|----------------------|---------------------------------|-------------------|-------------------------------------------|--------------------|-------------------|
| Case Number:         | 2010CP2500626                   | Court Agency:     | Common Pleas                              | Filed Date:        | 12/29/2010        |
| Case Type:           | Common Pleas                    | Case Sub Type:    | Contract/Other 199                        | File Type:         | Jury              |
| Status:              | Settled                         | Assigned Judge:   | Clerk Of Court C P, G S, And Family Court |                    |                   |
| Disposition:         | Withdrawn or Settled by Parties | Disposition Date: | 11/18/2013                                | Disposition Judge: | Buckner, Perry M. |
| Original Source Doc: |                                 | Original Case #:  |                                           |                    |                   |
| Judgment Number:     |                                 | Court Roster:     |                                           |                    |                   |

#### Case Parties    Judgments    Tax Map Information    Associated Cases    Actions    Financials

| Name                         | Description                             | Type   | Motion Roster | Begin Date           | Completion Date      | Documents |
|------------------------------|-----------------------------------------|--------|---------------|----------------------|----------------------|-----------|
| Personal Care Inc            | Stipulation Of Dismissal                | Filing |               | 12/13/2013<br>-10:55 |                      |           |
| Personal Care Inc            | Order/Form 4C-Case Settled              | Order  |               | 11/18/2013<br>-11:46 | 11/18/2013<br>-10:16 |           |
| Theos, Jerry Nicholas        | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Barnes, William Franklin III | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Mikell, Amy Jowers           | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Blinchow, John Keith Jr.     | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Shoun, Cheryl D.             | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Baker, Charles J. III        | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Holmes, Allan R.             | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Walters, Glenn Sr.           | Notice of Roster Publication Sent       | Action |               | 11/06/2013<br>-08:50 | 11/18/2013<br>-08:50 |           |
| Personal Care Inc            | Order/Form 4C-Motions Resolved          | Order  |               | 10/16/2013<br>-08:58 | 11/18/2013<br>-10:24 |           |
| Personal Care Inc            | Affidavit/Affidavit of Miller & Shelton | Filing |               | 10/01/2013<br>-14:07 | 11/18/2013<br>-14:07 |           |
| Personal Care Inc            | Affidavit/Affidavit of Shelton          | Filing |               | 09/30/2013<br>-14:09 | 11/18/2013<br>-14:09 |           |
| Mikell, Amy Jowers           | Notice of Roster Publication Sent       | Action |               | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |           |
| Blinchow, John Keith Jr.     | Notice of Roster Publication Sent       | Action |               | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |           |
|                              |                                         | Action |               |                      |                      |           |



|                              |                                           |        |  |                      |                      |  |
|------------------------------|-------------------------------------------|--------|--|----------------------|----------------------|--|
| Theos, Jerry Nicholas        | Notice of Roster Publication Sent         |        |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Barnes, William Franklin III | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Holmes, Allan R.             | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Walters, Glenn Sr.           | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Shoun, Cheryl D.             | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Baker, Charles J. III        | Notice of Roster Publication Sent         | Action |  | 09/25/2013<br>-16:52 | 11/18/2013<br>-16:52 |  |
| Walters, Glenn Sr.           | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
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| Barnes, William Franklin III | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
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| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Blinchow, John Keith Jr.     | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Blinchow, John Keith Jr.     | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent | Action |  | 09/13/2013<br>-11:30 | 11/18/2013<br>-11:30 |  |
| Personal Care Inc            | Memo/Memo in Support                      | Filing |  | 09/06/2013<br>-15:51 | 11/18/2013<br>-15:51 |  |
|                              |                                           | Motion |  |                      |                      |  |

|                              |                                            |        |  |                      |                      |  |
|------------------------------|--------------------------------------------|--------|--|----------------------|----------------------|--|
| Personal Care Inc            | Motion/Summary Judgment                    |        |  | 08/29/2013<br>-10:47 | 11/18/2013<br>-16:27 |  |
| Personal Care Inc            | Motion/Compel                              | Motion |  | 08/13/2013<br>-10:34 | 11/18/2013<br>-10:05 |  |
| Personal Care Inc            | Amended Consent Scheduling Order           | Filing |  | 04/18/2013<br>-08:37 | 11/18/2013<br>-08:30 |  |
| Askew, Hattie M              | Notice/Notice of Appearance                | Filing |  | 04/15/2013<br>-10:49 | 11/18/2013<br>-15:11 |  |
| Blinco, John Keith Jr.       | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Mikell, Amy Jowers           | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Theos, Jerry Nicholas        | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Barnes, William Franklin III | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Shoun, Cheryl D.             | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Baker, Charles J. III        | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Holmes, Allan R.             | Notice of Roster Publication Sent          | Action |  | 03/21/2013<br>-08:48 | 11/18/2013<br>-08:48 |  |
| Personal Care Inc            | Notice/Notice of Appearance                | Filing |  | 01/04/2013<br>-11:36 | 11/18/2013<br>-14:08 |  |
| Personal Care Inc            | Order/Order Relieving Counsel              | Order  |  | 11/09/2012<br>-09:35 | 11/18/2013<br>-11:00 |  |
| Askew, Hattie M              | Order/Order Denying Motion to Change Venue | Filing |  | 11/07/2012<br>-16:45 | 11/18/2013<br>-11:42 |  |
| Personal Care Inc            | Order/Form 4C-Motions Under Advisement     | Order  |  | 10/12/2012<br>-09:50 | 11/18/2013<br>-12:35 |  |
| Personal Care Inc            | Letter/Letter-Notice of Hearing            | Filing |  | 10/12/2012<br>-09:48 | 11/18/2013<br>-15:13 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Blinco, John Keith Jr.       | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Blinco, John Keith Jr.       | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent  | Action |  | 09/24/2012<br>-10:31 | 11/18/2013<br>-10:31 |  |
| Askew, Hattie M              | Affidavit/Affidavit of Hattie Askew        | Filing |  | 09/14/2012<br>-12:14 | 11/18/2013<br>-15:17 |  |
| Personal Care Inc            | Notice/Notice of Appearance                | Filing |  | 09/06/2012<br>-11:15 | 11/18/2013<br>-16:03 |  |
| Askew, Hattie M              |                                            | Filing |  |                      |                      |  |

|                              |                                                          |        |  |                      |                      |  |
|------------------------------|----------------------------------------------------------|--------|--|----------------------|----------------------|--|
|                              | Affidavit/Affidavit of Rebecca Walker                    |        |  | 09/05/2012<br>-09:27 | 11/18/2013<br>-10:22 |  |
| Askew, Hattie M              | Affidavit/Affidavit of Belinda Housey                    | Filing |  | 09/05/2012<br>-09:26 | 11/18/2013<br>-10:22 |  |
| Personal Care Inc            | Motion/Relieve As Counsel                                | Motion |  | 08/31/2012<br>-11:40 | 10/12/2012<br>-11:40 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent                | Action |  | 08/20/2012<br>-11:01 | 11/18/2013<br>-11:01 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent                | Action |  | 08/20/2012<br>-11:01 | 11/18/2013<br>-11:01 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent                | Action |  | 08/20/2012<br>-11:01 | 11/18/2013<br>-11:01 |  |
| Personal Care Inc            | Order/Consent Scheduling Order                           | Order  |  | 08/06/2012<br>-10:45 | 11/18/2013<br>-11:17 |  |
| Personal Care Inc            | Motion/Change Venue                                      | Motion |  | 07/30/2012<br>-10:12 | 10/12/2012<br>-10:12 |  |
| Personal Care Inc            | Memo/Return Memo                                         | Filing |  | 07/23/2012<br>-11:05 | 11/18/2013<br>-11:05 |  |
| Theos, Jerry Nicholas        | Notice of Roster Publication Sent                        | Action |  | 07/02/2012<br>-11:49 | 11/18/2013<br>-11:49 |  |
| Barnes, William Franklin III | Notice of Roster Publication Sent                        | Action |  | 07/02/2012<br>-11:49 | 11/18/2013<br>-11:49 |  |
| Mikell, Amy Jowers           | Notice of Roster Publication Sent                        | Action |  | 07/02/2012<br>-11:49 | 11/18/2013<br>-11:49 |  |
| Personal Care Inc            | Affidavit/Affidavit of Geraldine Miller                  | Filing |  | 06/21/2012<br>-14:30 | 11/18/2013<br>-09:33 |  |
| Personal Care Inc            | ADR/Mediation Results Report-At an Impasse               | Filing |  | 05/14/2012<br>-10:57 | 05/14/2012<br>-11:22 |  |
| Theos, Jerry Nicholas        | Notice of Motions Roster Publication Sent                | Action |  | 04/25/2012<br>-09:01 | 11/18/2013<br>-09:01 |  |
| Mikell, Amy Jowers           | Notice of Motions Roster Publication Sent                | Action |  | 04/25/2012<br>-09:01 | 11/18/2013<br>-09:01 |  |
| Barnes, William Franklin III | Notice of Motions Roster Publication Sent                | Action |  | 04/25/2012<br>-09:01 | 11/18/2013<br>-09:01 |  |
| Personal Care Inc            | Sanction                                                 | Motion |  | 03/21/2012<br>-12:59 | 05/14/2012<br>-12:59 |  |
| Personal Care Inc            | Order/Order to Extend Mediation Deadline                 | Filing |  | 12/02/2011<br>-16:47 | 11/18/2013<br>-09:24 |  |
| Personal Care Inc            | ADR/Notice of ADR                                        | Filing |  | 08/30/2011<br>-11:09 | 05/14/2012<br>-15:25 |  |
| Personal Care Inc            | ADR/Alternative Dispute Resolution (Workflow)            | Filing |  | 12/29/2010<br>-15:14 | 08/23/2011<br>-10:51 |  |
| Personal Care Inc            | Summons & Complaint (Change of Venue From Charleston Co) | Filing |  | 12/29/2010<br>-15:14 | 11/18/2013<br>-15:14 |  |

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# PENDARVIS LAW OFFICES, PC



September 4, 2014

## VIA US MAIL

Ms. Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

Re: Personal Care, Inc. V. Jerry N. Theos; Uricchio, Howe, Krell,  
Johnson, Toporek Theos & Keith, PA; Cheryl D. Shoun; and Taylor,  
Shoun, Bowley & Byrd, LLC.  
Civil Action No. 2013-CP-10-1396

Dear Ms. Armstrong:

Enclosed for filing, please find an original and one copy of a proposed CONSENT ORDER RESTORING CASE TO DOCKET (RULE 40(J), SCRCP) along with our MOTION INFORMATION COVER SHEET. Please present this to Judge Dennis for consideration to restore the above-referenced matter to the active trial docket.

Also enclosed is our firms check in the amount of \$150.00 representing the filing fee. Please return clocked copies in the stamped, self-addressed return envelope enclosed for your convenience.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in cursive script that reads "Thomas A. Pendarvis".

Thomas A. Pendarvis

TAP/alg  
Enclosures  
cc w/enc:

Bernie Cignavltch  
Phillip S. Ferderigos, J.D.  
M. Dawes Cooke, Jr., J.D.  
Cheryl D. Shoun, J.D.



THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
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500 CARTERET ST., SUITE A  
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CATHERINE B. KERNEY, J.D.  
ADMITTED IN SC, VA AND DC  
[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE [X] COURT OF COMMON PLEAS  
IN THE [ ] FAMILY COURT

Personal Care, Inc.,

Plaintiff,

vs.

Case No. 2013-CP-10-1396

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

**MOTION INFORMATION COVER SHEET**

Defendants.

name, S.C. Bar no. and address of Plaintiff's attorney

name, S.C. Bar no. and address of Defendant's attorney

Thomas A. Pendarvis, J.D.  
Catherine B. Kerney, J.D.  
Pendarvis Law Offices, PC  
500 Carteret Street, Suite A  
Beaufort, SC 29902  
telephone: 843.524.9500 fax: 843.524.9501  
e-mail: [thomas@pendarvislaw.com](mailto:thomas@pendarvislaw.com)  
e-mail: [carey@pendarvislaw.com](mailto:carey@pendarvislaw.com)

M. Dawes Cooke, Jr., J.D.  
Phillip S. Ferderigos, J.D.  
Barnwell, Whaley, Patterson & Helms, LLC  
PO. Drawer H  
Charleston, SC 29402  
telephone: 843.577.7700 fax: 843.577.7708  
e-mail: [mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)  
e-mail: [pferderigos@barnwell-whaley.com](mailto:pferderigos@barnwell-whaley.com)

Cheryl D. Shoun, J.D.  
Nexsen Pruet, LLC  
PO. Box 486  
Charleston, SC 29402  
telephone: 843.577.9440 fax: 843.720.1777  
e-mail: [cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)

**SECTION I: Hearing Information**

Nature of Motion: Consent Order Restoring Case To Docket (Rule 40(j), SCRCP)

Estimated Time Needed: 15 Minutes

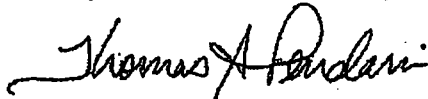
Court Reporter Needed: Yes / No

**SECTION II: Motion Type**

☒ Written motion attached

☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

09/04/2014

Date Submitted



**SECTION III: Motion Fee**☒ PAID - AMOUNT: \$150.00

- ☐ EXEMPT: (check reason) ☐ Rule to Show Cause, in Child or Spousal Support  
☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent Status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)  
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per Judge's instruction  
Name of Court Reporter: \_\_\_\_\_  
☒ Other: Consent Order Restoring Case To Docket (Rule 40(j), SCRCP)

**JUDGE'S SECTION**

- ☐ Motion Fee to be paid upon filing of the attached order.  
☐ Other:

Judge \_\_\_\_\_

CODE: \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected By: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

(Print Name)

☐ MOTION FEE COLLECTED: \_\_\_\_\_☐ CONTESTED - AMOUNT DUE: \_\_\_\_\_

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.

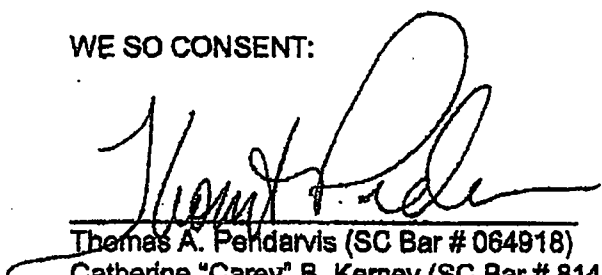
AND IT IS SO ORDERED.

Charleston, South Carolina

\_\_\_\_\_  
Chief Administrative Judge  
Ninth Judicial Circuit

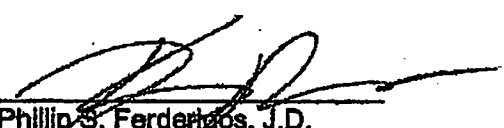
\_\_\_\_\_, 2014

WE SO CONSENT:



Thomas A. Pendarvis (SC Bar # 064918)  
Catherine "Carey" B. Kerney (SC Bar # 81429)  
PENDARVIS LAW OFFICES, P.C.  
500 Carteret St., Suite A  
Beaufort, SC 29902-5066  
843.524.9500 Tel.  
Thomas@PendarvisLaw.com

Counsel for Plaintiff, PERSONAL CARE, INC.



Phillip S. Ferdigos, 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

**Parish, Ruthie R.**

---

**From:** Shoun, Cheryl D.  
**Sent:** Friday, October 24, 2014 12:26 PM  
**To:** Parish, Ruthie R.  
**Subject:** FW: 2013-CP-10-1396

**Cheryl D. Shoun**  
**Special Counsel**  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29401  
PO Box 486 (29402)  
T: 843.720.1762, F: 843.414.8238  
[CShoun@nexsenpruet.com](mailto:CShoun@nexsenpruet.com)  
[www.nexsenpruet.com](http://www.nexsenpruet.com)

## NEXSEN PRUET

|                     |                      |                      |                                |                           |                         |
|---------------------|----------------------|----------------------|--------------------------------|---------------------------|-------------------------|
| <a href="#">Bio</a> | <a href="#">Card</a> | <a href="#">Home</a> | <a href="#">Practice Areas</a> | <a href="#">Attorneys</a> | <a href="#">Offices</a> |
|---------------------|----------------------|----------------------|--------------------------------|---------------------------|-------------------------|

**From:** Thomas A. Pendarvis [<mailto:tpendarvis@pendarvislaw.com>]  
**Sent:** Tuesday, September 16, 2014 1:26 PM  
**To:** Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)  
**Cc:** M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Tola; Shoun, Cheryl D.  
**Subject:** RE: 2013-CP-10-1396

Ms. Coffey:

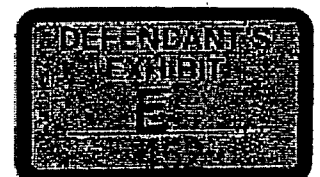
Thank you very much for your message below.

As for your question on the missing consent for Ms. Shoun, it was not done in error. Ms. Shoun was originally represented by Amanda Dudgeon with Carlock Copeland & Stair, who on Ms. Shoun's behalf accepted service of the Summons and Complaint, consented to the Rule 40j Order striking the case of the active docket, but was later relieved as counsel. Ms. Shoun was included on all of the written or electronic communications leading to the purposed consent Order restoring the case and has not raised any objection. Counsel for all of the other defendants have consented. Therefore, we believe the Order restoring the case should be issued.

Notwithstanding the foregoing, we will be happy to attend a hearing on the motion to restore if Judge Dennis believes it is necessary. Again, thank you very much for your time and attention to this matter.

Regards,

*Thomas A. Pendarvis*  
**Pendarvis Law Offices, P.C.**  
500 Carteret St., Ste. A  
Beaufort, SC 29902-5066  
843.524.9500 tel  
843.524.9501 fax  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
[www.PendarvisLaw.com](http://www.PendarvisLaw.com)



Admitted in South Carolina and Georgia

Board Certified by the American Board of Professional Liability Attorneys in Legal Malpractice

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, law-firm dissolutions, and lawyer moves between firms).

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From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]

Sent: Monday, September 15, 2014 10:13 AM

To: Thomas A. Pendarvis

Cc: M. Dawes Cooke

Subject: 2013-CP-10-1396

Thomas:

We received your proposed consent order restoring the case to the docket pursuant to rule 40j on 9/5/14. I have reviewed the order and noticed that it is missing the consent of Cheryl D. Shoun. Was this done in error? Just wanting to make sure all proper consents are obtained. I will print a copy of our correspondence for Judge Dennis when I give him this to be signed. If this was an accident, simply send me her signature by mail or courier to our office in the Charleston County Judicial Center and I will attach it to this order. Please let me know—thank you.

*Lindsey M. Coffey*

Law Clerk to the Honorable R. Markley Dennis, Jr.

100 Broad Street, Suite 439

Charleston, SC 29401

Phone: (843)958-5062

Email: [MDennisLC@sccourts.org](mailto:MDennisLC@sccourts.org)

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Parish, Ruthie R.

From: Shoun, Cheryl D.
Sent: Friday, October 24, 2014 12:26 PM
To: Parish, Ruthie R.
Subject: FW: 2013-CP-10-1396

Cheryl D. Shoun
Special Counsel
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com

NEXSEN PRUET

Bio	vCard	Home	Practice Areas	Attorneys	Offices

From: Catherine Byrd [<mailto:catherine@tbbsq.com>]
Sent: Wednesday, September 17, 2014 11:24 AM
To: Shoun, Cheryl D.
Subject: Fwd: 2013-CP-10-1396

----- Forwarded message -----

From: Catherine Byrd <catherine@tbbsq.com>
Date: Wed, Sep 17, 2014 at 11:21 AM
Subject: Fwd: 2013-CP-10-1396
To: thomas@pendarvislaw.com, mdc@barnwell-whaley.com, cshoun@nexsunpruet.com

----- Forwarded message -----

From: Catherine Byrd <catherine@tbbsq.com>
Date: Wed, Sep 17, 2014 at 10:36 AM
Subject: 2013-CP-10-1396
To: MDennisLC@sccourts.org
Cc: "lynnbowley@netzero.net Bowley" <lynnbowley@netzero.net>, Donna Taylor <donna@tbbsq.com>

Dear Lindsey and Judge Dennis

It has come to our attention in a roundabout way that there has been an attempt to file a "consent order" restoring to the docket the above matter in which our firm is a defendant. Please be advised that :



1. Mr. Pendarvis did not give us notice of intent to restore and did not send us a consent order. In fact, he has not contacted us in any manner, whether directly or by copy of any of his correspondence with other defendants or the court..

2. Cheryl Shoun does not represent this firm, nor has she ever represented this firm.

3. Mr. Pendarvis is aware that we do not have counsel, there having been no notice of appearance on our behalf since the withdrawal of our counsel at the time of the 40 J more than a year ago.

--

Catherine Doscher Byrd
TAYLOR, BOWLEY & BYRD,LLC
39 Broad Street, Suite 101
Charleston, SC 29401
843-723-4020 (fax 4021)

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--

Catherine Doscher Byrd
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Parish, Ruthie R.

From: Shoun, Cheryl D.
Sent: Friday, October 24, 2014 12:24 PM
To: Parish, Ruthie R.
Subject: FW: 2013-CP-10-1396

Cheryl D. Shoun
Special Counsel
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com

NEXSEN PRUET

Bio	vCard	Home	Practice Areas	Attorneys	Offices

From: Thomas A. Pendarvis [mailto:tpendarvis@pendarvislaw.com]
Sent: Wednesday, September 17, 2014 12:55 PM
To: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)
Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; Shoun, Cheryl D.; Catherine Byrd; Don Michel (DMichel@charlestoncounty.org)
Subject: RE: 2013-CP-10-1396

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.
500 Carteret St., Ste. A
Beaufort, SC 29902-5066



843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com
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From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]
Sent: Wednesday, September 17, 2014 11:35 AM
To: Thomas A. Pendarvis
Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; cshoun@nexsenpruet.com; Catherine Byrd; Don Michel (DMichel@charlestoncounty.org)
Subject: RE: 2013-CP-10-1396

Thomas:

No order will not be signed until I discuss the matter fully with Judge Dennis. When he lets me know how to move forward, I will let everyone know. Thank you.

Lindsey M. Coffey

Law Clerk to the Honorable R. Markley Dennis, Jr.
100 Broad Street, Suite 439
Charleston, SC 29401
Phone: (843)958-5062
Email: MDennisLC@sccourts.org

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)
Sent: Tuesday, September 16, 2014 1:39 PM
To: Thomas A. Pendarvis
Cc: M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia; cshoun@nexsenpruet.com
Subject: Re: 2013-CP-10-1396

No problem. I just wanted to verify this before presenting the order to Judge Dennis. Thank you.

Lindsey M. Coffey
Law Clerk to the Honorable R. Markley Dennis, Jr.

On Sep 16, 2014, at 1:26 PM, "Thomas A. Pendarvis" <tpendarvis@pendarvislaw.com> wrote:

Ms. Coffey:

Thank you very much for your message below.

As for your question on the missing consent for Ms. Shoun, it was not done in error. Ms. Shoun was originally represented by Amanda Dudgeon with Carlock Copeland & Stair, who on Ms. Shoun's behalf accepted service of the Summons and Complaint, consented to the Rule 40j Order striking the case of the active docket, but was later relieved as counsel. Ms. Shoun was included on all of the written or electronic communications leading to the proposed consent Order restoring the case and has not raised any objection. Counsel for all of the other defendants have consented. Therefore, we believe the Order restoring the case should be issued.

Notwithstanding the foregoing, we will be happy to attend a hearing on the motion to restore if Judge Dennis believes it is necessary. Again, thank you very much for your time and attention to this matter.

Regards,

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
500 Carteret St., Ste. A
Beaufort, SC 29902-5066
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From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]
Sent: Monday, September 15, 2014 10:13 AM
To: Thomas A. Pendarvis
Cc: M. Dawes Cooke
Subject: 2013-CP-10-1396

Thomas:

We received your proposed consent order restoring the case to the docket pursuant to rule 40j on 9/5/14. I have reviewed the order and noticed that it is missing the consent of Cheryl D. Shoun. Was this done in error? Just wanting to make sure all proper consents are obtained. I will print a copy of our correspondence for Judge Dennis when I give him this to be signed. If this was an accident, simply send me her signature by mail or courier to our office in the Charleston County Judicial Center and I will attach it to this order. Please let me know—thank you.

Lindsey M. Coffey
Law Clerk to the Honorable R. Markley Dennis, Jr.
100 Broad Street, Suite 439
Charleston, SC 29401

Phone: (843)958-5062

Email: MDennisLC@sccourts.org

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# PENDARVIS LAW OFFICES, PC



October 13, 2014

## VIA US MAIL

Ms. Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matter, please find an original and one copy of the following:

1. Motion Information Cover Sheet;
2. Application for Entry of Default; Motion for Default Judgment against Defendant Cheryl D. Shoun and against Defendant Taylor, Shoun, Bowley & Byrd, LLC; and Request for Damages Hearing; and
3. Certificate of Service.

Also enclosed please find a \$25 dollar check for the filing fee.

Please return clocked copies in the stamped, self-addressed return envelope enclosed for your convenience.

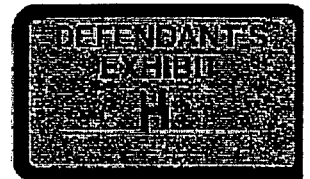
With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/alg  
Enclosures



THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
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CATHERINE B. KERNEY, J.D.  
ADMITTED IN SC, VA AND DC  
[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

Ms. Julie J. Armstrong  
Page 2  
October 13, 2014

ec w/ enclosure: Bernard Cignavitch  
Cheryl D. Shoun, J.D.  
Catherine D. Byrd, J.D.  
M. Dawes Cooke, Jr., J.D.  
Phillip S. Ferderigos, J.D.

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE ☒ COURT OF COMMON PLEAS  
IN THE ☐ FAMILY COURT

Personal Care, Inc.,

Plaintiff,

vs.

Case No. 2013-CP-10-1396

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

**MOTION INFORMATION COVER SHEET**

Defendants.

name, S.C. Bar no. and address of Plaintiff's attorney

name, S.C. Bar no. and address of Defendant's attorney

Thomas A. Pendarvis, J.D.  
Catherine B. Kerney, J.D.  
Pendarvis Law Offices, PC  
500 Carteret Street, Suite A  
Beaufort, SC 29902  
telephone: 843.524.9500 fax: 843.524.9501  
e-mail: [thomas@pendarvislaw.com](mailto:thomas@pendarvislaw.com)  
e-mail: [carey@pendarvislaw.com](mailto:carey@pendarvislaw.com)

M. Dawes Cooke, Jr., J.D.  
Phillip S. Ferderigos, J.D.  
Barnwell, Whaley, Patterson & Helms, LLC  
P.O. Drawer H  
Charleston, SC 29402  
telephone: 843.577.7700 fax: 843.577.7708  
e-mail: [mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)  
e-mail: [pferderigos@barnwell-whaley.com](mailto:pferderigos@barnwell-whaley.com)

Catherine D. Byrd, J.D.  
Taylor, Bowley & Byrd, LLC  
39 Broad Street, Ste. 101  
Charleston, SC 29401  
telephone: 843.723.4020 fax: 843.723.4000  
e-mail: [cbyrdtsbb@bellsouth.net](mailto:cbyrdtsbb@bellsouth.net)

Cheryl D. Shoun, J.D.  
Nexsen Pruet, LLC  
PO. Box 486  
Charleston, SC 29402  
telephone: 843.577.9440 fax: 843.720.1777  
e-mail: [cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)

**SECTION I: Hearing Information**

Nature of Motion: APPLICATION FOR ENTRY OF DEFAULT; MOTION FOR DEFAULT JUDGMENT AGAINST  
DEFENDANT CHERYL D. SHOUN AND AGAINST DEFENDANT TAYLOR, SHOUN, BOWLEY & BYRD, LLC; AND  
REQUEST FOR DAMAGES HEARING

Estimated Time Needed: 30 Minutes

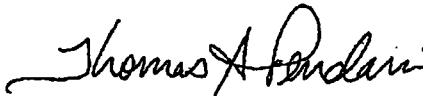
Court Reporter Needed: Yes / No

**SECTION II: Motion Type**

☒ Written motion attached

☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

10/13/2014

Date Submitted

| SECTION III: Motion Fee                                                                                                                                                                                                                      |                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$25.00</b>                                                                                                                                                                            |                                                                                                                                                                                                                                        |
| <input type="checkbox"/> <b>EXEMPT:</b> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support                                                                                                                              |                                                                                                                                                                                                                                        |
| (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect                                                                                                                                                                  |                                                                                                                                                                                                                                        |
| <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party                                                                                                                                             |                                                                                                                                                                                                                                        |
| <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief                                                                                                                                       |                                                                                                                                                                                                                                        |
| <input type="checkbox"/> Motion for Stay in Bankruptcy                                                                                                                                                                                       |                                                                                                                                                                                                                                        |
| <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)                                                                                                                               |                                                                                                                                                                                                                                        |
| <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction                                                                                     |                                                                                                                                                                                                                                        |
| Name of Court Reporter: _____                                                                                                                                                                                                                |                                                                                                                                                                                                                                        |
| <input checked="" type="checkbox"/> Other: <u>MOTION TO RESTORE PURSUANT TO RULE 40(J), SCRCP</u>                                                                                                                                            |                                                                                                                                                                                                                                        |
| <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"><b>JUDGE'S SECTION</b></div> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____ | <div style="border-bottom: 1px solid black; margin-bottom: 5px;">Judge</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">CODE:</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">Date:</div> |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                  |                                                                                                                                                                                                                                        |
| Collected By: _____<br>DATE FILED: _____<br><div style="text-align: center; margin-top: 10px;">(Print Name)</div>                                                                                                                            |                                                                                                                                                                                                                                        |
| <input type="checkbox"/> MOTION FEE COLLECTED: _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: _____                                                                                                                               |                                                                                                                                                                                                                                        |



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.

**APPLICATION FOR ENTRY OF  
DEFAULT; MOTION FOR DEFAULT  
JUDGMENT AGAINST DEFENDANT  
CHERYL D. SHOUN AND AGAINST  
DEFENDANT TAYLOR, SHOUN,  
BOWLEY & BYRD, LLC;  
AND  
REQUEST FOR DAMAGES HEARING**

TO: M. Dawes Cooke, Jr. J.D. and Phillip S. Ferderigos, J.D., Lawyers for Defendants Jerry N. Theos and URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; and to Defendant, Cheryl D. Shoun; and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, n/k/a TAYLOR, BOWLEY & BYRD, LLC:

**NOTICE**

PLEASE TAKE NOTICE THAT Plaintiff, PERSONAL CARE, INC., hereby moves pursuant to Rules 54, 55(a), and 55(b), SCRPC, 1) for the Clerk of Court to enter a default on the calendar (file book) against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; 2) for a default judgment against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, based on these Defendants' failure to serve counsel for Plaintiff with an Answer or otherwise responding to the CIVIL COVERSHEET, SUMMONS, AND AMENDED COMPLAINT, on which service was accepted on July 1, 2013, over Four Hundred (400) days ago; and 3) for a damages hearing to be set to establish the amount of damages to which Plaintiff is entitled.

### **MOTION**

Based on the failure to file an Answer or otherwise respond, Plaintiff, PERSONAL CARE, INC., through its undersigned counsel, does hereby apply to the Honorable Clerk of Court for an entry of default pursuant to Rule 55(a), SCRCP, against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; and moves this Honorable Court for a judgment by default against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, pursuant to Rule 55(b), SCRCP, Civil Procedure; and for a hearing to determine and establish the amount of damages to which Plaintiff, PERSONAL CARE, INC., is entitled.

This application and motion are made and based upon the Affidavit of Default, attached hereto and incorporated by reference as **Exhibit 1**, demonstrating that good and valid service was obtained upon Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC on July 1, 2013. More than Four Hundred Sixty-Nine (469) days have passed and no Answer, Motion or other responsive pleading has been entered by Defendant, Cheryl D. Shoun, or by Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC.<sup>1</sup>

In addition, on September 19, 2014, correspondence was sent to both Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, as a professional courtesy, reminding them that no Answer or other responsive motion had been filed in response to Plaintiff's Amended Complaint. This letter allowed these Defendants an additional Ten (10) days to file their Answer, and advised that if no Answer or responsive motion was served "on or before September 29, 2014, . . . PERSONAL CARE w[ould] pursue

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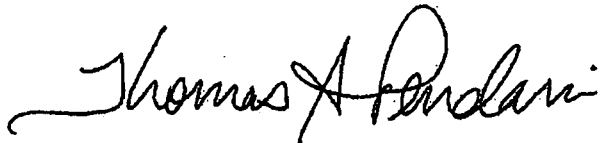
<sup>1</sup> These Defendants were given a Thirty (30) day extension to file their Answer or otherwise respond.

its remedies available under the Rules of Civil Procedure." A copy of that letter is attached hereto and incorporated by reference as **Exhibit 2**.

WHEREFORE, Plaintiff, PERSONAL CARE, INC., respectfully requests the Clerk of Court enter a default on the calendar (file book) against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC; that the Court issue an Order of default judgment be entered against Defendant, Cheryl D. Shoun, and against Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, based on these Defendants' failure to serve counsel for Plaintiff with an Answer or otherwise responding to the CIVIL COVERSHEET, SUMMONS, AND AMENDED COMPLAINT, on which service was accepted on July 1, 2013, over Four Hundred (400) days ago; and that a damages hearing to be set to establish the amount of damages to which Plaintiff is entitled.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



---

Thomas A. Pendarvis  
500 Carteret Street, Suite A  
Beaufort, South Carolina 29902  
(843) 524-9500 Tel.  
Thomas@Pendarvislaw.com

Lawyer for Plaintiff PERSONAL CARE, INC.

Beaufort, South Carolina

October 13, 2014

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.

**PLAINTIFF'S AFFIDAVIT OF  
DEFAULT AND NON-MILITARY  
SERVICE**

PERSONALLY APPEARED before me Thomas A. Pendarvis, who, being first duly sworn, swears as follows:

1. I am a lawyer for the Plaintiff in the above action.
2. A CIVIL COVERSHEET, SUMMONS, and AMENDED COMPLAINT were duly served on the Defendant, Cheryl D. Shoun, and on Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, on July 1, 2013, by personal service, as shown by the ACCEPTANCE OF SERVICE on behalf of Defendant, Cheryl D. Shoun, a copy of which is attached as **Exhibit A**, and the ACCEPTANCE OF SERVICE on behalf of Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, a copy of which is attached as **Exhibit B**.
3. On September 19, 2014, correspondence was sent to both Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, as a professional courtesy, reminding them that no Answer or other responsive motion had been filed in response to Plaintiff's Amended Complaint. This letter allowed these Defendants



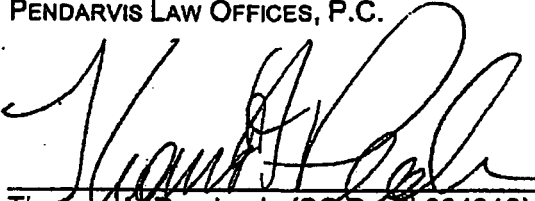
an additional Ten (10) days to file their Answer, and advised that if no Answer or responsive motion was served "on or before September 29, 2014, . . . PERSONAL CARE w[ould] pursue its remedies available under the Rules of Civil Procedure." A copy of that letter is attached hereto and incorporated by reference as **Exhibit C**.

4. More than Four Hundred (400) days have elapsed since service was accepted on behalf of these Defendants of the CIVIL COVERSHEET, SUMMONS, and AMENDED COMPLAINT.
5. Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, have not served an Answer, or other pleading in this matter or otherwise responded and now are and have been in default.
6. Upon information and belief, Defendant, Cheryl D. Shoun, is not in active military service allowing Defendant Shoun, to suspend enforcement of her civil liabilities pursuant to the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A. App. § 510 *et seq.*
7. Upon information and belief, Defendant Shoun, is not a minor or incompetent person.
8. Plaintiff hereby moves the Court, pursuant to Rule 55(b), SCRPC, for an Order adjudging Defendant, Cheryl D. Shoun, and Defendant, TAYLOR, SHOUN, BOWLEY & BYRD, LLC, to be in Default and for judgment against both of these Defendants, and for a damages hearing to be set as soon as reasonably and practicably possible to establish the amount of damages.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

THE AFFIANT FURTHER SAYETH NOT.

PENDARVIS LAW OFFICES, P.C.



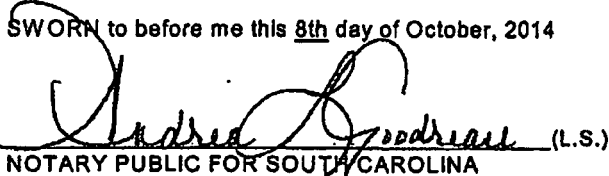
Thomas A. Pendarvis (SC Bar # 064918)

Lawyer for Plaintiff, PERSONAL CARE, INC.

Beaufort, South Carolina

October 13, 2014d

SWORN to before me this 8th day of October, 2014



NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 3-8-2023



472



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.

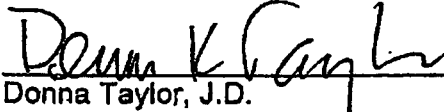
**ACCEPTANCE OF SERVICE**

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

Defendants.

NOW COMES the undersigned, Officer and/or Managing or General Agent for Defendants, TAYLOR, BOWLEY & BYRD, LLC; F/K/A TAYLOR; SHOUN, BOWLEY & BYRD, LLC and accepts service of the Civil Cover Sheet, Amended Summons and Amended Verified Complaint on behalf of all Defendants this 2nd day of July, 2013.

TAYLOR, BOWLEY & BYRD, LLC

  
Donna Taylor, J.D.

Officer and/or Managing or General Agent  
for Defendants, TAYLOR, BOWLEY & BYRD,  
LLC; F/K/A TAYLOR, SHOUN, BOWLEY &  
BYRD, LLC

Charleston, South Carolina

July 2nd 2013



# PENDARVIS LAW OFFICES, PC



September 19, 2014

## VIA E-MAIL

Cheryl D. Shoun, J.D.  
NEXSEN PRUET, LLC  
PO Box 486  
Charleston SC 29402  
[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

Catherine D. Byrd, J.D.  
TAYLOR BOWLEY & BYRD, LLC  
39 Broad St., Ste. 101  
Charleston SC 29401  
[catherine@tbbesq.com](mailto:catherine@tbbesq.com)

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

Dear Ms. Shoun and Ms. Byrd:

This is a reminder given to both of you as a professional courtesy.

As you know, on July 1, 2013, an Acceptance of Service form was signed on behalf of Defendant, TAYLOR, BOWLEY & BYRD, LLC, f/k/a TAYLOR, SHOUN, BOWLEY & BYRD, LLC, and an Acceptance of Service form was signed on behalf of Defendant, Cheryl D. Shoun, which made July 31, 2013, the due date for an Answer or responsive motion to Plaintiff's Amended Complaint. On July 30, 2013, a request was made for 30 day extension, which was granted making August 30, 2013, the due date for an Answer or responsive motion.

To date, PERSONAL CARE has not been served with an Answer or responsive motion for either Ms. Shoun or TAYLOR, BOWLEY & BYRD, which now are **385 days late**.

This is to advise that we expect to be served with Answer or responsive motion for Ms. Shoun and for TAYLOR, BOWLEY & BYRD on or before September 29, 2014. Otherwise, PERSONAL CARE will pursue its remedies available under the Rules of Civil Procedure.

Also, please allow this letter to confirm that I have not been informed of successor counsel for either Ms. Shoun or for TAYLOR, BOWLEY & BYRD. If counsel has been retained or is retained in the future, please have them contact me.

Please do not hesitate to call or contact me if you have any questions or concerns.



THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
Board Certified by the American Board of  
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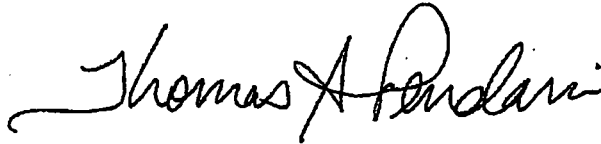
CATHERINE B. KERNEY, J.D.  
ADMITTED IN SC, VA AND DC  
[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

Cheryl D. Shoun, J.D.  
Catherine D. Byrd, J.D.  
Page 2  
September 19, 2014

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis

TAP/alg

cc: Bernard Cignavitch

# PENDARVIS LAW OFFICES, PC



September 19, 2014

## VIA E-MAIL

Cheryl D. Shoun, J.D.  
NEXSEN PRUET, LLC  
PO Box 486  
Charleston SC 29402  
[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

Catherine D. Byrd, J.D.  
TAYLOR BOWLEY & BYRD, LLC  
39 Broad St., Ste. 101  
Charleston SC 29401  
[catherine@tbbesq.com](mailto:catherine@tbbesq.com)

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

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This is to advise that we expect to be served with Answer or responsive motion for Ms. Shoun and for TAYLOR, BOWLEY & BYRD on or before September 29, 2014. Otherwise, PERSONAL CARE will pursue its remedies available under the Rules of Civil Procedure.

Also, please allow this letter to confirm that I have not been informed of successor counsel for either Ms. Shoun or for TAYLOR, BOWLEY & BYRD. If counsel has been retained or is retained in the future, please have them contact me.

Please do not hesitate to call or contact me if you have any questions or concerns.



THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
Board Certified by the American Board of  
Professional Liability Attorneys in  
Legal Malpractice

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F 843.524.9501

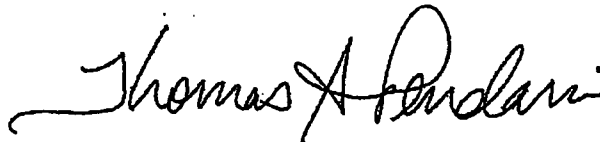
CATHERINE B. KERNEY, J.D.  
ADMITTED IN SC, VA AND DC  
[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

Cheryl D. Shoun, J.D.  
Catherine D. Byrd, J.D.  
Page 2  
September 19, 2014

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis

TAP/alg

cc: Bernard Cignavitch

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.

## CERTIFICATE OF SERVICE

I, Andrea L. Goodreau, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the document listed below upon counsel of record by e-mailing and mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said Defendants at the following addresses:

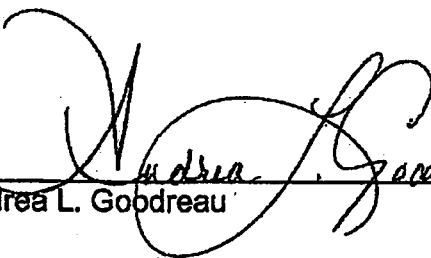
M. Dawes Cooke, Jr., J.D.  
Phillip S. Ferderigos, J.D.  
BARNWELL, WHALEY, PATTERSON & HELMS, LLC  
PO. Drawer H  
Charleston, SC 29402  
[mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)  
[pferderigos@barnwell-whaley.com](mailto:pferderigos@barnwell-whaley.com)

Catherine D. Byrd, J.D.  
TAYLOR, BOWLEY & BYRD, LLC  
39 Broad Street, Ste. 101  
Charleston, SC 29401  
[Cbyrdtsbb@bellsouth.net](mailto:Cbyrdtsbb@bellsouth.net)  
[Catherine@tbbesq.com](mailto:Catherine@tbbesq.com)

Cheryl D. Shoun, J.D.  
NEXSEN PRUET, LLC  
PO. Box 486  
Charleston, SC 29402  
[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)

**Documents Served:** MOTION INFORMATION COVER SHEET; APPLICATION FOR ENTRY OF DEFAULT; MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT CHERYL D. SHOUN AND AGAINST DEFENDANT TAYLOR, SHOUN, BOWLEY & BYRD, LLC; AND REQUEST FOR DAMAGES HEARING.

Beaufort, South Carolina  
October 13, 2014

  
Andrea L. Goodreau

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personal Care, Inc.,

Plaintiff,

vs.

Jerry N. Theos, Cheryl Shoun and Taylor,  
Bowley and Byrd, LLC

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-1396

**DEFENDANT TAYLOR BOWLEY AND  
BYRD'S MOTION FOR SANCTIONS  
AND EXPEDITED HEARING**

**FILED**  
NOV 17 PM 3:01  
J. A. STRONG  
CLERK OF COURT

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Defendant Taylor Bowley and Byrd, LLC ("TBB"), through its undersigned counsel, hereby moves this honorable Court for sanctions against Plaintiff and its counsel.

Plaintiff filed this action on March 8, 2013. The complaint was amended on March 19, 2013. Defendant Taylor Bowley and Byrd accepted service of the Amended Complaint on July 2<sup>nd</sup>, 2013 (See Exhibit B to Plaintiff Motion for Entry of Default). On July 30, 2013, Plaintiff granted TBB an extension to answer or otherwise plead, allowing TBB to answer or otherwise plead on or before August 30, 2013. The case was dismissed pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure on August 28, 2013, two days prior to the deadline for TBB to file its responsive pleading, with Plaintiff's consent.

On October 4, 2013, joint counsel for TBB and Cheryl Shoun was relieved. On August 22, 2014 counsel for Plaintiff wrote to Cheryl Shoun and counsel for Jerry Theos, enclosing a consent order to restore the matter to the active docket and asking for their consent. TBB was not



copied on said letter. Counsel for Theos consented to the restoration. Significantly, Ms. Shoun **did not** consent. TBB also **did not consent as it** was never consulted on the matter.

On September 9, after the expiration of time to restore the case and without notice or consent from TBB, counsel for Plaintiff wrote to this court purporting to enclose consent order. Plaintiff failed to bring to the court's attention the fact that not all parties had consented. On September 15, 2014, Judge Dennis' law clerk wrote to counsel for Plaintiff and requesting an explanation as to why Ms. Shoun's signature was missing (Exhibit 1). Counsel for Plaintiff responded by indicating that Ms. Shoun did not object and therefore consented. Counsel for plaintiff failed to disclose that he did not give TBB notice of his motion to restore the matter and misrepresented that **all other parties consented**.

On September 17, after it was revealed that he did not have proper consent, counsel for Plaintiff advised the court that Plaintiff was withdrawing the proposed consent order to restore "as not all parties consented to restoration." (Exhibit 2).

On September 22, more than 30 days after his communication with the court and more than 45 days after the deadline to restore the case to the active docket, counsel for Plaintiff filed a motion to restore the case.

On September 19, 2014, counsel for Plaintiff wrote to Cheryl Shoun and Catherine Byrd purporting to advise them that the time to file and answer or otherwise plead had expired and they were in default. Again counsel for Plaintiff misrepresented the facts, completely disregarding the status of the case, which at the time of the letter and to present date is

“dismissed”. This was a clear attempt by counsel to induce TBB to file a pleading in a case that is not active.<sup>1</sup>

When TBB did not respond to the Amended Complaint, as the case had not been restored, counsel for Plaintiff filed an Application for Entry of Default and Motion for Default Judgment against TBB and Defendant Shoun. The Application and Motion are frivolous.

Plaintiff’s counsel conduct has been patently misleading. Plaintiff’s counsel first attempted to have the Court enter a consent order when counsel knew that not all parties had consented and furthermore; represented to this Court that **all parties except for Ms. Shoun** consented to the order, even though counsel had full knowledge that TBB **did not** consent. Second, Plaintiff’s counsel is attempting to induce the Court to enter default against TBB when he knows that TBB’s answer was not due until after the case had been stricken from the active roster and TBB could not possibly be in default . This is a pattern of knowingly misrepresenting the facts to the court. As such, Defendant TBB respectfully requests that the Court sanction Plaintiff and its counsel for knowingly filing frivolous motion.

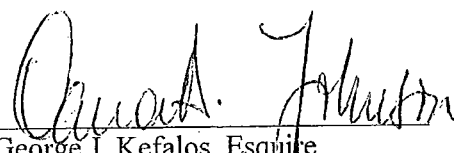
Defendant TBB gave Plaintiff’s counsel notice of its intent to file this Motion. Plaintiff’s counsel refused to withdraw the motions (See Exhibit 3). As Plaintiff’s Application for Entry of Default and Motion for Default Judgment are currently pending before this Court, Defendant TBB respectfully requests that this Motion be heard at the Hearing on the Motion to Restore scheduled for Wednesday, November 19, 2014.

---

<sup>1</sup> This attempt is disingenuous, especially when counsel for Plaintiff earlier took the position that he believed he had no standing to object or consent to TBB’s counsel Motion to be relieved (See Exhibit 4), because of the status of the case under Rule 40(j). Counsel for Plaintiff cannot argue now that Defendant TBB had standing to enter an answer or otherwise plead when the case had been stricken from the active roster pursuant to Rule 40(j).

This Motion is supported by pleadings, applicable law, arguments of counsel, affidavits or any other supporting materials that may be submitted by Defendants at or before the hearing on this Motion.

GEORGE J. KEFALOS, PA

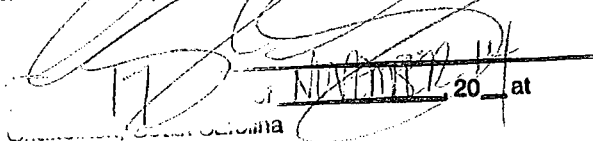
  
George J. Kefalos, Esquire  
Oana D. Johnson, Esquire  
46 A State Street  
Charleston, SC 29401  
(843) 722-6612  
[george@kefaloslaw.com](mailto:george@kefaloslaw.com)  
[oana@kefaloslaw.com](mailto:oana@kefaloslaw.com)

ATTORNEYS FOR DEFENDANT TAYLOR  
BOWLEY AND BYRD, LLC

This 17<sup>th</sup> day of November, 2014  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

THE UNDERSIGNED HEREBY CERTIFIES that two  
and correct copies of the pleading or paper to which  
this certificate is attached was served upon the party(s)  
to this certificate in accordance with the applicable Court Rules  
by electronic transmission or by hand delivery or by  
mail, prepaid, properly addressed  
to the party(s) or such party(s).

  
17 NOV 2014 at  
Charleston, South Carolina

**Cc:** M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Tola; Shoun, Cheryl D.  
**Subject:** RE: 2013-CP-10-1396

Ms. Coffey:

Thank you very much for your message below.

As for your question on the missing consent for Ms. Shoun, it was not done in error. Ms. Shoun was originally represented by Amanda Dudgeon with Carlock Copeland & Stair, who on Ms. Shoun's behalf accepted service of the Summons and Complaint, consented to the Rule 40j Order striking the case of the active docket, but was later relieved as counsel. Ms. Shoun was included on all of the written or electronic communications leading to the purposed consent Order restoring the case and has not raised any objection. Counsel for all of the other defendants have consented. Therefore, we believe the Order restoring the case should be issued.

Notwithstanding the foregoing, we will be happy to attend a hearing on the motion to restore if Judge Dennis believes it is necessary. Again, thank you very much for your time and attention to this matter.

Regards,

*Thomas A. Pendarvis*  
**Pendarvis Law Offices, P.C.**  
500 Carteret St., Ste. A  
Beaufort, SC 29902-5066  
843.524.9500 tel  
843.524.9501 fax  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
[www.PendarvisLaw.com](http://www.PendarvisLaw.com)

Admitted in South Carolina and Georgia

Board Certified by the American Board of Professional Liability Attorneys in Legal Malpractice

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, law-firm dissolutions, and lawyer moves between firms).

The Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, applies to e-mail, prohibits unauthorized interception, unauthorized use, and unauthorized disclosure of an e-mail, of the contents of an e-mail, and of any attachments to the e-mail. 18 U.S.C. §§ 2510-2521, the Electronic Communications Privacy Act, provides for civil remedies, including an award of damages, in cases of unauthorized interception, unauthorized use, or unauthorized disclosure of an e-mail, of the contents of an e-mail, or of any attachments to the e-mail.

---

**From:** Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]  
**Sent:** Monday, September 15, 2014 10:13 AM  
**To:** Thomas A. Pendarvis  
**Cc:** M. Dawes Cooke  
**Subject:** 2013-CP-10-1396

Thomas:

We received your proposed consent order restoring the case to the docket pursuant to rule 40j on 9/5/14. I have reviewed the order and noticed that it is missing the consent of Cheryl D. Shoun. Was this done in error? Just wanting to make sure all proper consents are obtained. I will print a copy of our correspondence for Judge Dennis when I give him this to be signed. If this was an accident, simply send me her signature by mail or courier to our office in the Charleston County Judicial Center and I will attach it to this order. Please let me know—thank you.

*Lindsey M. Coffey*  
Law Clerk to the Honorable R. Markley Dennis, Jr.



----- Forwarded message -----

From: **Thomas A. Pendarvis** <[tpendarvis@pendarvislaw.com](mailto: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](mailto:MDennisLC@sccourts.org)>  
Cc: "M. Dawes Cooke" <[mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)>, Phillip Ferderigos  
<[pferderigos@barnwell-whaley.com](mailto:pferderigos@barnwell-whaley.com)>, Andrea Goodreau <[AGoodreau@pendarvislaw.com](mailto:AGoodreau@pendarvislaw.com)>,  
Leslie Toia <[LToia@pendarvislaw.com](mailto:LToia@pendarvislaw.com)>, "cshoun@nexsenpruet.com"  
<[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)>, Catherine Byrd <[catherine@tbbesq.com](mailto:catherine@tbbesq.com)>, "Don Michel  
(DMichel@charlestoncounty.org)" <[DMichel@charlestoncounty.org](mailto: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.



500 Carteret St., Ste. A

Beaufort, SC 29902-5066

843.524.9500 tel

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Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, law-firm dissolutions, and lawyer moves between firms).

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**From:** Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)

[mailto:[MDennisLC@sccourts.org](mailto:MDennisLC@sccourts.org)]

**Sent:** Wednesday, September 17, 2014 11:35 AM

**To:** Thomas A. Pendarvis

**Cc:** M. Dawes Cooke; Phillip Ferderigos; Andrea Goodreau; Leslie Toia;  
[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com); Catherine Byrd; Don Michel ([DMichel@charlestoncounty.org](mailto:DMichel@charlestoncounty.org))

**Subject:** RE: 2013-CP-10-1396

Thomas:

No order will not be signed until I discuss the matter fully with Judge Dennis. When he lets me know how to move forward, I will let everyone know. Thank you.

*Lindsey M. Coffey*

Law Clerk to the Honorable R. Markley Dennis, Jr.

100 Broad Street, Suite 439

Charleston, SC 29401

Phone: (843)958-5062

Email: MDennisLC@sccourts.org

# PENDARVIS LAW OFFICES, PC



November 14, 2014

## VIA US MAIL & E-MAIL

Richard A. Farrier, Jr., J.D.  
K&L GATES, LLP  
134 Meeting St., Ste. 200  
Charleston SC 29401  
[Richard.Farrier@KLGates.com](mailto:Richard.Farrier@KLGates.com)

Oana D. Johnson, J.D.  
GEORGE J. KEFALOS, P.A.  
46 A State Street  
Charleston SC 29401  
[Oana@Kefaloslaw.com](mailto:Oana@Kefaloslaw.com)

Re: **PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON, TOPOREK THEOS & KEITH, PA; Cheryl D. Shoun; and TAYLOR, SHOUN, BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396**

Dear Mr. Farrier and Ms. Johnson:

This is in response to the letter from Mr. Farrier dated November 12, 2014 and letter from Ms. Johnson dated November 13, 2014, both requesting PERSONAL CARE withdraw its Rule 40(j), SCRPC motion and its Motion for Default Judgment in the foregoing matter under threat of Rule 11 sanctions. Your contentions that this "case is objectively barred by the statute of limitations" are patently incorrect, and more importantly, relate to affirmative defenses that are no longer available to either of your clients based on their decisions to remain in default.

As you know, or should know, on July 1, 2013, service of process in the above matter was obtained on both of your clients. On September 19, 2014, more than one year after they had been served, both of your clients were provided with a "professional courtesy" reminder letter advising that no Answer or other responsive motion had been filed on their behalf and advising that they would be allowed *additional time* until September 29, 2014, to file Answers or otherwise respond. Both Ms. Shoun and TAYLOR, SHOUN, BOWLEY & BYRD chose not to respond and to allow themselves to remain in default. As you know, or should know, having chosen to concede liability by their default, your clients are not allowed to assert any affirmative defenses. Based on the posture of this case your threats of Rule 11 motions and sanctions are unfounded and frivolous in their own right.

Is unfortunate that your clients have chosen to start down this path. Based on the present posture of this case and the amount of PERSONAL CARE's damages, it seems that the parties should be focusing their energies toward resolving this matter, rather than throwing gasoline on the fire with unsupported threats of Rule 11 sanctions.

Please call or contact me if you wish to discuss resolving this matter.

THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
[Thomas@PendarvisLaw.com](mailto:Thomas@PendarvisLaw.com)  
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CATHERINE B. KERNEY, J.D.  
ADMITTED IN SC, VA AND D  
[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

EXHIBIT

488 3

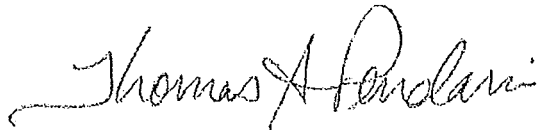


Richard A. Farrier, Jr., J.D.  
Oana D. Johnson, J.D.  
Page 2  
November 14, 2014

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis

TAP/alg

ec: Bernard Cignavitch  
M. Dawes Cooke, Jr., J.D.  
Phillip S. Ferderigos, J.D.  
David W. Overstreet, J.D.  
Amanda K. Dudgeon, J.D.

PENDARVIS LAW OFFICES, PC



September 26, 2013

VIA E-MAIL and US MAIL

David W. Overstreet, J.D.  
Amanda K. Dudgeon, J.D.  
CARLOCK COPELAND & STAIR, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
[doverstreet@carlockcopeland.com](mailto:doverstreet@carlockcopeland.com)  
[adudgeon@carlockcopeland.com](mailto:adudgeon@carlockcopeland.com)

RE: PERSONAL CARE, INC. vs. Jerry N. Theos; URICCHIO, HOWE, KRELL, JOHNSON,  
TOPOREK THEOS & KEITH, P.A.; Cheryl D. Shoun; and TAYLOR, SHOUN,  
BOWLEY & BYRD, LLC; Civil Action No. 2013-CP-10-1396

Dear David and Mandi:

Enclosed, please find the Consent Order Relieving Counsel with my signature, although we believe that we do not have standing to object or consent with the case under a Rule 40(j) Order. Please forward a filed copy once you receive it back from the court.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/alg

Enclosures

ec w/enc:

Bernie Cignavitch  
M. Dawes Cooke, Jr. J.D.  
Phillip S. Ferderigos, J.D.

THOMAS A. PENDARVIS, J.D.  
ADMITTED IN SC AND GA  
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CATHERINE B. KERNEY, J.D.  
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[Carey@PendarvisLaw.com](mailto:Carey@PendarvisLaw.com)

EXHIBIT

490

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personal Care, Inc.,

Plaintiff,

vs.

Jerry N. Theos, Cheryl Shoun and Taylor,  
Bowley and Byrd, LLC

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2013-CP-10-1396

**DEFENDANT TAYLOR BOWLEY AND  
BYRD'S MEMORANDUM IN  
OPPOSITION TO PLAINTIFF'S MOTION  
TO RESTORE**

FILED  
2014 NOV 18 PM 4:02  
J. ARMSTRONG  
CLERK OF COURT

Defendant Taylor Bowley and Byrd (hereinafter TBB), through its undersigned counsel, hereby joins Defendant Shoun in her opposition to Plaintiff's Motion to Restore Pursuant to Rule 40(j), SCRCP ("Motion to Restore") and further submits this memorandum supporting its position.

### INTRODUCTION

This case comes to be heard on Plaintiff's Motion to Restore Pursuant to Rule 40(j), SCRCP. Plaintiff filed its motion to restore the case to the active roster more than one year after the case had been stricken from the active docket and the statute of limitations has expired. Therefore, Plaintiff cannot benefit from the tolling of the statute of limitations as provided by Rule 40(j). Plaintiff's Motion to Restore is futile because the statute of limitations expired and the motion should be denied.

### FACTS

This is a case arising out of events that occurred in September 2009 through early 2010. On December 10, 2009, Cheryl Shoun, a partner at Taylor, Bowley and Byrd at the time, filed

the underlying suit on behalf of Plaintiff suing Askew (Askew suit). On March 9, 2010, Askew filed an Answer and Counterclaim in the underlying lawsuit. Recognizing that statute of limitation for any claims against TBB or any other defendant in the present matter may run from the date the counterclaim in the underlying matter was filed, counsel for Plaintiff in the present matter filed suit on March 8, 2013, against Defendants Theos, Shoun and TBB. The only cause of action against TBB is for breach of contract.

Defendant TBB accepted service of the Complaint on July 2, 2013. On July 30, 2013, counsel for TBB and Shoun obtained an extension to answer or otherwise plead until August 30, 2013. The reason for obtaining said extension was that the parties had asked for dismissal pursuant to Rule 40(j) and were waiting for the Court's response to the motion (See Exhibit 1). On August 27, 2013, three days before TBB's Answer was due, Judge Dennis signed Consent Order Striking Case from the Docket pursuant to Rule 40(j). That order was filed on August 28, 2013 and the case was therefore listed as dismissed. The Askew action was settled and dismissed in late 2013.

On September 9, 2014, after the expiration of time to restore the case and without notice or consent from TBB, counsel for Plaintiff wrote to this court purporting to enclose **consent** order to restore the case to the active roster. Plaintiff failed to bring to the court's attention the fact that **not all parties consented**. On September 15, 2014, Judge Dennis' law clerk wrote to counsel for Plaintiff and requesting an explanation as to why Ms. Shoun's signature is missing (Exhibit 2). Counsel for Plaintiff responded by indicating that Ms. Shoun did not object and therefore consented. Counsel for plaintiff failed to disclose that he did not give TBB notice of his motion to restore the matter and misrepresented that **all other parties consented**.

On September 17, after it was revealed that he did not have proper consent, counsel for Plaintiff advises the court that Plaintiff is withdrawing the proposed consent order to restore “as **not all parties consented** to restoration.” (Exhibit 3).

On September 22, more than 30 days after his communication with the court and more than 45 days after the one year deadline to restore the case to the active docket, counsel for Plaintiff filed a motion to restore the case.

Despite the fact that the case had not been restored and no motion to restore the case was pending, on September 19, 2014, counsel for Plaintiff wrote to Cheryl Shoun and Catherine Byrd purporting to advise them that the time to file and answer or otherwise plead has expired and they are in default.

When TBB did not respond to the Amended Complaint as the case had not been restored, counsel for Plaintiff filed an Application for Entry of Default and Motion for Default Judgment against TBB and Defendant Shoun<sup>1</sup>.

## ARGUMENT

**Plaintiff's motion to restore the case is futile as the statute of limitations expired.**

SCRCF Rule 40(j) provides:

**(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

---

<sup>1</sup> Plaintiff's Application and Motion for entry of default do not disclose the status of the case as dismissed, materially misrepresenting the facts.

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).

The Order Striking the case from the active roster entered in this case is even more restrictive than the rule and provides that the statute would be tolled only if “the **claim is restored within one year** from the date” of the order and not if a motion was filed within the year. Regardless, Plaintiff did not file a motion and the case was not restored within the year.

It is settled in South Carolina that a party that moves to restore a case to the docket more than a year after the case was stricken from the docket “cannot take advantage of the one year tolling period provided by the rule.” *Maxwell v. Genez*, 356 S.C. 617, 621, 591 S.E.2d 26, 28 (2003).

Here, the only cause of action alleged by Plaintiff against TBB is breach of contract. A breach of contract action is governed by a three-year statute of limitation period. See S.C. Code Ann. § 15-3-530 (1) (2005). Under the discovery rule, the statute 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 *Manios v. Nelson, Mullins, Riley & Scarborough, LLP*, 389 S.C. 126, 145, 697 S.E.2d 644, 654 (Ct. App. 2010).

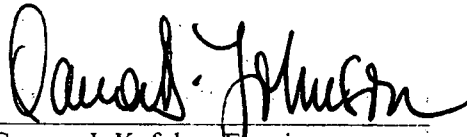
It is undisputable that the statute of limitations on Plaintiff’s claim for breach of contract against TBB has expired. Plaintiff’s only claim against TBB arises out of the letter sent in September 14, 2009. Even if Plaintiff argues that the statute did not begin to run until the counterclaims were filed in the Askew matter, its argument still fails. The counterclaims were filed March 9, 2010 and the statute began to run on that day and expired on March 9, 2013. Even if the case were to be restored to the active docket, Defendant TBB would be entitled to raise the defense of the expiration of statute of limitations. See *Temples v. Plush*, 2014 S.C. App. Unpub.

LEXIS 227, 2014 WL 2721796 (S.C. Ct. App. May 7, 2014). Plaintiff's attempt to restore the case to the active docket is futile and a waste of the Court's time.

### CONCLUSION

For the reasons stated above, Defendant TBB respectfully requests that this Honorable Court enter an order denying Plaintiff's Motion to Restore the Case to the Active Docket

GEORGE J. KEFALOS, PA



George J. Kefalos, Esquire  
Oana D. Johnson, Esquire  
46 A State Street  
Charleston, SC 29401  
(843) 722-6612  
[george@kefaloslaw.com](mailto:george@kefaloslaw.com)  
[oana@kefaloslaw.com](mailto:oana@kefaloslaw.com)

ATTORNEYS FOR DEFENDANT TAYLOR  
BOWLEY AND BYRD, LLC

This 17<sup>th</sup> day of November, 2014  
Charleston, South Carolina

### CERTIFICATE OF SERVICE

SERIGNED HEREBY CERTIFIES that true  
ct copies of the pleading or paper to which  
icate is affixed was served upon the party(s)  
ction in accord with the applicable Court Rules  
ronic transmission or by hand delivery or by  
U.S. Mail, postage prepaid, properly addressed  
torney(s) of record for such party(s).

18 this day of NOVEMBER 20 at  
Charleston, South Carolina

**Terrien, Amanda M.**

---

**From:** Dudgeon, Amanda K.  
**Sent:** Tuesday, July 30, 2013 6:06 PM  
**To:** 'Thomas A. Pendarvis'  
**Cc:** Andrea Goodreau; Rash, Lindsey N.  
**Subject:** RE: Personal Care

Thanks, Thomas.

Mandi Dudgeon  
Carlock Copeland & Stair, LLP  
(843) 266-8207

---

**From:** Thomas A. Pendarvis [<mailto:tpendarvis@pendarvislaw.com>]  
**Sent:** Tuesday, July 30, 2013 5:49 PM  
**To:** Dudgeon, Amanda K.  
**Cc:** Andrea Goodreau  
**Subject:** RE: Personal Care

No problem. This will confirm a 30 day extension for your clients to file and serve an Answer to the Amended Complaint or otherwise respond.

Have a good evening.

Regards,

**Thomas A. Pendarvis**  
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Admitted in South Carolina and Georgia

Board Certified by the American Board of Professional Liability Attorneys in Legal Malpractice

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, law-firm dissolutions, and lawyer moves between firms).

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**From:** Dudgeon, Amanda K. [<mailto:adudgeon@carlockcopeland.com>]  
**Sent:** Tuesday, July 30, 2013 4:19 PM



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To: Thomas A. Pendarvis  
Subject: Personal Care

Thomas,

Since our Answer deadlines are based on the two executed Acceptance of Service, can I get a 30 day extension for both Cheryl Shoun and the firm to Answer or otherwise respond to the Amended Complaint while we wait for confirmation on the 40(j)?

Thanks,

Mandi

[website](#) | [bio](#) | [LinkedIn](#) | [vCard](#) | [map](#)



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