THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge, Second Judicial Circuit
Case No. 2018CP0200675

Appellate Case No. 2019-000288

Ex parte: Daniel Geitner,

Appellant,

In re: Kelly Sims,

Respondent,

v.

Sharon Enteen-Prusso a/k/a
Sharon Enteen, and
Falcon Ridge, Inc.,

Defendants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS, IN THE COUNTY OF AIKEN

KELLY SIMS, Plaintiff, v. SHARON ENTEEN-PRUSSO aka SHARON ENTEEN and FALCON RIDGE, INC., Defendants.	Case No. 2018CP0200675

ORDER AWARDING EXPENSES OF MOTION TO COMPEL, INCLUDING REASONABLE ATTORNEY'S FEES, TO SIMS

Having considered the circumstances of the motion,[1] the moving papers and any timely filed opposition papers, the oral arguments of the parties, the affidavits submitted pursuant to this Court's order ruling on the motion, the submissions of Mr. Geitner opposing the affidavits, and the reply of Plaintiff to that opposition, this court finds as follows:

1. There was insufficient basis for refusal of the discovery in question, and lack of basis for not following up with a motion asserting any proffered reason for failing to provide the discovery. Indeed, Mr. Geitner did not file a written response to the motion to compel, nor did he offer any substantive justification for his refusal to answer the deposition questions at issue at the hearing on the motion.

[1] Mr. Geitner's present South Carolina counsel, Mr. Bowers, was not in the case and was not present at the time of the deposition. Plaintiff Sims has stated that Plaintiff seeks no sanction or recovery against Mr. Geitner's South Carolina counsel. This Court agrees that neither the previous order nor this award implicates Mr. Geitner's South Carolina counsel in any way.

2. The discovery was reasonably sought.

3. It was necessary for Plaintiff to file a motion to obtain the discovery.

4. In accordance with Rule 37(a)(4), SCRCP, it is reasonable to require the party making the motion necessary to pay the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

5. In that this court did not rule solely on the written submissions, but held a full hearing and allowed post-hearing submissions, there has been afforded, an opportunity for a hearing on whether to award expenses.

6. The expenses of $14,486.69 submitted by the moving party are reasonable, taking into account numerous factors, the chief one of which is that the expenses were actually agreed and incurred.

7. Additionally, the legal services were complicated by pendency of the litigation in another state, making the services more extensive and difficult and requiring that local counsel be engaged. The time devoted was considerable and was all accounted for unless some has not actually been charged. Counsel have professional standing justifying the fees charged. The fees are those customarily charged by them in the locality for similar services, and the fees charged by others in the locality vary according to the nature of the matter and the lawyers hired, and

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the fees in the instant case are within that range. The motion was granted in its entirety, and pertained to a matter which was necessary.

I therefore conclude that pursuant to Rule 37(a)(4), SCRCP, Plaintiff Sims shall be awarded the expenses of this motion and that the $14,486.69 she incurred was reasonably charged and incurred and shall be the award. The clerk of court is directed to tax these costs to the nonparty deponent, Mr. Geitner within ten days of entry of this order, referencing the subpoena in the case for any necessary information. The nonparty deponent, Mr. Geitner, is directed to pay them.

AND IT IS SO ORDERED.

_____

Doyet A. Early, III
Circuit Court Judge, Second Judicial Circuit

Date: _____

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Aiken Common Pleas

Case Caption: Kelly Sims VS Sharon Enteen Prusso , defendant, et al

Case Number: 2018CP0200675

Type: Order/Costs

So Ordered

s/D.A. Early III 2136

ELECTRONICALLY FILED - 2018 Dec 05 11:50 AM - AIKEN - COMMON PLEAS - CASE#2018CP0200675

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS, IN THE COUNTY OF AIKEN

KELLY SIMS, Plaintiff, v. SHARON ENTEEN-PRUSSO aka SHARON ENTEEN and FALCON RIDGE, INC., Defendants.	Case No. 2018CP0200675

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL NONPARTY DANIEL GEITNER TO COMPLY WITH SUBPOENA AND SOUTH CAROLINA RULES FOR DEPOSITION

This matter came before the Court for hearing on Plaintiff's Motion to Compel on November 5, 2018. Plaintiff Sims seeks an order compelling nonparty witness Daniel Geitner to answer questions he refused to answer after being subpoenaed by this Court to attend a deposition in his county of residence pursuant to the South Carolina Interstate Depositions and Discovery Act, S.C. Code §15-47-100 et seq. (the "Act"). The Court, having considered the contentions and arguments of the parties, hereby finds as follows:[1]

On January 12, 2018, Plaintiff Sims filed her Complaint against Defendants Enteen-Prusso and Falcon Ridge in the Superior Court of Cherokee County, Georgia, Case No. 18cv30059 (the "Georgia Lawsuit"). The gravamen of the Georgia Lawsuit is that: (a) Plaintiff Sims engaged Defendant Enteen-Prusso as a horse buying agent; and (b) Defendant Enteen-Prusso misrepresented the true selling price of various horses to receive undisclosed commissions to which she was not entitled.

[1] Mr. Geitner never filed an opposition to Plaintiff's motion, and the facts set forth herein were not disputed at the hearing on November 5.

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One such horse is called "Nick," which Plaintiff Sims paid $275,000 for on August 22, 2017. Plaintiff Sims was the buyer, and her agent was Defendant Enteen-Prusso.[2] Bill and Brenda Mackay were Nick's owners and the sellers. Nonparty Daniel Geitner was their agent. Plaintiff Sims wired $275,000 to Mr. Geitner for the horse, but Mr. Geitner only delivered $145,000 of that amount to the Mackays. Mr. Geitner told Mr. Mackay that the difference—$130,000—was going to pay commissions to himself and Ms. Prusso that Plaintiff Sims had purportedly refused to pay. In fact, Plaintiff Sims never refused to pay the commission and had already separately paid Defendant Enteen-Prusso the 10% commission of $27,500 in connection with the sale. About one week later, on September 1, 2017, Mr. Geitner wired $75,000 to Falcon Ridge, which is a stable owned by Defendant Enteen-Prusso.[3]

After Mr. Mackay and Plaintiff Sims eventually spoke and compared notes, Mr. Mackay approached Mr. Geitner and accused him, in words or substance, of fraud. In response, Mr. Geitner offer to pay Mr. Mackay $25,000 and eventually paid Mr. Mackay $40,000 (in addition to the $145,000) to settle the matter. As a condition of that payment, Mr. Geitner required Mr. Mackay sign a settlement agreement with the following provision:

> The Parties hereto agree, to the fullest extent possible under the law, that they shall not disclose all or any of the terms of the Settlement Agreement, except to such of its directors, officers, legal representatives or advisors as are advising the Parties and have a reasonable need to access to such information in connection with such advice and then only to the extent necessary for their participation or contribution. Each party also agrees to be responsible for any breach of this Agreements by its representatives and for enforcing the terms of this Agreement as to its representatives and the confidentiality of the terms hereunder and to take

[2] Falcon Ridge, Inc. is also a named Defendant. It is a horse stable owned by Defendant Enteen-Prusso.

[3] Mr. Geitner and Defendant Enteen-Prusso contend this $75,000 was consideration for a horse named "Epic." Plaintiff Sims contends that the purported sale of "Epic" by Enteen-Prusso to Geitner was a sham designed to disguise an undisclosed commission paid to Defendant Enteen-Prusso in connection with the Nick transaction.

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> such action, legal or otherwise, to the extent necessary to cause them to comply with the terms and conditions of this Agreement and thereby prevent any disclosure of the terms by any of such Party's representatives.

On March 22, 2018, this Court, pursuant to the Act, issued a Subpoena for the deposition of nonparty Daniel Geitner at Plaintiff Sims' request. On May 22, 2018, Plaintiff Sims, through counsel, deposed Mr. Geitner in Aiken, South Carolina pursuant to the South Carolina Rules of Civil Procedure, which were expressly applicable under the Subpoena pursuant to Section 15-47-140 the Act.

Mr. Geitner initially lied under oath, denying the existence of the settlement agreement and further denying that he had any meaningful communications with Mr. Mackay after the sale of Nick. Then, when confronted with a copy of the settlement agreement and the checks made payable to Mr. Mackay, Mr. Geitner refused to answer any further questions because of instruction by his Atlanta counsel based on the above-quoted language in the settlement agreement.[4]

Plaintiff Sims' counsel, not Mr. Geitner's, consequently suspended the deposition and filed the pending motion seeking a Court Order requiring Mr. Geitner to answer questions regarding the settlement agreements and the payments made to Mr. Mackay.

The Court hereby directs Mr. Geitner to appear within the next thirty (30) days to resume his deposition and fully respond to Plaintiff Sim's inquiries regarding the settlement agreement and payments to Mr. Mackay.

The outcome of this motion is dictated automatically and expressly by South Carolina law:

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[4] Mr. Geitner's present South Carolina counsel was not in the case and was not present at the time of the deposition. Plaintiff Sims seeks no sanction or recovery against Mr. Geitner's South Carolina counsel.

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> Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court or unless that counsel intends to present a motion under Rule 30(d), SCRCP. In addition, counsel shall have an affirmative duty to inform a witness that, unless such an objection is made, the question must be answered. Counsel directing that a witness not answer a question on those grounds or allowing a witness to refuse to answer a question on those grounds shall move the court for a protective order under Rule 26(c), SCRCP, or 30(d), SCRCP, within five business days of the suspension or termination of the deposition. Failure to timely file such a motion will constitute waiver of the objection, and the deposition may be reconvened.

Rule 30(j)(3), SCRCP (footnote omitted).

Here, Mr. Geitner's Atlanta counsel did direct that the witness not answer the question, but was prohibited from doing so unless counsel made an objection on the ground that (1) the answer was protected by a privilege, or (2) the answer was protected by a limitation on evidence directed by the court, or (3) counsel intended to present a motion under Rule 30(d), SCRCP to terminate or limit examination on a showing of bad faith or unreasonable annoyance, embarrassment or oppression of the deponent. Rule 30(j)(3).

Counsel made no such objection: (1) no privilege was raised[5]; (2) there was no court order concerning the settlement agreement or its subject matter; and (3) counsel neither

---

[5] In *Polston v. Eli Lilly and Co.*, 2010 WL 2926159, *1 (D.S.C. 2010), Judge Anderson declared categorically:

> The Fourth Circuit has never recognized a settlement privilege or required a particularized showing in the context of a subpoena for confidential settlement documents. Nor can the court find any statute or rule excepting a confidential settlement agreement from Rule 26(b)(1). Accordingly, the only question before the court is whether any information in the [settlement] agreement is relevant, and not unduly burdensome to produce.

Id.; *accord*, *Wilshire v. WFOI, LLC*, 4:13-cv-03614 (D.S.C. 2015) (R. Bryan Harwell, J.); *see also In re MI Windows & Doors, Inc., Prod. Liab. Litig.*, MDL No. 2333, Case No. 2:12-mn-00001 (D.S.C. June 18, 2013) (Capra, Special Master)("the case law in the District of South Carolina is clear").

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announced any intention to make, nor made, any motion pursuant to Rule 30(d). Accordingly, Mr. Geitner's counsel had "an affirmative duty to inform [the] witness that, unless such an objection is made, the question must be answered." Rule 30(j)(3), SCRCP.

Further, counsel directing that a witness not answer a question on any of those three grounds or allowing a witness to refuse to answer a question on those grounds was required to "move the court for a protective order under Rule 26(c), SCRCP, or 30(d), SCRCP, within five business days of the suspension or termination of the deposition." Rule 30(j)(3), SCRCP. Mr. Geitner's counsel neither made an objection on any of those three grounds nor made a motion on any grounds at all within five business days.

Failure to timely file such a motion constituted waiver of the objection, and the deposition may be reconvened. Rule 30(j)(3), SCRCP.

Private confidentiality agreements do not trump this Court's subpoena powers or the Act or the South Carolina Rules of Civil Procedure. This is particularly true where, as here, the purpose is to silence a witness and seek to conceal relevant and otherwise discoverable facts regarding a pending litigation. Even if a confidentiality agreement were a permissible ground for an objection under Rule 30(j)(3) – which it is not – and even if Mr. Geitner's counsel had made a timely motion with respect to the objection – which she did not, numerous courts have directly addressed this precise issue. The substantial weight of authority is that private confidentiality agreements cannot be utilized to suppress discovery of facts relevant in a related but distinct lawsuit. The following cases support that proposition:[6]

- *Gen. Steel Domestic Sales, LLC v. Steel Wise, LLC*, No. 07-cv-01145-DME-KMT, 2009 WL 185614, at *8 (D. Colo. Jan. 23, 2009) (finding confidentiality provisions in

[6] Mr. Geitner's counsel cited no contrary authority at the hearing or otherwise.

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settlement agreements were null and void on public policy grounds; "[E]ven when private confidentiality agreements are enforced, not all *factual matters* concerning the settled case will necessarily be muzzled; often courts will protect the terms of the settlement but will not allow a confidentiality agreement to prevent discovery directed to witnesses who can testify to otherwise admissible factual matters");

- *Gotham Holdings, LP v. Health Grades, Inc.*, 580 F.3d 664, 665 (7th Cir. 2009) (affirming trial court order compelling production of documents pursuant to subpoena despite recipient's confidentiality agreement; "[A] person's desire for confidentiality is not honored in litigation. Trade secrets, privileges, and statutes or rules requiring confidentiality must be respected ... but litigants' preference for secrecy does not create a legal bar to disclosure");
- *In re Application of O'Keeffe*, No. 2:14-cv-01518-RFB-CWH, 2016 WL 2771697, at *4 (D. Nev. Apr. 4, 2016) (granting motion to issue subpoena; "[L]itigants cannot shield otherwise discoverable information from disclosure to others by agreeing to maintain its confidentiality, and cannot modify the Federal Rules of Civil Procedure by agreement") (citation omitted);
- *Green v. Cosby*, 314 F.R.D. 164, 170 (E.D. Pa. 2016) (denying motion to quash subpoena for attorney's case file in separate actions despite confidential settlement agreement; "[T]here is no Federal Rule of Civil Procedure, or legal precedent, that requires Plaintiffs to provide a compelling justification for the disclosure in discovery of materials deemed confidential pursuant to a private settlement agreement");
- *Sonnino v. Univ. of Kan. Hosp. Auth.*, No. Civ. A. 02-2576-KHV-DJ, 2004 WL 769325, at *3 (D. Kan. Apr. 8, 2004) (granting motion to compel interrogatory response; "Parties

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cannot create a privilege against civil discovery by mere written agreement. Moreover, the mere fact that the settling parties agree to maintain the confidentiality of their agreement cannot serve to shield it from discovery");

- *Gutter v. E.I. DuPont de Nemours and Co.*, No. 95-2152, CIV-GOLD, 2001 WL 36086590, at *1 (S.D. Fl. Jan. 31, 2001) (compelling production of settlement agreements in related lawsuits; "Litigants cannot shield a settlement agreement from discovery merely because it contains confidentiality provisions if it itself is relevant to the subject matter of the action, or is likely to lead to relevant evidence. ... This is particularly true when confidentiality provisions may have the effect of silencing witnesses with a settlement agreement where the facts of one controversy are relevant to another") (citations and punctuation omitted);
- *Channelmark Corp. v. Destination Prods., Inc.*, No. 99 C 214, 2000 WL 968818, at *5 (N.D. Ill. July 7, 2000) (granting motion to enforce subpoena; "To permit parties to silence a witness through enforcement of settlement agreements would allow a defendant to continue a pattern of harmful behavior while being shielded from the legal system");
- *Tribune Co. v. Purcigliotti*, No. 93 Civ. 7222 (LAP) (THK), 1996 WL 337277, at *3 (S.D.N.Y. June 19, 1996) (compelling production of settlement agreement; "[T]he mere fact that the settling parties agreed to maintain the confidentiality of their agreement cannot serve to shield it from discovery");
- *Wendt v. Walden Univ., Inc.*, No. CIV. 4-95-467, 1996 WL 84668, at *2 (D. Minn. Jan. 16, 1996) ("While parties have the freedom to contract, courts must carefully police the circumstances under which legitimate areas of public concern are concealed. ...

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Defendants should not be able to buy the silence of witnesses with a settlement agreement when the facts of one controversy are relevant to another");

- *Barger v. Garden Way, Inc.*, 499 S.E.2d 737, 741 (Ga. Ct. App. 1998) (holding confidential settlement agreements that defendant entered into in other cases were unenforceable to extent that they purported to preclude discovery from witnesses who entered into those confidentiality agreements; "The public policy of Georgia does not permit parties to contract privately for the confidentiality of documents or testimony, and thereby foreclose others from obtaining, in the course of litigation, materials that are relevant to their efforts to vindicate a legal position") (citation and punctuation omitted);
- *Scott v. Nelson*, 697 So. 2d 1300, 1301 (Fla. Dist. Ct. App. 1997) (denying petition for protective order from deposition based on settlement agreement in prior related action; "While settlement is an important objective, an overzealous quest for alternative dispute resolution can distort the proper role of the court.... [S]ettlement agreements which suppress evidence violate the greater public policy") (citation and punctuation omitted);

A party refusing to answer a question at a deposition bears the burden of demonstrating the validity of the objection. Rule 30(j)(3), SCRCP. The foregoing decisions and authorities are ample reason to compel answers, particularly given Mr. Geitner's failure to cite any contrary authority.

The object of all legal proceedings is the discovery of truth. Accordingly, in a civil action, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action ...." Rule 26(b)(1), SCRCP. "The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what

facts are concealed." *In re Anonymous Member of South Carolina Bar*, 552 S.E.2d 10, 18 (S.C. 2001) (citation and punctuation omitted).

Parties cannot contract around this interest. *See, e.g., Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477, 480 (S.C. 2012) ("It is axiomatic that freedom of contract is subordinate to public policy, and agreements that are contrary to public policy are illegal") (citation and punctuation omitted). The public interest would be actively undermined by enforcing settlement agreements that attempt to buy the silence of witnesses and otherwise suppress evidence that is relevant to a related but distinct dispute.

This Court rejects the sole argument proffered by Mr. Geitner's counsel in opposition to Plaintiff Sims' motion -- that this Court not rule on the motion and leave it to the courts of Georgia for resolution, given that Mr. Geitner has now been made a party to that case. This Court has a duty to enforce its own subpoenas and an interest in the enforcement of its subpoenas, as well as a duty to enforce the rules that govern depositions taken in South Carolina pursuant to the Act and properly issued subpoenas. Mr. Gietner's refusal to answer relevant questions during his deposition is a violation of South Carolina Rules, and it is incumbent upon this Court to enforce those rules. Additionally, if this Court were to decline to enforce the rules that Mr. Geitner does not dispute violating, Plaintiff Sims would be required to again start the process of noticing and taking Mr. Geitner's deposition in the Georgia case, and likely face this very issue again (particularly given Mr. Geitner's suggested relief), resulting in added unnecessary and considerable delay and expense for Plaintiff Sims that in no way can be justified.

Accordingly, IT IS HEREBY ORDERED that Mr. Geitner appear at a mutually convenient time and date within the next thirty (30) days to resume his deposition and

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FURTHER ORDERED that Mr. Geitner to fully respond to Plaintiff Sims's inquiries regarding the settlement agreement and payments to Mr. Mackay. Plaintiff's counsel is directed to submit an affidavit to the Court regarding Plaintiff's cost of this motion within fourteen (14) days of the entry of this Order, and the Court will consider an award of the same against Mr. Geitner. The fact that Mr. Geitner offered no defense whatsoever to this motion or legal justification for his refusal to answer the questions posed, strongly support the award of such costs.[7]

The Honorable Doyet A. Early, III
Circuit Court Judge, Second Judicial Circuit

Date: _____

[7] As is indicated above, the only argument advanced by Mr. Geitner is that because he is now a party to the Georgia action, the Georgia court should handle this issue. That position does not justify his refusal to answer the questions posed, particularly given that Mr. Geitner was added as a party defendant in the Georgia case after his deposition and after this issue arose.

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Aiken Common Pleas

Case Caption: Kelly Sims VS Sharon Enteen Prusso , defendant, et al

Case Number: 2018CP0200675

Type: Order/Compel

So Ordered

s/D.A. Early III 2136

2018CP0200675

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF AIKEN

KELLY SIMS, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

SHARON ENTEEN PRUSSO aka SHARON ENTEEN , and FALCON RIDGE, INC., Defendants

Case Number: 18cve0059

Pending in CHEROKEE County, GEORGIA

TO: DANIEL GEITNER, 1224 Sizemore Road, Aiken, South Carolina 29803

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Hilton Garden Inn, 350 Eastgate Dr., Aiken, SC 29803	05/09/18, 9:00 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE EXHIBIT 1

PLACE	DATE AND TIME: SEE ABOVE
SEE ABOVE	

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
	, AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature — 03/21/18 Date — William Daniel Davis Print Name

Indicate if Attorney for Plaintiff

Attorney's Address and Telephone Number :

ICHTER DAVIS, LLC, 3340 Peachtree Road, NE, Suite 1530, Atlanta, GA 30326

404-869-7600

Robert J Harte by Shadell Parks DJC — 3-22-18 Date — Robert J Harte by Shadell Parks DJC Print Name

Clerk of Court/Issuing Officer's Signature

Pro Se Litigant's Name, Address and Telephone Number :

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A)A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

2018CP0200675

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

FILED 3-22 2018 3:26 SP
C.C.C.P. & G.S.
Shadell Parks
Deputy Clerk

KELLY SIMS,

Plaintiff,

v.

SHARON ENTEEN PRUSSO aka SHARON ENTEEN, and FALCON RIDGE, INC.

Defendants.

Civil Action No. 18cve0059

SUBPOENA FOR DEPOSITION AND PRODUCTION OF DOCUMENTS

To: Daniel F. Geitner
1224 Sizemore Road
Aiken, South Carolina 29803

GREETINGS:

Pursuant to O.C.G.A. §§ 9-11-30 and 9-11-45, you are required to be and appear at Hilton Garden Inn, 350 Eastgate Drive, Aiken, South Carolina 29803 at 9:00 a.m. on May 9, 2018, to give your deposition upon oral examination in *Sims v. Enteen Prusso, et al.*, Superior Court of Cherokee County, Georgia, Civil Action No. 18cve0059, and to bring with you copies of the documents listed in Exhibit "1."

Herein fail not, under penalty of law.

Witness, Jackson Harris, Chief Judge of said Court, this 20 day of March, 2018.

Julie West
Deputy Clerk
Superior Court of Cherokee County, Georgia
Blue Ridge Judicial Circuit

SEAL

Inquiries should be directed to:

William Daniel Davis
Ichter Davis LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, Georgia 30326
404.869.7600
404.869.7610 (F)
ddavis@ichterdavis.com

Attorneys for Kelly Sims

EXHIBIT "1"

FILED 3-22 2018 3:26 SP
C.C.C.P. & G.S.
Deputy Clerk

Definitions

1. "Documents" means any and all manner of written, typed, printed, reproduced, photographed, filmed or recorded materials, including, but not limited to, papers, books, ledgers, statements, memoranda, reports, records, checks, drafts, money orders, invoices, receipts, worksheets, work papers, notes, transcription of notes, letters, correspondence, abstracts, diagrams, plans, blueprints, specifications, pictures, drawings, charts, graphs, films, photographs, diaries, calendars, lists, logs, advertisements, press releases, instructions, minutes, appraisals, messages, records, summaries, agreements, contracts, recordings, audio tapes, visual tapes, and transcriptions of tapes or recordings. "Document" and "Documents" also means any and all information and data stored in digital form, including, but not limited to, word processing documents, **e-mail**, tweets, **text messages**, web pages, audio and visual files, and database material, located on or accessible exclusively by a computing device, including, but not limited to, servers, desktops, laptops, cell phones, hard drives, flash drives, and personal digital assistants.

2. "Communications" and any variant thereof means any conversation or oral or written contact, formal or informal, under any circumstances whatsoever, whereby information or data of any nature was transmitted or transferred. It includes, but is not limited to, meetings, telephone conversations, discussions, correspondence, reports, summaries, memoranda, notes, audio and/or visual recordings, and **text messages**.

3. "Relate," "concern," and "relevant to" and any variants thereof mean mentioning, describing, predating to, being in connection with, reflecting upon, referring to, alluding to, responding to, commenting on, in respect to, about, regarding, showing, contrasting, comparing, contradicting or analyzing, whether directly or indirectly.

Production Requests

1. Any and all documents evidencing Daniel F. Geitner and/or Cathy Geitner's ownership, in whole or in part, directly or indirectly, in the horse Eleventh Hour a/k/a Nick, USEF # 5382857.

2. Any and all documents relating, referring or otherwise relevant to the medical history of the horse Eleventh Hour a/k/a Nick, USEF # 5382857.

3. Any and all documents evidencing anything of value Daniel F. Geitner and/or Cathy Geitner received, directly or indirectly, in connection with Kelly Sims' purchase of the horse Eleventh Hour a/k/a Nick, USEF # 5382857.

4. Any and all documents evidencing any communications between Daniel F. Geitner, Cathy Geitner, and/or Daniel Geitner Stables, Inc., on the one hand, and any other person or entity, including, but not limited to, Sharon Enteen Prusso aka Sharon Enteen, Falcon Ridge, Inc., and/or any affiliate of Falcon Ridge, Inc., that refers, directly or indirectly, to Kelly Sims.

5. Any and all documents evidencing any communications between Daniel F. Geitner, Cathy Geitner, and/or Daniel Geitner Stables, Inc., on the one hand, and any other person or entity, including, but not limited to, Sharon Enteen Prusso aka Sharon Enteen, Falcon Ridge, Inc., and/or any affiliate of Falcon Ridge, Inc., that refers, directly or indirectly, to the following horses: True Story, USEF # 5348940; Rock A Bye a/k/a Henry, USEF # 5269284; Charisma a/k/a Chanel, USEF # 5368942; Amadeo, USEF # 5177556; Esco, USEF # 5262012; True Enough, USEF # 5461417 or 5262012; Eleventh Hour a/k/a Nick, USEF # 5382857; Raffle, USEF # unknown; Remix, USEF # 5353246; and/or Sam, USEF # unknown.

6. Any and all documents relating, referring or otherwise relevant to anything of value that Sharon Enteen Prusso aka Sharon Enteen and/or Falcon Ridge, Inc. received in connection

with any transaction involving the following horses: True Story, USEF # 5348940; Rock A Bye a/k/a Henry, USEF # 5269284; Charisma a/k/a Chanel, USEF # 5368942; Amadeo, USEF # 5177556; Esco, USEF # 5262012; True Enough, USEF # 5461417 or 5262012; Eleventh Hour a/k/a Nick, USEF # 5382857; Raffle, USEF # unknown; Remix, USEF # 5353246; and/or Sam, USEF # unknown.

7. Any and all documents that refer, relate or are otherwise relevant to the following horses: True Story, USEF # 5348940; Rock A Bye a/k/a Henry, USEF # 5269284; Charisma a/k/a Chanel, USEF # 5368942; Amadeo, USEF # 5177556; Esco, USEF # 5262012; True Enough, USEF # 5461417 or 5262012; Eleventh Hour a/k/a Nick, USEF # 5382857; Raffle, USEF # unknown; Remix, USEF # 5353246; and/or Sam, USEF # unknown.

8. Any and all documents relevant to the allegations in the Complaint, Answer, and/or Counterclaims in *Sims v. Enteen Prusso, et al.*, Superior Court of Cherokee County, Georgia, Civil Action No. 18cve0059, copies of which are attached hereto as composite **Exhibit "a."**

FILED 3-22 2018 3:20 SP
C.C.C.P. & G.S.
Deputy Clerk

EXHIBIT "a"

Superior Court of Cherokee County
E-Filed
18cve0059
1/12/2018 1:47 PM CM
Patty Baker, Clerk
Civil Division

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

KELLY SIMS, Plaintiff, v. SHARON ENTEEN PRUSSO aka SHARON ENTEEN, and FALCON RIDGE, INC. Defendants.	Civil Action No. 18cve0059 JURY DEMANDED

COMPLAINT

For her Complaint against Sharon Enteen Prusso aka Sharon Prusso and Falcon Ridge, Inc., Kelly Sims alleges as follows:

Introduction

1. This is an action for breach of fiduciary duty and fraud. Plaintiff Kelly Sims engaged Defendant Sharon Enteen Prusso aka Sharon Enteen ("Defendant Enteen") as a horse buying agent with respect to ten (10) transactions totaling $1.585 million. Defendant Enteen misrepresented the true selling price of various horses to draw secret remuneration and inflate the size of the commissions she was otherwise entitled to receive.

Parties, Jurisdiction and Venue

2. Plaintiff Kelly Sims ("Mrs. Sims") is a natural person domiciled and residing in Georgia.

3. Defendant Sharon Enteen Prusso aka Sharon Enteen ("Defendant Enteen") is a natural person domiciled and residing in Cherokee County, Georgia. Defendant Enteen may be served with process by delivering a copy of the Summons and this Complaint to her personally at 347 Arnold Mill Road, Woodstock, Cherokee County, Georgia 30188.

4. Defendant Falcon Ridge, Inc. ("Falcon Ridge Stables") is a domestic profit corporation. Falcon Ridge Stables may be served with process by delivering a copy of the Summons and this Complaint its registered agent, Sharon Enteen, at 347 Arnold Mill Road, Woodstock, Cherokee County, Georgia 30188.

5. This Court has jurisdiction over the subject matter of this action.

6. This Court has jurisdiction over Defendant Enteen's person.

7. Venue in Cherokee County is proper.

Background Facts

8. Mrs. Sims is an equine enthusiast.

9. Defendant Enteen is the CEO of Falcon Ridge Stables, a horse boarding barn that also offers lessons and training in the three major horse show categories: hunting, jumping, and equitation.

10. In or around early 2015, Mrs. Sims retained Defendant Enteen as her horse buying agent. Defendant Enteen's duties and responsibilities included locating and recommending suitable horses, participating in pre-purchase "vetting" and disclosing the results of same to Mrs. Sims, and negotiating purchase and sale agreements at fair market value. Defendant Enteen was to be compensated for these services by receiving a commission based on the sale price paid to the seller.

11. Using Defendant Enteen as her agent, Mrs. Sims engaged in the following transactions:

Horse	Price Paid	Commission Paid to Defendant Enteen
True Story	$175,000	$26,250 (15%)
Rock A Bye aka Henry	$245,000	$36,750 (15%)
Charisma aka Chanel	$150,000	N/A
Amadeo	$30,000	$15,000 (15%)
Esco	$185,000	$15,000 (15% of initial $100,000 tranche)
True Enough	$200,000	$30,000 (15%)
Eleventh Hour aka Nick	$275,000	$27,500 (10%)
Raffle	$100,000	$10,000 (10%)
Remix	$185,000	$15,000 (15% of initial $100,000 tranche)
Sam	$40,000	$6,000

Raffle

12. Mrs. Sims most recent purchase was Raffle, which was owned by a third party but stabled at Falcon Ridge Stables under Defendant Enteen's care and supervision.

13. On or about October 18, 2017, Mrs. Sims took Raffle to a horse show in Ohio, where he was shown by Michael Leon, a trainer then affiliated with Falcon Ridge Stables.

14. Raffle did not place and was disqualified from future competition due to laryngeal hemiplegia aka roaring (an upper airway obstruction).

15. Mrs. Sims had no knowledge Raffle suffered from roaring prior to her purchase. Defendant Enteen never disclosed Raffle's condition to Mrs. Sims.

16. Since Raffle was stabled at Falcon Ridge Stables under Defendant Enteen's care and supervision, Defendant Enteen would have known about Raffle's roaring.

17. After Mrs. Sims discovered Raffle's roaring, Defendant Enteen admitted she had been treating Raffles for roaring. As a result, Raffle's roaring would not have been apparent during the pre-purchase vetting that Mrs. Sims paid for.

18. A subsequent veterinary examination revealed that Raffle's throat had been previously been operated on.

19. Mrs. Sims alleges upon information and belief that Defendant Enteen conspired with Raffle's owners and/or their agent, Daniel F. Geitner, to conceal Raffle's roaring for the purposes of defrauding Mrs. Sims.

20. Mrs. Sims rescinded her purchase of Raffle and recouped the commission she paid Defendant Enteen by deducting it from amounts invoiced by Falcon Ridge Stables for the stabling of Mrs. Sims' various horses.

Eleventh Hour aka Nick

21. In or around October 2017, Defendant Enteen terminated the relationship between Falcon Ridge Stables and Michael Leon.

22. Mrs. Sims and/or Clarity Farms then retained Mr. Leon's services.

23. On or about December 20, 2017, Bill Mackay, the husband of Nick's purported former owner, called Mr. Leon and disclosed that Nick had previously suffered from a suspensory ligament injury. Mr. Leon informed Mrs. Sims of such.

24. On or about December 27, 2017, Mrs. Sims returned Mr. Mackay's calls and text messages, who disclosed that Nick was partially owned by Daniel F. Geitner; that Nick has undergone surgery to have a bone chip removed from his right hoof; and that Nick had suffered from lameness following a horse show in 2015.

25. Mrs. Sims had no knowledge of Nick's prior health issues. Defendant Enteen never disclosed any of the foregoing to Mrs. Sims.

26. During this same conversation, Mr. Mackay disclosed that he had received $140,000, and Mr. Geitner had received $60,000 (inclusive of his commission), for the sale of Nick.

27. On top of the $75,000 in undisclosed profit Defendant Enteen received from this transaction, Mrs. Sims separately paid Defendant Enteen $27,500 as her buyer's agent commission.

28. Mrs. Sims has demanded Defendant Enteen refund the $75,000 she secretly received from Mrs. Sims' purchase of Nick. Defendant Enteen has ignored these demands.

29. Mrs. Sims alleges upon information and belief that Defendant Enteen has earned secret "commissions" on additional transactions.

30. Mrs. Sims has demanded Defendant Enteen render a full disclosure and accounting. Defendant Enteen has also ignored these demands.

Count I: Breach of Contract
(Against Defendant Enteen)

31. Mrs. Sims incorporates Paragraphs 1 through 30 of her Complaint by reference herein.

32. Mrs. Sims was party to a contract with Defendant Enteen pursuant to which Defendant Enteen acted as Mrs. Sims' horse buying agent in exchange for a commission from the sale price paid to the seller for the horse's fair market value.

33. As alleged herein, Defendant Enteen breached that contract.

34. As a direct and proximate result of Defendant Enteen's breach of her contract with Mrs. Sims, Mrs. Sims has been damaged by overpaying for the horses she has purchased using Defendant Enteen as her agent.

35. Mrs. Sims has performed all conditions precedent to enforcement of Defendant Enteen's promises and/or Defendant Enteen has waived same.

Count II: Breach of Fiduciary Duty
(Against Defendant Enteen)

36. Mrs. Sims incorporates Paragraphs 1 through 30 of her Complaint by reference herein.

37. As Mrs. Sims' agent, Defendant Enteen had a fiduciary duty to Mrs. Sims.

38. As alleged herein, Defendant Enteen breached that duty. Specifically, although without limitation, Defendant Enteen breached her duty of loyalty by lying to Mrs. Sims about the actual purchase price of various horses to personally enrich herself at Mrs. Sims' expense.

39. As a direct and proximate result of Defendant Enteen's breach of her fiduciary duty to Mrs. Sims, Mrs. Sims has been damaged by overpaying for the horses she has purchased using Defendant Enteen as her agent.

Count III: Clawback of All Commissions Paid
(Against Defendant Enteen)

40. Mrs. Sims incorporates Paragraphs 1 through 30 and 37 through 39 of her Complaint by reference herein.

41. As an unfaithful agent, Defendant Enteen is not entitled to retain any commissions paid, even if otherwise appropriately earned, during the period she was unfaithful to Mrs. Sims. *See* O.C.G.A. § 10-6-31.

Count IV: Fraud
(Against Defendant Enteen)

42. Mrs. Sims incorporates Paragraphs 1 through 30 of her Complaint by reference herein.

43. Defendant Enteen falsely represented the actual purchase price of various horses to Mrs. Sims and the amount of compensation she would receive from the transactions at issue.

44. Defendant Enteen knew these representations were false and intended to deceive Mrs. Sims because the inflated prices were attributable to undisclosed compensation she was personally receiving.

45. Defendant Enteen fully intended to induce Mrs. Sims to purchase various horses at inflated prices so she could personally profit.

46. Mrs. Sims justifiably and reasonably relied on Defendant Enteen's representations. Defendant Enteen was Mrs. Sims' agent, and Mrs. Sims was entitled to place trust and confidence in Defendant Enteen.

47. As a direct and proximate result of Defendant Enteen's misrepresentations, Mrs. Sims has been damaged by overpaying for the horses she has purchased using Defendant Enteen as her agent.

48. As an agent with fiduciary duties, Defendant Enteen owed Mrs. Sims a duty of candor and affirmative disclosure.

49. Defendant Enteen concealed that she was personally profiting from Mrs. Sims' purchase of various horses.

40. Defendant Enteen intended to deceive Mrs. Sims.

51. Defendant Enteen fully intended to induce Mrs. Sims to purchase various horses at inflated prices so she could personally profit.

52. As a direct and proximate result of Defendant Enteen's concealment of material facts, Mrs. Sims has been damaged by overpaying for the horses she has purchased using Defendant Enteen as her agent.

Count V: Punitive Damages
(Against Defendant Enteen)

52. Mrs. Sims incorporates Paragraphs 1 through 30, 37 through 39, and 43 through 52 of her Complaint by reference herein.

53. As alleged herein, Defendant Enteen's actions show willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences. Accordingly, Mrs. Sims seeks, and is entitled to recover, punitive damages from Defendant Enteen in an amount sufficient to penalize, punish or deter Defendant Enteen.

Count VI: Unjust Enrichment
(Against Both Defendants)

54. Mrs. Sims incorporates Paragraphs 1 through 30 of her Complaint by reference herein.

55. Mrs. Sims paid certain commissions to Defendant Enteen and other commission to Falcon Ridge Stables.

56. Those commissions were improperly inflated due to the undisclosed compensation added to the actual purchase price of the horses at issue.

57. Mrs. Sims alleges upon information and belief Falcon Ridge Stables also received, directly or indirectly, some portion of the amounts improperly and illegally added to the purported purchase price of the horses at issue.

58. Mrs. Sims has conferred a benefit on Defendants and they equitably ought to return or compensate for that benefit.

Count VII: Expenses of Litigation
(Against Both Defendants)

59. Mrs. Sims incorporates Paragraphs 1 through 59 of her Complaint by reference herein.

60. As alleged herein, Defendants has acted in bad faith and been stubbornly litigious by simply ignoring Mrs. Sims' attempts to resolve this matter short of litigation. As a result, Mrs. Sims seeks, and is entitled to recover, her expenses of litigation, including reasonable attorneys' fees, pursuant to O.C.G.A. § 13-6-11.

Prayer for Relief

Accordingly, Mrs. Sims asks the Court to:

a. Enter judgment against Defendant Enteen on Count I (breach of contract) and award Mrs. Sims all monetary damages, direct and consequential, general and special, actual or nominal, to which she is entitled;

b. Enter judgment against Defendant Enteen on Count II (breach of fiduciary duty) and award Mrs. Sims all monetary damages, direct and consequential, general and special, actual or nominal, to which she is entitled;

c. Enter judgment against Defendant Enteen on Count III (clawback of all commissions paid) and require Defendant Enteen to return all commissions received from Mrs. Sims;

d. Enter judgment against Defendant Enteen on Count IV (fraud) and award Mrs. Sims all monetary damages, direct and consequential, general and special, actual or nominal, to which she is entitled;

e. Award Mrs. Sims punitive damages (Count V);

f. Enter judgment against Defendant Enteen and Defendant Falcon Ridge Stables on Count VI (unjust enrichment) and award Mrs. Sims all monetary damages, direct and consequential, general and special, actual or nominal, to which she is entitled;

g. Require Defendant Enteen and Defendant Falcon Ridge Stables to pay Mrs. Sims' expenses of litigation, including reasonable attorneys' fees (Count VII);

h. Tax Defendant Enteen with all costs of this action; and

i. Award Mrs. Sims such other and further relief as the Court deems fair and proper.

Dated: January 12, 2018.

Cary Ichter
Georgia Bar No. 382515
William Daniel Davis
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Attorneys for Plaintiff Kelly Sims

Superior Court of Cherokee County
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18CVE0059
2/21/2018 4:26 PM JR
Patty Baker, Clerk
Civil Division

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

KELLY SIMS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action File
	)	Number: 18cve0059
SHARON ENTEEN PRUSSO aka	)	
SHARON ENTEEN, and	)	
FALCON RIDGE, INC.	)	
	)	
Defendants.	)	

ANSWER OF DEFENDANT SHARON ENTEEN PRUSSO aka SHARON ENTEEN

COMES NOW defendant SHARON ENTEEN PRUSSO aka SHARON ENTEEN (hereinafter "SE"), and in response to Plaintiffs' Complaint states as follows:

Affirmative Defenses

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief can be granted against SE.

SECOND AFFIRMATIVE DEFENSE

This Complaint is barred in whole or in party by laches.

THIRD AFFIRMATIVE DEFENSE

This Complaint is barred in whole or in party by Plaintiffs' unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim for punitive, actual, special exemplary, liquidated and/or compensatory damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to establish that Defendant breached any duty she may have owed to Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

No act or omission of Defendant either proximately caused or contributed to any injuries or damages allegedly incurred by Plaintiff; therefore, Plaintiff has no right of recovery against Defendant.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for punitive damages. If however Plaintiff has stated a claim for punitive damages against Defendant, such punitive damages are limited to a maximum of $250,000. O.C.G.A. §51-12-5.1(g).

Subject to and without waving the foregoing defenses, SE responds to the allegations within the individually numbered paragraphs of the Complaint as follows:

1.

Paragraph #1 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by SE.

2.

SE admits the allegations of fact contained in paragraph #2 of the Complaint.

3.

SE admits the allegations of fact contained in paragraph #3 of the Complaint.

4.

SE admits the allegations of fact contained in paragraph #4 of the Complaint.

5.

Paragraph #5 of the Complaint contains assertions of law that cannot be admitted or denied by SE.

6.

Paragraph #6 of the Complaint contains assertions of law that cannot be admitted or denied by SE.

7.

Paragraph #7 of the Complaint contains assertions of law that cannot be admitted or denied by SE.

8.

SE admits the allegations of fact contained in paragraph #8 of the Complaint.

9.

SE admits the allegations of fact contained in paragraph #9 of the Complaint.

10.

SE denies that Plaintiff retained her as her horse buying agent. SE admits that she located and recommended suitable horses and was paid commission based on the sale price paid to the seller. SE denies all other allegations of fact contained in paragraph #10 of the Complaint.

11.

SE cannot admit or deny the assertions of law in paragraph #11 of the Complaint. SE admits Sims engaged in the following transactions and paid commissions to FR:

Horse	**Price Paid**	**Commission paid**
Purchase of True Story	$175,000	$26,250 (15%)
Sale of Rock A Bye	$245,000	$36,750 (15%)

Purchase of Charisma	$150,000	0
Purchase of Amadeo	$30,000	$4,500
Purchase of Esco	$85,000	$12,750 still owed to Defendant
Purchase of True Enough	$200,000	$30,000
Purchase of Eleventh Hour	$275,000	$41,250
Purchase of Raffle	$100,000	$10,000 Money was returned
Sale of Remix	$185,000	$15,000 still owed to Defendant
Sale of Sam	$40,000	$6,000

12.

SE admits the allegations of fact contained in paragraph #12 of the Complaint.

13.

SE admits the allegations of fact contained in paragraph #13 of the Complaint.

14.

SE is unable to admit or deny the allegations of fact contained in paragraph #14 of the Complaint.

15.

SE is unable to admit or deny what Plaintiff knew about Raffle's health. SE would not advise Plaintiff or anyone that Raffle roared as that is a subjective term and the horse both passed the pre-purchase vet exam and placed in horse shows both before and after Plaintiff purchased the horse.

16.

SE admits the allegations of fact contained in paragraph #16 of the Complaint.

17.

SE admits that she advised Plaintiff she had been treating Raffles for roaring, but denies the remaining allegations of fact contained in paragraph #17 of the Complaint.

18.

SE admits the allegations of fact contained in paragraph #18 of the Complaint.

19.

SE denies the allegations of fact and law contained in paragraph #19 of the Complaint.

20.

SE admits the allegations of fact contained in paragraph #20 of the Complaint.

21.

SE admits the allegations of fact contained in paragraph #21 of the Complaint.

22.

SE admits the allegations of fact contained in paragraph #22 of the Complaint.

23.

SE is unable to admit or deny the allegations of fact contained in paragraph #23 of the Complaint.

24.

SE is unable to admit or deny the allegations of fact contained in paragraph #24 of the Complaint.

25.

SE is unable to admit or deny what Plaintiff had knowledge of regarding Nick's health. FR admits the remaining allegations of fact contained in paragraph #25 of the Complaint.

26.

SE is unable to admit or deny the allegations of fact contained in paragraph #26 of the Complaint.

27.

SE denies that she received $75,000 in undisclosed profit from the Nick transaction, but admits that Plaintiff paid her $27,500 as buyer's agent commission.

28.

SE admits that Plaintiff has demanded that she refund $75,000, but denies the remaining allegations of fact contained in paragraph #28 of the Complaint.

29.

SE denies the allegations of fact contained in paragraph #29 of the Complaint.

30.

SE admits that Plaintiff has demanded full disclosure and accounting, but denies the remaining allegations of fact contained in paragraph #30 of the Complaint.

31.

SE is unable to admit or deny paragraph #31 of the Complaint.

32.

SE denies the allegations of fact contained in paragraph #32 of the Complaint.

33.

Paragraph #33 of the Complaint contains assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #33 contains any other allegations of fact, same are hereby denied.

34.

Paragraph #34 of the Complaint contains assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #34 contains any other allegations of fact, same are hereby denied.

35.

Paragraph #35 of the Complaint contains assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #35 contains any other allegations of fact, same are hereby denied.

36.

SE is unable to admit or deny paragraph #36 of the Complaint.

37.

Paragraph #37 of the Complaint contains assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #37 contains any other allegations of fact, same are hereby denied.

38.

Paragraph #38 of the Complaint contains assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #38 contains any other allegations of fact, same are hereby denied.

39.

Paragraph #39 of the Complaint contains assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #39 contains any other allegations of fact, same are hereby denied.

40.

SE is unable to admit or deny paragraph # 40 of the Complaint.

41.

Paragraph #41 of the Complaint contains assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #41 contains any other allegations of fact, same are hereby denied.

42.

SE is unable to admit or deny paragraph #42 of the Complaint.

43.

SE denies the allegations of fact contained in paragraph #43 of the Complaint.

44.

SE denies the allegations of fact contained in paragraph #44 of the Complaint.

45.

SE denies the allegations of fact contained in paragraph #45 of the Complaint.

46.

SE denies the allegations of fact contained in paragraph #46 of the Complaint.

47.

Paragraph #47 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #47 contains any other allegations of fact, same are hereby denied.

48.

Paragraph #48 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #48 contains any other allegations of facts, same are hereby denied.

49.

SE denies the allegations of fact contained in paragraph #49 of the Complaint.

50.

SE denies the allegations of fact contained in paragraph #50 of the Complaint.

51.

SE denies the allegations of fact contained in paragraph #51 of the Complaint.

52.

Paragraph #52 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #52 contains any other allegations of fact, same are hereby denied.

The Second 52

SE is unable to admit or deny the second paragraph #52 of the Complaint.

53.

Paragraph #53 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #53 contains other allegations of fact, same are hereby denied.

54.

SE is unable to admit or deny paragraph #54 of the Complaint.

55.

SE denies that commissions were paid to her, and admits commissions were wired to Falcon Ridge Stables.

56.

SE denies the allegations of fact contained in paragraph #56 of the Complaint.

57.

SE denies the allegations of fact contained in paragraph #57 of the Complaint.

58.

Paragraph #58 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #58 contains any other allegations of fact, same are hereby denied.

59.

SE is unable to admit or deny paragraph #59 of the Complaint.

60.

Paragraph #60 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by SE. To the extent Paragraph #60 contains any other allegations of fact, same are hereby denied.

Each and every allegation of fact contained within the Complaint, not expressly responded to herein, including the WHEREFORE CLAUSE, is expressly denied.

WHEREFORE, SE prays:

a) That Plaintiff is not entitled to relief in any form, content or amount;

b) That the Complaint be dismissed with prejudice and all fees and court costs taxed to the Plaintiff; and

c) That SE have such other further relief as the Court deems just and proper.

This 20 day of Feb, 2018.

LORI J. CHRISTMAN, ESQ.
Georgia Bar No: 125522
Attorney for Defendant Sharon Enteen Prusso aka Sharon Enteen

LORI J. CHRISTMAN, LLC
P.O. Box 244157
Atlanta, GA 30324
(404) 973-0093 (telephone)

LOUIS LEVENSON, ESQ.
Georgia Bar No. 447938
GEORGE LOTT, ESQ
Georgia Bar No.
Attorney for Defendant Sharon Enteen Prusso aka Sharon Enteen

LEVENSON & ASSOCIATES
125 BROAD STREET, SW
ATLANTA, GA 30303
(404)659-5000 (telephone)

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

KELLY SIMS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action File
	)	Number: 18cve0059
SHARON ENTEEN PRUSSO aka	)	
SHARON ENTEEN, and	)	
FALCON RIDGE, INC.	)	
	)	
Defendants.	)	

VERIFICATION

Personally appeared before the undersigned officer duly authorized by law to administer oaths, SHARON ENTEEN PRUSSO aka SHARON ENTEEN, who being first duly sworn, deposes and says that the facts set forth in the within and foregoing ANSWER OF DEFENDANT SHARON ENTEEN PRUSSO aka SHARON ENTEEN are true and correct to the best of her knowledge and belief.

This 14 day of February, 2018.

Sharon Enteen Prusso aka Sharon Enteen

Sworn to and subscribed before me
This 14 day of February, 2018

My Commission Expires

LORI CHRISTMAN NOTARY PUBLIC DEKALB COUNTY, GEORGIA MY COMMISSION EXPIRES AUGUST 28, 2021

Superior Court of Cherokee County
E-Filed
18CVE0059
2/22/2018 11:21 AM JR
Patty Baker, Clerk
Civil Division

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

KELLY SIMS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action File
	)	Number: 18cve0059
SHARON ENTEEN PRUSSO aka	)	
SHARON ENTEEN, and	)	
FALCON RIDGE, INC.	)	
	)	
Defendants.	)	

ANSWER AND COUNTERCLAIM OF DEFENDANT FALCON RIDGE, INC.

COMES NOW defendant FALCON RIDGE, INC. (hereinafter "FR"), and in response to Plaintiffs' Complaint states as follows:

Affirmative Defenses

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief can be granted against FR.

SECOND AFFIRMATIVE DEFENSE

This Complaint is barred in whole or in party by laches.

THIRD AFFIRMATIVE DEFENSE

This Complaint is barred in whole or in party by Plaintiff's unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim for punitive, actual, special exemplary, liquidated and/or compensatory damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to establish that Defendant breached any duty it may have owed to Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

No act or omission of Defendant either proximately caused or contributed to any injuries or damages allegedly incurred by Plaintiff; therefore, Plaintiff has no right of recovery against Defendant.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for punitive damages. If however Plaintiff has stated a claim for punitive damages against Defendant, such punitive damages are limited to a maximum of $250,000. O.C.G.A. §51-12-5.1(g).

Subject to and without waving the foregoing defenses, FR responds to the allegations within the individually numbered paragraphs of the Complaint as follows:

1.

Paragraph #1 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #31 contains any other allegations of fact, same are hereby denied.

2.

FR admits the allegations of fact contained in paragraph #2 of the Complaint.

3.

FR admits the allegations of fact contained in paragraph #3 of the Complaint.

4.

FR admits the allegations of fact contained in paragraph #4 of the Complaint.

5.

Paragraph #5 of the Complaint contains assertions of law that cannot be admitted or denied by FR.

6.

Paragraph #6 of the Complaint contains assertions of law that cannot be admitted or denied by FR.

7.

Paragraph #7 of the Complaint contains assertions of law that cannot be admitted or denied by FR.

8.

FR admits the allegations of fact contained in paragraph #8 of the Complaint.

9.

FR admits the allegations of fact contained in paragraph #9 of the Complaint.

10.

FR denies that Plaintiff retained Defendant Enteen as her horse buying agent. FR admits that Defendant Enteen located and recommended suitable horses and was paid commission based on the sale price paid to the seller. FR denies all other allegations of fact contained in paragraph #10 of the Complaint.

11.

FR cannot admit or deny the assertions of law in paragraph #11 of the Complaint. FR admits Plaintiff engaged in the following transactions and paid the commissions to FR:

Horse	**Price Paid**	**Commission paid**
Purchase of True Story	$175,000	$26,250 (15%)

Sale of Rock A Bye	$245,000	$36,750 (15%)
Purchase of Charisma	$150,000	0
Purchase of Amadeo	$30,000	$4,500
Purchase of Esco	$85,000	$12,750 still owed to Defendant
Purchase of True Enough	$200,000	$30,000
Purchase of Eleventh Hour	$275,000	$41,250
Purchase of Raffle	$100,000	$10,000 Money was returned
Sale of Remix	$185,000	$15,000 still owed to Defendant
Sale of Sam	$40,000	$6,000

12.

FR admits the allegations of fact contained in paragraph #12 of the Complaint.

13.

FR admits the allegations of fact contained in paragraph #13 of the Complaint.

14.

FR is unable to admit or deny the allegations of fact contained in paragraph #14 of the Complaint.

15.

FR is unable to admit or deny what Plaintiff knew about Raffle's health. SE would not advise Plaintiff or anyone that Raffle roared as that is a subjective term and the horse both passed the pre-purchase vet exam and placed in horse shows both before and after Plaintiff purchased the horse.

16.

FR admits the allegations of fact contained in paragraph #16 of the Complaint.

17.

FR admits that SE advised Plaintiff she had been treating Raffles for roaring, but denies the remaining allegations of fact contained in paragraph #17 of the Complaint.

18.

FR admits the allegations of fact contained in paragraph #18 of the Complaint.

19.

FR denies the allegations of fact and law contained in paragraph #19 of the Complaint.

20.

FR admits the allegations of fact contained in paragraph #20 of the Complaint.

21.

FR admits the allegations of fact contained in paragraph #21 of the Complaint.

22.

FR admits the allegations of fact contained in paragraph #22 of the Complaint.

23.

FR is unable to admit or deny the allegations of fact contained in paragraph #23 of the Complaint.

24.

FR is unable to admit or deny the allegations of fact contained in paragraph #24 of the Complaint.

25.

FR is unable to admit or deny what Plaintiff had knowledge of regarding Nick's health. FR admits the remaining allegations of fact contained in paragraph #25 of the Complaint.

26.

FR is unable to admit or deny the allegations of fact contained in paragraph #26 of the Complaint.

27.

FR denies that Defendant Enteen received $75,000 in undisclosed profit from the Nick transaction, but admits that Plaintiff paid Defendant Enteen $27,500 as buyer's agent commission.

28.

FR admits that Plaintiff has demanded that she refund $75,000, but denies the remaining allegations of fact contained in paragraph #28 of the Complaint.

29.

FR denies the allegations of fact contained in paragraph #29 of the Complaint.

30.

FR admits that Plaintiff has demanded full disclosure and accounting, but denies the remaining allegations of fact contained in paragraph #30 of the Complaint.

31.

FR is unable to admit or deny paragraph #31 of the Complaint.

32.

FR denies the allegations of fact contained in paragraph #32 of the Complaint.

33.

Paragraph #33 of the Complaint contains assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #33 contains any other allegations of fact, same are hereby denied.

34.

Paragraph #34 of the Complaint contains assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #34 contains any other allegations of fact, same are hereby denied.

35.

Paragraph #35 of the Complaint contains assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #35 contains any other allegations of fact, same are hereby denied.

36.

FR is unable to admit or deny paragraph #36 of the Complaint.

37.

Paragraph #37 of the Complaint contains assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #37 contains any other allegations of fact, same are hereby denied.

38.

Paragraph #38 of the Complaint contains assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #38 contains any other allegations of fact, same are hereby denied.

39.

Paragraph #39 of the Complaint contains assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #39 contains any other allegations of fact, same are hereby denied.

40.

FR is unable to admit or deny paragraph # 40 of the Complaint.

41.

Paragraph #41 of the Complaint contains assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #41 contains any other allegations of fact, same are hereby denied.

42.

FR is unable to admit or deny paragraph #42 of the Complaint.

43.

FR denies the allegations of fact contained in paragraph #43 of the Complaint.

44.

FR denies the allegations of fact contained in paragraph #44 of the Complaint.

45.

FR denies the allegations of fact contained in paragraph #45 of the Complaint.

46.

FR denies the allegations of fact contained in paragraph #46 of the Complaint.

47.

Paragraph #47 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #47 contains any other allegations of fact, same are hereby denied.

48.

Paragraph #48 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #48 contains any other allegations of facts, same are hereby denied.

49.

FR denies the allegations of fact contained in paragraph #49 of the Complaint.

50.

FR denies the allegations of fact contained in paragraph #50 of the Complaint..

51.

FR denies the allegations of fact contained in paragraph #51 of the Complaint..

52.

Paragraph #52 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #52 contains any other allegations of fact, same are hereby denied.

The second 52

FR is unable to admit or deny the second paragraph #52 of the Complaint.

53.

Paragraph #53 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #53 contains other allegations of fact, same are hereby denied.

54.

FR is unable to admit or deny paragraph #54 of the Complaint.

55.

FR denies that commissions were paid to SE, and admits commissions were wired to Falcon Ridge Stables.

56.

FR denies the allegations of fact contained in paragraph #56 of the Complaint.

57.

FR denies the allegations of fact contained in paragraph #57 of the Complaint.

58.

Paragraph #58 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #58 contains any other allegations of fact, same are hereby denied.

59.

FR is unable to admit or deny paragraph #59 of the Complaint.

60.

Paragraph #60 of the Complaint contains prayers for relief and/or assertions of law that cannot be admitted or denied by FR. To the extent Paragraph #60 contains any other allegations of fact, same are hereby denied.

Each and every allegation of fact contained within the Complaint, not expressly responded to herein, including the WHEREFORE CLAUSE, is expressly denied.

WHEREFORE, FR prays:

a) That Plaintiff IS not entitled to relief in any form, content or amount;

b) That the Complaint be dismissed with prejudice and all fees and court costs taxed to the Plaintiff; and

c) That FR have such other further relief as the Court deems just and proper.

COUNTERCLAIM

COMES NOW, FALCON RIDGE, INC., and files this Counterclaim against KELLY SIMS ("Sims") and shows the Court the following:

JURISDICTION AND VENUE

1.

By filing her Complaint, Kelly Sims has consented to the jurisdiction and venue of this Court.

FACTS

2.

In early 2015 Plaintiff entered into a Boarding Agreement with FR and she began boarding her horses at the farm located at 347 Arnold Mill Road, Woodstock. Under this agreement, Plaintiff was to pay FR $775.00 a month per horse due and payable on the first day of each month in advance in exchange for the use of a stall, ring and turn out, regular worming, stall cleaning and horse feeding.

3.

In addition to monthly board owed, monthly FR would invoice the Plaintiff for services rendered at horse shows and commissions earned for finding suitable horses for Plaintiff to purchase.

4.

In June 8, 2017, FR hired Mr. Michael Leon to work as an independent contractor to ride, train and show FR customer horses. The relationship was ultimately terminated on November 20, 2017.

5..

On or about the 25th day of November, 2017 without 30 days notice to FR as required by paragraph #12 of the Boarding Agreement, Plaintiff advised Defendant Sharon Enteen that she would move her seven (7) horses from Falcon Ridge Stables on November 26, 2017.

6.

At the time Plaintiff removed her horses from RF, Plaintiff owed FR $17,785.25 for outstanding horse show invoices from November 2017 (Exhibit "A"), $1,350 in farrier charges from November 2017 (Exhibit "B"), and $25,500 for commissions owed (Exhibit "B").

7.

After leaving FR, Plaintiff hired Mr. Leon to work at her farm as well as Isabella Randell, a former FR employee. In January 2018, Plaintiff persuaded a FR customer to move to her barn as well.

Monies Due on Open Account

8.

Paragraphs 1 through 6 of FR's counterclaim are incorporated herein by reference as if repeated verbatim in their entirety.

9.

FR provided to the Plaintiff on open account certain services and goods all set forth in the invoices attached hereto as Exhibit A and B.

10.

Despite demand having been made, the balance and total of $44,635.25 is past due and owing.

Breach of Contract

9.

Paragraphs 1 through 9 of FR's counterclaim are incorporated herein by reference as if repeated verbatim in their entirety.

10.

Plaintiff has breached her Boarding Agreement with FR by failing to provide thirty (30) days written notice of termination of the agreement, and by removing her seven (7) horses prior to the 30 day period without paying all fees and charges in full.

11.

Plaintiff owes an additional twenty five days board for each of her seven (7) horses.

Tortious Interference with Business Relations

12.

Paragraphs 1 through 11 of FR's counterclaim are incorporated herein by reference as if same were repeated verbatim in their entirety.

13.

Sims intended to injure FR by inducing customers not to continue using FR's services.

14.

Because FR has suffered financial injury as a result of Sims, she is liable for tortious interference with FR's business relations.

15.

The actions of Sims have been willful, fraudulent and exhibit an entire want of care that would raise the presumption of conscious indifference to the consequences. FR should receive an award of punitive damages in an amount not less than $10,000 in order to punish, penalize and deter Sims consistent with O.C.G.A. §51-12-5.1.

Expenses of Litigation

16.

Paragraph1 through 15 of FR's counterclaim are incorporated herein by reference as if repeated verbatim in their entirety.

17.

Sims has acted in bad faith and has been stubborn and litigious and has hereby caused FR unnecessary trouble and expense. Therefore, in addition to actual and punitive damages, FR should receive an award of expenses of litigation and attorney's fees provide as provided by law.

WHEREFORE, FR having set forth this counterclaim asks this Honorable Court for the following relief:

a) Award FR damages, including, but not limited to, nominal and actual damages as shown by the evidence upon trial of this action;

b) Award FR such other and further damages as are just and proper along with punitive damages in the amount of not less than $10,000;

c) Award FR its attorney's fee and costs incurred herein;

d) Such other and further relief as this Court may deem property

This 20 day of Feb, 2018.

LORI J. CHRISTMAN, ESQ.
Georgia Bar No: 125522
Attorney for Defendant Falcon Ridge, Inc.

LORI J. CHRISTMAN, LLC
P.O. Box 244157
Atlanta, GA 30324
(404) 973-0093 (telephone)

LOUIS LEVENSON, ESQ.
Georgia Bar No. 447938
Attorney for Defendant Falcon Ridge, Inc.

LEVENSON & ASSOCIATES
125 BROAD STREET, SW
ATLANTA, GA 30303
(404)659-5000 (telephone)

Falcon Ridae Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount End.
$17,785.25	

Date	Transaction	Amount	Balance
11/12/2017	Balance forward		-1,177.50
11/14/2017	INV #55964. True 1 / Atlanta Fall Classic I --- Big Show Invo --- Horse Shows --- Horse Show Fees --- Trainer Fee, 6 @ $50.00 = 300.00 --- Pro Rides, 7 @ $50.00 = 350.00 --- Day Care, 6 @ $55.00 = 330.00 --- Supply Fee, 6 @ $8.50 = 51.00 --- Teck Stall $53.00 --- Shavings/Hay/Feed, 11 @ $8.00 = 88.00 --- Hay $16.25 --- Camper $55.00 --- --- Robaxin Powder, 5 @ $4.00 = 20.00 --- Equine Elbows, 6 @ $2.50 = 15.00 --- $1,278.25	1,278.25	100.75

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

EXHIBIT A

Falcon Ridge Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/14/2017	INV #55965. True 2 / Atlanta Fall Classic I --- Big Show Invo --- Horse Shows --- Horse Show Fees --- Trainer Fee, 6 @ $50.00 = 300.00 --- Pro Rides, 7 @ $50.00 = 350.00 --- Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 --- Day Care, 6 @ $55.00 = 330.00 --- Supply Fee, 6 @ $8.50 = 51.00 --- Tack Stall $53.00 --- Shavings/Hay/Feed, 11 @ $8.00 = 88.00 --- Hay $16.25 --- Camper $55.00 --- --- Robaxin Powder, 5 @ $4.00 = 20.00 --- Dex, 4 @ $3.00 = 12.00 --- Perfect Prep, 5 @ $22.00 = 110.00 --- Milk (Zylkene Equine), 10 @ $9.00 = 90.00 --- Equine Elixers, 6 @ $2.50 = 15.00 --- === $1,510.25	1,510.25	1,611.00

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridae Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/14/2017	INV #55966. Nick / Atlanta Fall Classic I === Big Show Invo --- Horse Shows --- Horse Show Fees --- Trainer Fee, 6 @ $50.00 = 300.00 --- Pro Rides, 6 @ $50.00 = 300.00 --- Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 --- Day Care, 6 @ $55.00 = 330.00 --- Supply Fee, 6 @ $8.50 = 51.00 --- Tack Stall $53.00 --- Shavings/Hay/Feed, 11 @ $8.00 = 88.00 --- Hay $16.25 --- Camper $55.00 --- --- Robaxin Powder, 5 @ $4.00 = 20.00 --- Dex, 1 @ $3.00 = 3.00 --- Perfect Prep, 5 @ $22.00 = 110.00 --- Milk (Zylkene Equine), 10 @ $9.00 = 90.00 --- Equine Elixers, 6 @ $2.50 = 15.00 --- === $1,451.25	1,451.25	3,062.25

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridge Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/14/2017	INV #55967. Esco / Atlanta Fall Classic I — Big Show Invo — Horse Shows — Horse Show Fees — Trainer Fee, 6 @ $50.00 = 300.00 — Pro Rides, 7 @ $50.00 = 350.00 — Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 — Day Care, 6 @ $55.00 = 330.00 — Supply Fee, 6 @ $8.50 = 51.00 — Tack Stall $53.00 — Shavings/Hay/Feed, 11 @ $8.00 = 88.00 — Hay $16.25 — Camper $55.00 — — Robaxin Powder, 5 @ $4.00 = 20.00 — Dex, 4 @ $3.00 = 12.00 — Perfect Prep, 5 @ $22.00 = 110.00 — Milk (Zylkene Equine), 10 @ $9.00 = 90.00 — Equine Elixers, 6 @ $2.50 = 15.00 — = $1,510.25	1,510.25	4,572.50

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridge Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/14/2017	INV #55968. Hannah / Atlanta Fall Classic I ---- Big Show Invo --- Horse Shows --- Horse Show Fees --- Trainer Fee, 6 @ $50.00 = 300.00 --- Pro Rides, 7 @ $50.00 = 350.00 --- Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 --- Day Cars, 6 @ $55.00 = 330.00 --- Supply Fee, 6 @ $8.50 = 51.00 --- Tack Stall $53.00 --- Shavings/Hay/Feed, 11 @ $8.00 = 88.00 --- Hay $16.25 --- Camper $55.00 --- --- Robaxin Powder, 5 @ $4.00 = 20.00 --- Dex, 4 @ $3.00 = 12.00 --- Perfect Prep, 4 @ $22.00 = 88.00 --- Equine Elixers, 6 @ $2.50 = 15.00 ---- $1,398.25	1,398.25	5,970.75

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridae Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/14/2017	INV #55969. Tank / Atlanta Fall Classic I === Big Show Invo — Horse Shows — Horse Show Fees — Trainer Fee, 6 @ $50.00 = 300.00 — Pro Rides, 6 @ $50.00 = 300.00 — Day Care, 6 @ $55.00 = 330.00 — Supply Fee, 6 @ $8.50 = 51.00 — Tack Stall $53.00 — Shavings/Hay/Feed, 11 @ $8.00 = 88.00 — Hay $16.25 — Camper $55.00 — — Robaxin Powder, 5 @ $4.00 = 20.00 — Dex, 3 @ $3.00 = 9.00 — Perfect Prep, 5 @ $22.00 = 110.00 — Milk (Zylkene Equine), 10 @ $9.00 = 90.00 — Equine Elixers, 6 @ $2.50 = 15.00 — Gastro-guard, 0.5 @ $32.00 = 16.00 === $1,453.25	1,453.25	7,424.00

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridge Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/14/2017	INV #55970. Chanel / Atlanta Fall Classic I === Big Show Invo --- Horse Shows --- Horse Show Fees --- Hauling to Conyers $120.00 --- Trainer Fee, 4 @ $50.00 = 200.00 --- Pro Rides, 4 @ $50.00 = 200.00 --- Day Care, 4 @ $55.00 = 220.00 --- Supply Fee, 4 @ $8.50 = 34.00 --- Teck Stall $53.00 --- Shavings/Hay/Feed, 8 @ $8.00 = 64.00 --- Hay $16.25 --- Camper $55.00 --- --- Robaxin Powder, 4 @ $4.00 = 16.00 --- Equine Elixers, 4 @ $2.50 = 10.00 === $988.25	988.25	8,412.25

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridge Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/21/2017	INV #56159. True 1/Conyers II === Big Show Invo — Horse Shows — — — — Trainer Fee, 5 @ $50.00 = 250.00 — Pro Rides, 8 @ $50.00 = 400.00 — Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 — Day Care, 7 @ $55.00 = 385.00 — Supply Fee, 7 @ $8.50 = 59.50 — Tack Stall $50.00 — Shavings/Hay/Feed $70.00 — Camper $60.00 — — Robaxin Powder, 5 @ $4.00 = 20.00 — Dex, 1 @ $3.00 = 3.00 — Perfect Prep, 2 @ $22.00 = 44.00 — Milk (Zylkene Equine), 5 @ $9.00 = 45.00 — Equine Elixers, 6 @ $2.50 = 15.00 === $1,421.50	1,421.50	9,833.75

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridae Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/21/2017	INV #56160. True 2 / Conyers II === Big Show Invo — Horse Shows $0.00 — Trainer Fee, 5 @ $50.00 = 250.00 — Pro Rides, 9 @ $50.00 = 450.00 — Day Care, 7 @ $55.00 = 385.00 — Supply Fee, 7 @ $8.50 = 59.50 — Tack Stall $50.00 — Shavings/Hay/Food $70.00 — Camper $60.00 — — Robaxin Powder, 5 @ $4.00 = 20.00 — Dex, 5 @ $3.00 = 15.00 — Perfect Prep, 1 @ $22.00 = 22.00 — Equine Blixers, 6 @ $2.50 = 15.00 === $1,396.50	1,396.50	11,230.25

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridae Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/21/2017	INV #56161. Nick / Conyers II ---- Big Show Invo --- Horse Shows --- Trainer Fee, 6 @ $50.00 = 300.00 --- Pro Rides, 7 @ $50.00 = 350.00 --- Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 --- Day Care, 7 @ $55.00 = 385.00 --- Supply Fee, 7 @ $8.50 = 59.50 --- Tack Stall $50.00 --- Shavings/Hay/Feed $70.00 --- Camper $60.00 --- --- Robaxin Powder, 5 @ $4.00 = 20.00 --- Perfect Prep, 3 @ $22.00 = 66.00 --- Milk (Zylkene Equine), 5 @ $9.00 = 45.00 --- Equine Elixers, 6 @ $2.50 = 15.00 ---- $1,440.50	1,440.50	12,670.75

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

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Falcon Ridge Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/21/2017	INV #56162. Chanel / Conyors I] === Big Show Invo — Horse Shows — Trainer Fee, 3 @ $50.00 = 150.00 — Pro Rides, 3 @ $50.00 = 150.00 — Day Care, 6 @ $55.00 = 330.00 — Supply Fee, 6 @ $8.50 = 51.00 — Tack Stall $50.00 — Shavings/Hay/Feed $70.00 — Camper $60.00 — — Robaxin Powder, 3 @ $4.00 = 12.00 — Equine Elixers, 4 @ $2.50 = 10.00 === $883.00	883.00	13,553.75

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridae Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/21/2017	INV #56163. Esco / Conyers II ==> Big Show Invo --- Horse Shows --- Trainer Fee, 5 @ $50.00 = 250.00 --- Pro Rides, 7 @ $50.00 = 350.00 --- Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 --- Day Care, 7 @ $55.00 = 385.00 --- Supply Fee, 7 @ $8.50 = 59.50 --- Tack Stall $50.00 --- Shavings/Hay/Feed $70.00 --- Camper $60.00 --- --- Robaxin Powder, 5 @ $4.00 = 20.00 --- Dex, 3 @ $3.00 = 9.00 --- Perfect Prep, 4 @ $22.00 = 88.00 --- Equine Elixirs, 6 @ $2.50 = 15.00 <== $1,376.50	1,376.50	14,930.25

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridae Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/21/2017	INV #56164. Hannah / Conyers II ==== Big Show Invo — Horse Shows — Trainer Fee, 5 @ $50.00 = 250.00 — Pro Rides, 9 @ $50.00 = 450.00 — Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 — Day Care, 7 @ $55.00 = 385.00 — Supply Fee, 7 @ $8.50 = 59.50 — Tack Stall $50.00 — Shavings/Hay/Feed $70.00 — Camper $60.00 — — Robaxin Powder, 5 @ $4.00 = 20.00 — Dex, 5 @ $3.00 = 15.00 — Perfect Prep, 4 @ $22.00 = 88.00 — Milk (Zylkene Equine), 5 @ $9.00 = 45.00 — Equine Elixers, 6 @ $2.50 = 15.00 ==== $1,527.50	1,527.50	16,457.75

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridge Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Kelly Sims 16222 Clarity Road Alpharetta, GA 30004 (Shows only)

Amount Due	Amount Enc.
$17,785.25	

Date	Transaction	Amount	Balance
11/21/2017	INV #56165. Tank / Conyers II ---- Big Show Invo --- Horse Shows --- Trainer Fee, 5 @ $50.00 = 250.00 --- Pro Rides, 7 @ $50.00 = 350.00 --- Ticketed warm up/Night watch, 1 @ $20.00 = 20.00 --- Day Care, 7 @ $55.00 = 385.00 --- Supply Fee, 7 @ $8.50 = 59.50 --- Tack Stall $50.00 --- Shavings/Hay/Feed $70.00 --- Camper $60.00 --- --- Robaxin Powder, 5 @ $4.00 = 20.00 --- Dex, 1 @ $3.00 = 3.00 --- Milk (Zylkene Equine), 5 @ $9.00 = 45.00 --- Equine Elixers, 6 @ $2.50 = 15.00 ---- $1,327.50	1,327.50	17,785.25

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	0.00	0.00	17,785.25	0.00	$17,785.25

Please note that these statements are printed approximately on the 15th of the previous month and will not include charges added to account after that point. Those charges will show up on the next statement with the date it was entered. These statements are post dated in order to include the next month's lessons, board, and training on a statement. All payments are due on the 1st and late by the 3rd of each month.

Falcon Ridge Stables

347 Arnold Mill Road
Woodstock, GA 30188

Statement

Date
2/6/2018

To:
Sims, Kelly 16222 Clarity Road Alpharetta, GA 30004 (Boarding, ect)

Amount Due	Amount Enc.
$26,850.00	

Date	Transaction	Amount	Balance
11/18/2017	Balance forward		0.00
11/20/2017	INV #56127. Ferrier 11/20 — Morgan Hurst $260.00 — Morgan Hurst $260.00 — Morgan Hurst $260.00 — Morgan Hurst $310.00 — Morgan Hurst $260.00	1,350.00	1,350.00
01/09/2018	INV #56484. Remmy Esco — Commision, 0.15 @ $85,000.00 = 12,750.00 — Commision, 0.15 @ $85,000.00 = 12,750.00	25,500.00	26,850.00

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	PAY THIS AMOUNT
0.00	25,500.00	0.00	1,350.00	0.00	$26,850.00

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EXHIBIT B

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

KELLY SIMS,

Plaintiff,

vs.

SHARON ENTEEN PRUSSO aka SHARON ENTEEN, and FALCON RIDGE, INC.

Defendants.

Civil Action File Number: 18cve0059

VERIFICATION

Personally appeared before the undersigned officer duly authorized by law to administer oaths, SHARON ENTEEN PRUSSO aka SHARON ENTEEN as representative and on behalf of FALCON RIDGE, INC. who being first duly sworn, deposes and says that the facts set forth in the within and foregoing ANSWER AND COUNTERCLAIM OF DEFENDANT FALCON RIDGE, INC. are true and correct to the best of her knowledge and belief.

This 14 day of February, 2018.

Sharon Enteen Prusso aka Sharon Enteen
as representative and on behalf of
Falcon Ridge, Inc.

Sworn to and subscribed before me
This 14 day of February, 2018

My Commission Expires

LORI CHRISTMAN NOTARY PUBLIC DEKALB COUNTY, GEORGIA MY COMMISSION EXPIRES AUGUST 29, 2021

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STATE OF SOUTH CAROLINA
CIRCUIT COURT IN THE COUNTY OF AIKEN

KELLY SIMS, Plaintiff, v. SHARON ENTEEN-PRUSSO aka SHARON ENTEEN and FALCON RIDGE, INC., Defendants.	Case No. 2018CP0200675

PLAINTIFF'S MOTION TO COMPEL NON-PARTY DANIEL GEITNER TO COMPLY WITH SUBPOENA FOR DEPOSITION AND SUPPORTING BRIEF

Pursuant to S.C. Code Ann. § 15-47-150 and S.C. R. Civ. P. 37(a)(2), (4) and 45, Plaintiff Kelly Sims hereby moves the Court for an Order compelling non-party Daniel Geitner to comply with this Court's subpoena and sit for a continuation deposition on facts surrounding the $275,000 purchase and sale of a horse named "Nick," and awarding Plaintiff Sims her reasonable attorneys' fees in connection with this matter.

In support of her motion, Plaintiff Sims shows as follows:

I. Introduction and Statement of Pertinent Facts.

On January 12, 2018, Plaintiff Sims filed her Complaint against Defendants Enteen-Prusso and Falcon Ridge in the Superior Court of Cherokee County, Georgia, Case No. 18cv30059 (the "Georgia Lawsuit"). The gravamen of the Georgia Lawsuit is that: (a) Plaintiff Sims engaged Defendant Enteen-Prusso as a horse buying agent; and (b) Defendant Enteen-Prusso misrepresented the true selling price of various horses to receive undisclosed commissions to which she was not entitled.

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One such horse is called "Nick," which Plaintiff Sims paid $275,000 for on August 22, 2017.[1] Plaintiff Sims was the buyer, and her agent was Defendant Enteen-Prusso. Bill and Brenda Mackay were the sellers, and non-party Daniel Geitner was their agent. Plaintiff Sims wired $275,000 to Mr. Geitner.[2] Mr. Geitner, however, only gave Mr. Mackay $145,000 for Nick[3] and represented that the difference—$130,000—was attributable to commissions that Plaintiff Sims purportedly was refusing to pay.[4] In fact, Plaintiff Sims had separately paid Defendant Enteen-Prusso a 10% commission of $27,500.

About one week later, on September 1, 2017, Mr. Geitner wired $75,000 to Falcon Ridge, which is a stable owned by Defendant Enteen-Prusso.[5] Mr. Geitner and Defendant Enteen-Prusso contend this $75,000 was consideration for a horse named "Epic." Plaintiff Sims contends that the purported sale of "Epic" by Enteen-Prusso to Geitner was a sham designed to disguise an undisclosed commission paid to Defendant Enteen-Prusso in connection with the Nick transaction.

When Mr. Mackay and Plaintiff Sims eventually spoke and compared notes, Mr. Mackay approached Mr. Geitner and accused him, in words or substance, of fraud.[6] In response, Mr.

---

[1] A true and correct copy of the bill of sale is attached hereto as Exhibit "1."

[2] A true and correct copy of Mr. Geitner's production of the pertinent transaction details from his Bank of America business checking account is attached hereto as Exhibit "2."

[3] A true and correct copy of the check is attached hereto as Exhibit "3."

[4] A true and correct copy of the pertinent portions of Mr. Mackay's deposition transcript (pp. 39-40, 51-63) is attached hereto as Exhibit "4."

[5] A true and correct copy of Mr. Geitner's production of the pertinent transaction details from his Bank of America business checking account is attached hereto as Exhibit "5."

[6] A true and correct copy of the pertinent portions of Mr. Mackay's deposition transcript (pp. 51-63) is attached hereto as Exhibit "4."

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Geitner offer to pay Mr. Mackay $25,000 and eventually paid Mr. Mackay an $40,000 (in addition to the $145,000). In connection with that payment, Geitner required Mr. Mackay sign a settlement agreement with the following provision:

> The Parties hereto agree, to the fullest extent possible under the law, that they shall not disclose all or any of the terms of the Settlement Agreement, except to such of its directors, officers, legal representatives or advisors as are advising the Parties and have a reasonable need to access to such information in connection with such advice and then only to the extent necessary for their participation or contribution. Each party also agrees to be responsible for any breach of this Agreements by its representatives and for enforcing the terms of this Agreement as to its representatives and the confidentiality of the terms hereunder and to take such action, legal or otherwise, to the extent necessary to cause them to comply with the terms and conditions of this Agreement and thereby prevent any disclosure of the terms by any of such Party's representatives.[7]

On March 22, 2018, this Court issued a Subpoena to non-party Daniel Geitner at Plaintiff Sims' request.[8] On May 22, 2018, Plaintiff Sims, through counsel, deposed Mr. Geitner. Mr. Geitner lied under oath about the existence of the settlement agreement and denied having any meaningful communications with Mr. Mackay after the sale of the horse. Then, when confronted a copy of the settlement agreement and the checks made payable to Mackay, Geitner refused to answer based on the settlement agreement.[9]

As a result, Plaintiff Sims' counsel suspended the deposition and now must seek a Court Order informing Mr. Geitner what should be plain and obvious: a private agreement between a fraud-feasor and one victim cannot prevent another victim from utilizing compulsory discovery in a pending civil action to learn the truth.

---

[7] A true and correct copy of the settlement agreement produced by Mr. Mackay in response to a subpoena is attached hereto as Exhibit "6."

[8] A true and correct copy of the subpoena is attached hereto as Exhibit "7."

[9] A true and correct copy of the pertinent portions of Mr. Geitner's deposition transcript (pp. 15, 98-102) is attached hereto as Exhibit "8."

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II. Argument and Citation to Authority.

Private confidentiality agreements do not trump this Court's subpoena powers. While no South Carolina court has apparently addressed this precise issue, many courts have—and the substantial weight of authority supports the proposition that private confidentiality agreements cannot be utilized to suppress discovery of facts relevant in a related but distinct lawsuit. The following cases support that rather obvious proposition.

- *Gen. Steel Domestic Sales, LLC v. Steel Wise, LLC*, No. 07-cv-01145-DME-KMT, 2009 WL 185614, at *8 (D. Colo. Jan. 23, 2009) (finding confidentiality provisions in settlement agreements were null and void on public policy grounds; "[E]ven when private confidentiality agreements are enforced, not all *factual matters* concerning the settled case will necessarily be muzzled; often courts will protect the terms of the settlement but will not allow a confidentiality agreement to prevent discovery directed to witnesses who can testify to otherwise admissible factual matters");
- *Gotham Holdings, LP v. Health Grades, Inc.,* 580 F.3d 664, 665 (7th Cir. 2009) (affirming trial court order compelling production of documents pursuant to subpoena despite recipient's confidentiality agreement; "[A] person's desire for confidentiality is not honored in litigation. Trade secrets, privileges, and statutes or rules requiring confidentiality must be respected ... but litigants' preference for secrecy does not create a legal bar to disclosure");
- *In re Application of O'Keeffe*, No. 2:14-cv-01518-RFB-CWH, 2016 WL 2771697, at *4 (D. Nev. Apr. 4, 2016) (granting motion to issue subpoena; "[L]itigants cannot shield otherwise discoverable information from disclosure to others by agreeing to maintain its

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confidentiality, and cannot modify the Federal Rules of Civil Procedure by agreement") (citation omitted);

- *Green v. Cosby*, 314 F.R.D. 164, 170 (E.D. Pa. 2016) (denying motion to quash subpoena for attorney's case file in separate actions despite confidential settlement agreement; "[T]here is no Federal Rule of Civil Procedure, or legal precedent, that requires Plaintiffs to provide a compelling justification for the disclosure in discovery of materials deemed confidential pursuant to a private settlement agreement");
- *Sonnino v. Univ. of Kan. Hosp. Auth.*, No. Civ. A. 02-2576-KHV-DJ, 2004 WL 769325, at *3 (D. Kan. Apr. 8, 2004) (granting motion to compel interrogatory response; "Parties cannot create a privilege against civil discovery by mere written agreement. Moreover, the mere fact that the settling parties agree to maintain the confidentiality of their agreement cannot serve to shield it from discovery");
- *Gutter v. E.I. DuPont de Nemours and Co.*, No. 95-2152, CIV-GOLD, 2001 WL 36086590, at *1 (S.D. Fl. Jan. 31, 2001) (compelling production of settlement agreements in related lawsuits; "Litigants cannot shield a settlement agreement from discovery merely because it contains confidentiality provisions if it itself is relevant to the subject matter of the action, or is likely to lead to relevant evidence. ... This is particularly true when confidentiality provisions may have the effect of silencing witnesses with a settlement agreement where the facts of one controversy are relevant to another") (citations and punctuation omitted);
- *Channelmark Corp. v. Destination Prods., Inc.*, No. 99 C 214, 2000 WL 968818, at *5 (N.D. Ill. July 7, 2000) (granting motion to enforce subpoena; "To permit parties to

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silence a witness through enforcement of settlement agreements would allow a defendant to continue a pattern of harmful behavior while being shielded from the legal system");

- *Tribune Co. v. Purcigliotti*, No. 93 Civ. 7222 (LAP) (THK), 1996 WL 337277, at *3 (S.D.N.Y. June 19, 1996) (compelling production of settlement agreement; "[T]he mere fact that the settling parties agreed to maintain the confidentiality of their agreement cannot serve to shield it from discovery");
- *Wendt v. Walden Univ., Inc.*, No. CIV. 4-95-467, 1996 WL 84668, at *2 (D. Minn. Jan. 16, 1996) ("While parties have the freedom to contract, courts must carefully police the circumstances under which legitimate areas of public concern are concealed. ... Defendants should not be able to buy the silence of witnesses with a settlement agreement when the facts of one controversy are relevant to another");
- *Barger v. Garden Way, Inc.*, 499 S.E.2d 737, 741 (Ga. Ct. App. 1998) (holding confidential settlement agreements that defendant entered into in other cases were unenforceable to extent that they purported to preclude discovery from witnesses who entered into those confidentiality agreements; "The public policy of Georgia does not permit parties to contract privately for the confidentiality of documents or testimony, and thereby foreclose others from obtaining, in the course of litigation, materials that are relevant to their efforts to vindicate a legal position") (citation and punctuation omitted);
- *Scott v. Nelson*, 697 So. 2d 1300, 1301 (Fla. Dist. Ct. App. 1997) (denying petition for protective order from deposition based on settlement agreement in prior related action; "While settlement is an important objective, an overzealous quest for alternative dispute resolution can distort the proper role of the court.... [S]ettlement agreements which suppress evidence violate the greater public policy") (citation and punctuation omitted);

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Of course, none of these decisions are controlling precedent. They are, however, persuasive, and their rationales are all fully consistent with South Carolina law and common sense. The object of all legal proceedings is the discovery of truth. Accordingly, in a civil action, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action ...." S.C. R. Civ. P. 26(b)(1). This is hardly esoteric: "[t]he primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." *In re Anonymous Member of South Carolina Bar*, 552 S.E.2d 10, 18 (S.C. 2001) (citation and punctuation omitted).

> The entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed.

Samples v. Mitchell, 495 S.E.2d 213, 217 (1997).

Parties cannot contract around this interest. *See, e.g., Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477, 480 (S.C. 2012) ("It is axiomatic that freedom of contract is subordinate to public policy, and agreements that are contrary to public policy are illegal") (citation and punctuation omitted); *Drafts v. Shull Sausage Co.*, 275 S.E.2d 577, 578 (S.C. 1981) (holding non-party to contract "owed no duty or obligation thereunder"). The public interest would be actively undermined by enforcing settlement agreements that attempt to buy the silence of witnesses and otherwise suppress evidence that is relevant to a related but distinct dispute.

Furthermore, compelling Mr. Geitner to answer questions upon oral examination about the underlying facts with respect to the Nick transaction will not implicate the public policy interest in encouraging settlement. Plaintiff Sims already has a copy of the settlement agreement and does not seek discovery of compromise negotiations for the purposes of proving Mr.

Geitner's liability. Furthermore, S.C. R. Civ. P. 408 "only applies to the admissibility of evidence at trial, not to discovery." *Valiante v. VCA Animal Hospitals, Inc.*, Civ. No. 3:09CV2115(WWE), 2011 WL 219672, at *2 (D. Conn. Jan. 20, 2011) (discussing Fed. R. Evid. 408); *see also* S.C. R. Civ. P. 26(b)(1) ("It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence").

III. Conclusion

For these reasons, Plaintiff Kelly Sims hereby moves the Court for an Order compelling non-party Daniel Geitner to comply with the Court's subpoena and sit for a continuation deposition on the "Nick transaction." In addition, pursuant to S.C. R. Civ. P. 37(a)(4) and all other applicable law, Plaintiff Sims seeks an award of her reasonable expenses incurred in obtaining this order, including attorneys' fees.

Dated: June 28, 2018.

s/M. Baron Stanton
M. Baron Stanton
SC Bar No. 7970

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Columbia, S.C. 29202
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Attorneys for Plaintiff Kelly Sims

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Pro Hac Vice Application to be filed

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ddavis@ichterdavis.com

Putative Attorneys for Plaintiff Kelly Sims

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Plaintiff's Motion to Compel Non-Party Daniel Geitner to Comply with Subpoena for Deposition and Supporting Brief by placing same in the U.S. Mail with sufficient postage attached to ensure delivery as follows:

Rosemary S. Armstrong
Armstrong Nix, P.C.
1200 Abernathy Road
Suite 1700
Atlanta, Georgia 30328

Dated: June 28, 2018.

M. Baron Stanton

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Daniel Geitner Stables, Inc
1224 Sizemore Road
Aiken, SC 29803
dfgstables@aol.com
(803)270-0574

BILL OF SALE

THIS AGREEMENT is made this 21st day of August, 2017), by and between Brenda Mackay, residing at 101 Century Lane, SC, 29803 , hereinafter referred to as Seller, and Tim Sims, residing at 16222 Clarity Rd, Alpharetta, GA 30004, hereinafter referred to as Buyer.

The parties hereby ACKNOWLEDGE that this AGREEMENT is made for the purchase and sale of a horse, described as follows in paragraph A below, on the following terms and conditions as set forth herein.

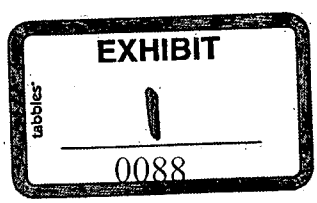
NOW THEREFORE, for good and valuable consideration, receipt of which the parties hereby acknowledge, the parties AGREE AS FOLLOWS:

A. Description of Horse

Name:	Eleventh Hour, "Nick"
Age:	8
Color:	Bay
Breed:	Oldenburg
Sex:	gelding
USEF #	5382857

B. Consideration

In consideration of the total sum of $275,000 USD (two hundred seventy five thousand dollars), SELLER agrees to sell and BUYER agrees to buy the said



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horse described herein above in paragraph A on the terms and conditions further set forth herein

C. Payment Terms

The purchase is for cash and BUYER agrees to pay $275,000.00 USD by wire transfer payable to Daniel Geitner Stables, Inc as full payment on the 21st day of August, 2017.

D. Warranties

(1) SELLER warrants s/he has clear title to said horse;
(2) SELLER makes no other warranties, express or implied, including the warranties of fitness for a particular purpose except as may be otherwise provided for in this AGREEMENT;
(3) BUYER warrants that BUYER has had the option to review the condition and health of the horse, including any veterinarian examinations, at BUYER's expense.

E. Risk of Loss

(1) Upon Seller's receipt of payment, BUYER shall assume the risk of loss.

F. Default

Upon material breach of this AGREEMENT by one party the other party shall have the option to terminate same. On any breach, the other party shall have the right to recover expenses and costs within the parameters of paragraph I, below.

G. Law

This AGREEMENT shall be governed by the laws of the State of South Carolina, in the County of Aiken.

H. Entire Agreement

This AGREEMENT constitutes the entire AGREEMENT between the parties. Any modifications or additions must be in writing and signed by all

parties to this AGREEMENT. No oral modifications will be considered part of this AGREEMENT unless reduced to writing and signed by all parties.

SELLER
Brenda Mackay
101 Century Lane
Aiken, SC 29803

Brenda Mackay 8-22-2017
Signed Date

BUYER
Tim Sims
16222 Clarity Lane
Alpharetta, GA 30004

Signed Date

Address:

Warning - Under South Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in an equine activity resulting from an inherent risk of equine activity, pursuant to Article 7, Chapter 9 of Title 47, Code of Laws of South Carolina, 1976.

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Bank of America

Online Banking

Business Advantage Chk - [redacted]: Account Activity Transaction Details

Post date:	08/22/2017
Amount:	275,000.00
Type:	Credit
Description:	WIRE TYPE:WIRE IN DATE: 170822 TIME:1345 ET TRN:2017082200294220 SEQ:D1072340468101/368304 ORIG:TIMOTHY JOSEPH SIMS ID:[redacted]7 SND BK:CI TIBANK, N.A. ID:[redacted] PMT DET:REF: SIMS
Merchant name:	TIMOTHY JOSEPH SIMS
Transaction category:	Income: Deposits

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EXHIBIT 2

Bank of America

Online Banking

Business Advantage Chk - [redacted]: Account Activity Transaction Details

Check number: 00000004003

Post date: 08/22/2017

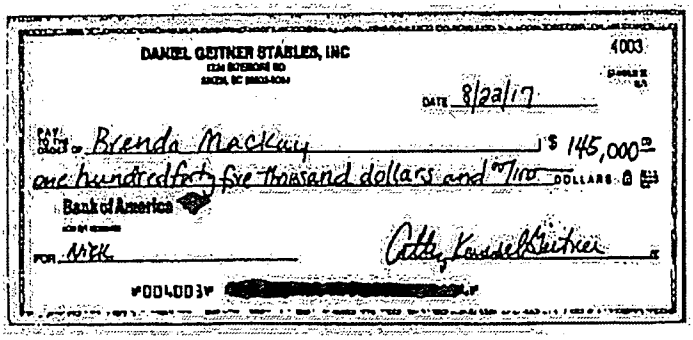
Amount: -145,000.00

Type: Check

Description: Check

Merchant name: Check

Transaction category: Cash, Checks & Misc: Checks


DANIEL GEITNER STABLES, INC 4003

DATE 8/22/17

PAY TO THE ORDER OF Brenda Mackay $ 145,000.00

one hundred forty five thousand dollars and no/100 DOLLARS

Bank of America

FOR Mare Cathy Lowell Geitner

⑈004003⑈ [redacted]

EXHIBIT 3

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VERITEXT
LEGAL SOLUTIONS

Deposition of:

William Mackay

April 18, 2018

In the Matter of:

Sims vs. Prusso

Veritext Legal Solutions
1075 Peachtree St. NE , Suite 3625
Atlanta, GA, 30309
800.808.4958 | calendar-atl@veritext.com | 770.343.9696

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IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

KELLY SIMS,
Plaintiff,
vs. CASE NO. 18cvc0059
SHARON ENTEEN PRUSSO aka
SHARON ENTEEN and
FALCON RIDGE, INC.,
Defendants.

DEPONENT: WILLIAM MACKAY
DATE: April 18, 2018
TIME: 2:06 p.m.
LOCATION: Hilton Garden Inn
350 Eastgate Drive
Aiken, SC
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: KIMBERLY T. POWER, CR

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF
ICHTER DAVIS, LLC
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cichter@ichterdavis.com

ATTORNEYS FOR THE DEFENDANTS
LEVENSON & ASSOCIATES
BY: GEORGE LOTT, ESQUIRE
LOUIS LEVENSON, ESQUIRE
125 Broad Street SW
Atlanta, Georgia 30303
(404) 659-5000
glott@levensonlaw.com

ALSO PRESENT: BRENDA MACKAY
TORY TAM, VIDEOGRAPHER

(INDEX AT REAR OF TRANSCRIPT)

THE VIDEOGRAPHER: My name is Victoria Tam representing Veritext Mid-Atlantic Region. The date today is April 18, 2018 and the time is 2:06. This deposition is being held at 350 East Gate Drive, Aiken, South Carolina. The caption of this case is Kelly Sims vs. Sharon Enteen Prusso and Falcon Ridge, Inc., et al., in the Superior Court of Cherokee County, State of Georgia, Case No. 18-cvc-0059. The name of the witness is William Mackay.

At this time, the attorneys will identify themselves and the parties they represent, after which our court reporter, Kim Power, representing Veritext Mid-Atlantic Region will swear in the witness and we can proceed.

MR. ICHTER: My name is Cary Ichter and I represent the plaintiff who is present here today, Kelly Sims.

MR. LOTT: This is George Lott. I represent Sharon and Falcon Ridge.

MR. LEVINSTON: This is Louis Levenson, also represents the defendants in the case.

THE COURT REPORTER: Oh, I'm sorry. Who will be the questioning attorney because I can't see the computer the way we're sitting? So who will

be asking the questions?

MR. LOTT: From the defendants' side, I couldn't answer that question just yet. It will probably be me, though.

MR. ICHTER: It would be George.

MR. LOTT: George Lott.

THE COURT REPORTER: Okay.

WILLIAM MACKAY,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. ICHTER:

Q. Mr. Mackay, my name is Cary Ichter. I'm going to be taking your deposition today about subjects related to a lawsuit that Kelly Sims has filed in Fulton County, Georgia -- I'm sorry, Cherokee County, Georgia. The purpose of this deposition is to get some understanding of your knowledge concerning some transactions that Ms. Sims entered into concerning the purchase and sale of one or more horses.

If I ask you any questions during the course of the deposition that are unclear to you for any reason, would you let me know and I will try and rephrase so that we're working on the same page?

A. Sure.

Q. Okay. Also, if you would always let me finish my questions and I will attempt to let you finish your answers before I try to introduce another question so we're not talking over each other.

A. Okay.

Q. All right. If at any point in time you want to take a break, just let me know. I'll be happy to accommodate your wishes. Okay?

A. Thank you.

Q. All right. Fair enough. Would you state your full name for the record, sir?

A. William Mackay.

Q. And where do you live, sir?

A. 101 Century Lane, Aiken, South Carolina.

Q. And how long have you lived in Aiken, South Carolina?

A. Just about 30 years.

Q. Okay. Are you married?

A. Yes.

Q. And what is your wife's name?

A. Brenda Mackay.

Q. And how long have you and Ms. Mackay been married?

A. Forever. About 26 years.

Q. Did you receive a subpoena to appear here

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today to testify?
A. Yes, I did.
Q. And are you testifying today pursuant to that subpoena?
A. Yes, I am.
Q. Were there documents that were requested that you produce in connection with your appearance here today?
A. Yes.
Q. And did you undertake to gather documents responsive to that subpoena?
A. I have some of them and other ones I will supply as you feel you have to have them. I'm not withholding them. I just -- it was voluminous.
Q. And what particular documents did you -- let's cover it in two parts. What documents did you bring with you today that you have present here?
A. I have the horse's passport from when my wife purchased the horse. I have the bill of sale. I have my notes regarding all of the things that were done to the horse, how they -- what we paid for him, money we had invested in the horse. That's what I have with me.
Q. And are your notes a summary of other documents that you had access to?

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A. I believe so.
Q. Okay. And the documents that were too voluminous to bring, what was the nature of those documents?
A. The horse -- what went on with the horse prior to the sale. I believe that was part of -- you know, from the time the horse entered this country and just, basically, a lot of notes on conversations that I had with Mr. Geitner over the past -- since, let me get this right, 2014, '15, '16, and '17 regarding this horse.
Q. And when we talk about this horse, are we talking about a horse that is named Eleventh Hour, but sometimes goes by the name of Nick?
A. Yes.
Q. Okay. And is it okay for the purposes of this deposition if we refer to that horse as Nick?
A. Absolutely.
Q. Okay. So you had a lot of conversations, I gather from what you're telling me, with Mr. Geitner on the subject of Nick over the period of time between the time the horse entered the country and the time the horse was sold to Ms. Sims, correct?
A. Yes, constantly.
Q. Okay. Before we get into the particulars

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of that, I would like to ask you some background questions about your involvement in the equestrian community. How long you been involved in the equestrian community, been involved in buying, selling, owning horses?
A. Since 1957. In the '60s, I was a professional. I bought and sold horses and I rode horses and showed horses.
Q. And when you say you were a professional, do you mean --
A. I earned a living that way.
Q. Okay. And you earned that living -- were you compensated not only for buying and selling, but also showing horses?
A. Yes.
Q. Okay. Were these award -- cash awards from competitions or --
A. No. I was paid by people like Falcon Crest who had customers who needed horses written.
Q. Okay. When you say "Falcon Crest" --
A. I think that's --
Q. Falcon Ridge?
A. Falcon Ridge, yes.
Q. Okay. And you -- you owned horses during that same period of time?

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A. Yes.
Q. Since the 1960s, how many horses would you say you have bought and sold?
A. This is a guess.
Q. Give me an estimate, ballpark.
A. One hundred.
Q. One hundred horses?
A. Uh-huh.
Q. And at any given period of time, what is the maximum number of horses that you have owned?
A. At one time in my barn?
Q. Yes, sir.
A. Nineteen, 20.
Q. Okay. Now, when you talk about your barn, have you operated a commercial stable where you stabled other people's animals in addition to your own?
A. No, sir.
Q. Okay. So you had your own barn where you had as many as 19 or 20 of your own horses at one period of time?
A. That's the best way to go broke.
Q. If you're looking for a straight line from Point A to Point B, right?
A. Right.

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Q. Okay. So during the period of time that you regarded yourself as being a professional, were you acting sometimes as an agent for the purchase and sale?
A. No.
Q. Okay. So you always were just involved in buying and selling on your own?
A. I would -- I was -- I bought and sold on my own, but I was employed to ride for people in the business years ago.
Q. Okay. During any period of time, have you been in the business buying and selling horses for the purpose of buying the horse to sell the horse at a future date to generate a profit?
A. Once.
Q. Okay. And when was that?
A. When we bought Nick.
Q. Okay. And when you are involved in transactions to buy and sell horses, is it your understanding or your experience that typically the buyers and/or the sellers in those transactions are represented by agents?
A. It didn't used to be. It is today.
Q. Okay. And is it common for both buyers and sellers to be represented by agents or just are

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agents more typical on one -- side of the transaction or the other?
A. Unfortunately, this has become a sleazy business, and by that I mean this: People -- if somebody saw they had a wonderful horse, they might approach the people and say, "Gee, I'd really like to buy your horse." Today what the trainers and agents have done, is they have inserted themselves in the middle of all these sales to keep the seller and the buyer out of the picture totally.
Q. Okay. And you talked about -- about trainers. First of all, do you have horses that you own today?
A. Yes.
Q. Okay. Do you train your own horses?
A. Yes.
Q. For how long have you been training your own horses?
A. Since the '50s. My wife was the first licensed racehorse trainer -- female racehorse trainer in the country. She showed all over the -- go all over the world -- the country and we have done this together for a number of years.
Q. Okay. For those of us who typically only see horses on TV and movie screens and still become

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excited when we see one in the field while driving by --
A. Right.
Q. -- can you explain to me what exactly is involved in training of horses of the type we're talking about?
A. Well, because of my health, I'm not in a position to do a lot of the work physically anymore, but I will give you a soft example of this morning and then I'll go further. My wife got up this morning, she went out at 6:30. We have a man that comes and cleans the stalls, but my wife turned around and cleaned all the water buckets, put water out and buckets out in the field, took the horses out after she had cleaned the horses, then the horses were put out. And then before we came here today, the horses were brought in and put in their stalls.
In addition to that, when you are showing horses, you are getting on the horses one or two times a day and you are, what they refer to as schooling them, which is training, and you do that at your own facility and you go to other facilities as well to make the horses used to going to different areas. And then you can go to schooling shows which are like the Atlanta Horse Park might have situations

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where you can go there on a non-show day, but take the horses in the rings and work them. It's very time-intensive.
Q. Okay. I've -- I've talked to some of the people in equine industry. I've heard them talk about stable hands. Are there some things that you just described that are more the jobs and duties of stable hands versus trainers?
A. Yes. A stable hand usually is somebody that comes in and cleans the stalls, cleans the barn, brushes the horses, carries them, takes care of them; whereas a trainer usually comes in and tells everybody what to do and gets on some horses himself -- he or herself.
Q. Okay. Do the trainers often also show professionally?
A. Yes.
Q. Okay. So oftentimes those who are training the horses will also go to shows and engage in competition?
A. The trainers?
Q. Yes, sir.
A. Yes. For the most part, that's who does.
Q. Okay. The trainers do?
A. Yes.

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Q. And you mentioned that the trainers and the agents are oftentimes the folks who are involved in the transactions by which the horses get sold?
A. The trainers, for the most part, take a dual position and act as the agent as well as the trainer.
Q. Okay. All right. And as we are using these terms, we've talked about what a trainer does. In connection with the purchase and sale of a horse, what is your understanding of what the duties and responsibilities of an agent are?
A. Well, as a seller, an agent, trainer, however -- let's just use the word trainer. We lost connection.
THE COURT REPORTER: I think it just timed out.
THE WITNESS: You use them to find customers for what you want to sell, you use them to show your horse, and it's supposed to represent your side of it. Now, if you are looking to buy a horse, you go to a trainer or an agent and you ask them to help you locate a horse. That's my understanding of it. It's...
BY MR. ICHTER:
Q. Do you know if, typically speaking, agents

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who are involved in these transactions on behalf of buyers are expected to know what the market for horses are such that they can protect their client from overpaying for a horse?
A. Okay. An agent representing a buyer --
Q. Buyer.
A. -- is supposed to turn around and see if the horse is suitable for his client and/or himself to show, he's supposed to represent as much of the horse's history as he can, he's supposed to have the horse vetted, and he's supposed to guide his client as to what would be a realistic price to pay for that horse.
Q. Okay. Describe vetting for me in connection with one of these transactions.
A. Vetting is a veterinarian comes in. In many instances, he will pull the shoes off the horse, he'll x-ray the feet, he'll x-ray the legs, he'll check the horse's heart. Sometimes they will scope a horse with an endoscope down through the horse's throat. He'll go over the horse and then he'll trot the horse for soundness to see that the horse is sound on the given day.
Q. Okay. What is the purpose of the endoscope?

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A. Horses that have lung problems. It tells you right away if you've got a problem.
Q. What is roaring?
A. Roaring used to be referred to as windy.
Q. Break wind?
A. No.
Q. Bad wind?
A. Okay. Years ago -- okay. In a horse's throat, there's two little flaps. And when one or both of those flaps become dislodged, the horse makes a noise and it's a roar. It's sometimes -- in the early cases, it's a whistle and it becomes a roar where you can hear it 100 yards away with the horse coming. It sounds like -- it sounds like I would sound if I were trying to run through the hall here having emphysema to the extent that I do, you would hear me.
Q. Okay.
A. It's very -- people try and hide it with liquid and they -- they have an operation where they sew back the flaps. But it's considered an absolute unsoundness.
Q. So it is -- roaring the physical defect that causes roaring is something that a buyer would be looking for in connection with vetting?

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A. Yeah. Sure.
Q. And, generally speaking, that would be a deal breaker for --
A. It's a deal ender.
Q. Are -- are -- can you -- can you show horses that suffer from a roaring?
A. Unfortunately, yes.
Q. Okay. Are there -- are you aware of any shows that will not show horses that are roaring?
A. The problem you have is the people who are judging the horses, for the most part, are trainers themselves or agents themselves or ex-trainers or ex-agents. And if one of their friends, acquaintances, associates they do business with are showing a horse that's making a noise, they try not to hear it. So the problem is it's -- whether or not the horse is excused, it becomes a bit subjective, it's -- it is considered to be a legitimate unsoundness. The problem is we have so many unscrupulous people in the horse community today that it's not shown.
Q. Are you familiar with an organization known as the USEF?
A. Yes.
Q. And what is the USEF?

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A. It's an association which oversees showing horses.
Q. Okay. Are -- does the USEF have rules that govern shows?
A. Yes. Yes, they do.
Q. Are you aware of whether or not the USEF rules state that unless a specific division rule states otherwise, all animals except stallions and mares in breeding classes must be serviceably sound for competition purposes, i.e., such animals must not show evidence of lameness or broken wind?
A. I am aware of that and, unfortunately, I have seen horses go in the ring bobbing their heads they're so lame and the judge just refuses to look at them.
Q. But, again, lameness would be one of those things that's typically a deal breaker in connection --
A. Absolutely.
Q. -- with the vetting process?
A. Sure.
Q. What is the seller's agent or trainer's role in the vetting process? Are they supposed to make disclosures of the situation -- medical situation of the horse to the vet?

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A. Usually the vet that's vetting the horses will say to the selling agent, "Is there anything I've missed? Is there anything -- has he been injured?" And it's more or less a verbal communication with the selling agent.
Q. Okay. And as a custom and practice in the industry, is it an expectation that the selling agent will disclose honestly that information to the veterinarian who is conducting the vetting process?
A. You're asking me if the selling agents are honest?
Q. Well, no. Is it expected that they would be honest?
A. It's absolutely expected, but, you know, it's expected that people aren't going to shoot each other and kill each other.
Q. Okay. Hopefully that expectation will serve as well today.
All right. In connection with a horse that has been imported into the United States, is there any documentation that reflects upon the horse's medical history and physical condition?
A. When you purchase a horse overseas, it's standard practice that the person purchasing that horse has the horse vetted overseas.

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Q. And does -- does any document get produced or generated through that process?
A. Not to my knowledge.
Q. Okay. Does the -- there's a passport that the animal has in coming into the country?
A. That is correct.
Q. Does that particular passport have any sort of indication of either medical history or previous injuries that the horse may have suffered?
A. No.
Q. Okay. How long have you known Daniel Geitner?
A. I've known Daniel Geitner since the middle of the '90s.
Q. And do you know Cathy Geitner?
A. Yes, I do. I know her the same length of time when they first moved to Aiken.
Q. Okay. And they are a married couple?
A. I believe they are.
Q. And what is your relationship with the Geitners?
A. I hired the Geitners back in the '90s to show a horse for me. Unfortunately, they lied to me totally about what they were doing with the horse and we found -- on a Sunday afternoon, my wife and I went

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to the stable where the horse was and the horse was walking around in a sand ring totally dehydrated, had no water. I had to get a veterinarian by the name of Dr. Hadden to come and hydrate the horse. It took over a day to do so, and I fired Daniel immediately.
Four or five years later, Daniel appeared to be more mature as an individual. And a woman by the name of Andrea King basically begged me to give Daniel another shot and I did and he started showing horses for us around 2005, I believe. And he's been showing horses for me a long -- right up until the time we sold Nick.
Q. Okay. Do you know if Mr. Geitner has a business and what the name of that business is?
A. I believe it's DFG Standles -- Stables. Daniel Geitner Stables.
Q. And what is the nature of that business? What does it do?
A. He buys and sells horses and he shows horses for people and they train people to ride and show.
Q. Have you ever jointly owned a horse with Mr. Geitner?
A. That's a very interesting question and I will explain as best I can. Daniel Geitner called me

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up in December of 2014 and said he had found a wonderful prospect over in Germany and I said, "What is?" And he told me and I turned around -- the following day he sent me a video of the horse, a very short video, but the horse looked like what I wanted. And he said to me, "Tell you what, I'll -- you buy the horse and everything above your expenses we'll split and I'll keep the horse at my barn and that's what we'll do." And I said, "I'm open to that." Do you want me to go on with this?

Q. Yes, please.

A. Okay. So in the middle -- and at the time we did this, he said to me the horse has a chip in the anterior portion of his left front pastern, and I had my vet -- I had them send the x-rays from Germany to my vet and my vet looked at the x-rays and he said, "This is a very simple thing. It affects nothing with the horse, but I would take it out."

Q. And pastern, for the uninitiated, is the hoof?

A. No, the pastern is above the hoof.

Q. Okay.

A. It's the part on the ankle that you see. So the horse -- I imported the horse into the United States --

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Q. And this is Nick we're talking about?

A. This is Nick.

Q. Okay.

A. And a week after he was here, I had the chip removed, Nick was fine. About a month later, there was a little schooling-type of show in Aiken at -- what's Rick Cram's showgrounds name?

Q. It's not critical to the --

A. Okay. It's a show out in Aiken and Daniel and Cathy came running up to our car that Brenda and I were sitting in at the time and they both were red in the face, is a good way to describe it. They said, "Nick's been hurt." And I said, "How has Nick been hurt? He's been on stall rest."

"Well, he got a bandage bow," which is where somebody put a bandage on the leg too tight and it would be like if you put a bandage on, but usually it leaves a telltale swelling something. And we went over to see the horse and there was no evidence of a bandage bow, but the horse was laying. So Daniel said, "You know, we're going to keep resting. The vet will take care of him." I had the top veterinarian clinic here taking care of the horse. And a month or two, Nick was fine. No side effects. Nothing. He's healthy.

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So, I guess, around in the summer of 2015, Daniel started riding the horse a little bit and, unfortunately, Daniel doesn't ride these horses himself enough. He has three girls that are very inept riders, but they sit on the horse and they walk, trot, canter them around. And if a horse -- if a horse shows any hesitancy or acts up at all, they immediately stick a needle with a -- with a tranquilizing drug I'll call -- called Sedivet right in them to calm them down. Well, we were told by Lindsey Fletcher who is a manager at Daniel's place that on so many occasions, they would take Nick out of the stall to take him down and they would put him back in the stall because he was acting up on the way down the ring and Daniel just would say to them both, "Put him back." So he didn't get any -- there was no real training.

In the fall, Daniel showed him once or twice at little shows, a Classier Class, just to see how he was. I think he showed that the -- an Aiken show. He showed in Green Hunter. Pre-Green Hunter said he was champion. In January or February, I had a major medical problem and I was on a ventilator for about a month. And while that happened, Daniel took the horse down to Florida to Ocala and the horse was

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reserved circuit champion.

And when he came home, I said, "Well, I want to see Brenda get on the horse." And the day before, he had been in a paddock at Daniel's. And a woman named Carrie -- Carrie Skinner who is used for training and desensitizing horses that Daniel has problems with was in the paddock immediately next to where Nick was and she was bouncing these huge rubber balls up in the air for the horses that she was trying to desensitize, and Nick started running the fence back and forth being upset by it and Carrie told me she actually saw him hurt himself, again, unsupervised. And the next day, Nick was laying, but Daniel knew he was laying. And when Brenda showed up, Lindsey Fletcher and the three girls that work for her that ride the horses deliberately went to the other end of the property, according to Lindsey, because they knew when Brenda got on the horse, we would know immediately that our horse was lame.

Well, he was lame. And we got off the horse immediately and I called my vet and the horse had bruised a suspensory ligament on the posterior side of his right front leg. At that point, he was on stall rest for two weeks and then my wife would go over twice a day and walk him -- hand walk him. And

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about a month later, she started tack walking the horse where she got on the horse with all his equipment on and she would walk him and she did that for approximately to August -- August -- somewhere August or something and the -- I lost my thought.

During that period of time, I spent $14,000 in vet bills on the horse. I had the horse ultrasounded every month because I wanted a good result and I wasn't going -- their -- their vet, at one point, said to me, "Oh, we can get this horse right back on his feet." And I went berserk at the place to where everybody heard me within a 300 yard radius and I told everybody that they could all go -- I can't repeat it here. And I said, "This is my horse and we're going to do what I want to do with this horse and I don't care what anybody says." And we put the horse -- we just kept tack walking him and then we went to tack trotting him.

Q. When was this?

A. This was in the spring and summer of 2015.

Q. Okay.

A. In September of 2015 -- '16? '16.

Q. When he hurt --

THE WITNESS: No, no. Brenda, you're --

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BY MR. ICHTER:

Q. He hurt himself and became lame again in?

A. In March of 2015.

Q. Okay. Okay. Let me -- before -- before you go on, let me -- let me do a little backfilling. This -- this understanding that you had with Mr. Geitner that you would buy the horse and he would barn the horse --

A. I'd pay -- and I would pay all out of pocket expenses.

Q. You pay the expenses?

A. All out of pocket.

Q. Okay. And you guys would split any profit from the sale of the horse. What was the split?

A. We never discussed that.

Q. Okay. Did you -- I take it then that you did not put this agreement in writing?

A. No. And there was a point where it ended.

Q. Okay. Okay. When did it end?

A. It ended in September of two thousand and -- my wife is telling me '16. I believe it's '15. I had that note and I don't --

Q. So it was either '15 or '16? It was before the sell to Ms. Sims, right?

A. Yes. Absolutely. Way before.

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Q. Okay. And when that deal ended, was it replaced with some other deal with Mr. Geitner?

A. No.

Q. Okay. So at the point in time that that deal ended, as far as you were concerned, you had no further obligations with Mr. Geitner with respect to Nick?

A. Well, at that point now. And that's -- we'll call it '16. I'll give you the exact, but I'm pretty sure. The horse came to my barn where it came under our care totally. What came to my barn was a horse that didn't know anything; a horse that when you looked at him, it was a blank wall. He had no emotion, no nothing of anything like a pet would have or anything.

He was -- he was -- we felt really bad for the horse and we started working with the horse and I brought in another professional rider that helped Brenda from time to time with the horse. The first time my wife sat on the horse, the horse -- I believe he's 62. He blew up to about 18 hands. He was so emotionally crazy at that point because he had had none -- nobody had been doing anything with this horse.

I spent the next 13 months with this horse

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at my barn, my vets, my wife riding him every day, me sitting in the car and telling her things to do with the horse, professional trainers. We did all of it.

Q. You mentioned the chip. Is that something that he had that --

A. He had the chip in Germany. He did not -- when he came here, we took it out immediately.

Q. Right. Is that sometimes referred to as an OCD?

A. Yeah, but it -- yeah. They say it's that, but I don't believe it was that in this case.

Q. Okay. And is that something that typically it is a custom and practice in the industry that in connection with the sale of a horse, you would disclose to a buyer that the horse previously had a chip of that sort?

A. I do.

Q. Okay.

A. I always have. I've always told everything -- everybody -- everybody anything about a horse. And I think maybe part of the reason this whole case came into being is because I call up and speak to people who have purchased horses from me in the past and I know where all my horses went after I owned them and I know what happened to them.

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Q. By the way, does the USEF -- how do you become a member of that?
A. You send them a check.
Q. Okay. And is it important for people who are in the -- who travel in equestrienne circles, typically those who compete, to be a member of the USEF?
A. You have to be.
Q. Okay. And are there any rules of the USEF in connection with where they govern the purchase and sale of horses?
A. I would assume. I've never read them, but I would assume there would be.
Q. Okay. All right. So you were telling me that you took over --
A. We took over the --
Q. -- the care of Nick?
A. We took over the total care of Nick. We worked him over fences. We worked him over anything. Again, continually checking him. All -- all I wanted to do -- he's an outstanding athlete as a horse, and all I wanted to do was put him back the way he was supposed to be and I didn't want a doctor job done on him. I didn't want a patch job, a band-aid. I wanted him right to the point where with ultrasound,

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we were able to measure the swelling in the suspensory ligament. And while this was going on, and even when he was at Daniel's, my wife and myself would massage this horse's leg every day. And then we -- I got a product called Cool -- what is it called, Brenda?
Q. Well, she's not supposed to --
A. Oh, she can't tell. We got a product that you put on the horse and that was put on him every day. In fact, we were criticized at Daniel's for doing it, but we did it. And the outcome was this: The horse's suspensory that was bruised came back and measured exactly the same as the other leg and the horse has never taken a lame step since then.
Q. Is the injury to the suspensory ligament something that you would expect a seller of the horse to disclose in connection with the sale of the horse?
A. I can only speak to for myself.
Q. Yes, sir.
A. I gave my veterinarian's information telling him that, you know -- I wanted everything if I had to have it -- if I -- okay. If Kelly had spoken to me in purchasing this horse, I would have turned around and said, "Okay. Here's his veterinarian. Here is his x-rays. Here are his

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films from his -- you know, from the ultrasound." I would have done all of that and I would have said there it is because this way nothing falls back on me. You're totally aware.
Q. I understand. So you would have told Ms. Sims about the suspensory ligament issue that Nick had even -- even if it was not immediately --
A. I -- I -- I, in fact, told her the first time I spoke to her.
Q. But that was after the sale, correct?
A. Oh, yeah. That's when we -- well, I think a lot of effort was taken to keep us far part.
Q. And you mean your respective agents --
A. Yeah.
Q. -- kept y'all apart in connection with --
A. I didn't even know who was buying the horse. All -- and Cathy Geitner appeared at my house with this bill of sale which showed that the horse was sold to Kelly's husband, I believe is the person on it.
Q. I think it may be Kelly Sims, but we'll get to the bill --
A. Okay.
Q. -- of sale in just a moment.
A. Okay. Yeah. All right.

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Q. Okay.
A. But that was it.
Q. Okay. So -- so between the time that you undertook to assume control of the horse's care and the time that the horse was sold to Kelly Sims, did you begin showing the horse again?
A. Yes. I had Daniel show the horse at Tryon on three occasions and the horse was champion on every occasion. A week before the horse went to the Pre Green Hunter Incentive in Kentucky, Daniel said to me, "I have somebody that wants to try the horse in Tryon." I said, "No, you can't do that. The horse is going to the Incentive. I don't want -- I don't want anybody getting on my horse and trying the horse." We went to the Pre Green Incentive and on the first day of the Pre Green Incentive, the horse rubbed a rail.
Q. And what is the Pre Green Incentive?
A. It's a -- it's a thing that goes on throughout the year where the Pre Green Hunters pull money together and you win money at this thing. The best horses in the -- the best Pre Green horses in the country at the end of the year compete.
Q. What are Pre Green Hunters?
A. They are hunters that are hunting in the

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first year -- their first year showing, generally.
Q. Okay.
A. And --
Q. And where did this occur?
A. It occurred in Kentucky last year. And so the first day --
Q. When you say he rubbed a rail, what does that mean?
A. He rubbed a rail with his leg. He touched it.
Q. And?
A. He's not supposed to touch a rail.
Q. Not supposed to do that?
A. No, that isn't what I taught him to do. So he rubbed a rail. And, okay, I said, "Daniel, what happened?" He said, "Oh, I overmedicated the horse." I said, "What do you mean, you overmedicated the horse?" He said to me, "Well, I wanted to make sure he's quiet. I gave him something." I said, "Daniel, this horse doesn't need anything to keep quiet."

The next day the horse went up in the point standings to, I believe, 13th. And the final day, the horse went up to 5th in the country without any medication. I mean, you have to understand -- my

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wife is going to kill me. My wife is 72 years old --
Q. You're safe as long as we're on video.
A. Yeah. My wife -- my wife is 72 years old. She weighs 98 or 100-plus nothing. Okay. She got this horse -- she gets on this horse every day. He doesn't need a lunge line to go around before you get on him. You get on him and you ride him and he's a gentleman. That's what makes him worth so much money.

Daniel in the spring -- it's very interesting. My wife may be aware of this. In the spring of 2017, Brenda?
Q. You can't --
A. Oh, I can't do that. I'm sorry. Okay. Well, this is '18. Okay. In the spring of '17, Daniel come over to get on the horse one day and said, "He's great. But, you know, I don't know, you know. He's damaged goods." And I said, "Really?" He says, "Yeah." I said, "Okay," and that was it. In his mind, he was done with this horse. He wasn't going to make any money on this horse.
Q. Damaged goods in what sense?
A. Because he had been injured.
Q. Okay.
A. Okay.

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Q. So -- so was that -- did you understand what Mr. Geitner was telling you was that --
A. I heard what he told me, but all he knew how to do was call a veterinarian. I was in this business in the '50s when you fixed them yourself and you didn't try and do it in ten minutes.
Q. But did you understand what Mr. Geitner was telling you was his opinion --
A. That is correct.
Q. -- that this was a horse that had -- that had important defects?
A. No, that's not -- the horse didn't have defects. The horse had been injured. People -- a lot of people in this industry -- because people that are coming into this industry and I'm tepid because I'm from back in the year of the flood. We used to take -- when something was wrong, you fixed it and you made it work again. You didn't -- you didn't put a band-aid on it. The way most of these trainers today, when a horse is hurt, they will turn around and they'll give them Xylocaine. They shoot them up so that they can show them the next weekend. And if you know anything about athletes, if you keep running on something that's damaged, it's going to break for good.

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That's what they think of when a horse is hurt. So that's where he was coming. He quickly changed his opinion about a month later when he showed the horse and everybody was going goo ga ga ga over the horse out there because he was doing so fabulously. And then he took him to Tryon two more times and he won both times and he beat top horses in the country and top politically plugged in riders. This is a very subjective sport.
Q. Yes, sir. Were there any injuries that Nick had that Mr. Geitner, to your knowledge, was unaware of?
A. He was totally aware of them. What -- what bothered me is, as far as I'm concerned, they were both caused by his negligence.
Q. Do you have all of the vet records?
A. All of them. You're welcome to them all.
Q. Okay. And are they at your home?
A. I think -- I think most of them all. If not, I'll get you. Yeah.
Q. Okay. And you say you spent about $14,000?
A. 14,000-plus.
Q. Plus. Okay. How is it that the subject of the potential sale of the horse, Nick, to

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Kelly Sims first came to your attention?
A. We went to the Pre Green Hunter Incentive. I believe it ended on a Thursday. I said to Daniel, and I've been doing this since the '50s, "Is there any interest in this horse." He said, "No, I don't think so." Well, a couple of people that I know in the business for 20, 30 years was telling me everybody was looking at this horse, but Daniel said no. He said, "We're going to ship him home Friday or Saturday." So --
Q. You were in Kentucky at this point?
A. We were in Kentucky and Daniel Geitner ushered Brenda and I out of Kentucky telling us there was nothing going and he was shipping the home back -- the horse back to us. And I said, "That's great because I'm going to get a half million for him at Indoors." And he said, "Well, it's" -- I said, "Yes, it's possible because I know who is looking at the horse." And I'm not going to say it here, but Kelly knows who some of those people are from New Jersey. They were gooing over the horse. So we went home and I'm waiting for my horse to come home. And Saturday comes --
Q. You left on Friday?
A. We left Friday morning, I believe. Yeah,

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Friday morning. But we were clearly looking -- looking back, we were clearly ushered out of there.
Q. Okay. Let me talk to you about the timeline. So you arrived in Kentucky what day?
A. Monday, I think. The beginning of the Pre Green Incentive, whatever day that was. We stayed there for three days. The day after, Daniel said nothing was going on with interest, because I wanted to be there, and we went home. And Friday, the horse didn't come home. And then Saturday at six o'clock at night, I got a call and I said, "What's going on?" He said, "Your horse is sold."
Q. Sold?
A. "Your horse is sold. He's been pre-vetted. They've already insured him, and he's going to Atlanta."
Q. And this is Mr. Geitner?
A. This is Daniel Geitner.
Q. And --
A. And he said to me, "We've got a wealthy woman here with 650,000 to spend. Her and her husband just sold a company and I sold -- I sold her Nick for 300,000 and I sold her Raffles for 350." I said, "Okay. What's my end?" He said, "Well, there's a lot of commissions in here that have to be

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paid out."
Q. Now, you just said 300,000 and the bill of sale has a different number.
A. I'll get into that.
Q. Okay. I just want to make sure.
A. He said, "There's a lot of commissions have to be paid out." And I says, "Why?" And he said, "Because the woman buying the horse refused to pay any commission." I said, "Okay."
Q. And so he told you Kelly Sims --
A. Would not pay any commissions out on the horse.
Q. Okay.
A. I said, "Well, what's my end?" He says, "You're getting 200,000." I said, "So there's 100,000 going out in commissions?" And he said, "Bill, there's a lot of commissions have to be paid on this because she refuses to pay commission on either horse." I said, "All right."
Well, the next day he called me up, he says, "The horse only sold for 275 because he -- on the vetting they found arthritic changes," which I know to be pure nonsense. I shut up. His wife appeared a couple of days later with a bill of sale. And I, of course, I wanted -- I said, "Who's buying

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my horse?"
"Oh, it's some lady in Atlanta. I've ridden horses for her. She's okay." I said, "No." I said, "Let's go beyond okay." She said, "She's got a beautiful place. She has some nice horses and it's good." I said, "All right." And I asked them a few more questions, which I honestly don't remember right this minute, and it was lip service, but he did it. And --
Q. I'm interested how is it that -- and did Mr. Geitner explain to you how it was that he thought he had authority to sell your horse without you approving it ahead of time?
A. That's a great question, isn't it?
Q. Yeah.
A. That's a good question. I don't have the answer. I know now in retrospect how he did the commission deal with me -- how he figured the commission deal with me.
Q. Tell me that.
A. When we first got the horse and he was at Daniel's facility, he said to me, "Doug Wheeler is going to want this horse and Hunt Tosh is going to buy this horse." And Hunt Tosh is Daniel's best friend. I mean, they are stuck at the hip. I said,

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"Yeah." He said, "I'm going to tell you right now, Bill, no matter what we get for this horse, Hunt is going to want 50 or 75,000 back because Kenny Wheeler will not allow him to take any commissions on horses that he buys for them." And that, when I look back in retrospect, was the setting up and putting me in position so that when he did make that call to me, I wouldn't find it so foreign and so offensive. So he did that and --

Q. Did he explain to you who was getting paid those --

A. No.

Q. -- commissions?

A. No.

Q. Did you ask?

A. No. He said, "There are a lot of" -- he said, "There are a lot of other people getting" -- he did. He said, "There are a lot of other people getting commissions on this." Did not -- okay. To clarify the question you didn't ask me, but I read into what you were saying, he did not infer in any way, shape, or form that he was getting any of the money.

Cathy Geitner appears at our house a few days later. I guess the date is here someplace. The

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21st day of August. Yeah. Here it is.

Q. Yeah, I got it.

A. And she hands Brenda a check.

Q. My copy has an attachment. So...

A. Okay. She hands Brenda a check for 145,000 --

MR. LOTT: Are we making that -- excuse me. Is that document an exhibit or is that one that Mr. Mackay had with him?

MR. ICHTER: That's one he had with him, but a copy of that will be marked.

MR. LOTT: Okay.

MR. ICHTER: I trust y'all have a copy of the bill of sale?

MR. LOTT: We're talking about the bill of sale August 21, 2016?

MR. ICHTER: Yes.

MR. LOTT: Yeah, I've got that in front of me. Go ahead.

THE WITNESS: So the check is for 145,000. And Daniel gets on the phone and he explains to me, you know, he did have expenses on the horse, et cetera, and he would like to make 20 grand and his expenses -- no receipts. Expenses were 30,000 and he would like to make 20,000 on the horse.

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So to me that was saying that he wasn't taking any commission on the sale of the horse, that he was just taking 20,000 because he wanted to make, in his words, some money on the horse. I didn't like it. I was not in a position to turn around and go crazy. The horse was no longer in my care. I didn't know who Kelly was from Adam.

A week later, Brenda and I were over at the Aiken horse show and Daniel is there. And I had told a few people that I -- they said, "What did you get for the horse?" I said, "The horse sold for 275 and he sold Raffles for 350," because that's what he told me.

And Daniel is not a first here professional in the business, you know. If you go to people up in Jersey or Texas or other areas of the country, these people command enormous prices for horses. I mean -- and I think your client would agree with me. If this horse were in Flemington, New Jersey right now, this horse would probably be sold for three quarters of a million dollars. And I'm not exaggerating by any stretch.

MS. SIMS: I need to move to New Jersey.

MR. ICHTER: Let's go to New Jersey

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after this.

THE WITNESS: She knows where, too. Anyway, we ran into Daniel at the show. We were just in our car and he came up. He said, "I wish you wouldn't tell anybody what we got for the horses." And I said, "Well, I've got to be honest with you, Daniel, I have a girl named Lindsey Fletcher -- Fletcher who runs the Atlanta Hunt Club calling me on the phone and telling me terrific that Daniel sold these horses for 550,000, this is fabulous and everything." And, I mean, this girl is like the town crier, so it was all over.

So I said, "You know, I think that's who is telling everybody." And Daniel turned to me and he says, "Well, you told a few people." I said, "Well, you never told me not to say anything." And he looked at my wife and myself and he said, "I thought you guys were on my team." And I said, "We are." And he stormed off. And that was the beginning of me going on this hunt to find out what happened.

(PLF. EXH. 1, Horse Passport, was marked for identification.)

BY MR. ICHTER:

Q. Okay. Before we go into a description of

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the hunt, let me show you a couple of documents, do a little backfilling. Exhibit No. 1 purports to be that horse passport that you told me about?
A. Yes, it is.
Q. Can you identify for the record what that document is, please, sir?
A. It's a horse passport for Nick.
Q. And it's plastic container, clear --
A. It's a plastic, clear container and it has his previous owners. It has a description of the horse.
Q. Much of it in German?
A. Well, they're not very accommodating that way. They only want our money.
Q. Right. I understand.
A. And it shows the transference to my wife's name and it's -- this document says that Brenda Mackay was the owner and sole owner of the horse.
Q. Okay. And in spite of the fact that your wife was the owner of the horse, were you the person who handled the business aspects?
A. I was in the business world for many years, a number of those years as a developer of properties. And years ago my lawyers advised me that

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I should never own anything, that everything should be in my wife's name because as a developer, people have a tendency to sue you even if they're not legitimate suits. And that's why I own nothing.
Q. I understand. So -- so is it -- is it fair to say that in spite of the fact that the horse was owned by your wife, that you were as fully informed about the horse as if you had owned it personally yourself?
A. My horse.
(PLF. EXH. 2, Pre-Purchase History Disclosure, was marked for identification.)
BY MR. ICHTER:
Q. Your horse. Okay. Let me show you what's been marked as Exhibit No. 2. Exhibit No. 2, and for the folks back in Atlanta, is captioned -- and I believe this is in the file somewhere -- a pre-purchase history disclosure and it is a history disclosure from, as I understand it, Dr. Suiter or Dr. Sutter. Do you know who Dr. Sutter is?
A. Stiner.
Q. Who?
A. Stiner. S-T-I-N-E-R.
Q. Okay. Are you familiar with a Dr. Sutter out of Lexington?

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A. I know the name. I don't know the person.
Q. Okay. All right. Do you recognize this as being the type of disclosure that would be associated with the sale of a horse such as Nick?
A. I would like to see more, but yeah.
Q. Okay. Do you know if this is, in fact, the disclosure that was done on Nick?
A. I have never seen it before this minute.
Q. I want you to assume for a moment that this is the disclosure on Nick.
A. Okay.
Q. Based upon your knowledge of the horse, would you say that this fully discloses all of the medical history and previous conditions the horse had that should have been disclosed in connection with the sale of the horse?
A. Medical history --
MR. LOTT: Object to the form.
MR. ICHTER: That's okay. You can answer.
MR. LOTT: You can answer. I just objected to the form of the question.
THE WITNESS: Medical history, no. Yes, he had regular dental care. Well, he did have surgical. He had a chip removed and he was taken to

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the vet who did it in Daniel's van.
BY MR. ICHTER:
Q. So it says, "Surgical history, none disclosed." That would be wrong, correct?
A. That would be incorrect.
Q. And it says, "Muscular skeletal lameness history, none disclosed."
A. That's incorrect.
Q. Okay. And you indicated the reason for the purchase price on the horse being decreased from $300,000 to $225,000 had something to do with some sort of arthritic condition?
A. He said that -- he -- he told me the reason the price went down from 300,000 to 275,000 was because the horse showed arthritic changes.
Q. And would that be something you would expect to be disclosed on a pre-purchase history like this?
A. The horse didn't have the condition.
Q. Well, if it were true, would that be disclosed on a document such as this?
A. I would hope so, but, you know.
(PLF. EXH. 3, Bill of Sale, was marked for identification.)
BY MR. ICHTER:

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Q. Now let's talk about the bill of sale. Exhibit No. 3 --
A. Yeah.
Q. -- is the bill of sale for Nick?
A. Yeah.
Q. And my first question is whether or not you recognize that document?
A. Yes, I do.
Q. Okay. If you take a look at the third page of the document, is that your wife's signature on that page?
A. My wife signed that under my direction.
Q. Okay. And did you witness her signing the document?
A. Yes.
Q. And you recognize her signature?
A. Absolutely.
Q. Okay.
MR. ICHTER: Gentlemen, let me take a real quick break, please, and let's take --
MR. LOTT: Sure.
MR. ICHTER: Let's take about five minutes. Is that okay?
THE WITNESS: Sure.
THE VIDEOGRAPHER: We are off the

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record at 3:08.
(Off the record.)
THE VIDEOGRAPHER: We're on the record at 3:19.
BY MR. ICHTER:
Q. Mr. Mackay, before we get into further details about the sale of Nick, can you tell me whether or not prior to the sale to Ms. Sims, had there been ongoing efforts to sell the horse?
A. I had spoken to some -- not by Daniel Geitner. I had spoken to some trainers up in New York on my own. In fact, one of them came down to see the horse and he loved the horse, but his client moved out to the coast and that -- and I had somebody else from Connecticut that wanted to very much see the horse.
Q. Had there been any previous vettings of the horse by perspective purchasers?
A. No.
Q. Okay. When the horse was purchased by Ms. Sims, was there any discussion between you and Mr. Geitner on the subject of how the proceeds would be disbursed?
A. The only conversation that I had with Mr. Geitner was that the -- what became 75,000 had to

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be paid out in commissions to people on the sale and that I was getting 200,000, which turned out to be 145 because Mr. Geitner had to make 20,000 over what he claimed were expenses of 30,000.
Q. And who received the money from Ms. Sims?
A. I said to Mr. Geitner on the phone that night, "Well, fine. Have them send me a wire." And he said, "No, I'm handling the whole thing. All the money is coming through me because it's a package deal."
Q. So he actually took in the money?
A. He took in the entire wire.
Q. Okay. And so as a consequence of that, you had no visibility to the full -- what exactly was the full amount that was paid, right?
A. Only what he had told me.
Q. By the way, with respect to the vetting on Nick, do you know who -- who attended that vetting on behalf of both seller and buyer?
A. I would -- I'm assuming Daniel Geitner attended it on that part. I was -- I didn't even know it was happening.
Q. Did you -- do you know or did you know at that point in time who Sharon Enteen was?
A. Never heard of her.

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Q. The bill of sale itself, did it go through more than one iteration? Were there various drafts to it, do you recall?
A. No.
Q. You don't recall that?
A. No. Cathy Geitner came to the house and that was it.
Q. Okay. So you never saw a copy of it that had been sent from Kentucky prior to the time --
A. Nothing.
Q. -- she appeared on your doorstep?
A. Nothing.
Q. Did she bring a check when she appeared on your --
A. The check was already made out.
Q. For 140?
A. That's it.
Q. Okay. At some point in time, did you get an understanding of exactly who the recipients were of the proceeds of the purchase price for Nick? In other words, how was the money distributed?
A. Okay. I'm going to go back to where Daniel turned around and said, "I thought you guys were on my team," and stormed off. At that point -- I've got a short fuse as it is, but that really set

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me -- set me off. And I looked at my wife and I said, "Something is not kosher here. This is not right and I want to know what's going on." And I started --

Q. And this is relative to when you --

A. Within a week of the sale.

Q. Within a week of you getting the money?

A. Yes, which was right when the horse -- okay. I called Sharon on the phone and I said --

Q. Sharon Enteen?

A. Yes.

Q. And how did you find out who she was?

A. From Lindsey Fletcher because Daniel didn't even tell me the name of the person or the stable or anything.

Q. Okay.

A. So I called Sharon. I said, "I'm the guy that owned Nick." And she was very charming and very nice and everything on the phone, and she said she was going to send me pictures and everything was great. And I said, "A lot of commissions paid out on this." I just laid it out there like that because I wanted to hear what she said and she said nothing.

So I hung up. That was the end of the conversation. Oh, no. During the conversation, I

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wanted to make sure that she knew the horse had to have a window. I mean, he really does. If he doesn't have a window, he's -- he's not right. So -- and I said he loves sugar cubes. Oh, she -- she humored me and, you know, that was the end of that conversation.

About a month later -- three, four weeks later, I called again and I got her husband. I introduced myself. I said, "Is Sharon there?" He said, "No, she's not available right now." I said, "Okay."

Q. This is Mr. Prusso?

A. Yes. And I said, "Oh, I was just calling to find out how Nick is doing now." He didn't even know who the horse was, which I found very odd being that he's probably the most expensive horse in their barn. So I hung up. And then I guess about a month later, I called up and I got him.

Q. Him?

A. Mr. Prusso, I guess. And he sounded a little inebriated on the phone, was slurring his words. He was really screaming and yelling, "It's what you get when you bring somebody in to ride in your barn. He took all her -- he took all of her horses and the horses are gone. They're not here

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anymore."

Q. Was he talking about Michael Leon at this point?

A. Yes.

Q. Now, Mr. Leon was a trainer?

A. I don't -- I assume that, but let me go on. So I said, "Well, where did they" --

Q. Every once in a while I've got to ask questions --

A. Yeah, I know. So I said -- I said --

Q. -- so I can establish --

A. I said, "Where did the horses go?" And he said, "They're at Terri Brown's." So I know Terri Brown. So I called Terri Brown's phone. Terry Brown is on vacation in the islands. And I just left a message, and Terri Brown called me two days later from the islands. And I said, "Terri, do you have Kelly Sims' horses?" She says, "I have a couple, I think." I think that's what she said to me, "But Nick is not one of them." I said, "Okay."

And, ironically, Daniel said to me a week later, "You know, Kelly called you back because she has a half brother to Nick and she thought you were calling to try and buy him." That's why I got the call back from Terri Brown. At that point, I didn't

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really know who Kelly was. I didn't know whether she was part of a scam to cheat me out of money on these horses. I got her home phone number. I called it, but it was no longer -- it didn't hook up.

I spoke to the Cherokee County Sheriff's Department and I outlined to them what had basically -- what I was under the impression had happened, that something was wrong. No. That was after I spoke to Michael and then to Kelly. I spoke to Michael and Michael got to Kelly and Kelly called me.

Q. Well, tell us how you -- how you got in touch with Michael?

A. I got to Michael from Terri Brown. Terri Brown gave me Michael's phone number.

Q. And at this point, was Michael working for Kelly?

A. I believe so.

Q. Okay. And this is Michael Leon?

A. Michael Leon says to me, "Your horse is here. He's great. He's fabulous." I said, "Okay. Good." I said, "You know, something went on with the commissions on this deal and I'm trying to figure out what happened."

So about, I guess, a week later or close

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to that, I get a call from Kelly. Keep in mind, until I speak to her, I don't know whether she's part of this deal and I've been duped for $75,000. So I was very cautious and then she was cautious initially with me because I think we were both trying to figure out what was going on. Nobody likes to be a victim. And we figured out pretty fast what had happened.

And then I called Sharon again and I introduced myself to her on the phone once again. And I said, "I understand that you and Daniel chopped up the $75,000 on my horse." And I said, "I want to know what's going on and I want you to communicate with me." And she was silent and she said, "I'll have to speak to Daniel."

Q. She didn't deny that that had happened?

A. She did not deny it. Nothing. She didn't admit it. She didn't deny it.

Q. Okay.

A. That was the last -- last time I spoke to Sharon. I called Daniel the same night and I said, "We've got a problem going on here, and the problem is there's a gal named Kelly Sims that knows that she's been screwed and I'm feeling pretty screwed and we've got to make this right." Daniel was at my house the next day at nine o'clock, hat in hand,

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doing mea culpas all -- all over my living room.

Q. What is he saying to you?

A. He's telling me, "Look, you know, things happen." I don't know the full thing. I said, "Well, who got the money?".

Q. And the money you're talking about --

A. I'm talking about the 75,000 different between 200,000 and 275,000. And I said, "Well, who got the money?" And he kind of smiled and give me this little boy look. And I said, "You know, Daniel, we're not talking about buttons here." And he said, "Well, you know, would 20,000 make it better?" I said, "No, it's not going to make it any better at all."

And at that point, I spoke to a friend of mine and I was told not to let him off the hook, that he was wrong and that what he had done had been -- he had been cheating and, you know, this was wrong. So I think about a day --

Q. In that -- in that first meeting --

A. Yes, go ahead.

Q. -- you had where he showed up at your house with the mea culpas, did he tell you how that $75,000 had been dispersed?

A. No, he didn't. And all he did was look

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peaked. It was like a little kid that got caught stealing something out of the icebox and they got it in their hand, but they're not affirming or denying that they got it.

Q. Okay.

A. That's what he was doing. Two days later, he comes back to my house and he says, "You know, what can we do here?" And I said, "I want my money." I said, "This is wrong, Daniel." I said, "How much of this did you get?" I said, "Did -- did Sharon get any of this?"

"Yes." I said, "Sharon?" Yeah. I said, "What did Sharon get?" And he wouldn't tell me. He just told me Sharon got money out of this. I said, "Okay." And I said, "Well, where are we going?" And he said to me, "I'll give you 40,000." Okay. And I let him hang that night.

The next morning I spoke to my lawyer, which is a guy named Jake Moore who is a litigating attorney in Columbia, South Carolina. And I said, "Jake, what do you think?" And he says, "Bill, a burden of hand is worth two in a bush." He says, "If you sue him right now," he says, "unless you turn around," he says, "and let this thing go criminally," and he says, "by the way, you cannot use the threat

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of criminal prosecution to collect money in the state of South Carolina."

Q. Or Georgia.

A. Or Georgia. So I said, "Okay. Fine. I don't want to do that." And he said, "You know," he says, "the 40 might be better than the net you'd get out of a lawsuit." And at that point, I signed the confidentiality agreement and took the $40,000. And when he was giving it to me, I said, "Is this her money or your money?"

Q. And by "her" you meant?

A. Sharon.

Q. Enteen?

A. Enteen. And he said to me, "Sharon." He says, "No, this is my money." He started saying Sharon and then he said, "No, this is my money." Then they sent me an agreement, and on the agreement it was Daniel and Cathy Geitner and Sharon Enteen and her husband, and there was a paragraph in there that would have, you know -- I would have ended up paying for their lawyers and all kind. I said, "You know, rip it up. I'm not going to sign it." And they took all of that out. And -- but the agreement that came back to me did not have Sharon Enteen, nor her husband on it.

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So the lawyer Daniel was using at that time was Mary Guynn who has represented me in a number of real estate matters and everything. And I said, "Mary, where are the other people?" And she says, "I don't know why, but they don't want to go in on this -- this agreement." And I said, "Fine." And at that point, that was the agreement.

I guess the things that, you know -- after he told me, when he first sold the horse, that they had a woman with 650,000 that they were going to spend the money with -- that they were going to take -- I -- I guess when Brenda and I drove away from Bruce's field that day, I felt like we were had. But then I also felt she was -- Kelly Sims was had. It appears that the 75,000, according to Daniel Geitner, was chopped up between he and Sharon.

Q. And did you get some understanding at some point in time of how it was divided between them?

A. Well, he paid me 40,000 and I don't think he had any more to give me inasmuch as he had to pay me in two payments.

Q. Okay. Did he ever tell you what the specific division --

A. No.

Q. -- of the proceeds were?

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A. No. At one point he inferred that -- on the first meeting he inferred that it went -- he said, "Look, it had to go to her because the woman refused -- the woman buying the horses refused to pay any commission." So, yes, at that point I -- I would assume he inferred Sharon.

Q. Okay. And when -- when he told you that, did you at some point pass along that information to Ms. Sims and indicate to her that your understanding was Ms. Enteen had received the $75,000?

A. I think I said they chopped it between them or they had received -- they received the money and I couldn't find any other people that got commission.

Q. Okay. The agreement that was presented to you by Mr. Geitner --

A. Yes.

Q. -- did Mr. Geitner explain to you why it was that he wanted you to sign an agreement?

A. Yes. He said they didn't want me to discuss this with anybody and I couldn't talk about it.

(PLF. EXH. 4, Settlement Agreement, was marked for identification.)

BY MR. ICHTER:

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Q. I'm going to show you what's been marked as Exhibit No. 4. Four is a settlement agreement?

A. Yes.

Q. And you supplied that to me today?

A. Yes.

Q. It is dated January of 2018 and it appears as though it was signed on -- by some folks on the 21st and some folks on the 18th of January?

A. It was supplied -- it was supplied to you because I'm under judicial subpoena to be here.

Q. Right. So -- so this is one of the documents that you're supplying as a consequence of the subpoena that was served on you, correct?

A. Correct.

Q. Okay. And your understanding is that this document was to be executed by you because Mr. Geitner did not want you sharing the information about the sale of Nick that you have shared with us today?

A. Since I have signed that agreement, I have not said anything to anybody about this in any way, shape, or form.

(PLF. EXH. 5, Letter from Smith, Massey, Brodie, Guynn & Mayes, was marked for identification.)

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BY MR. ICHTER:

Q. And let me show you, sir, what has been marked as Exhibit No. 5. Five purports to be a document on the letterhead of Smith, Massey, Brodie, Guynn & Mayes, a law firm, apparently, in Aiken, South Carolina dated March 8, 2018. Do you know what that is?

A. Yes. He's filtering the money through them.

Q. Okay. So Mr. Geitner is paying you -- instead of paying you by personal check, he provided, apparently, the money to his law firm and they wrote you a check?

A. Just like Donald Trump.

Q. Okay. And this is for $20,000. Is there another payment that --

A. There are two. They paid me twice. I've received $40,000.

Q. Okay. Have you ever talked to Ms. Enteen following those mea culpa discussions you had with Mr. Geitner?

A. Never. In fact, the day after I spoke to her the last time, Daniel came over to my house again and he said to me, "Why did you tell them the horse was ever hurt?" I said, "Because I have nothing to

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hide." And then he said to me --
Q. When he said them -- tell them that the horse had been --
A. Meaning Kelly.
Q. Ms. Sims, the buyer?
A. That's correct.
Q. So he was complaining that you had made full disclosure?
A. Absolutely.
Q. Okay.
A. Then he said, "You called Sharon." I says, "Daniel, I called Sharon. I was very polite to her. I did not attack her in any way. I didn't threaten or anything." I said, "I'm madder than hell and this thing is going to come to a -- come to a head." And that's what -- that was it.
Q. Have you -- and you haven't had any conversations with Ms. Enteen since then?
A. Never.
Q. Okay. More recently have you had, since this lawsuit began, any conversations with Mr. Geitner?
A. Not since this agreement.
Q. Okay. So that's the last time you talked to him?

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A. Yeah.
Q. Any communications --
A. Nothing. After 20 years of showing horses for me and everything, no, nothing.
Q. So he's essentially fallen off the face of the earth?
A. The sun on the grass.
Q. Got you. Do you know Kelly Farmer and Larry Glefkee?
A. Yes.
Q. Who are they?
A. Kelly is a show rider and she's married to Larry Glefkee and he is an excellent horse trainer and seller of high end horses.
Q. And, to your knowledge, have either Daniel Geitner or Sharon Enteen contacted Kelly Farmer or Larry Gefkee about -- Glefkee about this particular case and the dispute?
A. Not to my knowledge, but I know that Daniel Geitner was friends with Larry Glefkee. There was one thing I forgot.
Q. Yes, sir. What's that?
A. When Daniel -- in the initial conversation on the sale of the horse that night and he told me that at that point 100,000 -- well, it was supposed

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to be a $300,000 sale was going to be used, I said, "How are you going to cover this? How are you going to handle this?" And he said to me, "I've got it covered."
Q. Okay. So originally the amount of commissions that was --
A. Was 100,000.
Q. Was $100,000?
A. The first -- when he first -- on the initial call on Saturday night, he said to me, "Your horse is sold. He's insured. He's already been pre-vetted. They're going to do a final vetting tomorrow and it's $300,000."
Q. Now, you've mentioned the horse Raffle a couple of times. Are you familiar with that horse?
A. Yes.
Q. Who -- who owned that horse?
A. Ms. Janet Peterson. He was bought by -- he was sold by Terri Brown to Ms. Janet Peterson through Daniel Geitner approximately two, two and a half years ago.
Q. Okay. And who -- who rode Raffle?
A. Daniel, 100 percent of the time. Only Daniel.
Q. And he professionally rode him?

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A. Yeah, showed him.
Q. Okay. Were there any medical issues that you were aware of that Raffle had?
A. None that I can say that I knew about. I noticed Raffles showed a little bit, and then all of a sudden Raffles didn't show. And then Raffles would show a little bit, and then Raffles didn't show. And I thought -- and this is purely supposition on my part. I mean, I -- I thought that the horse had hurt his leg or something, but I had no knowledge and nothing was ever said to me to that effect.
Q. But that expectation arose from the fact that the horse was sporadic in its appearance at --
A. Yeah.
Q. -- shows?
A. Yeah.
Q. Okay. Are you -- I already asked you that question.
MR. ICHTER: Sir, those are all the questions I have for you right now. I appreciate your help today. Thank you so much.
THE WITNESS: Thank you.
THE VIDEOGRAPHER: This concludes the deposition --
MR. LOTT: No, I have a couple of

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follow-up questions. This is George Lott for Sharon Enteen. Can everybody hear me okay?
THE WITNESS: Yes.
EXAMINATION
BY MR. LOTT:
Q. Okay. I just want to follow up on a few things that Mr. Ichter asked you. I believe you used the praise "subjective standards" in terms of disclosures and what is expected of sellers of horses prior to the sale. Is that what you said earlier, that there aren't necessarily objective standards, but it's all subjective in the mind of the seller?
A. I may have said that. Would you like me to clarify it?
Q. Sure.
A. The business has become an absolute pick of scumbags that are selling horses and they cheat on both ends and this is not unique. This is constant. Is that clear enough?
Q. And I understand that. Go ahead.
A. That's it.
Q. Okay. Well, I guess my question is a little different then. Are there any objective standards that sellers of horses are expected to follow?

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A. Absolutely. You mean -- you mean written, printed standards?
Q. Sure. Of course. Written standards, codes, regulations, anything like that?
A. I haven't seen anything in writing. I know that two years ago or three years ago at the Hunter Jumper Association national meeting, the people tried to bring forward a open disclosure in the sale of horses and the professionals voted it down. But I -- I think just normal business standards and normal moral etiquette and not lying and not being deceitful and cheating -- I mean, this is nothing but theft that went on here.
Q. Sure. Okay. We'll get into the theft. There's moral standards, right? And I understand that. Yes?
A. Yeah. What's your question?
Q. Moral standards in a lot of business transactions, right?
A. Yes.
Q. Okay. Are there -- my question is, are there any legal standards that a seller or a purchaser, for that matter, of a horse is expected to be bound by?
MR. ICHTER: I object -- I object to

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the extent it calls for a legal conclusion. But if you know, you can answer.
THE WITNESS: I don't know, but I would assume they would be just normal business standards. I would assume they follow --
BY MR. LOTT:
Q. Anything -- I'm sorry. Go ahead. I didn't mean to interrupt you.
A. I would think they would be -- be the same as if you were in a business in Georgia and you were selling a product to somebody, you've got to disclose about the product or you can't turn around and have all this nonsense going on in between. I mean, I can tell you right now that I was told by a Cherokee County sheriff that he thought it was clearly theft by deception.
Q. And what was theft by deception? If you don't mind elaborating on that. And who was the purported actor that committed that theft?
A. In my opinion?
Q. Yes, sir.
A. If what Daniel Geitner said was true that she got half of the under-the-table money, both of them.
Q. And that being Sharon Enteen?

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A. Sharon and Daniel.
Q. Okay. But if I understood you correctly, you said that when Daniel approached you about this, it was -- I think you called it a boyish smile, but didn't expressly say anything about Sharon. Is that still your testimony?
A. That was on the first time we discussed it. When we agreed to the 40,000, I specifically said to him, "Is this all your money or is this her money?" And he said to me, "No." I said, "Did she get any of the money?" He said, "Yes, she did." And he did not --
Q. Did any of the commission --
A. Any of the $75,000 and he did not clarify it beyond that point.
Q. Let's talk about that for a minute. Earlier -- I'm trying to follow the timeline in my head because you didn't give a lot of dates, but it sounds like to me Daniel was in Kentucky and called you and said the horse was sold; is that correct?
A. He said to me; "I sold your horse."
Q. Okay. And he told you that there would be $100,000 in commissions paid out on that horse?
A. He said that the woman that was buying the two horses refused to pay any commissions; and that

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because of that, they were going to take $100,000 out of the 300,000, at that point that he was telling me that I was getting for my horse, and that was going to be paid out in commissions.
Q. Okay. Did you have any objection to that at that point?
A. Yes, I think I probably did. And I should have, at that time, stated them more than I had. I didn't. That's a good question.
Q. I appreciate that. I don't get that compliment very often, but let me ask it a different way. Did you ever tell Mr. Geitner not to sell the horse?
A. No.
Q. And when he told you that he was going to get $100,000 in commissions, that didn't prompt you to say, "Wait a minute. You don't have the authority to sell my horse?"
A. I -- No. 1, if you want to get technical, he shouldn't have been having the conversation with me. Officially and legally, I didn't own the horse.
Q. Is that because it was owned by your wife, correct?
A. It was owned by Brenda Mackay. She wrote the check for the horse. She paid the bills on the

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horse.
Q. Okay. There was some reference earlier to a settlement agreement, I believe is what you called it, where Daniel paid you $40,000 albeit in two payments. I would imagine 20,000 and 20,000; is that correct?
A. That is correct.
Q. Were you a party to that settlement agreement?
A. Yes.
Q. Was your wife also a party to that settlement agreement?
A. Yes.
Q. And what were the terms of that agreement, if you know? And I think you may have it in front of. But since I'm not there --
A. Basically, the terms --
Q. -- I don't know.
A. -- of that agreement was that he was giving me an additional $40,000 as a final settlement on the horse and that nothing in the agreement was to be disclosed or talked about and not go around town and tell everybody what a slime bag he is.
Q. So that was, in your mind, a reimbursement for the commissions that he had taken?

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A. That's what he said. He said it was.
Q. Okay. Was Ms. Enteen's name anywhere in that agreement?
A. On the first agreement they sent me, her name and her husband's name were on the agreement. When I declined to accept the first agreement because of verbiage in a paragraph and they gave me the second agreement, Mr. -- Mr. and Mrs. Enteen's name was not in the agreement. And when I spoke to Mr. Geitner's lawyer and asked them how come her name was not in the agreement, he said they elected not to be involved in this. I asked Daniel --
Q. Do you happen to have a copy of that original agreement anywhere in your possession?
A. I think I do someplace. I -- I --
Q. Okay. And if we were to send you a subpoena, would you be able to get that to us?
A. You don't have to subpoena me. All right? I'm just --
Q. Get it to us. I want to see what it says.
A. If I can find it. And I'm being -- look, this has not been an easy day for me. I've been very candid about a lot of things here. All right.
Q. I understand. I appreciate that. I really do. I just want to know if you have it?

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A. No. I don't send me a subpoena. Send me a letter. I'll be happy to comply if I can find it. If not, I'm sure you can get it from Mary Guynn.
Q. And she is in Aiken, South Carolina?
A. Yes, she is.
Q. Okay. And if you know off the top of your head, was that agreement -- did that agreement have any language that Ms. Enteen would pay you any money --
A. No.
Q. -- as a reimbursement?
A. It not.
Q. And what was -- what terms was she bound by in that agreement? Just the non-disclosure portion?
A. I -- I -- I -- for -- for myself and my wife. But Daniel did -- upon the agreement of the $40,000 and the agreement that ended up being signed, Daniel did turn around and say that she got half the money.
Q. Have you happened to have the chance to read the lawsuit in this case, the complaint that was filed?
A. Yes, I've seen it.
Q. I'm not sure if it's been made an exhibit.

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I haven't heard.
A. I've -- I've -- I've seen the -- I've seen it.
Q. Okay. Well, I don't think you have it in front of you, so I'm just going to ask you a hypothetical question. Let's assume that the lawsuit alleges that Ms. Enteen received $75,000 in, quote/unquote, secret commissions.
A. Yeah.
Q. Would that be factually accurate?
A. I don't know.
Q. (Inaudible.)
A. Excuse me?
Q. I thought you just said that Ms. Enteen allegedly received half of the $75,000 --
A. That's -- that's -- that's what Daniel --
Q. -- according to Daniel Geitner?
A. -- that's what Daniel said.
Q. So all the evidence presented to you said that Ms. Enteen received half of $75,000, correct?
A. From Daniel Geitner.
Q. And have you gotten that information from any other source other than Mr. Geitner?
A. No.
Q. And I think you told me that the -- or you

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told Mr. Ichter when he was asking you questions that the last time you spoke to Ms. Enteen was prior to the signing of that settlement agreement with Mr. Geitner?
A. The last time I spoke with Ms. -- with Sharon, I'm not good with last names, was when I became aware of what had transpired. I called her on the phone and I just told her I was aware of this, and she told me she had to speak to Daniel.
Q. Okay. Let's back up a little bit. You mentioned the Cherokee County sheriff's office. Do you remember who you spoke with over there at the office -- sheriff's office?
A. One of the sheriffs.
Q. Did you get a police report?
A. No. I did -- I didn't file --
Q. Or did you make an actual --
A. No. Okay. I did not file a report. I called as a point of information to find out what were my possible avenues if I wanted to pursue this. That was all. I did not even give Sharon's name or her husband's name. I gave the man a hypothetical situation.
Q. Okay. And this may seem like a silly question, but you're not a party to this lawsuit,

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correct?
A. No, I'm not.
Q. But according to what you have told us, the undisclosed commissions came out of your pocket, correct?
A. Yeah.
Q. Why do you think that Kelly Sims is claiming she's entitled to the $75,000 in extra commissions if she didn't pay any commissions and refused to pay any?
MR. ICHTER: Object to the extent that it calls for speculation, but you can answer if you like.
THE WITNESS: I think Kelly Sims feels totally put upon by your client.
BY MR. LOTT:
Q. And I understand you might not know this and it is sort of a speculative question, but if Ms. Sims paid the price for the horse that she was quoted and your portion of the payment proceeds paid the commissions, what is her grievance, if you know? And I know that's a speculative question, but I feel obligated to ask.
MR. ICHTER: I object to the extent that it's speculative.

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THE WITNESS: You want me to answer?
MR. ICHTER: Sure.
THE WITNESS: I'm not an attorney. But as far as I'm concerned, this shouldn't be a civil case. Your client should be looking at jail.
MS. SIMS: It might be.
BY MR. LOTT:
Q. Have you applied for a criminal warrant in Cherokee County for any crimes being committed?
A. No. I told you, I called purely to find out what this type of a situation would do. I have applied for nothing. I have not named anybody. I have not given any specifics.
Q. No, I understand. I'm just asking have you made any criminal warrant applications, submitted any official complaints to the police department, anything like that?
A. Well, No. 1, I don't know that it would be to Cherokee County if I did. If I did, I think it would be federal because this was across state lines -- involving three state lines. And there are law -- and I'm not trying to question your ability, but there are laws against doing this in the federal government.
Q. I missed that last part. Go ahead. I'm

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sorry.
A. There are laws against this in the federal government.
Q. Laws against what specifically?
A. Against fraudulent transactions and there have been cases involving horses.
Q. But it sounds to me like everything you said, that Daniel Geitner was the party to the transaction that would have withheld the $75,000, correct?
A. I have my own feelings about this which I'm not ready to disclose at this time because they're just inner feelings and I don't have to discuss them. I'm -- I'm not sure that regardless of the confidentiality agreement I signed with the Geitners -- because I've been advised by counselor -- counsel that due to the fact that it was in fact a fraud, that I could take this in other directions. And I'm not sure -- I'm not sure as to whether or not I'm going to do that. I'm probably not going to do it. I'm 75 years old, I'm in ill health, and I'm not looking to go in battle in court and fight it out for days. Although, if pushed to the wall --
Q. Have you ever made any -- I'm sorry. Go ahead. I didn't mean to interrupt you.

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A. If pushed to the wall, I'll plug in my oxygen and, Counselor, you don't want me in a courtroom.
Q. I'll make a note of that.
A. You should because I'll cut you off at the knees.
Q. Thank you, sir. I will note that as well.
A. Please.
Q. But you never made any civil claim against Ms. Enteen --
A. No, I have not.
Q. -- either, have you?
A. I have not.
Q. Is Ms. Sims paying you anything --
A. Absolutely not.
Q. -- to assist in this case?
A. Absolutely not. Not to my wife, not to me. We have no financial agreement whatsoever.
Q. You just feel obligated to assist her in recovering money that was owed to you?
A. No, no. I -- my dog to fight in this thing is Daniel Geitner. I don't really know Sharon Enteen. I've had two conversations with her. Neither one of them were hostile or really derogatory. If she took half the money, you know

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what I think of her. If she didn't take half the money, you know, I'm not aware of that. I can only go by what Daniel Geitner told me. And I think the fact that Daniel Geitner paid me an additional $40,000 and gave me a confidentiality agreement in itself is a form of admission of guilt.
Q. Do you think that Mr. Geitner could have possibly kept the entirety of the $75,000 for himself?
A. Sir, I would love to know that answer.
Q. I think we all would. Hopefully that will come to the surface eventually.
A. And -- and -- and -- you know, just as you asked me, send me a letter. And if I can find that, I'll be happy to send it to you that other piece of paper you wanted. If you find that to be true, I wish you'd let me know about Daniel.
Q. You'll be the first one I call. Yes, sir. I'm almost finished. I just have a few other questions.
A. Sure.
Q. I'm not sure what exhibit it was, but it's the bill of sale.
A. Yeah.
Q. I'm going to sort of switch gears now from

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the commission issue --
A. You're going to go to the --
Q. -- to the -- sir?
A. Go ahead.
Q. Okay. I want to move on to the health issues that Nick suffered from that, I believe, the first part of your deposition was sort of centered around, his history of -- correct me if I'm wrong because I'm not a horse expert, but you alluded to his legs and he suffered from ailments to his legs, ankles, hoofs?
A. He suffered from athletic injuries he derived because of the lack of care on the part of Daniel Geitner.
Q. Okay. And you don't have any complaint about any interactions that Ms. Enteen had or anyone from Falcon Ridge had with Nick that may have caused injury, do you?
A. You got to ask that -- I'm not --
Q. And I can ask it a different way because --
A. Yeah. That's a tough -- I don't know how to answer it that way.
Q. -- the horse.
A. Excuse me?

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Q. I'm just trying to make sure I understand your testimony which was that the injuries were suffered at the hands of Mr. Geitner or while the horse was in Mr. Geitner's care; is that correct?
A. Any injuries the horse had prior to Kelly Sims' purchase of the horse while under the care of Daniel Geitner. And on my initial conversation with Kelly Sims, unrequested by her, I gave her a full background on the horse as I have done with any and every horse I've ever sold. And I --
Q. Do you know -- I'm sorry. Go ahead. I didn't meant to interrupt.
A. No, you go ahead. I'm going to shut up.
Q. No. It's just there's a delay because I'm watching you on a video screen. So I apologize if I cut you off.
Did you ever -- so you spoke with Ms. Sims and you disclosed the various ailments that Nick had suffered, correct?
A. None of which were told to her before. In fact, the day I told her --
Q. That's what she --
A. The day I spoke to her and told her this, as I was telling her what had happened to the horse

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and what had totally transpired, the silence on her end of the phone was deafening.
Q. Did she have the ability to vet Nick before the purchase, do you know?
A. She did vet Nick before the purchase.
Q. And that vetting, I would assume, turned out acceptable because she purchased the horse, correct?
A. Well, according to a document that I'm looking at here, if this was information given by Daniel Geitner, it appears that Daniel Geitner misrepresented -- I won't -- I'll be nice. I won't call him a liar. I realize I'm in the south. He misrepresented the facts and withheld vital information.
Q. Do you have any information that Ms. Enteen was a party to any of those --
A. I have no --
Q. -- conversations?
A. -- knowledge -- I have no knowledge of that.
Q. Do you have any knowledge that Ms. Enteen was aware of Nick's prior health ailments at any point prior to the sale?
A. If Mr. Geitner didn't tell her, she would

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have no way of knowing.
Q. I'm trying to understand the agency relationships in these horse transactions. As a novice, it sounds sort of like a real estate transaction --
A. It -- it --
Q. -- where you have --
A. Okay. It --
Q. -- the buyer's agent and a seller's agent, correct?
A. It's beyond that. It's not even -- it's not even signed agreements. The chicanery that has gone on in this industry in the past five or six years, it's beyond understanding.
Q. You never had a signed agreement -- agency agreement with Ms. -- Mr. Geitner or --
A. No.
Q. -- Ms. Geitner, for that matter?
A. No.
Q. And you never had an agreement with Ms. Enteen?
A. Only the bill of sale.
Q. Sure. Do you know if Ms. Enteen had a signed agency agreement with Ms. Sims?
A. I have no idea.

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Q. These are just intrinsic agreements. Strike that.
There's nothing written. You just --
A. Yeah. I'm going to make it --
Q. I've got a buyer for the horse and you say, "Sure, bring him -- bring him to me and we'll --
A. You got it.
Q. -- talk." Is that how that works?
A. You hit it right on the head.
Q. Very informal it sounds like, correct?
A. And then what happens that you two guys don't understand, if I'm -- if I'm one of these, what I call, creeps and I have a barn in Atlanta and I sell the horse to Mary Joe. So Mary Joe's agent charges a commission. Then the guy whose barn the horse is going to, he gets a piece of the pie too and everybody gets a piece of the pie. It's -- you know what? You could make a lot of money just turning around and creating a law to stop it. It's that bad.
Q. That's a common thing -- so you're saying that's a common thing where both agents on either side of the transaction get a cut of it or whoever is -- owns the barn or where the horse is stabled?
A. Look, if the blacksmith happens to be standing in the aisle, he tries to get a piece.

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Q. Really?
A. Yes.
Q. I can see why that would be upsetting, but it sounds like it's something that is sort of commonly known in the industry?
A. Well, it is and it isn't and here's where it's not. And I can't speak for Kelly, but I can speak for myself. I had a 20 year ongoing relationship with Daniel Geitner. I did not -- I expected loyalty. I expected honesty. There was no reason -- if he had said to me, "Bill, we've got to pay these commissions out and they are legitimately going out," I wouldn't have a complaint. I wouldn't be happy, but I wouldn't have a complaint. The point is he totally misrepresented to me where these things were going. And by that I mean this: When Daniel Geitner came and said to me, "I'm taking 30,000 for expenses and I would like to make $20,000 on the horse," that totally substantiates my position that this was a fraudulent transaction on his part.
Q. So he didn't give you any indication where the other $25,000 was going to go?
A. The 25?
MR. ICHTER: 75.
THE WITNESS: 75. The rest of the --

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BY MR. LOTT:
Q. You said he wanted 30 for expenses, 25 for -- or 20 for --
A. No, no.
Q. -- his commission and then an extra 25.
A. When I got --
Q. Unless my math is off. I'm just --
A. I -- I -- I know -- look, when I got my -- I'm waiting for a check for 200, I get a check for 145. He tells me I've got 30,000 in expenses and I would like to make 20 -- these are his words. I'm not even vaguely remembering this. "I would like to make 20,000 on this horse." Now that, to me, whether we are speaking French, German or whatever, that kind of indicates that that is what he's going to get and only what he's going to get. Wouldn't you assume that being a rational person? You didn't answer me.
MR. ICHTER: He doesn't --
BY MR. LOTT:
Q. I'm not under oath.
A. Is that what it takes to get an answer?
MR. ICHTER: We can swear you, if you like.
BY MR. LOTT:
Q. Fortunately, you're the deponent in this

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situation and not me. So if you don't mind, let me ask you the questions. Maybe on another occasion we'll be able to chat about this.
A. Hey, look, I'm a 75-year-old man with one foot in the grave. So...
Q. No, you've got plenty of time left.
A. Oh, really? From your mouth to God's ears.
Q. You mentioned something earlier that stood out to me and it involved Michael Leon. And if I misunderstood you, please feel free to correct me. Initially Terri Brown referred to you the information from Michael Leon; is that correct?
A. All right. Here's the chain very clear. I called Sharon's husband hoping to speak to Sharon, but I get him. In my opinion, he was in an inebriated state. He was cursing. He was yelling. He was screaming. He was clearly not in his own -- under control. He said, "They took the horses out of here. You can't let any of these people come in and ride for you because they end up stealing your clients." He was going -- he was going crazy.
I said, "Where did the horses go?" He said, "To Terri Brown's." I turned around and I called Terri Brown. Terri Brown was on vacation in

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the islands. Terri Brown called me back a day later, or maybe two, and I said, "Do you have Kelly Sims' horses there?" I believe she said to me, "I have a couple, but I don't have" -- when I asked if she had Nick, she said, "No, I don't have Nick." I said, "Well, where the hell is he?" And she says, "Her trainer is Michael Leon." She gave me Michael Leon's cell phone number.
Now, while this is going on and I'm trying to figure out what's going on with a lot of things, especially -- see, what triggered the whole thing was Daniel Geitner acting like a little spoiled brat at the horse show when he turned around and said, "I thought you were on my team." That -- that set me off.
Anyway, I spoke to Michael Leon. Michael Leon then gave -- then had Kelly call me. Now there's your chain of events.
Q. Okay. And I know this is going to sound like I'm just repeating my questions and I'm sorry, but I just want to make sure I understand it. Earlier you said when someone showed up at your door with a check, it was for $200,000. Is that -- is that what you said?
A. No, no. I did not say that. Daniel

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told --
Q. I'm sorry. Go ahead.
A. Daniel told me my end was $200,000. Daniel's wife came to my house with 145.
Q. Okay. 145. What did you say at that point that you recall? I mean, what did you say to Daniel's wife when the check was way less than what you originally understand?
A. I didn't say much to her because the night before he had discussed with me that he had expenses and this and that. And you have to understand something, I have -- I have an animal who I had no participation in the sale of. I have an animal that is not under my control. And at that point, I don't know who the hell Kelly Sims is. Okay. And my first instinct was to take the money because I don't know where this thing is going.
MR. ICHTER: We've got two minutes left on the tape.
MR. LOTT: Okay. I should be finished within ten minutes.
THE WITNESS: Two.
MR. ICHTER: We have two minutes.
BY MR. LOTT:
Q. Did you and Daniel ever happen to co-own

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the horse?
MR. ICHTER: We have two minutes.
BY MR. LOTT:
Q. Or, excuse me, did Daniel ever co-own the horse with your wife?
A. Daniel did not. The owner of the horse is my wife. She paid for the horse. She bought the horse. The passport, which is an official international document, has my wife as the owner.
Q. There was no sort of partnership between neither you and Mr. Geitner or your wife and Mr. Geitner?
A. Daniel and I agreed that above all of my expenses, which included the sale, out of pocket, et cetera, that we would split profit. And after he damned near destroyed the horse in a year and a half, I took the horse away from him and that was the end of our deal.
MR. ICHTER: Okay. Let's go off because we need to change the tape.
MR. LOTT: Sure. Do y'all want to take a five-minute break?
MR. ICHTER: Sure.
MR. LOTT: I'm almost finished. I just want to review my notes really quick before we

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finish up. Is that okay?
THE VIDEOGRAPHER: This concludes Disk No. 1 in the deposition of William Mackay. We are off the record at 16:14.
(Off the record.)
THE VIDEOGRAPHER: This is Disk No. 2 in the deposition of William Mackay. We are on the record at 16:24.
BY MR. LOTT:
Q. Okay. Mr. Mackay, just a few more questions. Going back to this bill of sale. Was the bill of sale for Nick signed before or after you received the $140 -- the $140,000 check, if you remember?
A. On or about the same time. That's how I remember it.
Q. Okay. Did you ever ask for a different bill of sale that accurately reflected the purchase price?
A. No. Because it's standard agreement in this business to pay commissions out and I felt they were taking the commissions from me in order to make the deal happen. In fact, that's how it was put to me.
Q. Okay. And if you have it in front of you,

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the bill of sale, if you will flip over with me to the third page just quickly.
A. Yeah.
Q. Under your wife's signature that you've identified earlier, it says the buyer of the horse was Tim Sims. Is that your understanding of who purchased the horse?
A. That's the first time I ever heard her name.
Q. Were you present when this was signed? I think you said you saw your wife sign it; is that true?
A. I directed her to sign it.
Q. Was that the first time it came to your attention that Tim Sims was the buyer of the horse?
A. Yes.
MR. LOTT: I think that's all I have. Mr. Ichter, if you have any follow-up questions.
MR. ICHTER: Yeah, I do.
REEXAMINATION
BY MR. ICHTER:
Q. Mr. Mackay, take a look at the signature line on the bill of sale and tell us whose name appears as the buyer?
A. Kelly Sims.

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Q. And does it appear to be signed by Kelly Sims?
A. I wouldn't know.
Q. Well, I mean, does it appear to be?
A. I'm assuming that's her signature.
Q. Okay. Fair enough. Have you ever seen a bill of sale that had Mr. Tim Sims' signature line on it?
A. No.
Q. Okay. So the version that was signed is the only version you have ever seen?
A. I've never seen anything else.
Q. Okay. When the purchase or bill of sale was presented to you, you understood that the gross purchase price was $275,000, correct?
A. That's correct.
Q. Okay. And when the check was presented to you with the bill of sale for $145,000, you understood that was your net from the sale of the horse, correct?
A. I was told that was my net and I was under the impression, because of what Daniel said to me, that Ms. Sims refused to pay any commissions, that I had to pay all the commissions.
Q. So you were unaware of the fact that

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Ms. Sims was paying Ms. Enteen a 15 percent commission on this deal?
A. I was totally unaware of that. And in that moment, Ms. Sims was not my favorite person.
Q. Okay. Did Ms. Sims subsequently tell you that she had paid Ms. Enteen this 15 percent commission?
A. The first time we talked on the phone.
Q. Did you ever ask Ms. Enteen about that?
A. No. The only thing I did say to Ms. Enteen on the first conversation was that -- something to the effect, "You guys chopped up a lot -- a lot of commissions were on this deal." And she didn't answer me.
Q. So you knew what the gross purchase price was and what your net was and you agreed to sell the horse based on those terms, correct?
A. Under duress.
Q. Okay. But you agreed, correct?
A. Under duress.
Q. All right.
A. That's the best answer you're going to get out of me.
Q. All right. And, to your knowledge, as best you know from all the facts and circumstances

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available to you, Ms. Sims didn't know anything about the terms of how the money was being chopped up other than it was $275,000, right?
A. No, that's not correct.
MR. LOTT: Form. I'm sorry. I objected to form. You can answer it.
THE WITNESS: The reason that I -- I -- when I was told that she had refused to pay commissions and would not pay commission on either horse, that is when I agreed to pay the commissions. I was under the impression that I was paying the commissions on the horses totally because she refused to. So I did not view it in the terms in which I think you're trying to put it, which are that I knew that she -- that she was buying a $200,000 horse for 275. I don't agree with that premise at all.
BY MR. ICHTER:
Q. Okay. But as far as you know, the only thing that Ms. Sims knew about the financial terms of this deal is that she had to pay $275,000 to get title to this horse, correct?
A. Absolutely.
MR. LOTT: Objection.
THE WITNESS: And at the time I was under the impression, again, that she had said she

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wouldn't pay any -- in fact, the owner -- I'm trying to remember his exact words. "The owner won't pay any commissions because of the amount of money she's paying out." That's what he said.
MR. ICHTER: Okay. Those are all the questions I have.
MR. LOTT: I may have one follow-up.
THE WITNESS: We're going to be on candlelight soon.
MR. ICHTER: Hello?
MR. LOTT: Are we off the record?
MR. ICHTER: We're on the record.
MR. LOTT: Okay. Well, I don't have any more questions, unless you do.
MR. ICHTER: Okay. Well, then, in that case, we are done. Mr. Mackay, we appreciate your time and attention today. Thank you.
THE VIDEOGRAPHER: This concludes the deposition of William Mackay. We are off the record at 16:31.
THE COURT REPORTER: Mr. Lott, I need you to, if you don't mind -- we're off on the video part. But for my part, since you are attending by phone, I need you to put on the record your transcript order, please.

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MR. LOTT: Okay. Condensed version and full version is fine. Electronic. I guess I'll get a hard copy as well.

THE COURT REPORTER: Thank you.

(The witness, after having been advised of his right to read and sign this transcript, waives that right.)

(The deposition was adjourned at 4:31 p.m.)

CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court 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 record.

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 by official seal this 18th day of April 2018, at Lexington, Lexington County, South Carolina.

Kimberly T. Power, Court Reporter
My Commission Expires: 4/24/2025

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(No information requested.)

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Georgia Code

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Article 5, Section 9-11-30

(e) Review by witness; changes; signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code

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Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

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Bank of America Online Banking

Business Advantage Chk - [redacted]: Account Activity Transaction Details

Post date: 09/01/2017

Amount: -75,000.00

Type: Withdrawal

Description: WIRE TYPE:WIRE OUT DATE:170901
TIME:1343 ET TRN:2017090100339255
SERVICE REF:012543 BNF:FALCON RIDGE
STABLES ID:[redacted] BNF BK:SUNT RUST
BANK ID:[redacted] PMT DET:[redacted]
GRANNI

Merchant name: FALCON RIDGE STABLES

Transaction category: Uncategorized: Uncategorized

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EXHIBIT
tabbies
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ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP0200675

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS, IN THE COUNTY OF AIKEN

KELLY SIMS, Plaintiff, v. SHARON ENTEEN-PRUSSO aka SHARON ENTEEN and FALCON RIDGE, INC., Defendants.	Case No. 2018CP0200675

AFFIDAVIT OF M. BARON STANTON RE OWN FEES AND LEAD COUNSEL'S FEES, AND THE COMBINED TOTAL

Personally appeared before me, an officer duly authorized by law to administer oaths, M. Baron ("Barry") Stanton, who after being sworn and under penalty of perjury, states as follows:

1. I am the sole shareholder and designated director of Stanton Law Offices, P.A. and a member in good standing with the South Carolina Bar. I offer this Affidavit on my personal knowledge pursuant to this Court's December 5, 2018 Order granting Plaintiff's Motion to Compel Daniel Geitner to Comply with Subpoena and South Carolina Rules for Deposition (the "Motion").

2. Therein, the Court stated, "Plaintiff's counsel is directed to submit an affidavit to the Court regarding Plaintiff's cost of this motion within fourteen (14) days of the entry of this Order, and the Court will consider an award of the same

against Mr. Geitner. The fact that Mr. Geitner offered no defense whatsoever to this motion or legal justification for his refusal to answer the questions posed, strongly support the award of such costs."

3. I graduated from the University of South Carolina School of law in 1986. I was admitted to the South Carolina Bar the same year. I have practiced law in South Carolina full-time and continuously since then.[1] I am in good

[1]My present law office was established in 1994. I do not have a resume, do not advertise, do not have a website, and do not use Facebook or any social media. I do not apply to, respond to, pay, or provide any listings on or in, Martindale Hubbell, AVVO, the Better Business Bureau, any chamber of commerce, Linked-In, or any lawyer-listing, lawyer-ranking, or lawyer-promoting web services or other publications. Any found are unauthorized and likely inaccurate.

I do not report my pro bono work. I do not have a sign on my building. The identities of my clients are not discussed or ever advertised.

Exclusive of law-related work before law school, I worked for two firms before opening my own. One, the successor to a firm opened by one of our former governors, engaged primarily in business and private international law and commercial litigation, in state and federal courts. I engaged in all those activities, as well as served as the firm's immigration law department. My first real estate closing my first year was an office building consuming nearly an entire city block, and my first federal litigation commencing in my first year was multi-year litigation of a business dispute between airlines involving claims of fraud, unfair trade practices, violation of the Sherman and Clayton Antitrust Acts, and violation of the Racketeer Influenced and Corrupt Organizations Act. The case, defended by a Miami in-house legal department and firms from Charleston, Atlanta, and New York, was resolved over 120 days before the demise of Eastern Airlines.

The other, at the time a 90-year-old firm, provided a full range of services, and I was engaged in all, although primarily in civil litigation and transactional work, with a dash of white collar criminal work.

I have owned and run my own operation for the last twenty four years as of April of 2018.

I have formed -- and represented in consultation, transactions and litigation -- environmental engineering firms, technology companies, and real estate ventures.

I have sued and defended banks, construction companies, title insurance companies, sellers of products, and injurers of people. I have defended radio stations and sold radio stations in bankruptcy proceedings. I have overseen, litigated the successful result of, and defended on appeal, a corporate proxy battle, and have litigated the meanings of and applications of the provisions of the corporate and LLC codes.

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standing; I am familiar with standards and qualities of legal service rendered from town to town, county to county, state to state, and to some extent, country to country; I am familiar with the rates of colleagues in the community, across the

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I do: mergers and acquisitions work; health- and casualty-insurance inter-company negotiations and consulting; appellate work of all kinds (including work resulting in a published case on entitlement to and reasonableness of attorney's fees); injury and malpractice litigation; commercial lease negotiations and eviction litigation; distributorship and international distributorship structuring and negotiation; occasional licensure and other administrative or regulatory proceedings and contested cases; all sides of debtor-creditor law, from counseling, to asset structure planning, to strategic response to collections, to all phases of litigation, to debtor or creditor bankruptcy (from time to time); property tax and tax sale contested cases and litigation; and some intellectual property drafting, negotiation, consulting and litigation.

I also do: lawyer ethics and grievances representation; construction litigation; constitutional and state tort claims litigation; housing law litigation; litigation involving Articles 2, 3, 4, 5, 6, 7 and 9 of the UCC; trust and probate litigation; occasionally bizarre family law; complex estate planning (now mostly from a consult-structure-and-and-refer standpoint); when required, criminal law (federal white collar, or magistrate or municipal court adjuncts to other cases); school law; labor and employment law and litigation; land use litigation; principal-surety and surety-beneficiary litigation; lender liability litigation; wreck cases; and things I, and often others, have never done.

I have represented in litigation and otherwise, farmers, dog owners, Middle Eastern royalty, horse stables, server farms (a/k/a internet "clouds"), lawyers, unconventional lenders, real estate brokers, debt and residual asset purchasers, heavy equipment and other industrial equipment companies, every-day working people, captains of industry, the poor, the injured, the convicted, the downtrodden, the disbarred, the depressed, the crazy, and the oppressed.

I have lectured to the bar over the years on such topics as defamation, lawyer ethics, and lender liability, and have been written about anonymously as a lawyer with interests in the economics of law practice and as a lawyer playing in a rock band.

I have been a member of the Pawleys Island Civic Association for 21 years, and have served on the board of an entirely private specialized instruction/special needs school for the nine year maximum (at times, vice-chairman, chair of development committee, and chair of building committee) and was heavily involved in the planning, siting, detailed design, architecture, legal, and construction oversight functions for two beautiful large buildings and grounds improvements. For the latter, I received the board's Ed Pulaski award, complete with genuine used Pulaski Tool, recognizing contribution of work, and multi-purpose invention for no recognition or gain, simply out of desire to fill a need. I have also served on the board of a homeowner's association for a mainland mobile home beach enclave, currently as president. I have apparently recently become the live music provider and coordinator for the Pawley's Island Surf Club's efforts to raise funds for widows and families of dead surfers. Most of my community work and modest philanthropic activity (including pro bono cases lasting years), however, is unreported if not anonymous.

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country and, to some extent, in other parts of the world; I am familiar with the needs, demands, and results in the instant case; I am familiar with the factors of Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E. 2d 659 (1993) pertaining to the reasonableness of attorney's fees; and am familiar with the fee shifting provisions of Rule 37(a)(4), SCRCP.

4. I served as local counsel in this proceeding and Cary Ichter of Atlanta, of the Georgia Bar, served as lead counsel because the lawsuit giving rise to this ancillary South Carolina proceeding is pending in Georgia. Others in his firm, with whom I am also familiar, also provided directly related services. I have had the opportunity to personally observe the quality, efficiency and prudence of Ichter Davis's services in the instant case and am familiar with their work in another case which ended up in federal court, in which I worked with them, suing multiple syndicates of Lloyd's of London. I am also familiar with Cary's work years ago as lead counsel defending a case in federal court involving Italian made industrial wood working machinery, his work in earlier cases involving ancillary aspects of one or more franchise terminations, and his work as counsel actually opposing me in a multiple location franchise termination dispute. His work has always been high quality, his ethics have always been straight up and proper, and his rates are competitive with other counsel in his sphere, including lawyers in South Carolina.

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5. My own rates are in my estimation, lower than customary, which is to the advantage of the non-moving party.

6. Given: (a) the nature, extent and difficulty of the legal services rendered; (b) the time and labor devoted to the case; (c) the professional standing of counsel; (d) the contingency of compensation, (e) the fee customarily charged in the locality for similar services; and (e) the beneficial results obtained: The fees and expenses of my office and the fees of Ichter Davis are reasonable. The total combined fees and out-of-pocket expenses of $14,486.69 ($11,447.00 of Ichter Davis and $3,039.69 of Stanton Law Offices for local counsel services), as of December 6, 2018, directly associated with the motion to compel, should be awarded as the costs of the motion.

7. Separately filed is an affidavit of Cary Ichter, setting forth the actual billing records, less redactions, of Cary's firm reflecting the legal services and actual expenses incurred and agreed by Mrs. Sims in connection with the Motion. In addition, attached to my instant affidavit are the actual bills of my office. All these records show legal expense necessarily and actually incurred in pursuing the order compelling discovery, except that my bills reflect some notations of time necessarily and reasonably spent, but discounted purely as a courtesy to Mrs. Sims.

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8. It is my understanding that time was of the essence on the motion, and thoroughness was required, as Mr. Geitner was a significant witness in the fraud case pending in Georgia, his deposition was needed, and a scheduling order on discovery was running out therein, and other discovery was progressing without the benefit of all the answers and information sought from him. Importantly, the fees are reasonable because they are not hypothetical, but, rather, are the actual, bargained-for fees incurred and agreed for the actual time and expenses required. No part of the motion was resolved without motion and a ruling; every bit of it was made necessary by Mr. Geitner's refusal to answer and failing to move for an order. Cary was admitted pro hac vice, the motion was filed, a brief fully explaining its basis, with citation of authority, was filed with it, we, as Sims's counsel, never sought nor caused any delay or continuance, Cary and Mrs. Sims travelled to Aiken from Atlanta for the hearing, as did I, of necessity, from Columbia, the motion was heard, and proposed orders were submitted. The brief and the proposed order required a detailed account of the Georgia litigation and the relevant background facts or allegations giving rise to the motion in South Carolina. It also required the canvassing of the law of multiple jurisdictions and an account of the context of the motion within the South Carolina uniform act for taking South Carolina depositions for use in a foreign proceeding. The motion was granted in its entirety.

9. In my opinion, the total combined fees and out-of-pocket expenses of $14,486.69 charged by Ichter Davis, LLC and Stanton Law Offices, P.A. for local counsel services in connection with the Motion were reasonable, necessary and required, and should be an expense borne by Mr. Geitner, rather than Mrs. Sims.

M. Baron Stanton

SWORN TO BEFORE ME THIS

13th day of December, 2018.

Notary Public for South Carolina

My comm'n exp. 5/18/22

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Sims / Prusso - Costs

BILL AND
STATEMENT OF ACCOUNT WITH

STANTON LAW OFFICES, P.A.

P.O. Box 245
Columbia, South Carolina 29202
Telephone: 803-929-1484
Federal Employer ID# 57-1002644

Mrs. Kelly Sims
[redacted]

Page 1
8/10/18
File No.: [redacted]
Phone: [redacted]

Re: Sims v. Prusso

Invoice # 25310

Professional services:

			Hours
6/18/18	MBS	Review motion to compel.	0.30
6/19/18	MBS	Review redaction rules; Confer with JLP; Review motion and attachments; Memo to Mssrs. Ichter and Davis.	2.10
	JLP	Research redaction requirements for e-filing documents with clerk of court.	0.40
6/28/18	MBS	Examine ECF menus; Confer by telephone with Shadell at Clerk of Court's offc. re peculiar filing situation; Confer by telephone with Ms. Radecker at Court Administration; Load motion and exhibits into ECF system; Electronically file; Confer with JLP re manual service; Memo to Mr. Davis.	2.10

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ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP020675

			Hours	
6/28/18	MBS	Unbilled time this date. (Noted, not billed.)	1.00	NO CHARGE
6/29/18	MBS	Review incoming correspondence from Ms. LeMieux, with PHV application; Memo to same.	0.30	
7/9/18	MBS	Review draft PHV application for Mr. Ichter; Memo to Ms. LeMieux.	0.20	
7/10/18	JLP	Prepare PHV motion.	0.50	
7/11/18	MBS	Memo to Ms. LeMieux (certificate). (Noted, not billed.)	0.30	NO CHARGE
	JLP	Research PHV requirements in state court; Prepare memo to MBS addressing PHV requirements.	0.70	

	Hours	Amount
FOR CURRENT SERVICES RENDERED	7.90	$947.00

Charges for costs and expenses:

Photocopying	31.62
Filing fee	31.74
Postage	6.70
TOTAL COSTS AND EXPENSES	$70.06
TOTAL AMOUNT OF THIS BILL	$1,017.06
BALANCE DUE	$1,017.06

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Timekeeper summary

Timekeeper	Hours	Rate
M. Baron Stanton	5.00	175.00
Jessica L. Paribello	1.60	45.00

Due and Payable on Receipt. A service charge of 1.5% per month will be added to past due balances.

BILL AND
STATEMENT OF ACCOUNT WITH

STANTON LAW OFFICES, P.A.

P.O. Box 245
Columbia, South Carolina 29202
Telephone: 803-929-1484
Federal Employer ID# 57-1002644

Mrs. Kelly Sims
[redacted]

Page 1
8/27/18
File No.: [redacted]
Phone: [redacted]

Re: Sims v. Prusso

Invoice # 25369

Professional services:

			Hours	
7/31/18	MBS	Review incoming correspondence from Mrs. Sims; Memo to same. (Noted, not billed.)	0.40	NO CHARGE
8/9/18	MBS	Dispatch letter and application to S.Ct.; Review and revise motion (PHV); E-file motion and associated docs. (Noted, not billed.)	0.80	NO CHARGE
	JLP	Prepare PHV application for Mr. Ichter.	2.00	
8/10/18	MBS	Confer by telephone with Ms. Armstrong's offc. (LM w time of hearing). (Noted, not billed.)	0.20	NO CHARGE
	JLP	Prepare PHV admission order (Ichter); Research peculiar e-filing requirements in state court.	0.80	

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STANTON LAW OFFICES, P.A.

Mrs. Kelly Sims

Page 2
8/27/18
File No. [redacted]

	Hours	Amount
FOR CURRENT SERVICES RENDERED	4.20	$126.00
Charges for costs and expenses:		
Photocopying		3.57
Filing fee PHV		31.74
Postage		2.13
TOTAL COSTS AND EXPENSES		$37.44
TOTAL AMOUNT OF THIS BILL		$163.44
PREVIOUS BALANCE		$1,017.06
8/15/18 Payment - thank you		($1,017.06)
BALANCE DUE		$163.44

Timekeeper summary

Timekeeper	Hours	Rate
Jessica L. Paribello	2.80	45.00

Due and Payable on Receipt. A service charge of 1.5% per month will be added to past due balances.

ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP020675

BILL AND
STATEMENT OF ACCOUNT WITH

STANTON LAW OFFICES, P.A.

P.O. Box 245
Columbia, South Carolina 29202
Telephone: 803-929-1484
Federal Employer ID# 57-1002644

Mrs. Kelly Sims
[redacted]

Page 1
10/3/18
File No.: [redacted]
Phone: [redacted]

Re: Sims v. Prusso

Invoice # 25413

Professional services:

			Hours
9/18/18	MBS	Memo to Ms. Armstrong; Review deposition transcript for appearances; Memo to Mssrs. Ichter and Davis; Review incoming correspondence from Mr. Davis.	0.30
9/19/18	MBS	Confer by telephone with Ms. Knoepfle (status for roster meeting).	0.20
9/20/18	MBS	Review incoming correspondence from Ms. Armstrong; Memo to same; Review incoming correspondence from same; Memo to Mr. Ichter; Memo to Ms. Armstrong; Confer by telephone with Mr. Bowers; Memos to Mssrs. Ichter and Davis; Review incoming correspondence from Mr. Ichter; Memo to same.	2.60

ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP020675

		Hours	
9/20/18	MBS Review incoming correspondence from Mr.Ichter; Memo to same; Confer by telephone with Ms. Knoepfle; Memo to Mr. Ichter. (Noted, not billed.)	0.80	NO CHARGE
9/21/18	MBS Various calls, e-mails and texts back and forth among MBS, Mr. Ichter, Mr. Bowers, and Ms. Knoepfle.	3.40	

		Amount
FOR CURRENT SERVICES RENDERED	7.30	$1,137.50
PREVIOUS BALANCE		$163.44
10/3/18 COURTESY (SYMPATHY) DISCOUNT (10%)		($113.75)
BALANCE DUE		$1,187.19

Timekeeper summary

Timekeeper	Hours	Rate
M. Baron Stanton	6.50	175.00

Current	1 Days	30 Days	60 Days	90 Days
1,137.50	0.00	49.69	0.00	0.00

YOUR ACCOUNT IS 30 DAYS PAST DUE

Due and Payable on Receipt. A service charge of 1.5% per month will be added to past due balances.

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BILL AND
STATEMENT OF ACCOUNT WITH

STANTON LAW OFFICES, P.A.

P.O. Box 245
Columbia, South Carolina 29202
Telephone: 803-929-1484
Federal Employer ID# 57-1002644

Mrs. Kelly Sims
[redacted]

Page 1
10/31/18
File No.: [redacted]
Phone: [redacted]

Re: Sims v. Prusso

Invoice # 25468

	Amount
PREVIOUS BALANCE	$1,187.19
10/31/18 Payment - thank you	($1,187.19)
BALANCE DUE	$0.00

You will notice that the October 2018 bill or the soonest afterwards reflects a change in the rates for Barry Stanton. We have not changed this rate in more years than we can determine, and believe this rate is still below that charged by others for comparable or less competitive services. If this presents a problem with the first bill on which it appears, or will create one on subsequent bills, please let us know within ten days of receipt. Thank you very much for your business and entrusting your needs to us.

Best,

Barry

Due and Payable on Receipt. A service charge of 1.5% per month will be added to past due balances.

ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP020675

BILL AND
STATEMENT OF ACCOUNT WITH

STANTON LAW OFFICES, P.A.

P.O. Box 245
Columbia, South Carolina 29202
Telephone: 803-929-1484
Federal Employer ID# 57-1002644

Mrs. Kelly Sims
[redacted]

Page 1
12/3/18
File No.: [redacted]
Phone: [redacted]

Re: Sims v. Prusso

Invoice # 25511

Professional services:

			Hours
11/13/18	MBS	Research South Carolina rules of Civil Procedure on conduct of depositions; Research obscure local caselaw on discoverability of private confidential settlement agreements; Prepare comments and suggested changes on proposed order; Memo to Mr. Ichter.	3.90
11/14/18	MBS	Memo to Judge Early; Prepare letter to same; Revise order.	0.80

	Hours	Amount
FOR CURRENT SERVICES RENDERED	4.70	$893.00

Charges for costs and expenses:

Electronic filing fee - proposed order	31.74
TOTAL COSTS AND EXPENSES	$31.74

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ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP020675

	Amount
TOTAL AMOUNT OF THIS BILL	$924.74
12/3/18 COURTESY/SYMPATHY CREDIT (10%)	($89.30)
BALANCE DUE	$835.44

Timekeeper summary

Timekeeper	Hours	Rate
M. Baron Stanton	4.70	190.00

You will notice that the October 2018 bill or the soonest afterwards reflects a change in the rates for Barry Stanton. We have not changed this rate in more years than we can determine, and believe this rate is still below that charged by others for comparable or less competitive services. If this presents a problem with the first bill on which it appears, or will create one on subsequent bills, please let us know within ten days of receipt. Thank you very much for your business and entrusting your needs to us.

Best,

Barry

Due and Payable on Receipt. A service charge of 1.5% per month will be added to past due balances.

BILL AND
STATEMENT OF ACCOUNT WITH

STANTON LAW OFFICES, P.A.

P.O. Box 245
Columbia, South Carolina 29202
Telephone: 803-929-1484
Federal Employer ID# 57-1002644

Mrs. Kelly Sims
[redacted]

Page 1
12/5/18
File No.: [redacted]
Phone: [redacted]

Re: Sims v. Prusso

Invoice # 25516

Professional services:

			Hours
11/5/18	MBS	Travel to Aiken; Confer with Mr. Ichter and Mr. Bowers (2); Confer with Mr. Ichter (notes in court); Attend and participate in hearing of motion to compel argued by Mr. Ichter; Confer with Mr. Ichter and Ms. Sims; Return travel.	5.10
12/3/18	MBS	Confer by telephone with Judge Early; Memo to Mr. Bowers; Electronically attempt to file proposed order during onset of ECF outage.	0.90
12/4/18	MBS	Review incoming correspondence from Mr. Bowers; Memo to Judge Early and parties re Mr. Bowers's request.	0.50

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Mrs. Kelly Sims

		Hours	
12/4/18	MBS	Follow up on e-filing; re-enter payment; Confer by telephone with e-filing trouble line re ECF system outage; Memo to Judge Early and counsel re outage; Re-attempt e-filing. (Noted, not billed.)	0.90 NO CHARGE
12/5/18	MBS	Review incoming correspondence from clerk of court; Confer by telephone with same re rejected filing; Review incoming NEF; Review ECF file; Memo to Mr. Ichter with executed order.	0.70

	Hours	Amount
FOR CURRENT SERVICES RENDERED	8.10	$1,368.00

Charges for costs and expenses:

Mileage	129.60
Filing fee - proposed order	31.74
TOTAL COSTS AND EXPENSES	$161.34
TOTAL AMOUNT OF THIS BILL	$1,529.34
PREVIOUS BALANCE	$835.44
BALANCE DUE	$2,364.78

Timekeeper summary

Timekeeper	Hours	Rate
M. Baron Stanton	7.20	190.00

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ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP020675

You will notice that the October 2018 bill or the soonest afterwards reflects a change in the rates for Barry Stanton. We have not changed this rate in more years than we can determine, and believe this rate is still below that charged by others for comparable or less competitive services. If this presents a problem with the first bill on which it appears, or will create one on subsequent bills, please let us know within ten days of receipt. Thank you very much for your business and entrusting your needs to us.

Best,

Barry

Current	1 Days	30 Days	60 Days	90 Days
1,529.34	835.44	0.00	0.00	0.00

Due and Payable on Receipt. A service charge of 1.5% per month will be added to past due balances.

ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP0200675

STATE OF SOUTH CAROLINA
CIRCUIT COURT IN THE COUNTY OF AIKEN

KELLY SIMS, Plaintiff, v. SHARON ENTEEN-PRUSSO aka SHARON ENTEEN and FALCON RIDGE, INC., Defendants.	Case No. 2018CP0200675

AFFIDAVIT OF CARY ICHTER

Personally appearing before me, an officer duly authorized by law to administer oaths, Cary Ichter, who after being sworn and under penalty of perjury, states as follows:

1. My name is Cary Ichter. I am a managing member of Ichter Davis LLC and a member in good standing with the State Bar of Georgia. I offer this Affidavit on my personal knowledge pursuant to this Court's December 5, 2018 Order granting Plaintiff's *Motion to Compel Daniel Geitner to Comply with Subpoena and South Carolina Rules for Deposition* (the "Motion").

2. I graduated *magna cum laude* from the University of Georgia School of law in 1984. I was admitted to the State Bar of Georgia the same year. I have practiced law in Georgia and otherwise full-time and continuously since then. Attached hereto as Exhibit "A" is a true and correct copy of my C.V. posted on my law firm's website.

3. Attached hereto as Exhibit "B" are true and correct copies, less redactions, of billing records reflecting the legal services and expenses incurred by Mrs. Sims in connection with the Motion. These records describe the work performed on this matter by myself, my law partner, William Daniel Davis, and a paralegal, Janis Lemieux, the latter both operating pursuant to my direction and under my supervision.

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4. The billing records attached hereto show Mrs. Sims has incurred $10,947.00 in fees and expenses in connection with the Motion through November 30, 2018.

5. In addition, Mrs. Sims has incurred an additional $525.00 in fees (that have accrued but are yet to be billed) in connection with the Motion through ~~November 30~~ December 6, 2018. The fees are based on the following:

12.5.18	WDD	Assemble invoices for fee-shifting in connection with motion to compel continued deposition testimony from Mr. Geitner.	.5 $350.00/hr.	$175.00
12.6.18	WDD	Draft Affidavit of Mr. Ichter in connection with motion to compel continued deposition testimony from Mr. Geitner.	1 $350.00/hr.	$350.00

6. In my opinion, the fees and expenses charged by Ichter Davis LLC in connection with the Motion were reasonable, necessary and required. In particular, although without limitation, the pendency of the underlying action in Georgia and Mr. Geitner's residency in South Carolina created extra complexity and cost.

7. For the work performed in this action, Ichter Davis LLC charged Mrs. Sims $550,[1] $350, and $195 per hour for work performed by myself, Mr. Davis, and Ms. Lemieux, respectively.

8. In my opinion, these hourly rates are well within the range charged by civil litigation firms for similar work by persons of similar experience and ability. This opinion is based on my experience as a litigator and managing partner of multiple civil litigation firms. Ichter Davis, LLC customarily charges and collects fees based on these rates. My opinion is also based

[1] There is one exception on September 21, 2018 that has been accounted for in Paragraph 11.

on the Fulton County *Daily Report*'s most recent billing rate report, a copy of which is attached hereto as Exhibit "C."

9. I have reviewed the billing records in this matter for the tasks I performed, as well as the tasks performed by Mr. Davis and Ms. Lemieux under my supervision. Based on that review and my personal knowledge of the case, the total number of hours devoted to the Motion were reasonable, necessary and required.

10. Based on my review of the billing records and my knowledge of the case, the total amount of expenses incurred in connection with the Motion were reasonable, necessary, and required. In particular, as I am primary counsel, my admission *pro hac vice* in this matter was reasonable, necessary and required to protect Mrs. Sims' interests.

11. In my professional opinion, $11,447.00 in the fees and expenses incurred by Mrs. Sims in connection with the Motion were reasonable, necessary and required.

Dated: December 6, 2018.

Cary Ichter

Sworn to and subscribed before me
This December ___, 2018.

Notary Public
[SEAL]

ALYSSA LAYNE ALSBROOKS NOTARY PUBLIC MORGAN COUNTY GEORGIA EXPIRES SEPT. 16, 2022

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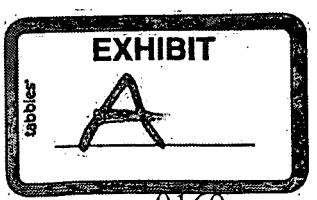
CARY ICHTER

Ichter Davis, LLC

3340 Peachtree Road NE
Suite 1530
Atlanta, GA 30326

Phone: 404.869.7600
Direct: 404.869.5243
Fax: 404.869.7610

cichter@ichterdavis.com



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Cary Ichter's is a story of the American Dream come true, with hard work, tenacity, and determination at its core. Cary's family settled in Douglasville, Georgia, a suburb of Atlanta, where he attended high school. Cary began debating as a high school junior, and upon graduation, he was offered a full debate scholarship at the University of West Georgia (then known as West Georgia College). West Georgia has historically had one of the best debate programs in the United States. With tuition and books covered, Cary funded the balance of his college and living expenses by working at Kroger, where he unloaded trucks and stocked shelves at night.

While at the University of West Georgia, Cary participated in debate for four years, maintained a rigorous class schedule during the day, and, at night, drove from Carrollton to Douglasville to work at Kroger.

In his final year of school, Cary accomplished two impressive feats. First, Cary ran for President of the West Georgia Student Government Association, making the campaign promise that he would quit his job at Kroger and dedicate that time to running Student Government and tending to the interests of his fellow students. Cary won that election, and true to form, he resigned from Kroger so that he could devote his time to tending to his duties as President of Student Government.

Additionally, as a college senior, Cary and his partner were ranked number seven (#7) in the country and received a first round bid to the National Debate Tournament. That same year, Cary received the Southern Debater of the Year from Stamford University.

Cary moved on to great success at the University of Georgia Law School where in 1984 he graduated *magna cum laude*, became a member of the Order of the Coif, was a member of the Georgia Law Review, and was published in Volume 18 of the Georgia Law Review.

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Cary's dedication and tenacity landed him a coveted position in the litigation department of Powell Goldstein, then considered to be the finest litigation law firm in Atlanta under one of the most revered trial attorneys in the southeast, Jerry Blackstock.

Mr. Blackstock saw something in young Ichter. While most young lawyers rarely saw the interior of a courtroom, Cary was trying cases, initially second chair, and eventually as lead counsel. Mr. Blackstock had Cary work alongside him representing Delta Air Lines, State Farm Insurance Company, international real estate investment and technology companies.

Cary had been at Powell Goldstein little more than seven years when he was bitten by the entrepreneurial bug and started his own firm, founding Meadows, Ichter & Trigg with Dart Meadows and Mark Trigg. While they started the firm with a secretary and a part-time paralegal, the firm grew rather rapidly. In 2000, when Mark Trigg left the firm, former Georgia Attorney General Mike Bowers became a name partner in the firm, creating Meadows, Ichter & Bowers.

The firm grew to be as large as the litigation departments of Atlanta's largest law firms and every bit as formidable. Meadows, Ichter & Bowers handled business litigation, representing corporate entities and individuals, enjoying tremendous success in and out of the courtroom. By 2003, Meadows, Ichter & Bowers had grown to over 30 lawyers and more than 50 employees. That same year, the partners were persuaded to merge with Balch & Bingham, a prominent Birmingham, Alabama law firm.

While at Balch & Bingham, Cary handled business litigation throughout the country and was a rising star in the Atlanta legal community. In 2003, Cary acted as lead trial counsel for EarthLink in a three week jury trial in Columbus, Ohio. Cary's local counsel in that case was Thompson Hine, a firm that had recently opened an office in Atlanta. Thompson Hine recruited Cary to join its Atlanta office as its lead litigator.

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As Ichter was contemplating an offer of partnership with Thompson Hine, he was approached by Adorno Yoss of Miami, Florida, then the largest minority-owned law firm in the country, and offered a partnership. Unfortunately, with the financial crisis that followed, Adorno was unable to pay its producers. So, Cary decided to leave with colleague, Jim Thomas (formerly of McKenna Long) and a two other lawyers to establish Ichter Thomas in 2009.

Although the firm was formed at the beginning of the financial crisis, Ichter Thomas flourished, representing large and small businesses and individuals. Cary quickly became high profile for his handling of cases other lawyers would not touch. In particular, Cary represented guarantors in collection cases–an area of considerable demand after the financial crisis. In what was virtually unprecedented performance, Ichter beat back motions for summary judgment in those cases, took the cases to jury trials, and obtained results for his clients that resulted in their having to pay nothing to the plaintiff banks .

Ichter also successfully represented a number of franchisees in litigation seeking to rescind their franchise relationships with various franchisors, obtaining awards worth millions of dollars to his clients.

Cary has represented the Development Authority of Fulton County in litigation since 2009. In particular, Cary prevailed in a case in which individual taxpayers challenged and sought to unravel $5 billion of development bond transactions. Cary won that $5 billion case by way of summary judgment, which the Georgia Supreme Court affirmed in *SJN Properties, LLC v. Fulton County Board of Assessors*, 296 Ga. 793 (2015).

In connection with his development bond work, Cary was able to persuade the Georgia Court of Appeals to overrule a fourteen year-old precedent. Additionally, Cary has been lead counsel in bond validation hearings in which over $2 billion of development bonds have been validated, financing projects that have brought thousands of jobs to Fulton County.

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When Jim Thomas decided to return to McKenna Long, Cary formed Ichter Kresky, LLC with Caroline Kresky, a well-respected family law practitioner. Together they tried divorce cases involving a multi-million dollar marital estate in a bench trial; they successfully handled a dispute involving the removal of the trustee from a family trust worth more than $70 million; and Cary succesfully tried a divorce case to a jury–quite an unusual occurrence. As a consequence of this experience, today Cary has the expertise to handle family law matters and issues related to trusts and estates.

In 2016, Ichter Davis, a boutique litigation firm in Atlanta, was formed to handle commercial litigation, trust and estate disputes, and family law litigation for high net worth individuals. Cary Ichter, as Managing Partner, coupled with William Daniel Davis have extensive experience in the courtroom, in corporate settings and in championing alternative dispute resolution mechanisms. This expertise sets them apart from other litigation firms. They work tirelessly to deliver results for their clients and are fiercely dedicated advocates both in and outside of the courtroom.

Cary has also been active acting as a court-appointed Special Master in various matters since 2005. Cary is typically appointed to act as a Special Master in complex commercial matters and mass tort and class action cases. In 2005, Cary joined the Academy of Court Appointed Masters (ACAM), the only national organization dedicated to educating the bench and bar on the appointment and use of Special Masters. In 2011, Cary was elected to the Board of ACAM. In 2014, he was elected President of the Academy, and in 2016 he became the first ACAM President ever to be re-elected.

As a consequence of his interest in the use of Special Masters by the courts, Cary took it upon himself to draft and to shepherd through the approval process Georgia's Uniform Superior Court Rule governing the appointment and use of special masters in Georgia courts.

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In his prestigious career, Cary has tried over fifty jury trials on a wide range of issues, including franchise relationships, sexual harassment, employment discrimination, real estate disputes, personal injuries, fraud, partnership break-ups, collections, UCC sales issues, and other commercial disputes. Cary has also successfully handled cases involving software licensing, municipal bond financing, fraud, professional wrestling, employment disputes, restrictive covenants ancillary to employment agreements, trade secrets, misappropriation of business opportunities, and intellectual property disputes. Cary is widely recognized as one of the best and most active commercial litigation lawyers in the State of Georgia. His cases include:

- Handling of over $2 billion of contested bond validation proceedings for various Georgia development authorities;
- Successfully defending a local development authority in $5 billion dispute concerning legality of bond financing transactions;
- Successfully defending guarantors in matters relating to over $7 million in real estate loan transactions;
- Defending employer against pregnancy discrimination, FMLA and retaliation claims in federal jury trial;
- Representing several international franchise brands on a national basis, including quick serve restaurants, athletic footwear and apparel stores, and hotel chains;
- Obtaining and collecting a $850,000 award against an area developer on behalf of a regional child care franchisor;
- Arbitrating a commercial products liability claim on behalf of a furniture company that received defective coating products and sustained a substantial commercial injury;
- Defending and prosecuting the claims of minority shareholders in closely-held corporations in arbitration and jury trials;
- Defending and prosecuting claims made under the Uniform Commercial Code related to the purchase and sale of ISP customer base;
- Prosecuting claims on behalf of the owners of intellectual property for copyright infringement and for the breach of licensing agreements; and
- Representing franchisees in pursuing fraud claims against franchisors, resulting in millions of dollars in awards.

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Admissions:

- Supreme Court of the United States of America
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for the Northern District of Georgia
- Supreme Court of Georgia
- Georgia Court of Appeals
- State Bar of Georgia

Professional Activities:

- Board and President, Academy of Court Appointed Masters (2011-present)
- Georgia Bar, Future of the Courts Committee (2003-2004)
- Trustee, University of West Georgia Foundation (2004-2010)
- Committee, Georgia National Guard Family Support Foundation (2006)
- Committee, 18th & 19th Annual Hospice Atlanta Gala (2005-2006)
- Committee, The Atlanta Committee for CARE (1998-2008)
- Southeastern Council, MedShare (2010-2014)

Education:

University of Georgia, J.D., *magna cum laude*

- Editorial Board and Managing Board, *Georgia Law Review*
- Order of the Coif
- Published: Note, "Beyond Judicial Scrutiny": Military Compliance with NEPA, 18 *Ga. L. Rev.* 639 (1984)

University of West Georgia, B.A.

- Southern Debater of the Year, 1981
- President, Student Government Association

Awards and Honors:

- Best Lawyers in America (2002 – present)
- Georgia Trend Legal Elite (2002 – present)

- Georgia Super Lawyers (2004 – present)

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Ichter Davis, LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, GA 30326

Invoice submitted to:

Sims, Tim and Kelly
16226 Clarity Road
Alpharetta, GA

Invoice Date	*Invoice Number*
July 3, 2018	11060

In Reference To: Sharon Enteen Prusso

475-008

Professional Services

	Hrs/Rate	Amount

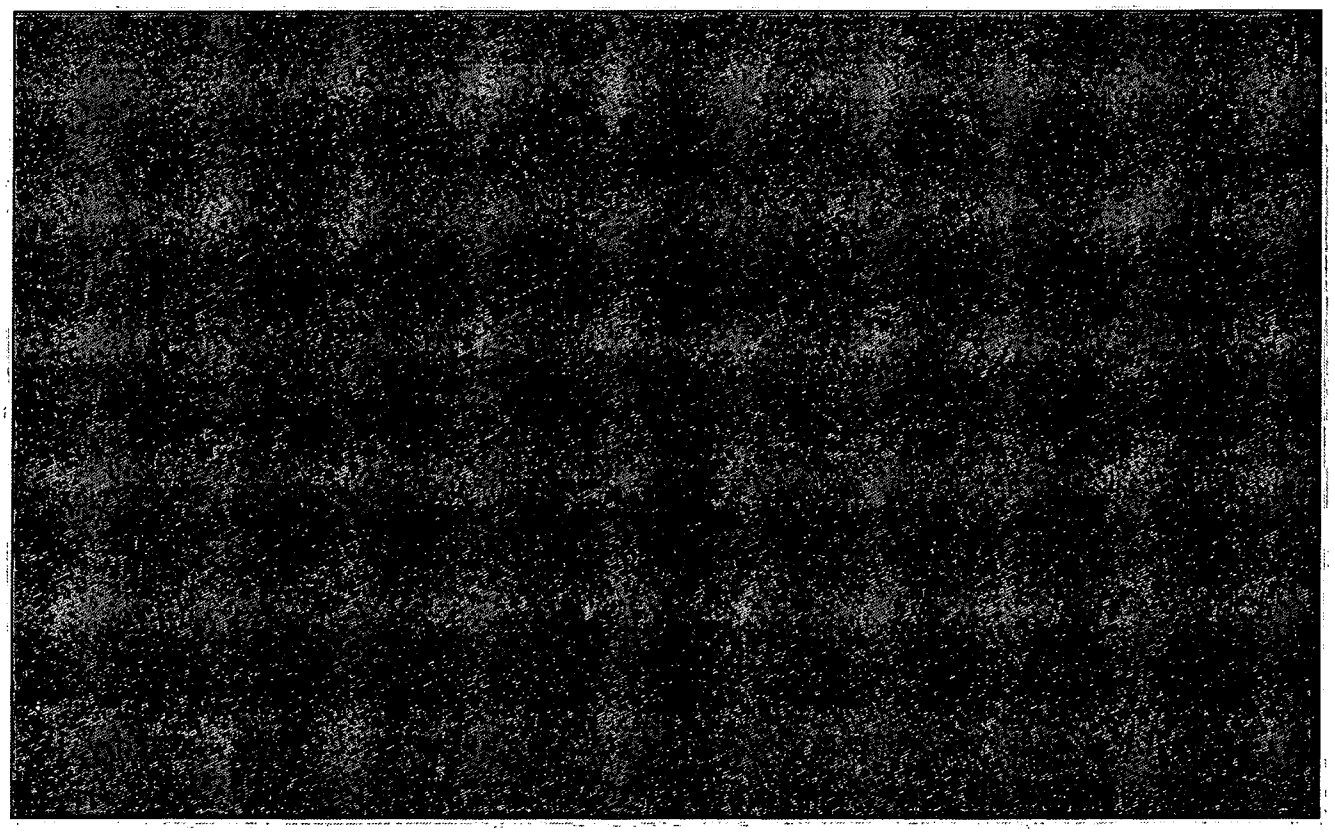


EXHIBIT
B
0177

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		Hrs/Rate	Amount
[redacted]			
6/11/2018	Begin researching confidentiality issue with respect to motion to compel second Geitner deposition. WDD	1.40 350.00/hr	490.00
[redacted]			
6/12/2018	[redacted]		
	Finish drafting motion to compel Mr. Geitner regarding Nick transaction. WDD	3.30 350.00/hr	1,155.00
	Draft deposition notice and subpoena for Ms. Goguen. WDD	0.50 350.00/hr	175.00
6/13/2018	[redacted]		
	Exchange emails with Mr. Stanton regarding filing motion to compel in South Carolina. CI	0.30 550.00/hr	165.00
[redacted]			

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		Hrs/Rate	Amount
[redacted]			
6/15/2018	[redacted]		
	Review and revise motion to add Geitner; conference with Mr. Davis regarding status and strategy. CI	0.50 550.00/hr	275.00
	Attention to finalizing motion to compel Geitner regarding deposition questioning on Nick transaction, WDD	0.50 350.00/hr	175.00
[redacted]			

		Hrs/Rate	Amount
[redacted]			
6/22/2018	Confer with Mr. Stanton regarding filing Ms. Sims' motion to compel Mr. Geitner's continued deposition. WDD	0.20 350.00/hr	70.00
[redacted]			
6/25/2018	Correspond with opposing counsel regarding motion to compel continuation of Mr. Geitner's deposition. WDD	0.10 350.00/hr	35.00
[redacted]			

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		Hrs/Rate	Amount
6/28/2018	Prepare S.C. Application for Admission Pro Hac Vice; email exchange with B. Stanton regarding same. JL	0.60 190.00/hr	114.00
6/29/2018	Revise Pro Hac Vice application. JL	0.50 190.00/hr	95.00

[redacted]

Ichter Davis, LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, GA 30326

Invoice submitted to:

Sims, Tim and Kelly
16226 Clarity Road
Alpharetta, GA

Invoice Date	*Invoice Number*
August 2, 2018	11105

In Reference To: Sharon Enteen Prusso

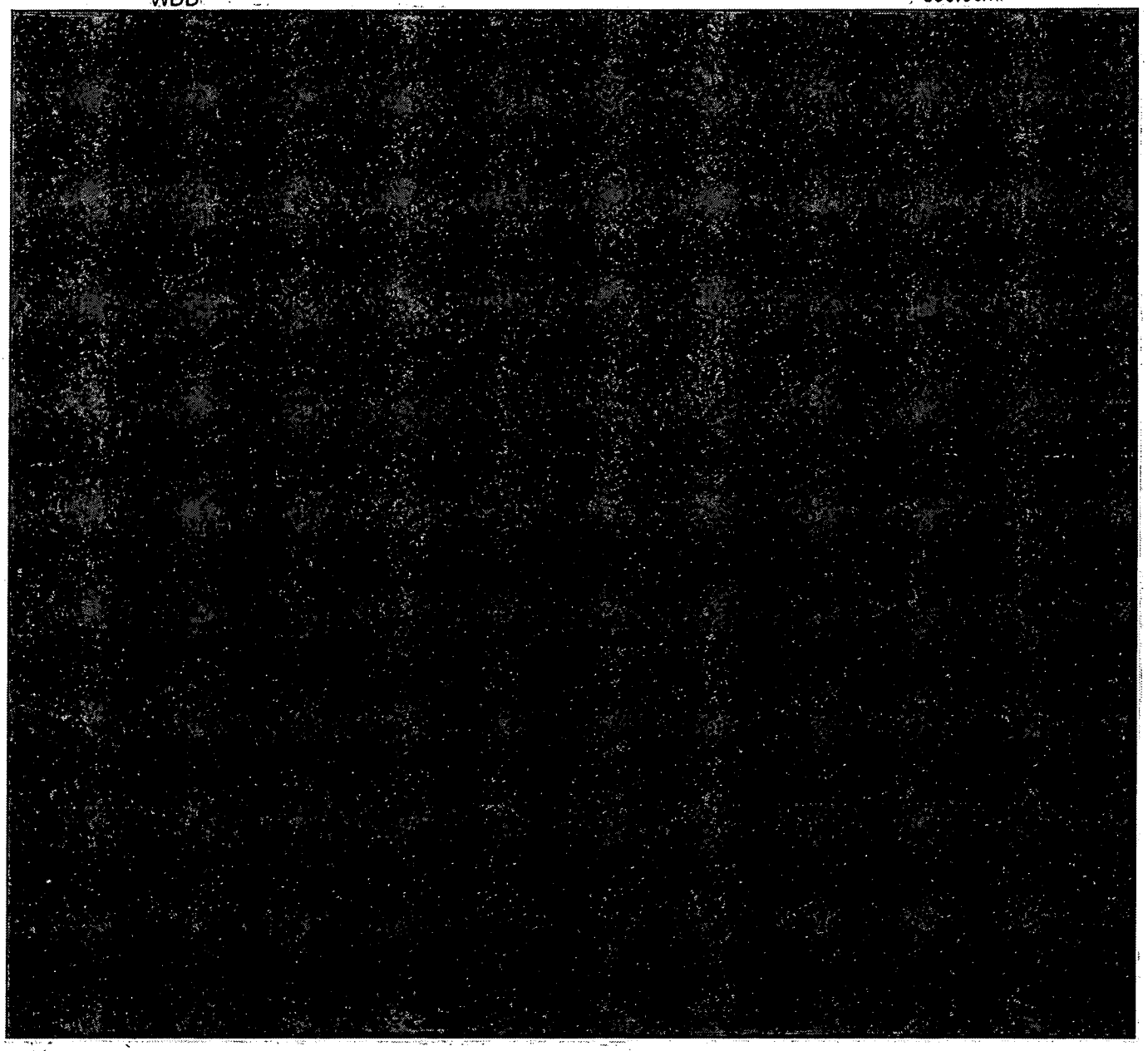
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Professional Services

	Hrs/Rate	Amount
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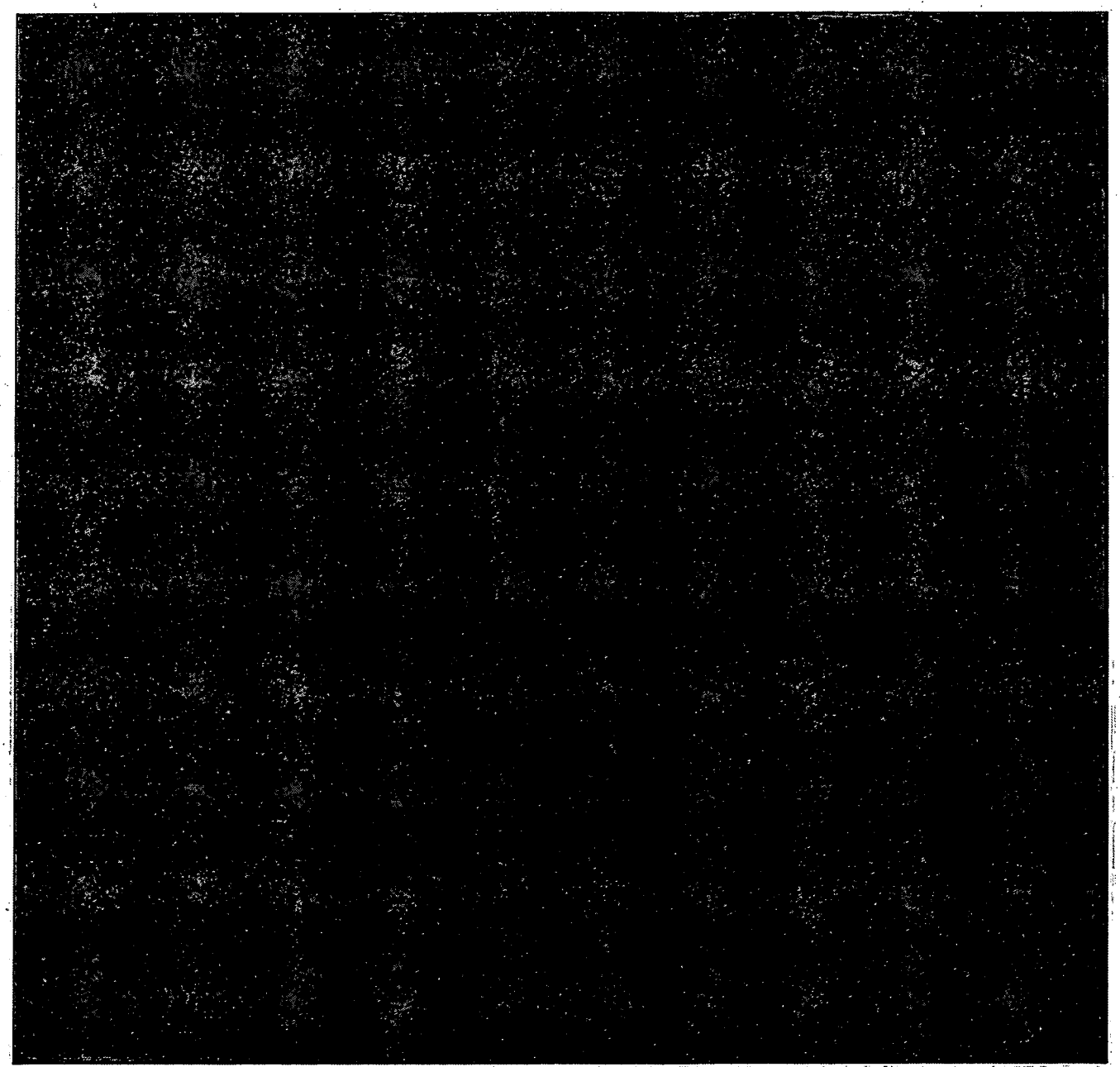
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		Hrs/Rate	Amount
7/12/2018	Attention to Mr. Ichter's PHV application in SC (motion to compel Geitner). WDD	0.10 350.00/hr	35.00



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Hrs/Rate Amount



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Additional Charges :

	Price	Amount
[redacted]		
7/16/2018 Clerk, Aiken County, South Carolina - Pro Hac Vice Application	$250.00	250.00
[redacted]		
7/23/2018 DD 7/21/18 EX Certificate of good standing for PHV application	$10.00	10.00
[redacted]		

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Ichter Davis, LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, GA 30326

Invoice submitted to:

Sims, Tim and Kelly
16226 Clarity Road
Alpharetta, GA

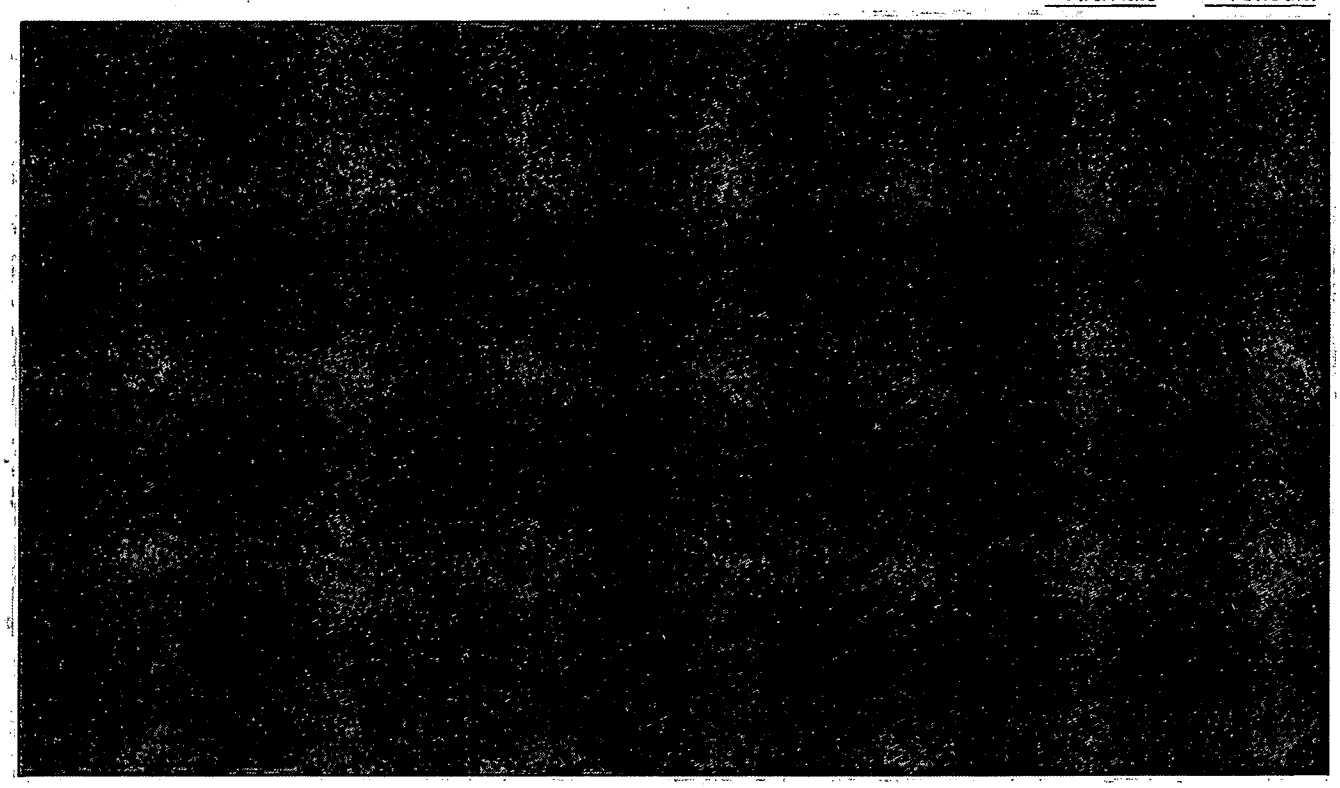
Invoice Date	*Invoice Number*
October 3, 2018	11269

In Reference To: Sharon Enteen Prusso

475-008

Professional Services

	Hrs/Rate	Amount



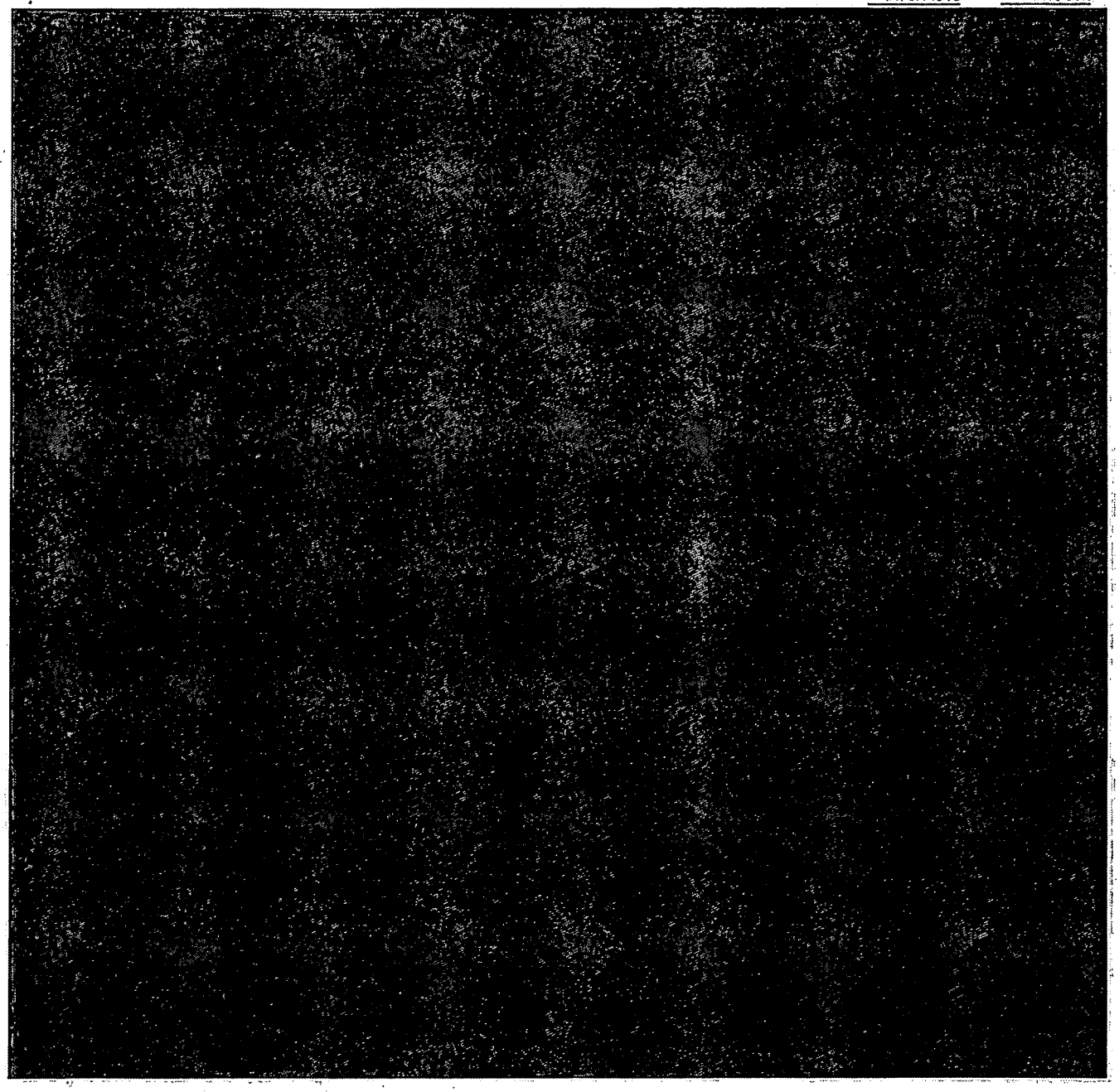
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ELECTRONICALLY FILED - 2018 Dec 14 3:23 PM - AIKEN - COMMON PLEAS - CASE#2018CP0200675

		Hrs/Rate	Amount
[redacted]			
9/20/2018	Correspond with opposing counsel regarding scheduling of hearing on motion to compel continuation deposition of Mr. Geitner. WDD	0.10 350.00/hr	35.00
	Exchange email with Mr. Stanton. CI	0.30 550.00/hr	165.00
	Assemble documents for motion to compel continuation deposition of Mr. Geitner. WDD	0.80 350.00/hr	280.00
9/21/2018	Various communications with Mr. Stanton and Ms. Sims regarding motion to compel hearing in South Carolina. CI	1.00 575.00/hr	575.00
[redacted]			

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Hrs/Rate Amount



Payment is due within fifteen (15) days of your receipt of our invoice. Any delinquent amount will accrue interest at the rate of one and one-half percent (1.5%) per month."

Ichter Davis, LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, GA 30326

Invoice submitted to:

Sims, Tim and Kelly
16226 Clarity Road
Alpharetta, GA

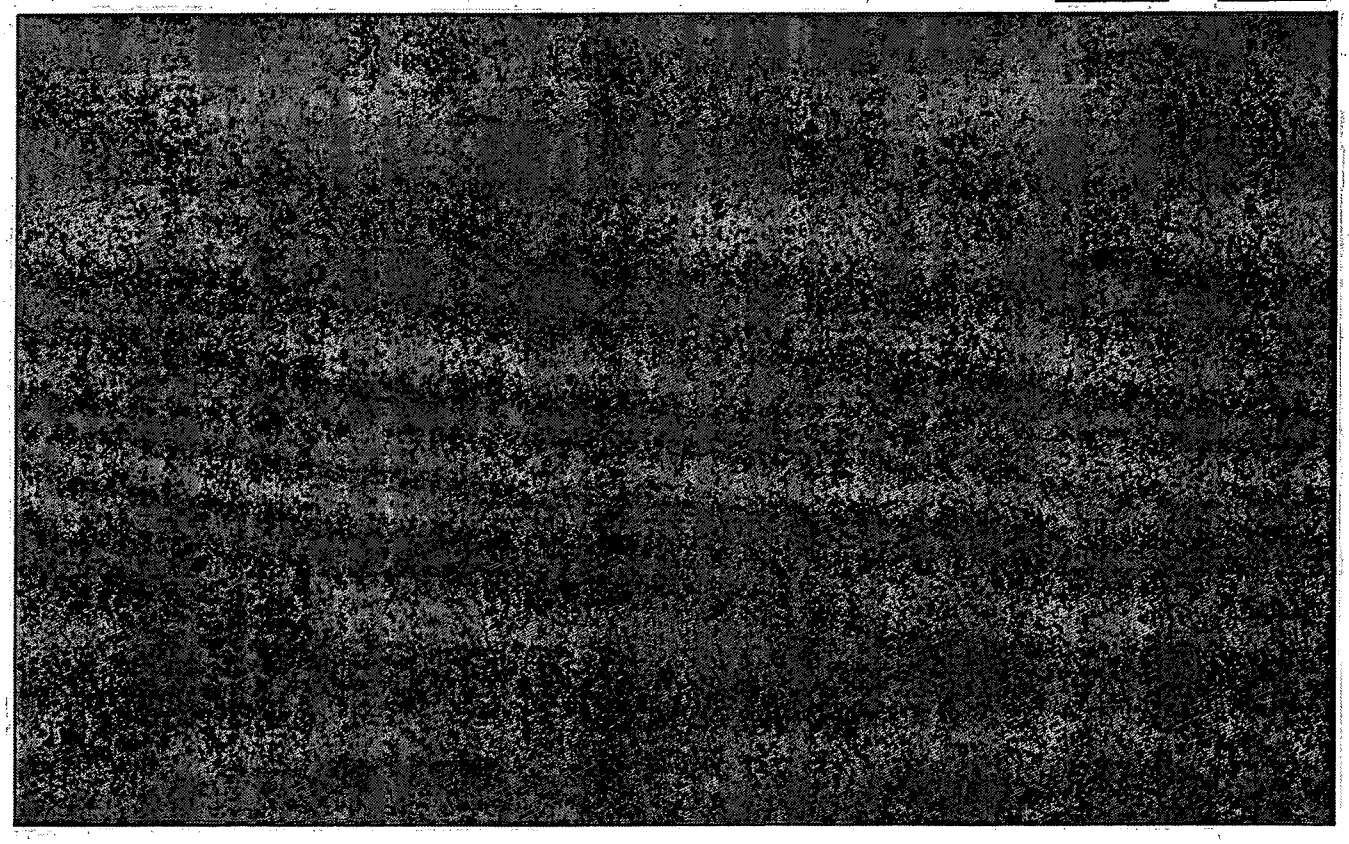
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November 1, 2018	11283

In Reference To: Sharon Enteen Prusso

475-008

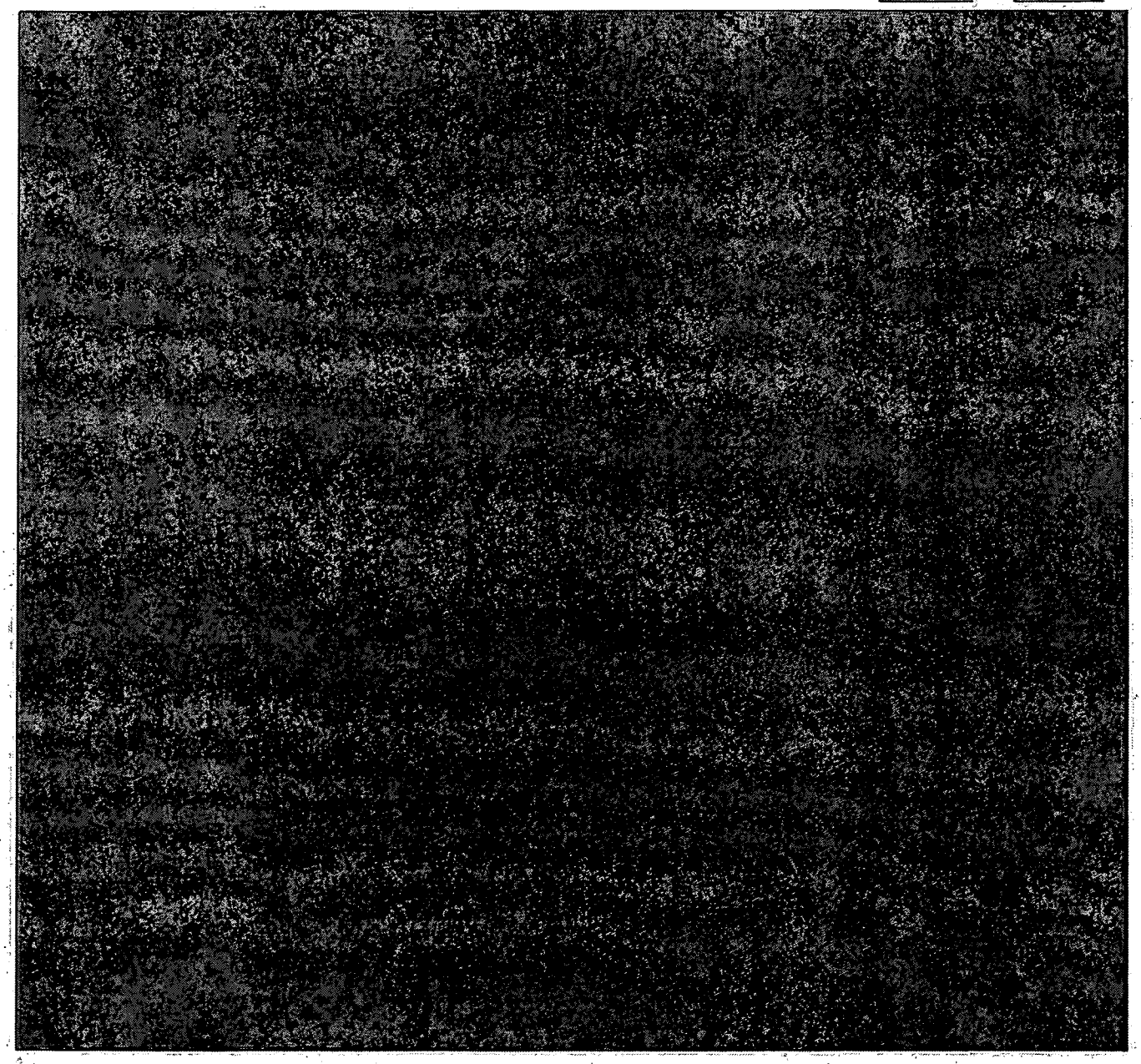
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	Hrs/Rate	Amount



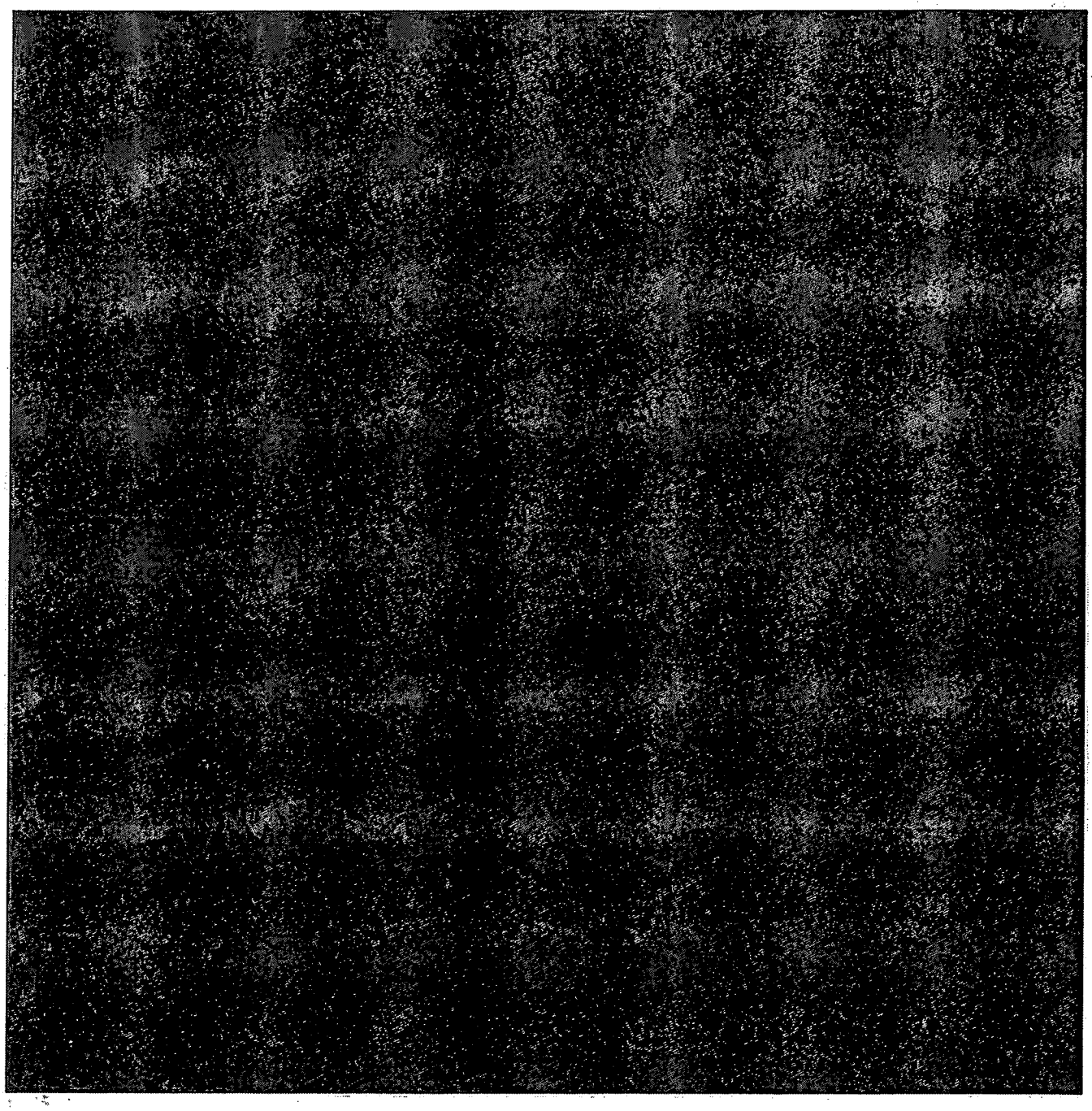
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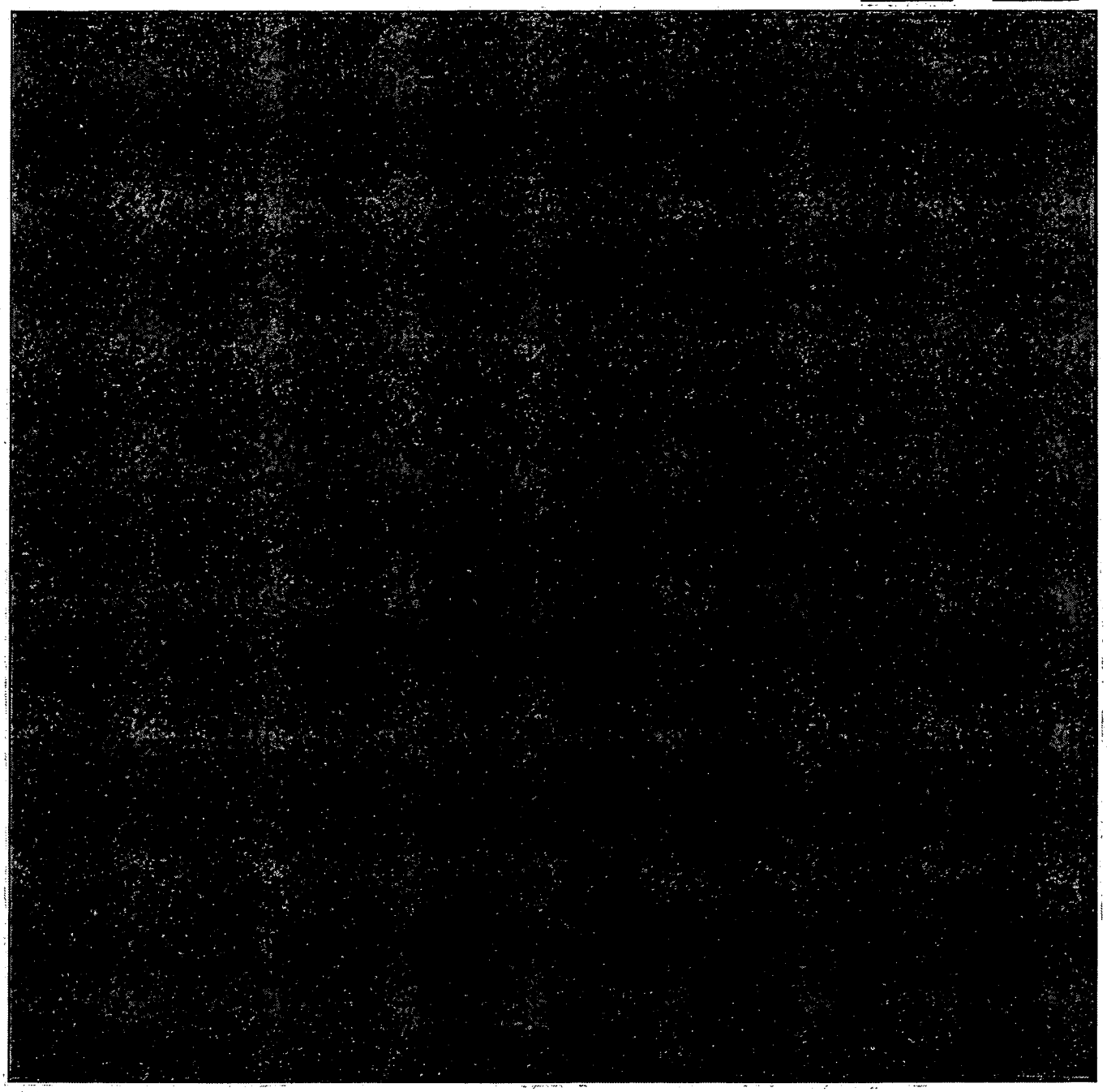
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Hrs/Rate Amount



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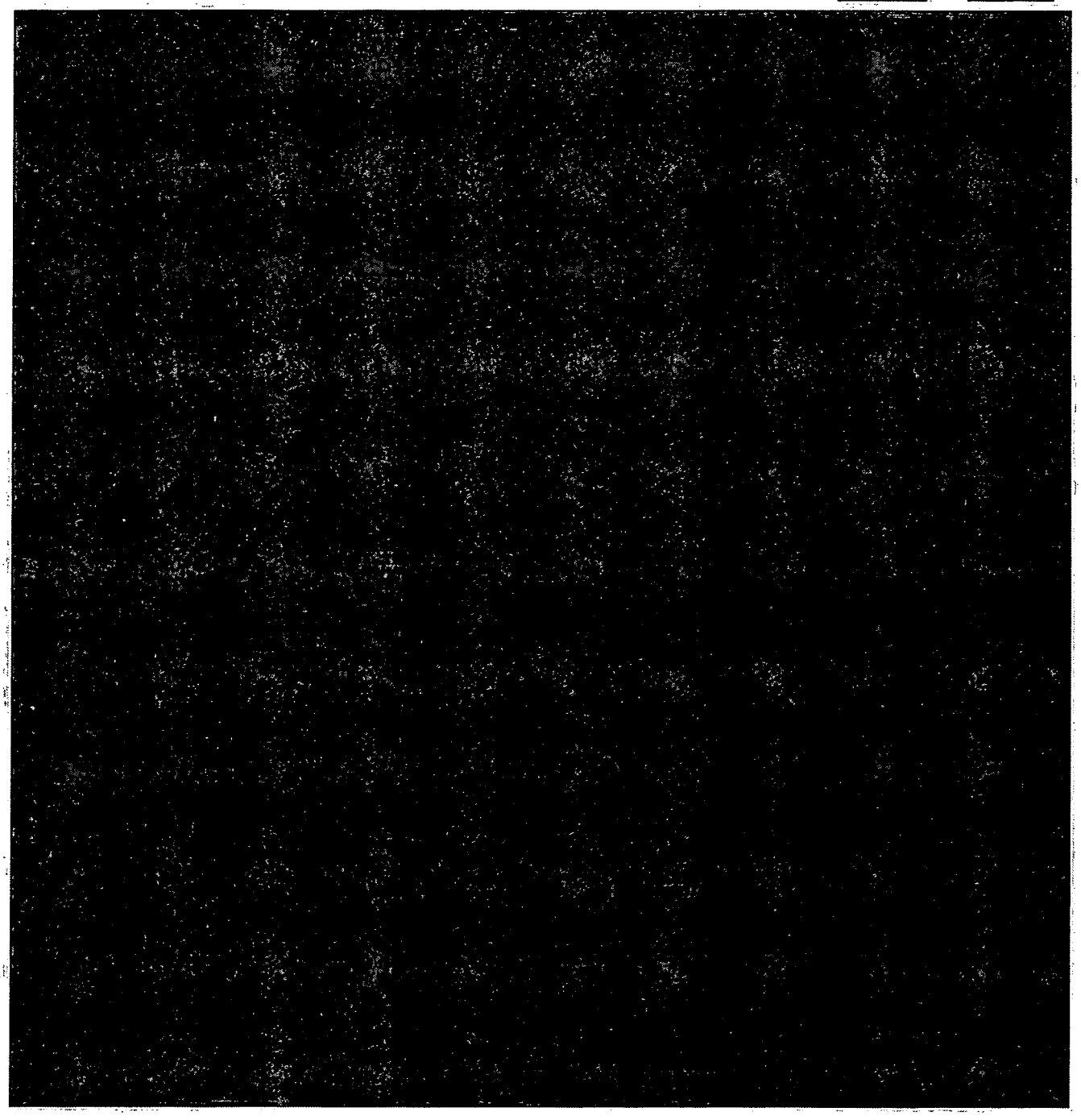


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		Hrs/Rate	Amount
[redacted]			
10/31/2018	Compile hearing material for Motion to Compel hearing on 11/5; compile information and material for deposition of K. Goguen on 11/1/ JL	0.70 190.00/hr	133.00
[redacted]			

Hrs/Rate Amount



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Ichter Davis, LLC
3340 Peachtree Road NE
Suite 1530
Atlanta, GA 30326

Invoice submitted to:

Sims, Tim and Kelly
16226 Clarity Road
Alpharetta, GA

Invoice Date	*Invoice Number*
December 4, 2018	11358

In Reference To: Sharon Enteen Prusso

475-008

Professional Services

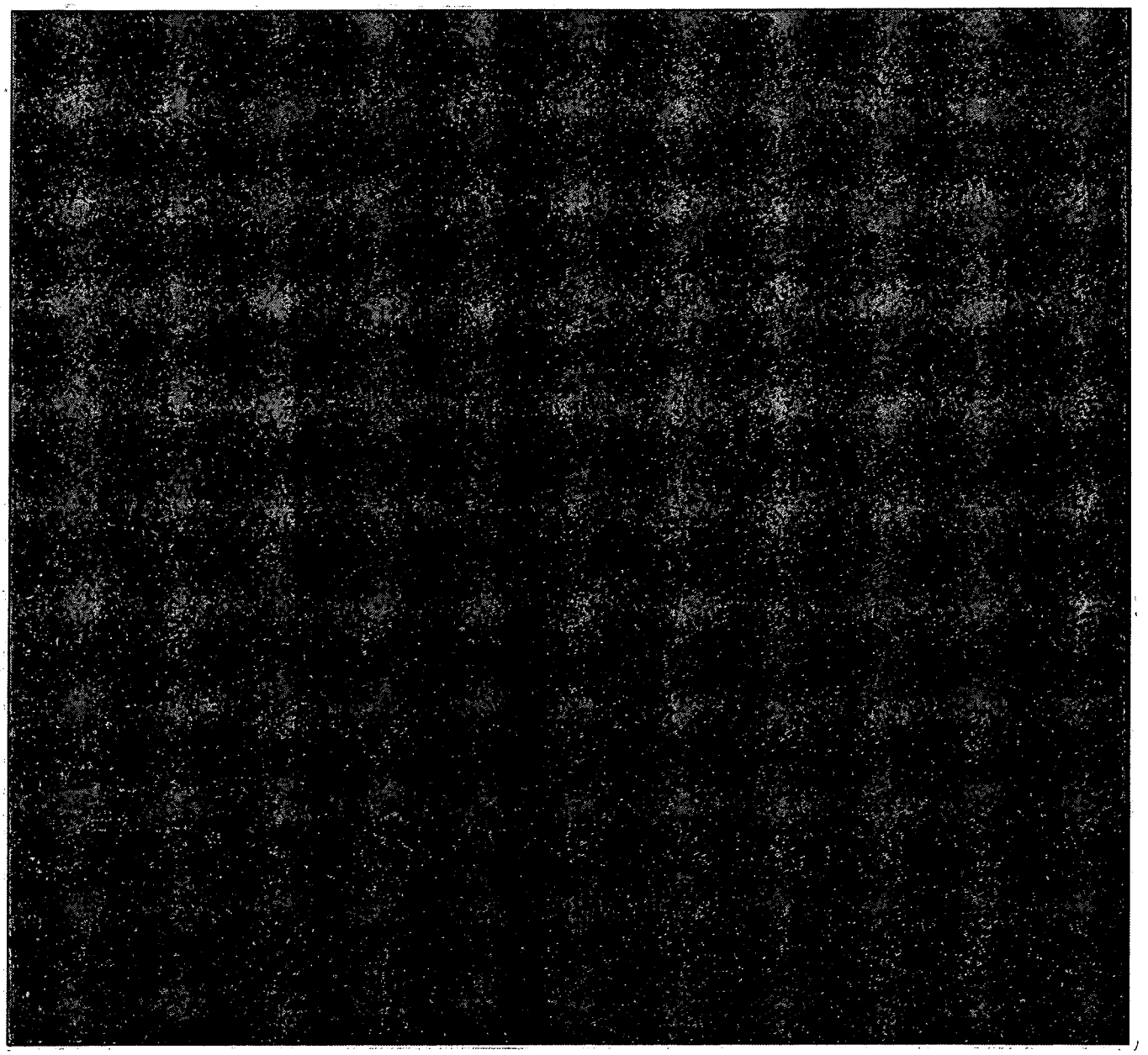
		Hrs/Rate	Amount
[redacted]			
11/4/2018	Prepare for Geltner hearing; exchange emails with Mr. Stanton regarding response from Geltner. CI	2.00 550.00/hr	1,100.00
11/5/2018	Travel to airport; travel to Aiken; continue to prepare for hearing on Geltner motion; participate in hearing; return travel to Atlanta; telephone call from Mr. Mackay; exchange of email with Mr. Pappas. CI	7.00 550.00/hr	3,850.00
[redacted]			

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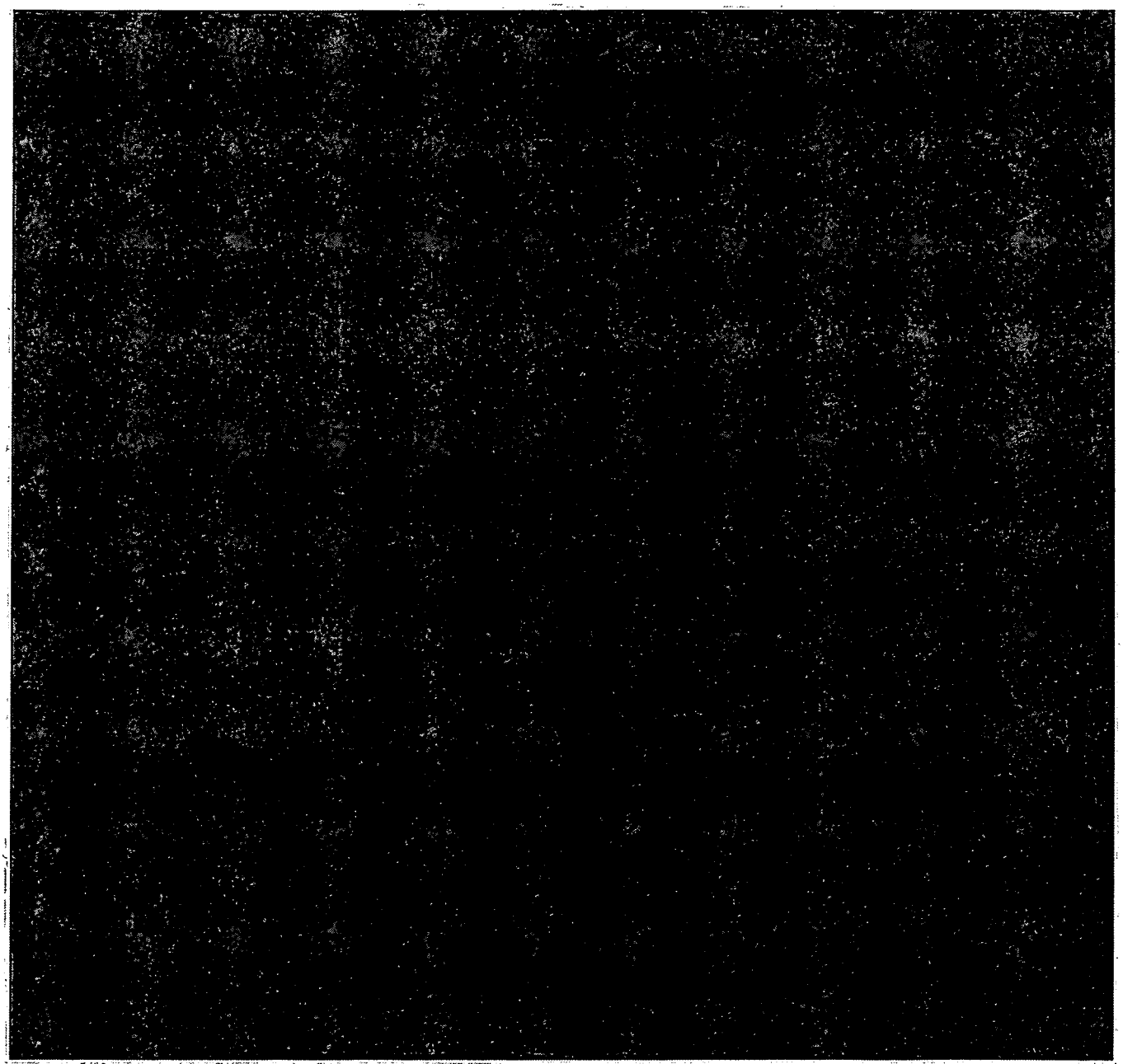
		Hrs/Rate	Amount
[redacted]			
11/13/2018	[redacted]		
	Revise proposed order granting plaintiff's motion to compel regarding Mr. Geltner's deposition and complete responses to questions regarding the settlement agreement with, and payments to, Mr. Mackay in connection with the purchase of Nick. AKB	1.90 350.00/hr	665.00
	Prepare order for Geltner motion to compel; review Geltner's proposed order; conference with Ms. Sims regarding upcoming depositions. CI	2.00 550.00/hr	1,100.00
[redacted]			

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Hrs/Rate Amount



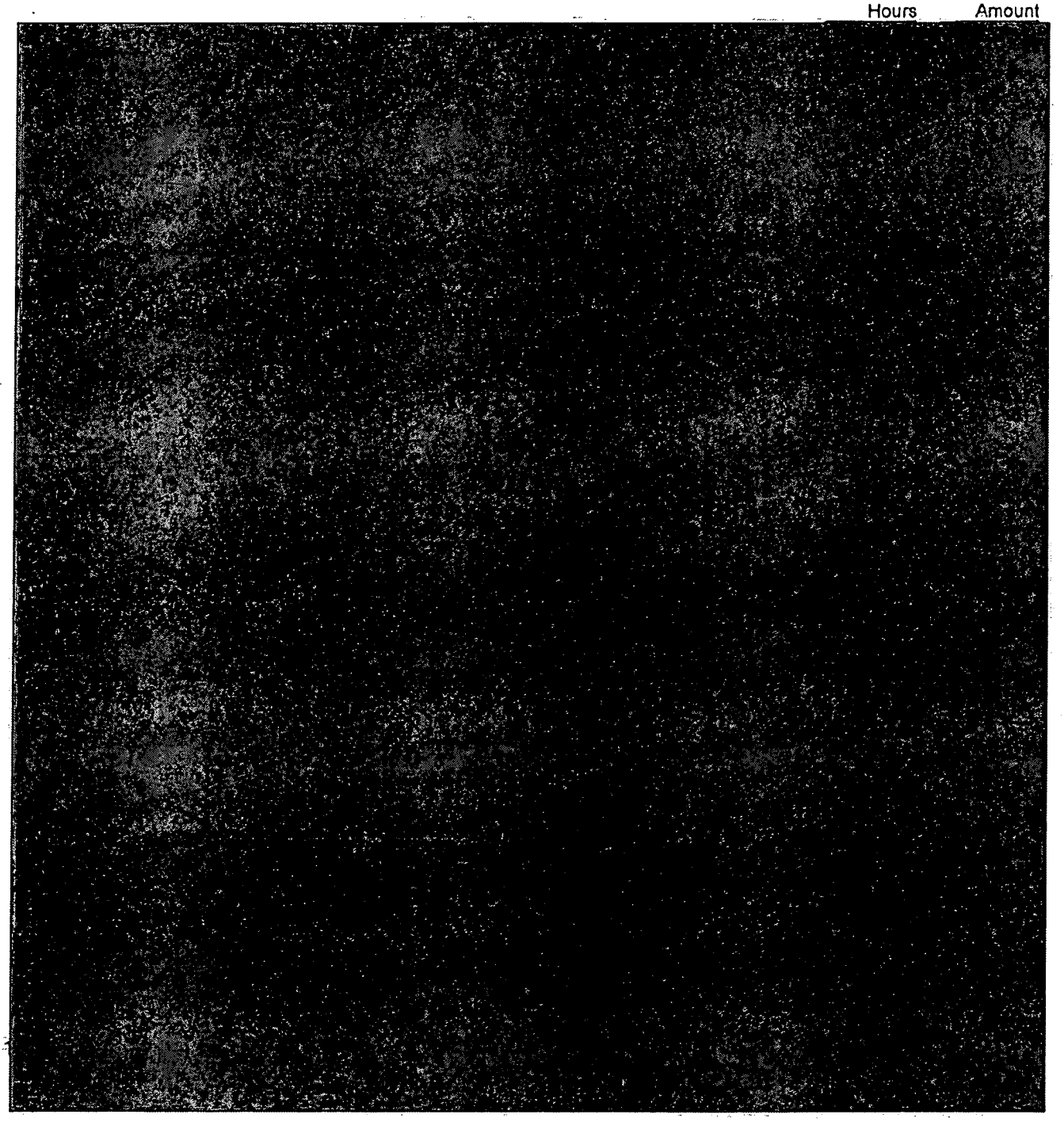
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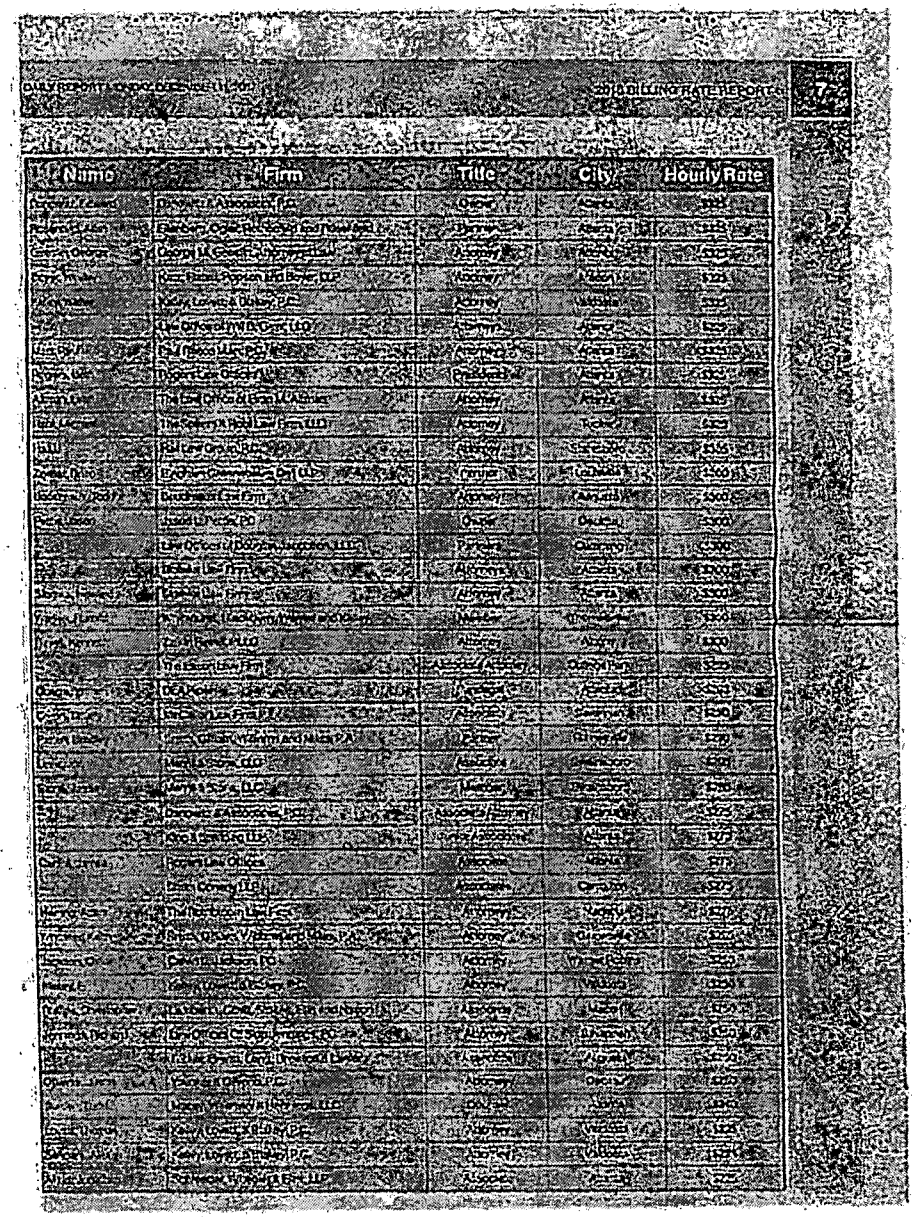
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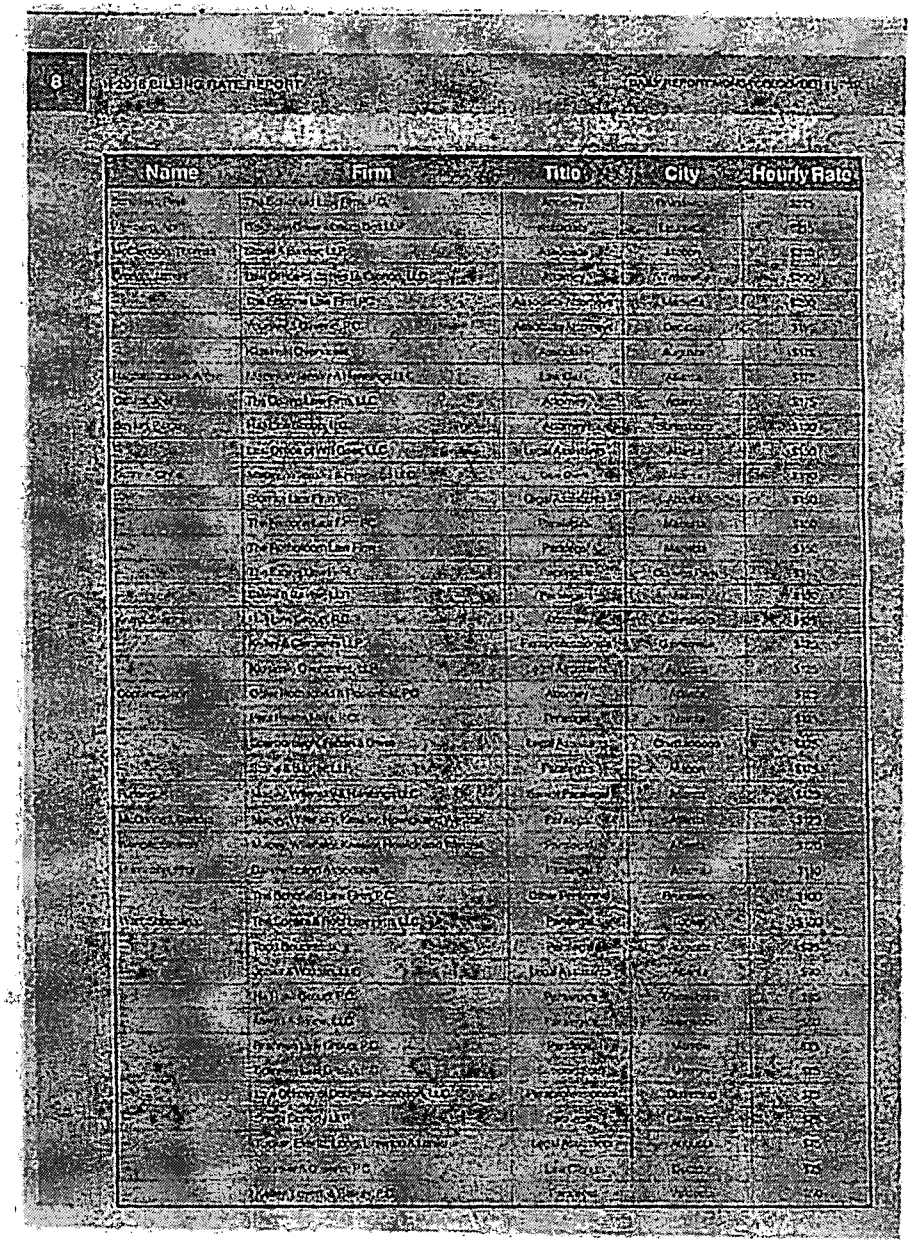


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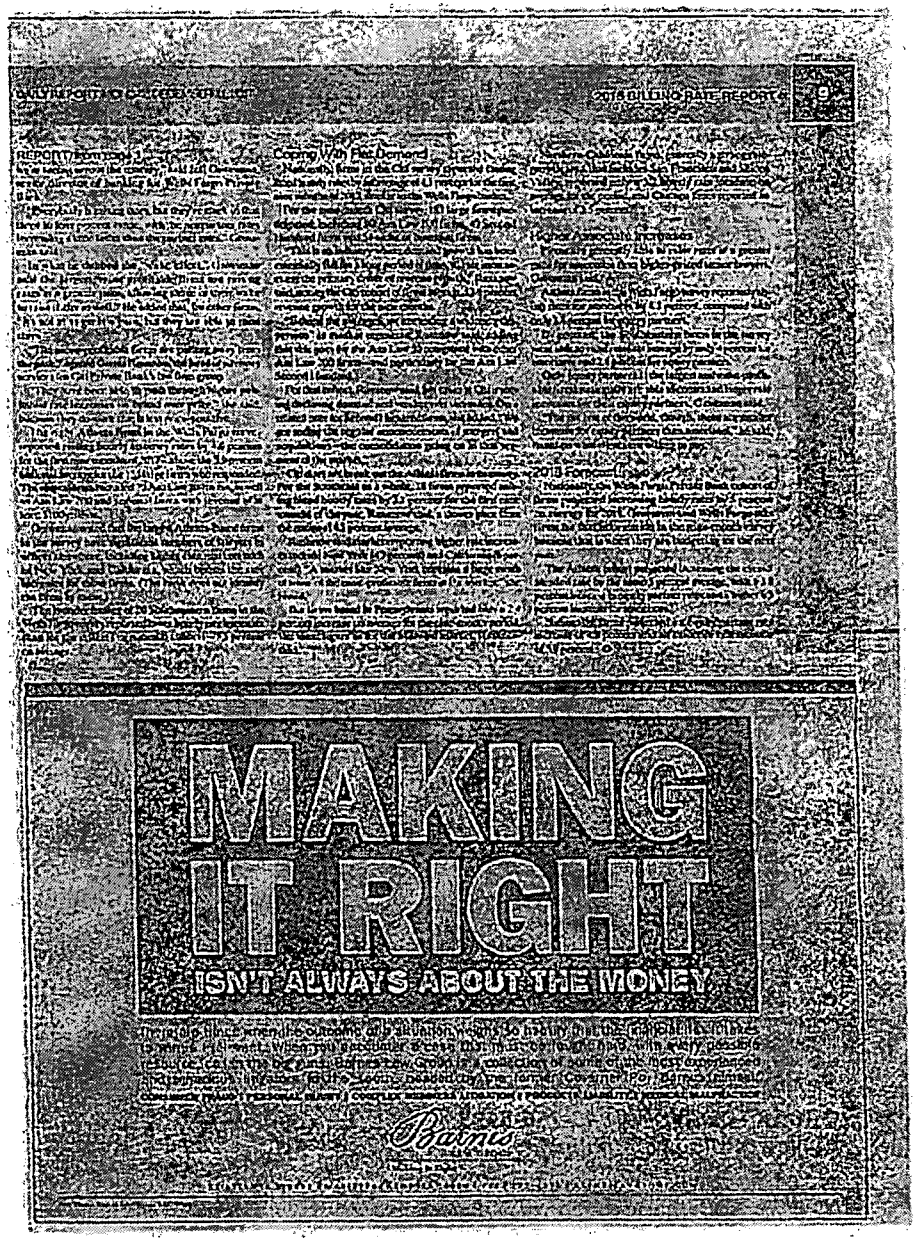
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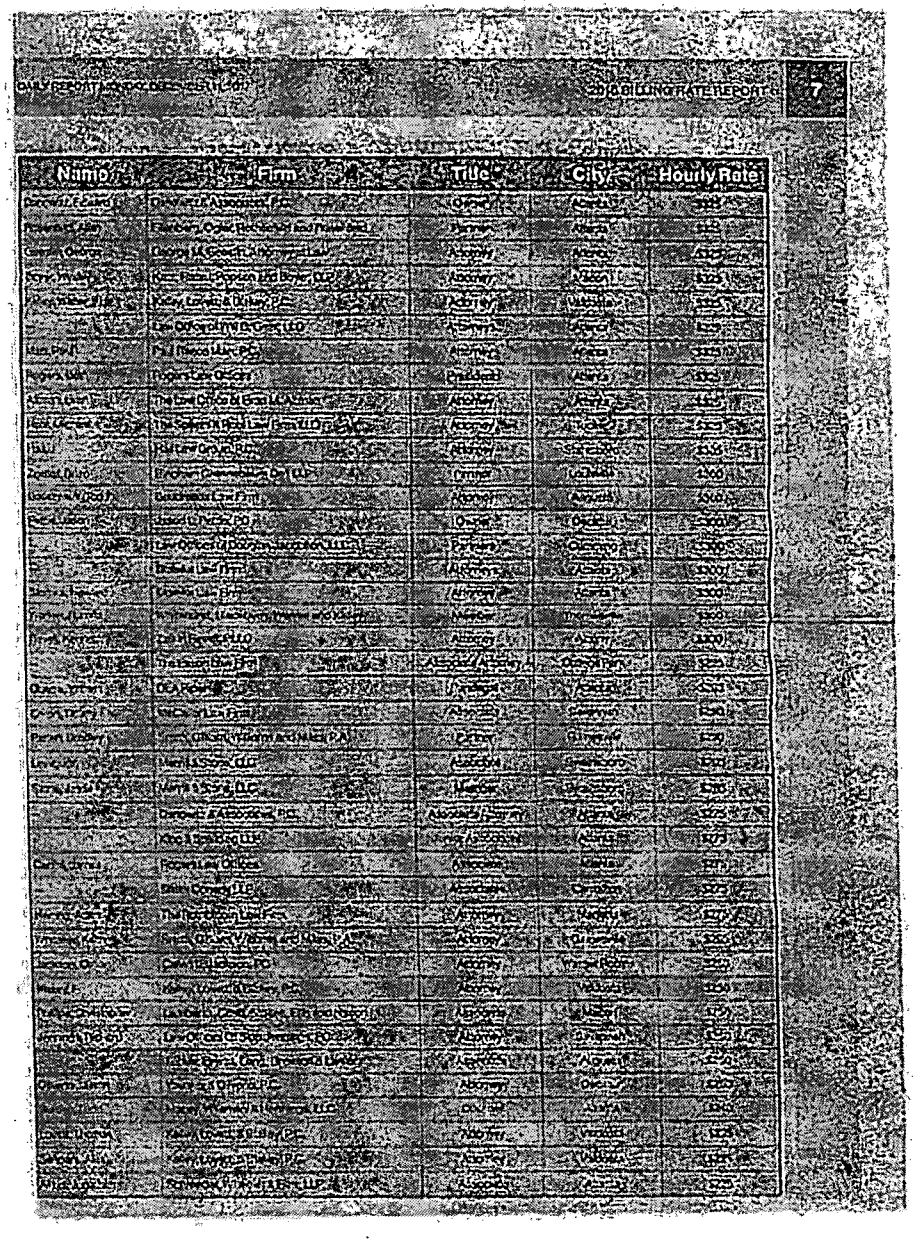
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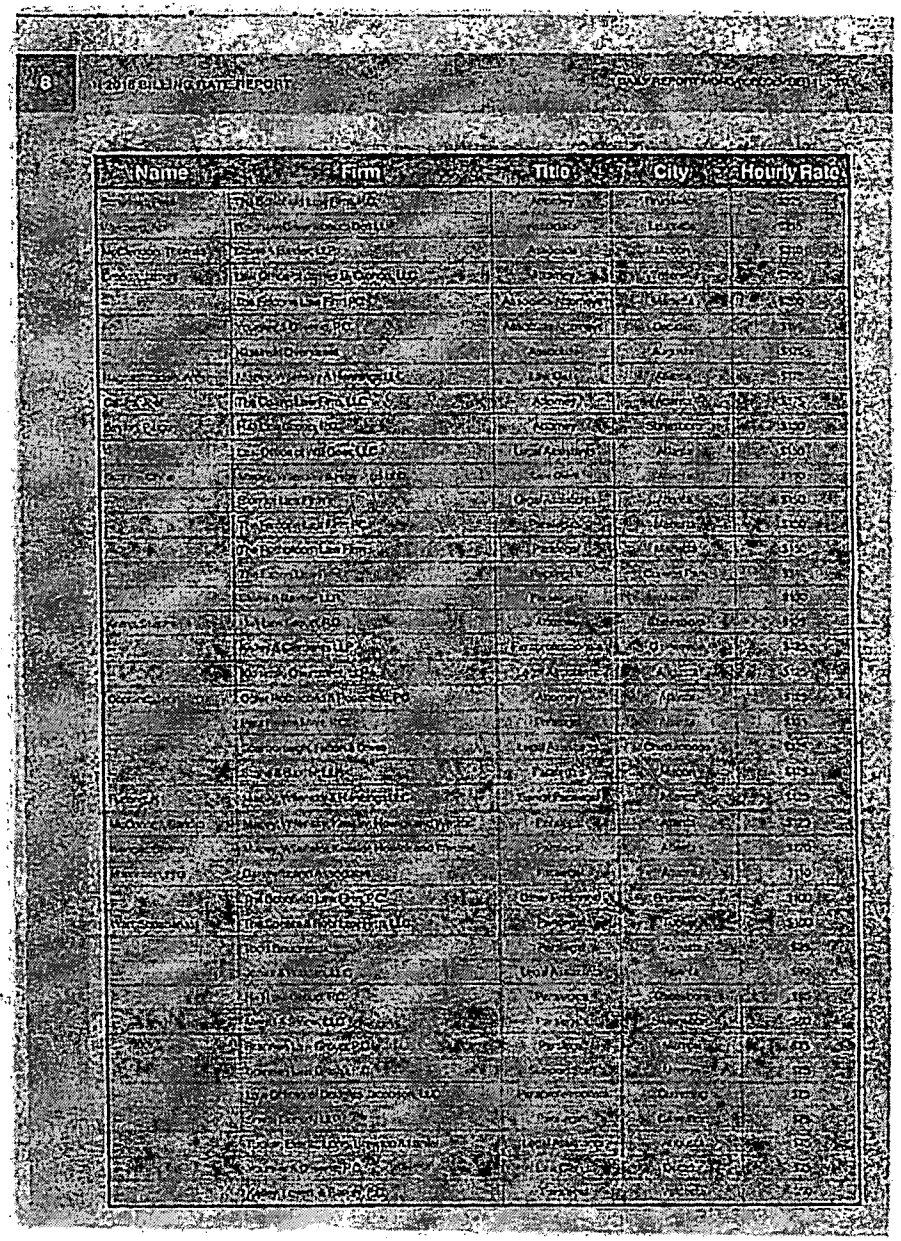
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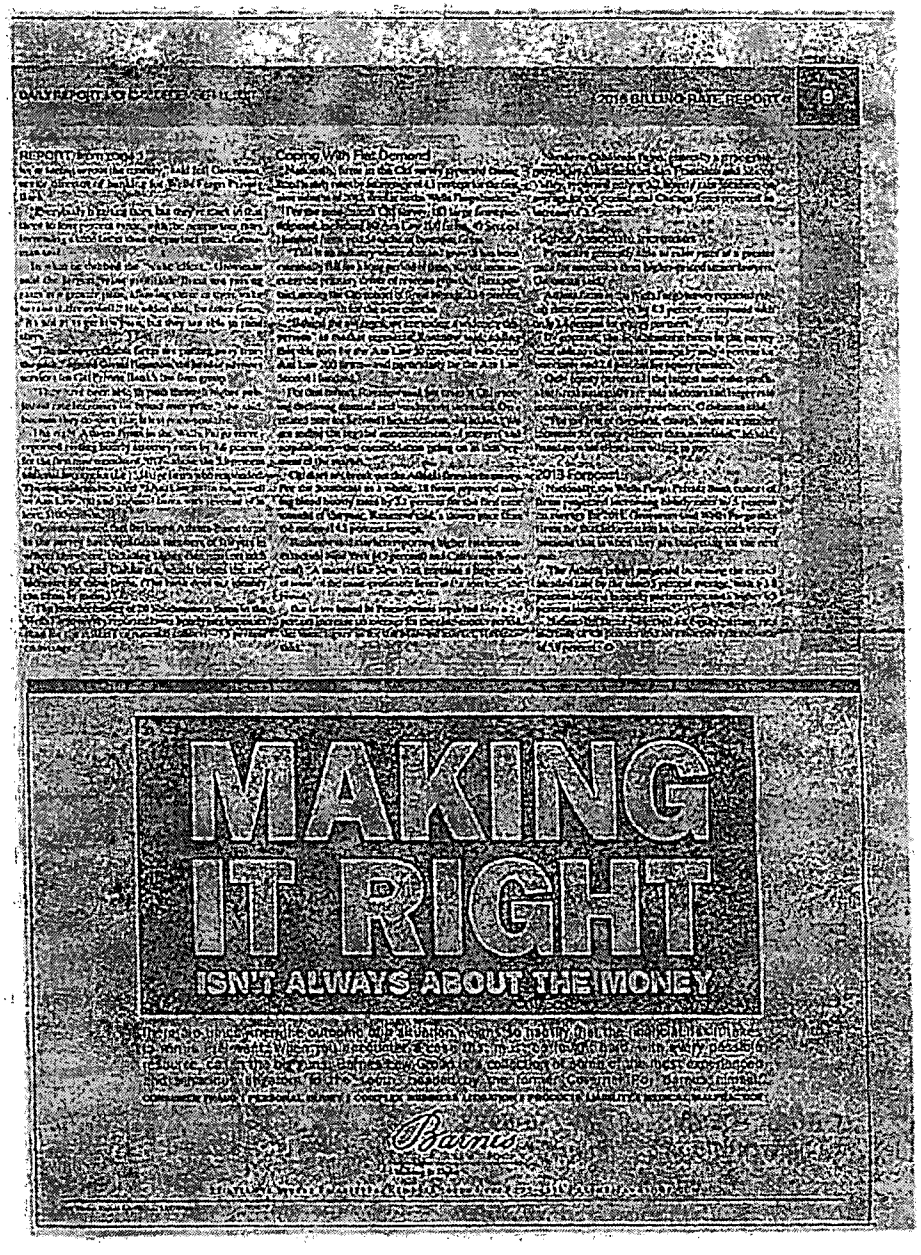
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MAKING
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ISN'T ALWAYS ABOUT THE MONEY
Barnes

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL
CIRCUIT

FILE NO: 2018-CP-02-00675

KELLY SIMS,

Plaintiff,

v.

SHARON ENTEEN-PRUSSO
aka SHARON ENTEEN and
FALCON RIDGE, INC.,

Defendants.

MEMORANDUM IN OPPOSITION TO AWARD OF ATTORNEYS' FEES

COMES NOW Daniel Geitner ("Mr. Geitner"), Third-Party Witness in the above-referenced matter, and files this his *Memorandum in Opposition to Award of Attorneys' Fees* showing the Court as follows:

Counsel for Plaintiff request that this Court award Plaintiff $14,486.69 associated with her Motion to Compel ("Motion") filed in the above-styled matter. Mr. Geitner respectfully submits that Plaintiff's request for an award of attorneys' fees be denied as his opposition to the motion was substantially justified and that, for the reasons set forth hereinbelow, such an award is unjust and unreasonable.

As an initial matter, Plaintiff insists that Mr. Geitner did not offer any defense to the Motion. This argument is inconsistent with the facts. Nothing in the South Carolina Rules of Civil Procedure require the filing of a written response to a motion to compel, but rather, require that a hearing on the matter be set. Counsel for Mr. Geitner appeared at the hearing on the Motion and

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argued that Plaintiff had failed to provide the Court with any authority requiring a third-party witness to violate a confidentiality agreement by testifying with respect to the same. All of the persuasive authority on the subject of confidentiality agreements submitted to the Court by Plaintiff related to a parties' obligation to testify regarding such agreements – not third-party witnesses. Additionally, at the time of the hearing on the Motion, Plaintiff had successfully added Mr. Geitner and Daniel Geitner Stable, Inc. as parties to the underlying litigation pending in the Superior Court of Cherokee County, State of Georgia, Civil action File No. 18cve0059 ("Georgia Litigation") by court order dated August 10, 2018. *See* Affidavit of Rosemary S. Armstrong at paragraph 6 filed contemporaneously with this Memorandum (cited hereinafter as "Armstrong Aff. at ¶ ___"). Given that no binding legal authority in South Carolina exists on the subject matter and that Mr. Geitner was added as a party by the time of the hearing, counsel for Mr. Geitner further argued that the issue would be more properly reserved for a ruling by the court in the Georgia Litigation.

Further, while it is true that no motion for protective order was filed by Mr. Geitner subsequent to his deposition held May 22, 2018, Mr. Geitner was not required to file such a protective order as the deposition was neither suspended by counsel for Plaintiff nor terminated by counsel for Mr. Geitner. Armstrong Aff. at ¶¶ 3-4 and Exhibit A. SCRCP 30(j)(3). Counsel for Plaintiff did not suspend the deposition, as stated in his Motion at page 3; rather, he simply concluded the deposition without preserving his rights under SCRCP 30(j)(3). Similarly, counsel for Mr. Geitner did not terminate the deposition either. Moreover, Mr. Geitner was deposed for over two hours and answered all other questions posed to him by counsel for Plaintiff. *Id.*

Mr. Geitner's opposition was substantially justified. Mr. Geitner was placed in an untenable situation of either being accused of being liable to Mr. Mackay for violating the

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confidentiality agreement or possibly waiving any rights that Mr. Geitner may have for Mr. Mackay's breach of the confidentiality agreement.

Finally, the requested award is unjust as the same does not meet the six criteria[1] set forth in *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). While counsel for Plaintiff did achieve a beneficial result, none of the other *Blumberg* criteria justify the requested award. First, the professional standing/reputation of Mr. Ichter, counsel for Plaintiff, is that he pursues frivolous claims, unnecessarily expands litigation and otherwise operates in bad faith. Armstrong Aff. at ¶¶ 10-11 and Exhibits B and C. Second and third, the requested fees for work performed by both Mr. Ichter's firm and Mr. Stanton are for unrelated work, unnecessary work, or work not properly to be included in the request; and, therefore, are not fees customarily charged for similar services nor are they properly included in time and labor devoted to the Motion.

Mr. Ichter's requested fees include the following improperly included entries: a request for reimbursement for work associated with an unrelated deposition (entries on 6/12/18, 10/31/18, and 11/5/18; fees for preparation of pro hac vice ("PHV") motion (entries on 6/28/18, 6/29/18, and 7/12/18) and costs for the filing of the PHV (cost entries on 7/16/18 and 7/23/18; fees for the motion to add Mr. Geitner to the Georgia Litigation (entry on 6/15/18); a call with Mr. Mackay (entry on 11/5/18); a total of 9 hours for hearing preparation and travel (entries on 11/4/18 and 11/5/18); charges for a conference with Plaintiff about upcoming unrelated depositions (entry on 11/13/18); and two people billing for the preparation of the proposed order which was nothing more than a lifting of language from the Motion (entry on 11/13/18). Mr. Stanton's requested fees

---

[1] "There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." *Blumberg*, at 494.

include the following improperly included entries: researching redaction requirements (entry on 6/19/18); research on how to use ECF (entry on 6/23/18); work related to the PHV motion (entries on 6/29/18, 7/9/18, 7/10/18, 7/11/18, 7/31/18, and 8/10/18); a total of 6 hours for phone calls and emails on 9/20/18 and 9/21/18 for rescheduling the hearing on the Motion; and 3.9 hours of legal research on the substance of the motion after the hearing (entry on 11/13/18).

Fourth, as reflected on the invoices submitted to the Court, Plaintiff's counsel's compensation is not contingent. Fifth, it cannot be argued that the filing and arguing of the Motion was unique or difficult in nature. Notwithstanding Mr. Stanton's submission at paragraph 8 of his affidavit, no other aspect of Plaintiff's case was contingent upon Mr. Geitner's testimony. Mr. Geitner was involved in only two of ten transactions involving the purchase or sale of horses by Plaintiff over a one and one-half year period of time. Mr. Geitner testified at his deposition about everything associated with those two transactions. The information about which he did not testify involved a transaction between himself and Mr. Mackay which was controlled by a confidentiality agreement. Armstrong Aff. at ¶¶ 4, 9 and Exhibit A. Clearly the *Blumberg* criteria do not support the fees requested by Plaintiff.

For all of the foregoing reasons, Mr. Geitner respectfully submits that no award of attorneys' fees to Plaintiff is warranted under SCRCP 37(a)(4) as Mr. Geitner's opposition to the Motion was substantially justified and the totality of the circumstances make an award of the requested fees unjust.

Signature on Following Page

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Respectfully submitted, this the 19th day of December, 2018.

/s/ Karl Smith Bowers Jr.
Karl Smith Bowers Jr.
South Carolina Bar No. 16141
Bowers Law Office LLC
1419 Pendleton Street
Columbia, South Carolina 29201
(803)753-1099
butch@butchbowers.com

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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS, IN THE COUNTY OF AIKEN

KELLY SIMS, Plaintiff, v. SHARON ENTEEN-PRUSSO aka SHARON ENTEEN and FALCON RIDGE, INC., Defendants.	Case No. 2018CP0200675

AFFIDAVIT OF ROSEMARY S. ARMSTRONG

Personally appeared before the undersigned officer, duly authorized to administer oaths, Rosemary S. Armstrong, who deposes and states as follows:

1.

I am Rosemary S. Armstrong and I am counsel for Daniel Geitner ("Mr. Geitner"), Third-Party witness in the above-styled matter at all times pertinent hereto, as well as the Defendants in the above-styled matter. I am over the age of 18 years old and am competent to testify to the facts contained herein. This affidavit may be used for any purpose allowed by law.

2.

On May 22, 2018, Mr. Geitner appeared for his deposition pursuant to a subpoena issued by the Court. At that time, Mr. Geitner was not a party to the litigation commenced by Plaintiff in the Superior Court of Cherokee County, State of Georgia, Civil action File No. 18cve0059 ("Georgia Litigation"). At that time, I did not represent the Defendants.

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3.

Mr. Geitner's deposition began at 12:36 p.m. and ended at 2:45 p.m. upon Carey Ichter's announcement "We're done." Carey Ichter was the only lawyer representing Plaintiff at Mr. Geitner's deposition and he conducted the examination of Mr. Geitner. Then counsel for Defendants, George Lott, confirmed that Mr. Ichter was finished and announced that he, Mr. Lott, had no questions for Mr. Geitner. Mr. Ichter did not suspend the deposition, nor did I terminate the deposition. Mr. Ichter did briefly lecture me regarding fraud and then he ended his examination of Mr. Geitner. Mr. Ichter then turned the questioning of Mr. Geitner over to counsel for Defendants counsel who had no questions. The deposition concluded at 2:45 p.m.

4.

For over two hours, Mr. Ichter questioned Mr. Geitner regarding the two transactions in which he was involved with Plaintiff. Mr. Geitner answered each and every question posed to him by Mr. Ichter related to those transactions. The only questions Mr. Geitner did not answer related to a matter involving Bill Mackay, the individual who co-owned the horse known as Nick/Eleventh Hour with Mr. Geitner. Those questions were posed to Mr. Geitner at the end of his deposition. Mr. Geitner did not answer those questions, on advice of counsel, as Mr. Geitner was bound by a confidentiality agreement with Mr. Mackay. It was clear from Mr. Ichter's questions that Mr. Mackay had already violated the confidentiality agreement, as Mr. Ichter had a copy of the same at the deposition. Mr. Ichter had previously deposed Mr. Mackay regarding the same. Mr. Geitner did not want to create liability for himself by testifying regarding the matter nor did he want to waive any claims he may have against Mr. Mackay for his violation of the agreement. A true and correct condensed copy of Mr. Geitner's deposition is attached hereto as Exhibit "A."

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5.

I did not file a motion for protective order in the above-styled matter as Mr. Geitner's deposition was concluded in the ordinary manner and it appeared that Plaintiff's counsel was threatening fraud claims against either my client or myself or both.

6.

In fact, on June 15, 2018, Plaintiff filed a Motion to Add Daniel Geitner and Daniel Geitner Stables, Inc. as additional defendants in the Georgia litigation alleging fraud and other claims. The same was granted on August 10, 2018.

7.

It was not until June 28, 2018, that Plaintiff filed the motion to compel in the above-styled matter.

8.

On June 12, 2018, I became counsel for Defendants in the Georgia litigation.

9.

Notwithstanding the representations in Mr. Stanton's affidavit in support of an award of fees in this matter at paragraph 8, Mr. Geitner's testimony regarding the matter between himself and Mr. Mackay has no bearing on any other discovery matters in the Georgia litigation and posed no delay to the Georgia litigation as numerous other depositions have been conducted by Plaintiff's counsel concerning matters unrelated to Mr. Geitner. Mr. Geitner was involved in only two of ten transactions involving the purchase or sale of horses by Plaintiff over a one and one-half year period of time. In fact, the only other witness involved in the Nick/Eleventh Hour horse transaction was Mr. Mackay whom had previously been deposed by Plaintiff.

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10.

In paragraph 4 of Mr. Stanton's affidavit he provides the Court with his opinion of Mr. Ichter's quality of work and ethics. Mr. Stanton makes specific reference to a federal court matter "involving Italian made industrial wood working machinery." In fact, Mr. Stanton's view of Mr. Ichter's quality of work and ethics is inconsistent generally with his reputation in Atlanta and specifically with respect to the litigation referenced by Mr. Stanton related to the federal court matter "involving Italian made industrial wood working machinery." Mr. Ichter was actually counsel for plaintiffs in that matter, *Costa & Grisson Machinery Company, Inc. and Costa Levigatrici S.p.A. v. Qingdao Giantway Machinery Co., Ltd. and Lobo Machinery Corporation,* United States District Court Norther District of Georgia Atlanta Division, Civil action File No. 1:08-CV-2948-CAP, and was sanctioned for his behavior in that matter related to (1) misrepresentations of the law to the court; (2) continuing to pursue claims he knew were not viable; and (3) engaging in deceptive behavior. The court therein determined that Mr. Ichter, along with his client, "acted willfully, in bad faith, vexatiously, wantonly, and for oppressive reasons." A true and correct copy of the District Court's opinion is attached hereto as Exhibit "B."

11.

The Georgia Litigation similarly is a frivolous case filed for the purpose of extorting money from Defendants. Plaintiff has testified that she had no role in the negotiation for and purchase of Nick/Eleventh Hour, but rather that transaction was a transaction involving her husband. Page 80, Lines 4-10, Deposition of Kelly Sims taken July 10, 2018. Plaintiff has also testified that she has no facts to support her claims related to alleged undisclosed commissions for any other horse transactions but rather "[t]he other horses are subsequently being looked at

and asked about and being confirmed because of the Nick situation." Page 108, Lines 4-6, Deposition of Kelly Sims taken July 10, 2018. A true and correct copy of the pertinent portions of Kelly Sims deposition is attached hereto as Exhibit "C."

FURTHER AFFIANT SAYETH NOT.

Rosemary S. Armstrong

SWORN TO AND SUBSCRIBED
before me this 19 day of
December, 2018.

Notary Public

My Commission expires:
12-10-2021

RENE GRIFFIS NOTARY PUBLIC GWINNETT COUNTY, GA

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Exhibit A

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VERITEXT
LEGAL SOLUTIONS

Deposition of:

Daniel Geitner

May 22, 2018

In the Matter of:

Sims vs. Prusso

Veritext Legal Solutions
1075 Peachtree St. NE , Suite 3625
Atlanta, GA, 30309
800.808.4958 | calendar-atl@veritext.com | 770.343.9696

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IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

KELLY SIMS,
Plaintiff,
vs. CIVIL ACTION NO. 18cve0059
SHARON ENTEEN PRUSSO aka
SHARON ENTEEN, AND
FALCON RIDGE, INC.,
Defendants.

VIDEOTAPED TELEPHONIC
DEPOSITION OF: DANIEL GEITNER
DATE: May 22, 2018
TIME: 12:36 P.M.

LOCATION: Carriage House Inn
139 Laurens Street NW
Aiken, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: LORI S. MORTGE,
Certified Court
Reporter, CCR

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APPEARANCES OF COUNSEL:
ATTORNEYS FOR THE PLAINTIFF
KELLY SIMS:

ICHTER DAVIS, LLC
BY: CARY ICHTER
3340 Peachtree Road, NE
Suite 1530
Atlanta, GA 30326
(404) 869-5243
cichter@ichterdavis.com

ATTORNEYS FOR THE DEFENDANTS
SHARON ENTEEN PRUSSO aka
SHARON ENTEEN AND FALCON RIDGE, INC.:

LEVENSON & ASSOCIATES
BY: GEORGE LOTT (by telephone)
125 Broad Street, SW
Atlanta GA 30303
(404) 659-5000
george@levensonlaw.com
and
LORI J. CHRISTMAN, LLC
BY: LORI J. CHRISTMAN (by telephone)
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lorichristman@yahoo.com

ATTORNEYS FOR DANIEL F. GEITNER:

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BY: ROSEMARY S. ARMSTRONG
1200 Abernathy Road
Suite 1700
Atlanta, GA 30328
(404) 900-5157
rarmstrong@armstrongnix.com

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ALSO PRESENT:
Kelly Sims
Sharon Enteen Prusso
Douglas Prusso

(INDEX AT REAR OF TRANSCRIPT)

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THE VIDEOGRAPHER: Good afternoon. We are now on the record. Today's date is 12:36 p.m. (sic). Today's date is May 26 (sic), 2018.

This is the videotaped deposition of Daniel Geitner. We are currently located at 139 Laurens Street in Aiken, South Carolina. My name is Clint Thomas, a legal videographer representing Veritext.

This videotaped deposition is being taken in the matter of Kelly Sims versus Sharon Prusso, Falcon Ridge, Incorporated, et al., Case Number 18cve0059.

Counsel present, will you introduce yourselves for the record?

MR. ICHTER: My name is Cary Ichter and I represent the Plaintiff, Kelly Sims.

MS. ARMSTRONG: Rosemary Armstrong here on behalf of Daniel Geitner, the deponent.

MR. LOTT: George Lott on behalf of Sharon Enteen Prusso and Falcon Ridge.

THE VIDEOGRAPHER: Okay. Madam Court Reporter, will you please introduce yourself for the record and swear in the witness? And then we may proceed.

THE COURT REPORTER: Mr. Geitner -- oh,

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I'm sorry. My name is Lori Mortge, court reporter.

* * * * * * * * * * *

DANIEL GEITNER
being first duly sworn, testified as follows:

EXAMINATION

BY MR. ICHTER:

Q. Mr. Geitner, as you heard before, my name is Cary Ichter. You just sat through your wife's deposition where I had a chance to ask her questions about certain transactions that are related to the subject matter of the lawsuit filed by Ms. Sims in Fulton County, Georgia. And I'm going to be asking you questions about those same transactions.

Same sort of rules apply. Can you always give me verbal responses as opposed to shrugs of the shoulder, nods of the head and uh-huhs and huh-uh -- huh-uhs don't work so good, so yes' and no's would be preferred.

Also, if you'll let me finish the question before you start answering, that's helpful. And I will try and let you finish your answers before I start asking another question. Also, if at any point in time you want to take a break just let me know and I'll be happy to accommodate you. The

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only request I would make is if there's a pending question at that point in time if you would answer the question first; okay?
A. Okay.
Q. Fair enough. So state your full name if you would, please, sir.
A. Daniel Folger Geitner.
Q. Are you named after the coffee?
A. I wish.
Q. Darn.
MS. SIMS: We wouldn't be sitting here, would we?
THE WITNESS: Exactly.
BY MR. ICHTER:
Q. So you just sat through your wife Cathy Geitner's deposition; correct?
A. Yes.
Q. And I'm not asking you to endorse anything that she said and I'm not asking you to give me a comprehensive denial of everything that she said that she might have got wrong. My question is only sitting here at this moment is there anything that immediately jumps out at you that she got wrong?
A. No.

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Q. Okay.
MR. LOTT: Object to the form, but you can answer it if you can.
MR. ICHTER: He already did.
Q. Sir, where do you currently reside?
A. In Aiken, South Carolina.
Q. Okay. And you live outside of the State of Georgia, then; correct?
A. Yes.
Q. And do you plan on becoming a resident of the State of Georgia any time soon?
A. No.
Q. Okay. You were originally subpoenaed to appear for this deposition; correct?
A. Yes.
Q. And we talked to your wife about assembling responsive documents to the subpoena. Did you see the portion of the subpoena that requested that certain documents be produced?
A. I did not, but she informed me.
Q. Okay. And did she, on behalf of the both of y'all, take care of assembling documents and producing them?
A. As far as I know, yes.
Q. Okay. And were those, to your

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knowledge, turned over to your lawyer for the purpose of producing to us?
A. As far as I know, yes.
Q. Okay. I want to ask you the same question I asked her which was it's kind of unusual. What made y'all decide to engage counsel when you received a subpoena?
A. This is the first deposition I've ever done. We've never been sued. I just wanted to cover our bases and make sure that we were doing the right thing.
Q. Okay. Did you have any concerns about the possibility of personal liability in connection with the transactions that Ms. Sims sued about?
A. No.
Q. Okay. So you never had any conversations with anybody on the subject of whether or not there was any potential for you to be held liable for any of the claims that Ms. Sims was making?
A. No.
Q. Okay. After the lawsuit -- well, change that.
Did you become aware of the fact sometime in December of 2017 that Bill Mackay had

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communicated with Ms. Sims on the subject of the transaction by which she purchased the horse known as Nick?
A. No.
Q. Okay. Did you ever have any communications with Mr. Mackay on the subject of the transaction by which Ms. Sims purchased the horse known as Nick?
A. Yes.
Q. Okay. When did you --
(The proceedings were interrupted.)
MR. ICHTER: Excuse me a second. I'm sorry. I should have turned that off.
Q. And when do you recall having those communications?
A. It was during the acquisition of -- of Nick or during the sale of Nick.
Q. Okay. Do you recall having any communications with Mr. Mackay on the subject of the sale of Nick after that transaction closed?
A. Not that I recall.
Q. Okay. Did you ever go over and visit him at his home after the sale of Nick?
A. I think I went over and brought him a picture.

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Q. A picture of what?
A. Of Nick.
Q. Okay. And why did you do that?
A. Just -- I brought a picture for him in Kentucky so -- and he's a little old and sickly and thought it might brighten his day.
Q. Have you -- other than going over to drop off a picture with Mr. Mackay following the closing of the transaction by which Ms. Sims acquired Nick, have you had any other communications with Mr. Mackay?
A. I don't think so. I've seen him in passing but...
Q. Okay. Where are you from originally?
A. Hickory, North Carolina.
Q. And how long have you lived in Aiken?
A. About 20 years.
Q. Same amount of time as your wife?
A. Mm-hmm.
Q. Y'all were married when you moved here?
A. No. We just moved here and got married a year later.
Q. Okay. How long have you been -- I guess that's -- you've been married 19 years?
A. Yeah -- 18 years I think, so...

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Q. Fair enough. Can you describe your educational background for me?
A. I went to college at St. Andrews College in North Carolina and graduated with a business degree.
Q. And when did you get that degree?
A. Let's see. '96, I think.
Q. Okay. Any postgraduate education of any kind?
A. No.
Q. And can you give me sort of a quick thumbnail sketch of what your employment history has been since 1996?
A. I worked for one year for the college, I graduated St. Andrews, and ran a horse business on the side. I taught riding lessons and had my horse business on the side, and then moved to Aiken and started my own business.
Q. So that would have been in 1997 that you came here?
A. Yeah, around then. Not -- yeah, '97/'98, something like that.
Q. Give or take?
A. Yeah.
Q. Okay. And did you start Daniel Geitner Stables in -- at that point in time?

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A. Yes.
Q. Were you married when you started the business?
A. No.
Q. When did your wife become a 50 percent owner of the business?
A. I think it was probably in the late '90s when we moved here.
Q. And can you describe for me what the -- the business of Daniel Geitner Studios (sic) is?
A. Trading horses, riders, showing, buying and selling of horses.
Q. By the way, you mentioned you had never been sued before; correct?
A. Right.
Q. And that includes personally?
A. Right.
Q. Have you ever been charged with a crime?
A. No.
Q. Okay. Do you know the Defendant, Ms. Sharon Enteen Prusso?
A. Yes.
Q. Okay. I'm going to refer to her as Ms. Enteen. Is that the way you know her?

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A. Sure.
Q. Okay. When was the last time you spoke to her?
A. Couple of months ago.
Q. And what was the occasion for speaking to her at that point in time?
A. To be honest, I can't even remember. It wasn't -- it was nothing to do with this.
Q. Okay. How long have you known Ms. Enteen?
A. Probably 15 years.
Q. Would you describe yourself as social friends?
A. Yeah, sure.
Q. Okay. And is it unusual for you and her to go a couple of months without talking to each other?
A. No.
Q. Do you often show up at the same events -- horse events?
A. Yes.
Q. Okay. When was the last time y'all showed up at a horse event that both of y'all were at?
A. Probably Conyers, November last year.

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Q. Okay. Have you and Ms. Enteen ever discussed the subject matter of this lawsuit?
A. Not that I recall.
Q. Have you ever talked to Ms. Enteen's counsel about this lawsuit?
A. No.
Q. Have you seen the lawsuit, the complaint that was filed by Ms. Sims --
A. No.
Q. -- that initiated this lawsuit?
A. No.
Q. Okay. You indicated that you know Bill Mackay. Tell me how you know Mr. Mackay.
A. He moved to Aiken probably 15 years ago. I rode a few horses for him off and on. He left Aiken and moved away and came back and rode a couple of horses for him when he came back.
Q. So your relationship sort of revolves around the horse world?
A. Yes.
Q. Other than riding some horses -- and when you talk about riding horses for him, are you talking about showing the horses?
A. Show -- yeah, showing, yes.
Q. Other than showing horses for Mr. Mackay

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have you had any other business transactions with him?
A. No.
Q. What about co-ownership of Nick?
A. Yes.
Q. You and Mr. Mackay were co-owners of Nick?
A. Yes.
Q. I trust that based upon your last answer you did not regard that as a business transaction?
A. Oh, sorry. Obviously that was -- that was involved, yes.
Q. Okay. All right.
A. Sorry, I thought we were including that in there. Sorry.
Q. All right. Let's roll back, then. Other than the showing of horses for Mr. Mackay and the co-ownership of Nick, were there any other business transactions --
A. No.
Q. -- you've ever done?
A. No.
Q. Ever enter into any agreements with Mr. Mackay?
A. Other than that, no.

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Q. Okay. Tell me about your co-ownership of Nick with Mr. Mackay. And I always tell people don't ever answer that question except as what do you want to know?
A. Yeah.
Q. What I want to know is, how did it first occur? Did you identify Nick as a horse during your travels that had potential and you reached out to Mr. Mackay and you said I think I've got a horse for you?
A. Yes. He -- I was in Europe and actually found several horses and had purchased the others with other people and he would -- he had always shown an interest in owning a horse. So I found this horse and, to be honest, had spent all my funds and resources on the other horses, so that's where he came in for this horse.
Q. And when you went over to Europe looking at horses on that trip, did you understand that Mr. Mackay wished for you to look for a suitable horse for him?
A. Yes.
Q. And did he tell you what kind of horse he was looking for?
A. A hunter horse.

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Q. And did he give you some sort of budget, a maximum amount that he was interested in spending?
A. No.
Q. Okay. Did he tell you anything else about the quality or nature of the horse that he was hoping he could acquire?
A. He wanted a quality horse, yes, a show horse.
Q. Okay. And for -- for those of us, like probably members of the jury in this case who don't know much about horses, what -- what are the characteristics of a quality horse?
A. Good confirmation.
Q. What does that mean?
A. How their legs are put together, their -- their body style. It's a little -- dog show is the same thing. And good movement and they jump.
Q. And is that true for all horses that show and compete? Those are the characteristics that you look for?
A. Yes.
Q. Okay. And that's hunters and...
A. Jumpers are the timed events and those -- the quality of movement isn't quite as

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important. It's mainly their -- if they can jump the jumps and go fast doing it.
Q. Okay. Is it important for hunters to be able to jump well?
A. Yes.
Q. Okay. So you are over in -- was it Germany where Nick was acquired?
A. I think Germany.
Q. And you reached out to Mr. Mackay back here in the States?
A. Yes. When I came home.
Q. Okay. So you left Nick overseas with his owner, came back, talked to Mr. Mackay about the horse?
A. Yes.
Q. Did you have any kind of written information, pictures, anything like that to show?
A. I think I showed him a video.
Q. Okay. And this was a video of Nick performing?
A. Of me riding him.
Q. And did you have a purchase price that had been identified to you by the seller when you talked to Mr. Mackay about Nick?
A. Yes.

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Q. And what was that purchase price?
A. I don't even remember. It's -- I'm sure Cathy has it, but it was so long ago I don't -- I don't remember.
Q. Roughly when was this?
A. Two and a half years ago, somewhere in there.
Q. And --
A. I do five trips a year, ten trips a year to Europe, so they get a little tangled in my mind.
Q. I understand. So Mr. Mackay, obviously, had some interest in Nick; correct?
A. Yes.
Q. And how did the transaction proceed from there?
A. Just like a usual transaction. I think we did the vet check and then sent money and we shipped here.
Q. Okay. Now, were you an agent in connection with this acquisition?
A. I -- I guess you could say that.
Q. Okay. So you would have been Mr. Mackay's agent dealing with the seller of Nick who was a resident of Germany?
A. Yes.

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Q. And --
A. And it might have been Holland. It was -- but it was one of those two.
Q. And the vetting of Nick, that was done wherever Nick was located overseas?
A. Yes.
Q. Had you identified a suitable veterinarian to take care of that prior to departing back to the United States?
A. No. I usually just leave it up to where the horse -- what area they're in and trust that who I'm dealing with is going to find a suitable vet.
Q. Okay. And so you trust that the seller is going to identify a suitable vet for the vetting for the purchaser?
A. Yes.
Q. Okay.
A. There's a lot of trust involved in Europe.
Q. Yeah. Well, we typically advise against that, but -- so I trust that Nick was vetted and was found to be medically suitable for Mr. Mackay?
A. Yes.
Q. Purchase price was paid; correct?
A. Yes.

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Q. You received a commission?
A. No.
Q. You were not paid a commission in connection?
A. No.
Q. Why did you not get a commission?
A. Because I was going to be part owner of this horse.
Q. Okay. What exactly was your deal with Mr. Mackay with respect to being part owner of the horse?
A. We were -- he was purchasing the horse. And then at the end when we sold it we'd take out his money he's put in, I would take out my money I put in, and then we'd split the rest.
Q. And how would your money be defined? I get how we define his money, which is probably a wire transfer.
A. I -- my money would be paying showing expenses, paying braiders, paying blacksmiths, paying vets. Anything out of my pocket.
Q. Okay. And then I trust you kept an accounting of all of that someplace?
A. Yes.
Q. And where is that?

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A. Cathy probably has that. I haven't seen that.
Q. Do you know if that's been produced?
A. I don't know.
Q. At the point in time that Nick was sold to Ms. Sims and an allocation of the purchase price was made to you, did you consult that accounting to see what you were entitled to be paid?
A. Yes.
Q. And how much were you entitled to be paid?
A. Again, I'd have to look back. We've got them, the numbers from what we gave him. So it was half of, you know, whatever was on top of the -- on top of the money paid out.
Q. Okay. And was the money that you received in connection with the transaction only for the payment of the expenses that you had approved over the period of time that you had joint ownership of Nick?
A. The money and the extra.
Q. The money and the extra?
A. So what I put into the horse plus our split over that.
Q. Okay. So that's what I'm trying to

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understand. Now, as I recollect, and we have seen from Exhibit Number 6, the amount that was paid --
A. Yes.
Q. -- to the Mackays -- actually Brenda Mackay was the titled owner --
A. Yes.
Q. -- of the horse; correct?
A. Yes.
Q. Okay. So the amount that was paid to Mrs. Mackay was $145,000; correct?
A. Yes.
Q. Did that include some profit element or was that the amount that Mr. Mackay and Mrs. Mackay originally paid to acquire the horse?
A. That was some profit on it.
Q. Okay. Do you recall how much was profit?
A. No, I don't, because I can't -- if I remember my expenses and what they originally paid exactly, you know, you can do the math.
Q. Was title to the horse held in the name of Daniel Geitner or Daniel Geitner Stables, Inc.?
A. The stables.
Q. Okay. So if there was a profit that was realized in connection with the sale of the horse in

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2017, that would have been reported on your 2017 Federal income taxes; correct?
A. Yes.
Q. Okay. Do you recall how much was recorded for that?
A. No, I don't.
Q. But the elements of the amount of money that you took out of the sale of Nick to Ms. Sims was for expenses you had on the horse for which there is a written accounting someplace?
A. Yes.
Q. Okay. And then a 50-50 split of the profit?
A. Yes.
Q. Over and above that set of expenses plus what Mr. Mackay originally paid for the horse; correct?
A. Yes.
Q. Okay. Now, is there any place where the terms of the deal between you and Mr. Mackay are reduced to writing?
A. No.
Q. Okay. Is there any time that Mr. Mackay, while you were caring for Nick and stabling Nick, objected to the manner in which he

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was being cared for and took possession of the horse?
A. No.
Q. That never happened?
A. He needed a rest after Florida from 2016, I think that was the year, and he took him in his possession then.
Q. Okay. Did he sustain an injury?
A. He had a small injury that needed a little break and Bill wanted to rest him at his farm and that's what happened.
Q. In connection with the expenses incurred by Mr. Mackay when he took possession of the horse, was any of that taken into account with respect to the allocation of the purchase price?
A. That -- that I don't know. I can't remember what -- what he's put in there.
Q. Okay. Well, do you recall whether or not at the point in time that Mr. Mackay was looking to get paid for his interest in the horse he indicated that he should get paid some of the expenses that had accrued while he had possession of the horse?
A. I don't know if he ever said that. He certainly -- I -- I didn't -- which he understood, I

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did not -- a lot of my time in feeding and taking care of this horse was not put into this split over amount, so that wouldn't have really been part of our agreement if -- if that had happened.

Q. Okay. So just so I understand, your testimony is that there was time and expense you had in connection with the care for Nick that you did not include in your accounting for what you were entitled to be reimbursed and, as a consequence of that, you believe that Mr. Mackay was not entitled to get any reimbursement for the expenses he incurred when you took possession --

A. No. No, not at all. I just -- I -- it's -- in the whole scheme of things, us feeding horses is, I mean, just pennies as compared to what a lot of the real expenses are, so...

Q. Okay.

A. I certainly did not write down every penny I spent on this horse --

Q. Okay.

A. -- in our final accounting numbers.

Q. Well, I'm trying to -- I get and appreciate that. What I'm trying to understand is whether or not Mr. Mackay was entitled to get reimbursement for the expenses he incurred when he

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had possession of the horse and, if not, why not?

A. He -- he told me what he had in the horse and I didn't ask what all it included.

Q. Okay. All right. So -- when the horse was vetted in Europe, by the way, did you -- was -- did y'all find or was there found OCD surgery had been conducted, a bone chip that the horse had?

A. No. There was a bone chip detected in the vetting, but there was no surgery that I know of done over there.

Q. Was there a bone chip that was detected that would require future surgery?

A. There was a bone chip detected. I mean, any -- anybody's guess.

Q. Was surgery performed here on a bone chip for Nick?

A. Yes.

Q. And when was that?

A. Right after he arrived. We had bought him with the intentions of going right to a horse showing and when he arrived, as do most horses, he had -- he was in -- not in great health. He was skinny, as happens quite a bit when you import them from Europe, so I said -- it was a complete elective surgery. I said, well, he's -- we're not going to

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take him anywhere for a couple of months so why don't we up his chip out and let him get fat and looking good and then we'll start his career. And it was completely elective, not needed.

Q. And -- and how was that paid for?

A. I can't remember who paid for that. Might have been Bill. I don't -- I don't remember, to be honest.

Q. Was there some expenses that were being paid by Mr. Mackay at the point in time that you had possession of the horse?

A. Not that I recall.

Q. Okay. Was there a point in time that Mr. Mackay told you that he was essentially rescinding the understanding that y'all had with respect to 50-50 percent ownership of the horse?

A. No. When -- when he took possession of the horse after Florida, maybe 2016, I can't remember for sure, but I -- I kind of was hoping we would end our partnership. Things just weren't going perfect and I was just fine with that.

Q. Okay.

A. But it was never spoken.

Q. And when you say that you wanted to end the partnership, what -- what was your concept of

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what that would mean?

A. He gets the horse.

Q. Okay. He would get the horse?

A. Yeah.

Q. And what would you get?

A. Nothing.

Q. And that was your idea in 2016?

A. That was my idea when he moved to his farm. I didn't communicate that with him at all, though.

Q. That was never expressed to him?

A. No.

Q. Okay. Do you know where Mr. Mackay might have gotten the idea that you were agreeable to the idea that he would take sole possession and title to the horse?

MS. ARMSTRONG: Object to form.

BY MR. ICHTER:

Q. To your knowledge, is there any document anywhere that reflects your ownership interest in Nick?

A. No.

Q. Is -- are there U-S-E-F, USEF, documents on Nick?

A. Yes.

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Q. Okay. And do they reflect who the owner of the horse is?
A. They reflect the owner is Brenda Mackay.
Q. Okay. And, to your knowledge, since the horse has come to the United States have they reflected Brenda Mackay?
A. Yes.
Q. Did you ever do anything to change that designation?
A. No.
Q. Do you know of any reason why Mr. Mackay would harbor ill will against you?
A. No.
Q. The last time that you communicated with him were your conversations amicable and friendly?
A. Always, but that's my nature.
Q. And how about him?
A. Not as talkative.
Q. But was he amicable and friendly towards you the last time you saw each other?
A. Absolutely.
Q. How about Ms. Enteen? Are -- is there any reason that you're aware of why she would harbor ill will towards you?
A. No.

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Q. And the last time you talked to her were you amicable and friendly?
A. Yes.
Q. Okay. I'd like to go back and talk to you a little bit about the business of Geitner -- or Daniel Geitner Stables. In particular, the elements of the business and how they were run. One of them you said was I think stabling horses and training them?
A. Yes.
Q. Okay. What -- can you explain to folks who don't have much experience with the horse industry, what does that involve?
A. We care for the horses, we feed them, groom them, bathe them, train them. All the horses -- we have 80 horses and all of the ones in our care are under training so they all get ridden every day, we have a horse treadmill. They're -- they're our supervision.
Q. Okay. And do you have employees who are especially assigned with the responsibility for feeding and grooming and bathing the horses?
A. Yes.
Q. And what are they called?
A. Grooms.

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Q. Okay. And these grooms, are they also responsible for administering medications to the horses?
A. No.
Q. Who administers medications?
A. Myself or my barn manager.
Q. Who's your barn manager?
A. Lauren Campbell.
Q. How long has Ms. Campbell been with you?
A. Five years, probably.
Q. So it is a fact that the grooms at Daniel Geitner Stables never administer medicine to horses?
A. No.
Q. No, that's not --
A. Sorry. No -- no grooms give medicine.
Q. Okay. Have you ever stabled Kelly Sims' horses?
A. Yes.
Q. What horses of Kelly Sims have you stabled?
A. True and -- I think that was it in Kentucky. And that was just in Kentucky.
Q. Okay. You also mentioned showing horses. What does it involve to show horses for

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those of us who don't go to horse shows?
A. You just have the horse braided and cleaned and clipped and I ride them in the class.
Q. Is there anybody else who rides in shows for Daniel Geitner Stables?
A. My wife some.
Q. Okay. And has that been true for the past several years?
A. Yes.
Q. Okay. What kind of background do you have to have in order to show horses?
A. Knowledge of a horse. It's -- to be honest, it's pretty much open to anybody that can hang on a horse. If you can hang on, you can horse show. There's a class for you.
Q. Okay. And what about people who operate at your level?
A. Lots of experience. You know, if you're -- if you have experience and you're good at your job, you'll -- you'll be busy.
Q. Are there awards and distinctions that you have in the business, in the industry, that -- that identify you as a go-to trainer and --
A. Yes.
Q. -- showman?

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A. Yes.
Q. Can you tell me a little bit about those?
A. We have some of our year-end qualifying horse shows, which means you have to compete all year to qualify in. Those are indoor shows and then Devon is another. Those are big shows and if you won there, you're -- you're doing well.
Q. Okay. And is there -- is there more -- in terms of showing is there more to just climb -- to showing than just climbing on and hanging on, as you say?
A. In a professional level, yes. There's quite a bit more.
Q. Tell me a bit about that.
A. It's -- in the hunters you have to be smooth and stylish and show the horse off to the best of their abilities. And then the jumpers you -- you know, you have to be quick and knock the jumps down to -- to win in the jumpers.
Q. And does that require you to be able to not only manage the horse in terms of riding it but being able to assess the skill level of the horse --
A. Yes.
Q. -- and its capabilities?

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A. Yes.
Q. And is that something that you would regard yourself as being an expert in?
A. Yes.
Q. And when you're -- when you're evaluating a horse like that, what are the things that you -- you look at?
A. For hunters, movement and jump. And for the jumpers, strictly their jump.
Q. Okay. You know, we've been talking about three horses so far here today, Raffle, Nick and Epic -- Epic. Let me ask a couple of questions about each of them. Raffle, you're familiar with Raffle?
A. Yes.
Q. How old was Raffle in 2017?
A. Eight or nine.
Q. Okay. And what kind of horse is Raffle?
A. Some kind of warmblood.
Q. What does that mean, warm --
A. It's -- from Europe mostly.
Q. And how big a horse was Raffle?
A. Probably 17-hands, maybe a little bigger.
Q. And is that a big horse?

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A. Yes.
Q. Okay. What is generally the -- the range for --
A. 16-hands to 17-hands.
Q. Okay.
A. Is kind of normal.
Q. All right. Raffle, did it have any unusual markings that you can recall?
A. No.
Q. What color a horse is --
A. Chestnut with white legs.
Q. And how did he ride?
A. How did he ride?
Q. Yes.
A. Great. He was --
Q. Is that a jumper?
A. A hunter. I mean, he was a mover and jumped great and is a top horse.
Q. Did you ride Raffle prior to the time that Ms. Sims bought him?
A. Yes.
Q. Okay. How often did you ride him prior to that time?
A. He was -- we had bought him from a lady who imported him from Europe so I had had him for a

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year and a half, two years, something like that. I rode him quite a bit.
Q. So was Raffle your horse?
A. Mrs. Peterson's horse.
Q. Okay. And when you say we bought him, then, does that mean --
A. Our stables purchased him for Mrs. Peterson.
Q. Did you act as the agent for Mrs. Peterson --
A. Yes.
Q. -- in connection with that transaction?
A. Yes.
Q. And you bought Raffle from somebody over in Europe?
A. No, from here in the States.
Q. Okay. Before you bought Raffle for Mrs. Peterson did you ride him and evaluate him?
A. I evaluated him and rode him, yes.
Q. Okay. And when did that purchase occur, roughly?
A. 2015 in the Spring, I think.
Q. Okay. Are you aware of the fact that at some point Raffle had some sort of surgery on his throat --

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A. Yes.
Q. -- that was causing wheezing and roaring issues subsequently?
A. Yes.
Q. When did you become aware of that?
A. When it happened which was 2016, after the Devon horse show.
Q. So the purchase of Raffle for Mrs. ...
A. Peterson.
Q. Peterson occurred in 2015, give or take, and then there was some need -- did he have some sort of affliction?
A. No, it was completely elective. He had just gone to Devon horse show and had won two classes and was at that -- absolutely the top of his game. And he was going to have a break anyway so I said, let's -- let's do this. And that's what we did.
Q. What was it that was being treated when he had the surgery?
A. It was a laser to help with the wind.
Q. So what issue was he having that required -- or that -- you said it was elective so --
A. Yeah.

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Q. What -- what issue did he have that you thought or the owner thought would be improved as a consequence of the procedure?
A. A little breathing issue.
Q. Okay. And -- and do you know what the source of that breathing issue was?
A. A -- my wife can explain it better. Something wasn't working right so they just flattened it out with a laser.
Q. And, to your knowledge, did Ms. Enteen know about that surgery --
A. Yes.
Q. -- at the point in time -- you have to let me finish.
A. Sorry.
Q. Did Ms. Enteen know about that surgery at the point in time that she acted as the purchasing agent for Ms. Sims in around August 2017 to purchase Raffle?
A. Yes.
Q. Okay. Do you know whether or not she disclosed that surgery to Mrs. Sims?
A. I don't know.
Q. Okay. But you disclosed that surgery to Mrs. Enteen?

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A. Yes.
Q. Okay. Is that as a -- as somebody who has acted as the agent for a purchaser in these kinds of transactions, if an agent is aware of that kind of surgery having taken place is that something that the agent should tell their customer, their client, the purchaser?
A. It depends. I mean, again, it was an elective surgery so I can't say. I've bought a lot of horses with stuff I didn't know happened to them or that I was aware of and...
Q. Well, let's back up a little bit because I think that you told me earlier that this surgery was ultimately associated with Raffle roaring and wheezing; correct?
A. Yes.
Q. And that roaring issue is an issue that can get horses -- show horses disqualified --
A. Yes.
Q. -- from participating in shows?
A. Yes.
Q. If you have a purchaser that you know is purchasing a horse for -- order of magnitude 2, $300,000 and you know of an affliction that would disqualify that horse from horse shows, shouldn't

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the purchaser's agent disclose that to the purchaser?
A. That's not -- not -- not me to judge. Certainly the horse that's shown for two years and had won everything everywhere including indoors and -- I mean, it never was a problem.
Q. Well, let me change the question. If it had been you and you had been representing Ms. Sims and you knew that Raffle had an affliction that was causing roaring and wheezing that could possibly disqualify him from participating in shows and she was about to spend $300,000 on the horse, would you tell her there's a problem with this horse?
A. To be honest, I -- it's -- if properly taken care of, it's not a problem.
Q. Would you tell her?
A. Probably.
Q. Okay. Did -- did Raffle have roaring issues prior to the throat surgery that he underwent in 2016?
A. They're born. They're born like that, so...
Q. And did he continue to have those issues after the surgery?
A. He didn't have issues before the

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surgery, so...
Q. Well, he was roaring; correct?
A. No.
Q. No? What -- well, okay.
A. If he was roaring I would have gotten disqualified from horse shows.
Q. Okay. Well, let's -- let's roll back, then. As of 2016 were you aware of the fact that Raffle had issues with roaring or wheezing?
A. There was a slight noise breathing and that's why we did the elective surgery.
Q. Okay. And did the elective surgery completely eliminate that issue?
A. Yes.
Q. Okay. Can you account for why it was he was disqualified in October of 2017 from an event in Ohio as a consequence of roaring?
A. I wasn't there so I don't -- I don't know. I imagine I -- I heard my wife say that she's the one that dealt with it, but there was a veterinarian that scoped him and looked and found an infected -- and, also, he was at an indoor arena which is basically like this room where there's no air moving, so a lot of times horses do get infections which can cause a very irritated throat.

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Q. Was Raffle receiving any kind of medication after his surgery?
A. No.
Q. Did you tell Sharon Enteen about medication for treatment or provide medication for treatment for Raffle at any time?
A. No.
Q. So Raffle was not on any kind of medication in the Fall of 2017 when he appeared at the Aiken show?
A. I don't know -- I guess so. I don't know.
Q. You don't know?
A. He was not under my care so I don't have a clue.
Q. Okay. With respect to Raffle, we were talking about getting details about these horses. How did you prepare Raffle for competition?
A. The same way we do all horses. Light ride or lunge in the morning and...
Q. And how would you describe Raffle in terms of the quality of the horse -- the horse overall?
A. Top.
Q. What about Nick? How old was -- was

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Nick in August of 2017?
A. Seven or eight.
Q. And what kind of horse was he?
A. Same. Lots of quality.
Q. Big horse?
A. Sixteen-two.
Q. And what color was he?
A. Bay.
Q. And what kind of markings?
A. Four white socks.
Q. What kind of ride was Nick?
A. He was the same, quite a nice ride. Soft and easy and brave.
Q. Okay. And did you ride Nick often?
A. Yes.
Q. How would you partic -- prepare Nick for competition?
A. The same.
Q. Same way as -- as Raffle?
A. Yes.
Q. Good quality horse?
A. Yes.
Q. Okay. And how about Epic? You purchased Epic in September of 2017; right?
A. Yes.

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Q. From Ms. Enteen?
A. Yes.
Q. How old was Epic at that point in time?
A. I think eight or nine.
Q. And what kind of horse was Epic?
A. A jumper, seemed to have some quality.
Q. Mm-hmm. And when you say seemed to have some quality, what was it that you did to vet -- not meaning veterinarian, but vet Nick in terms of athletic quality -- I'm not -- sorry.
What did you do to vet Epic?
A. The same that you do all horses. You watch them and try them and see if they can -- if they can jump.
Q. Okay. Well, they all jump, don't they?
A. Not all of them.
Q. So what was the sum quality you saw in --
A. He had plenty of jump.
Q. And --
A. Jumper, not a hunter.
Q. How big was Epic?
A. Probably 16-2ish.
Q. Okay. Did -- what color was he?
A. Bay.

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Q. Bay?
A. Yes.
Q. Okay. Bay is what?
A. Brown.
Q. Brown?
A. Yeah.
Q. And did he have any markings?
A. Not that I recall.
Q. Okay. How much time did you spend with Epic --
A. I --
Q. -- when you purchased him?
A. Not much. My friend Danny was getting his business started and needed help, so -- and he thought this was a nice -- a nice horse. So I said this can be a little help for him to -- to start his business.
Q. Okay. So, now, you bought Epic from Ms. Enteen to give him to Danny to resell?
A. Yes.
Q. Okay.
A. I bought him for myself but ended up we were super busy and full so Danny knew the horse and said he liked the horse.
Q. When you say we were full, you didn't

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have any room at the stable for --
A. Pretty much.
Q. -- stabling him?
A. Pretty much.
Q. You didn't know that prior to the time that you purchased --
A. I have 80 horses out there. They're in and out all the time. That's us -- that's the usual. I am renting five stalls from my neighbor right now, so...
Q. And this -- this occurred in September of 2017?
A. Yes.
Q. How many times did you ride Epic before you purchased him?
A. Three -- two or three.
Q. Okay. And when were those occasions?
A. I think around the same time, around September.
Q. Where were you when you rode Epic?
A. At the -- I think at the Aiken horse shows, if I remember right.
Q. And was Epic showing at that --
A. No.
Q. -- show?

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A. No.
Q. Did Epic show in any shows?
A. Yes. Not those shows.
Q. Did Epic show at any shows during the time that you owned him?
A. No.
Q. How long did you own Epic?
A. Probably six months.
Q. And so that means you would have sold him in the first quarter of 2018?
A. Yes.
Q. Okay. And you sold him through Danny?
A. Danny.
Q. Danny's last name was?
A. Berrio.
Q. Okay. And Danny sold Epic, as we heard in the last deposition, for $7500?
A. Yes.
Q. And you approved that?
A. Yes.
Q. You purchased Epic six months earlier then for $75,000?
A. Yes.
Q. And what is it that changed in your evaluation of Epic and his potential during that

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six-month period that caused you to want to take a $67,500 loss?
A. Danny just said Epic wasn't coming around, that there was kicking in the trailer and not suitable for most buyers. And as much business as I do, it's better to cut your losses.
Q. Okay. And who was Epic sold to?
A. I don't know.
Q. Who would know that?
A. Probably Danny.
Q. If you went to the USF -- USEF web site right now, do you have any idea who Epic would be reported as being owned by?
A. No.
Q. Did you ever put Epic in your name?
A. Cathy does all paperwork.
Q. Okay. Do you know if she put Epic in your name?
A. I don't know.
MS. SIMS: Can we take a five-minute break?
MR. ICHTER: Hold on.
Q. Do you know that Epic is black?
A. Yeah. I mean, black, brown. It's...
Q. They're the same?

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A. It's bay, yeah.
Q. Okay. Both meaning bay?
A. Bay, yeah.
MR. ICHTER: Okay. All right. Let's take a break.
THE VIDEOGRAPHER: We'll now go off the record. The time on the video monitor is approximately 1:27 p.m.
(A recess transpired.)
THE VIDEOGRAPHER: We'll now go back on the record. The time on the video monitor is 1:37 p.m.
BY MR. ICHTER:
Q. Mr. Geitner, with respect to Raffle, where did -- where did he come from?
A. From Europe originally.
Q. Okay. And when he was imported to the United States where was he stabled?
A. At Terry Brown in Atlanta.
Q. And he was owned by who?
A. I think Terry.
Q. Okay. Was Raffle roaring or wheezing when purchased?
A. No.
Q. Okay. And you -- did you vet him?

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A. Yes.
Q. And when a horse has roaring or similar problems, what kind of meds are administered to the horse in order to address those issues?
A. I -- I don't think there's any medicine you can give -- give a horse. I think Ventipulmin is one but you can't show on it, so it's -- I think the same -- Albuterol I think is what humans take.
Q. What -- what was the first one?
A. Ventipulmin -- same thing. Albuterol.
Q. Okay. And why is it you cannot show with that?
A. I don't know.
Q. It's just prohibited?
A. Yeah. Yeah.
Q. Okay. So if you wanted to mask the existence of roaring for a sale purpose, you could give Albuterol to the horse?
A. Well -- and I don't even know if that works or not, to be honest.
Q. Okay. Albuterol, is that --
A. Albuterol.
Q. Has, to your knowledge, Raffle ever been administered Albuterol?
A. No.

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Q. Okay. I want to go back to the subject of agents for a moment. As you understand it, what is the purpose of, say, a purchaser -- pardon me -- a purchaser engaging the services of an agent in connection with a transaction to purchase a show horse?
A. To find them a suitable horse.
Q. Okay. And does that mean that as an agent yourself for purchasers of show horses that you understand that your client expects you to exercise judgment and expertise in connection with identifying a suitable horse?
A. Yes.
Q. And that when you tell them a horse is suitable, you are telling them that the hor -- horse is suitable for the purposes of participating in shows if it's being purchased for a show horse?
A. Yes.
Q. And do you also understand that when you represent a purchaser of a show horse that they are looking to you and relying upon you to make sure that the horse is of the quality that's represented by the seller?
A. Yes.
Q. And then is it also your understanding

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that as the agent for the purchaser that they are relying upon your knowledge and expertise and judgment in connection with the market to properly evaluate whether or not the purchase price is fair and reasonable for the horse?
A. Yes.
Q. And when you are the purchaser's agent, are you typically paid based upon a commission basis?
A. Yes.
Q. Is there not an inherent conflict of interest in that arrangement given that if you negotiate a higher purchase price for your client your fee goes up?
A. I mean, I -- personally I want to just buy my client the best horse so I don't make my -- my living on huge commissions.
Q. I understand that, but let's go back to my question for just a second. You understand the concept of a conflict of interest?
A. Yes.
Q. Is there not an inherent conflict of interest when you are representing the interest of a purchaser, you're being paid on commission, you're negotiating the price and you get paid a higher

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price -- or you get paid a higher commission based upon the higher the price paid by your principal?
MS. ARMSTRONG: Object to form.
MR. LOTT: Object to form.
BY MR. ICHTER:
Q. You can answer.
A. I -- I don't know any other way to do it. If you had --
Q. How about a flat fee? Does that work?
MS. ARMSTRONG: Object. Calls for speculation, object to form.
THE WITNESS: I don't -- yeah. I don't know.
BY MR. ICHTER:
Q. Have you ever thought about that?
A. No.
Q. Okay. Have you ever charged a flat fee?
A. No.
Q. Why is that?
A. Because that's industry standard, commissions. That's just how -- how it's been since I've been doing business.
Q. When you are a purchaser of horses do you ever pay commissions to agents?
A. Personally?

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Q. Yeah.
A. If I buy my own horse?
Q. Yes.
A. I guess so. I have before, if someone scouts the horse out for me.
Q. Who have you paid a commission to for the purchase of a horse?
A. My friends in Europe that have found me the horse.
Q. Okay. And their names are?
A. I mean, there's Oliver Ross and Guy Reckmann and Lars Tolkmit. I mean, there's -- I've got a bunch of friends over there that -- that I've paid to scout horses for me.
Q. And they've all been paid on a commission basis?
A. Yes.
Q. A percentage of the --
A. Yes.
Q. -- purchase price? Okay. When was the last time you paid a commission based upon a percentage of the purchase price where you were the -- personally the purchaser?
MS. ARMSTRONG: Object to form.
THE WITNESS: Yeah. I don't even --

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can't even remember.
BY MR. ICHTER:
Q. The last five years?
A. Oh, yeah, yeah. Definitely.
Q. I apologize if I asked this question before, I put together some questions sometimes and then I get completely out of order.
You understood that Ms. Enteen was operating as the agent for Ms. Sims at the point in time that Ms. Sims purchased Raffle and Nick?
A. Yes.
Q. Okay. Did Ms. Enteen tell you anything about how she was being paid?
A. No.
Q. Did she ever mention to you that Ms. Sims had a particular budget that she was prepared to spend on the horses?
A. No.
Q. Did she say anything to you, to your -- to your recollection, of Mr. -- Mrs. Sims having -- she and her husband having recently sold their company and being flush with cash and being ready to purchase a number of horses?
A. No.
Q. Do you recall Ms. Enteen saying anything

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to you along the lines of Ms. Sims being too cheap to pay a commission to her in -- in connection with these transactions and so she would need to get a tran -- she would need to get a commission out of the seller?
A. No, no.
Q. Did you ever have any communications at all, ever, with Ms. Enteen where she said that she was looking to get a commission out of the sales price?
A. No. She -- yeah, I can't remember. She could have possibly tried to bargain on one of the horses.
Q. Mm-hmm.
A. But I -- to be honest, I can't remember. I mean, that's kind of a common tactic.
Q. Tell me how that works.
A. If I'm going to -- if a horse is 100,000 and I want to buy the horse for 85,000, I will offer -- I will say, would you pay my commission? Basically I'm offering them less money.
Q. Okay. So you want -- you're representing who in the hypothetical?
A. If I'm -- if I'm representing the -- let me make sure I get this right. So I'm

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representing -- if you have a horse you want to sell me for 100,000 and I have a client that wants it, I might -- rather than make an offer to you I might offer -- say would you -- would you pay my commission out of that? And that's a lesser -- lesser price. Basically it's a way of making an offer on the horse.

Q. Okay.

A. So rather than my client having to pay 100,000 plus me 15,000, I would say let's just go a little lower and you pay my commission.

Q. And so in those circumstances the sale would be for $100,000 and 15,000 of that would be dedicated to the payment of your commission?

A. That's correct.

Q. That presupposes, however, that you are going to advise your client of the fact that that additional $15,000 has been included in the purchase price --

A. Yeah.

Q. -- for the purposes of covering your commission; right?

A. Yes. You tell the client that.

Q. Have you ever experienced a situation in which that kind of proposal was made to a

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prospective seller where the agent for the purchaser said include my commission in the purchase price and -- and then did not advise the purchaser of the fact that the commission was embedded in the purchase price?

A. No.

Q. But the purchaser necessarily has to rely upon the honesty of the agent in that situation?

A. Yes.

Q. Have you ever met Tim Sims?

A. Yes.

Q. When did you meet Tim?

A. In Kentucky of 2017.

Q. And did y'all have any meaningful communications about --

A. We talked a bit about the horses and I was riding Kelly's horse there and we talked about that a little. We were kind of all crazy busy so it wasn't a long conversation.

Q. Okay. Did he say anything to you about being interested in purchasing two horses rather than one?

A. I can't remember. I don't recall that.

Q. Okay. At the point in time that you met

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Tim Sims did you understand that Ms. Sims was looking at purchasing a single horse?

A. I can't remember the timeline.

Q. Okay. Did you -- were you aware of the fact that around March of 2017 Ms. Enteen was talking to Kelly about -- about Raffle and expressing an interest in Raffle?

A. I know they had tried him sometime earlier that year. I don't remember the date, though.

Q. Typically speaking in your experience as an agent for both the seller or -- or the buyer in these kinds of transactions, is the typical first step that your purchaser is -- is -- advises their agent I want a horse and here's what I'm ready to spend?

A. I -- I'm sorry. What was the rest?

Q. I want -- typically the process of purchasing a horse of this kind and quality begins with the proposed purchaser telling their agent I want a horse, this is what I'm looking for and here's what I'm ready to spend?

A. Typically, yes.

Q. Okay. So the first thing that the -- that the purchaser's agent knows, among the first

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things, is what the budget is?

A. Yes.

Q. Okay. Did Ms. Enteen first make you aware of Ms. Sims' interest in Raffle?

A. I guess so.

Q. Okay. Do you recall what you were told?

A. No.

Q. Were you aware of another horse that Ms. Sims was looking at by the name of Celtic Fire?

MS. ARMSTRONG: Madam Court Reporter cannot understand --

BY MR. ICHTER:

Q. Celtic Fire?

A. Yes.

Q. Okay. So at the same time that Ms. Sims was looking at Nick and Raffle, there was a third horse known as Celtic Fire that she was also...

A. I --

Q. Looking at?

A. Yes.

Q. Okay. All right. Were you aware of the fact that all three horses were vetted?

A. No.

Q. Did you know that Celtic Fire was vetted?

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A. No.
Q. Were you aware of the fact that Celtic Fire was ultimately rejected as a prospective purchase by Ms. Sims because of a --
(Conferring with Ms. Sims.)
BY MR. ICHTER:
Q. Rejected by Ms. Enteen because of the quarter crack?
A. No.
Q. Okay. Did you know that Celtic Fire was rejected based on anything?
A. No. I didn't even know anything about it.
Q. What was your involvement in vetting Raffle?
A. I wasn't even there. I think, if I recall, my driver dropped him off at the clinic and that was it.
Q. Who was it who did the vetting?
A. I don't know.
Q. When you say the clinic, what --
A. Their -- their vet clinic. It was a couple of miles up the road.
Q. Okay. But you don't know the name of it?

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A. No.
Q. Okay. Here in Aiken?
A. No, in Kentucky.
Q. Oh, okay. For those of us unfamiliar with buying and selling horses, what is involved in vetting?
A. The vet watches the horses move and that's -- generally listen to their eyes and -- I mean, listen to their heart and listen to their heart.
Q. Yeah, listening to their eyes wouldn't probably get you much.
A. Yeah. But they, yeah, listen to their heart, look at their eyes, watch them move, and if they want to take x-rays they take x-rays. And, I mean, they're -- nowadays they can x-ray the whole body if they want.
Q. In your experience typically does the horse get a full body x-ray?
A. No.
Q. Does the -- typically does the horse get any kind of x-ray?
A. Yes.
Q. What is typically x-rayed?
A. Usually feet, ankles and hocks, stifles

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sometimes.
Q. Okay. And do you know, one way or the other, the extent of Raffle's vetting?
A. No.
Q. Who was present for Raffle's vetting, if you know?
A. I don't know.
Q. Okay. You were the seller's agent?
A. Yes.
Q. Did somebody report to you on how the vetting went?
A. I think Sharon did, if I recall.
Q. And did she say anything to you about the issues having to do with roaring, wheezing or this --
A. No.
Q. -- throat issue that Raffle had?
A. No.
Q. Did you ask her anything about that?
A. No.
Q. Did you have any idea of what Ms. Sims' standards were for the horses that she wished to buy in terms of the vetting?
A. No.
Q. Do you know what was done in terms of

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vetting Nick?
A. No.
Q. Were you present for that?
A. No.
Q. Did you provide any background or disclosure information in connection with either Raffle or Nick?
A. Ages was about it.
Q. Okay. And who did you provide that to?
A. I can't remember if Caroline that worked for me told me that or someone told them ages and what they were doing, but I can't remember who it was.
Q. Okay. Was there somebody else on behalf of the seller that was providing information to the vet?
A. It could have been Caroline, but I can't remember. I think we just dropped off the horses at the clinic.
Q. To your knowledge, was there anybody who supplied information to the vet about Raffle's medical history?
A. No.
Q. Is that something that you would have typically expected would have been requested by the

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buyer's agent in connection with vetting, that is, the medical history of the horse?
A. No.
Q. So buyers' agents don't care about the horse's medical history?
A. No, they care. It's -- it's usually the vet is the one that takes care of all that.
Q. Okay. But who was there to provide that kind of information?
A. No one.
Q. Okay. So would not an agent who is looking out for the interest of the purchaser have some objection to a vetting process that included no source of information about the medical history of the horse?
A. I typically rely on my vet. I buy horses and -- you know, all over the place and I -- I want to know what my vet thinks of that horse on that day.
Q. So you don't care about the medical history?
A. I usually don't get it.
Q. Okay. So you look in their eyes, you take a gaze upon them, the expense -- how long does vetting usually take?

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A. An hour, hour and a half.
Q. All right. And it's all done by the vet?
A. Usually, yes.
Q. Okay. Do you usually sit through these vetting processes --
A. I do not, no.
Q. When was the last time you did that?
A. I can't even remember. I don't know. I'm busy and I don't have time, though. I mean, it's tedious work and I trust whoever I'm vetting to tell me yea or nay.
Q. Okay. And is it your expectation that based upon the examination that a vet performs in that hour to hour and a half that you will wind up with the complete medical history on the horse?
A. No.
Q. So a complete medical history is not important?
A. No, it's important, but I usually -- you don't -- it doesn't happen.
Q. So something that is important with respect to suitability of the horse typically doesn't happen in connection with the purchase and sale of $300,000 horses?

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MS. ARMSTRONG: Object to form, it misstates the --
BY MR. ICHTER:
Q. Is that right?
MS. ARMSTRONG: -- testimony. You can answer.
THE WITNESS: I -- I buy horses all the time in Europe and I ride them for 20 minutes and I go home and the vet vets them and I don't see it. That's how we -- that's how we buy horses.
BY MR. ICHTER:
Q. Okay. So the answer to my question is yes, it's not important to get what you just described as an important piece of information about the medical history of the horse prior to closing a $300 -- $300,000 purchase of an animal?
A. I usually deal -- try to only deal with people I trust.
Q. Okay.
MR. LOTT: Can we move the phone closer to Mr. Ichter? You're starting to break up a little. I can hear Mr. Geitner's responses but not the question.
MR. ICHTER: Okay. Well, you're not missing much. Did you get that one?

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MR. LOTT: I got that one.
MR. ICHTER: Just kidding. Okay.
MS. ARMSTRONG: No, really. Just kidding, just kidding. Just kidding.
Thank you for doing that. Yes, I'll take a little more. Thank you.
BY MR. ICHTER:
Q. I may have asked this and if I did I apologize. Were you the person responsible for providing written disclosures on the history of Nick?
A. For what?
Q. For the sale to Ms. Sims.
A. I wasn't there. I didn't sign anything or talk to anybody.
Q. Okay. Do you know how your name would have appeared on a pre-pur -- pre-purchase history and disclosure document?
A. Because I'm the agent, I guess.
(PLF. EXH. 7, Purchase and Sale Agreement, dated August 23, 2017, was marked for identification.)
BY MR. ICHTER:
Q. Okay. All right. So I show you what's been marked as Exhibit Number 7 which purports to be

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the purchase and sale agreement.
MR. ICHTER: George, this is the purchase and sale agreement for Raffle.
MR. LOTT: Okay.
MR. ICHTER: Marked as Exhibit Number 7. It is --
MR. LOTT: Got it.
MR. ICHTER: -- dated August 22, 2017.
BY MR. ICHTER:
Q. Do you recognize that, sir?
A. Yes.
Q. Okay. Did you receive a copy of this document at the point in time that it was executed?
A. I'm sure. My wife handles all this but I'm sure she did.
Q. Okay. And it appears as though it was signed by Chris Peterson pursuant to a power of attorney he received on or about August 23, 2017. Do you see that on the final page?
A. Yes.
Q. Okay. And were you present when Mr. Peterson signed the document?
A. No.
Q. Okay. Do you know who drafted this document?

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A. No.
Q. Okay. The purchase price indicates that -- the sale of Raffle would be for $300,000 in Paragraph 2. Do you see that?
A. Yes.
Q. And that $100,000 would be paid upon signing of the agreement on or about August 21, 2018; correct?
A. Yes.
Q. And that payment was to be wired directly to Daniel Geitner Stables, Inc. per wiring instructions; right?
A. Yes.
Q. And a 15 percent commission from that 15 -- that 10 -- let me try it again.
And a 15 percent commission on that $100,000 was to be taken out of the purchase price to pay you for your commission?
A. Yes.
Q. And then the final sentence on Page 1 says: Purchaser shall pay separately any commission owed by her to her agent, if any; correct?
A. Yes.
Q. And, to your knowledge, was Ms. Enteen supposed to get a payment of a commission in

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connection with the sale of Raffle?
A. I assume so.
Q. Did you know?
A. No.
Q. Did you have any discussion with her on all of that?
A. No.
Q. Any communication of any kind?
A. I just -- I can't remember, but I just assumed that she would be paid a commission.
Q. Okay.
A. It's customary.
Q. And that commission was to be paid by Ms. Sims rather than by the seller?
A. Yes.
Q. Okay. And when a -- when a transaction like this occurs, I asked your wife about this and she seemed a little bit vague. The U-S-E-F, USEF, what kind of documentation do they get upon the execution and closing of a sale like this?
A. I think just the bill of sale. She -- she does all that, but I think just the bill of sale.
Q. All right. And what -- to your knowledge, what kind of action does USEF take based

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upon the receipt of that bill of sale?
A. I think an ownership transfer.
Q. Okay. And when you go to the USEF web site after they see that bill of sale and they have made that ownership transfer, does the name of the new owner appear on the web site as being the owner associated with that animal?
A. I think so and it probably has to also have an owner change form filled out or something, I would imagine.
Q. Okay. Item Number 4 on Page 2 says: All documents required in this Agreement shall be executed and delivered to Purchaser by Seller and Purchaser shall acquire complete ownership of the Horse with a Final Bill of Sale upon collected payment of the full (sic) Purchase Price.
Other than final bill of sale do you know what other documentation that references?
A. No.
Q. Okay. Item Number 6 on Page 3 requires that the: Purchaser agreed (sic) to board horse at Falcon Ridge Stables with Sharon Entine (sic) until the final payment is made.
Do you see that?
A. Yes.

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Q. And do you know why that was a condition of the sale?
A. Probably because I don't want my horse that's not paid for going somewhere else.
Q. Okay. And so is that a condition that you dictated or was that a condition that Ms. Enteen dictated?
A. I'm sure it was us. It's very standard.
Q. Okay. Item Number 9 talks about deliveries -- I'm sorry, not 9. Seven. Deliveries of the Seller. Says that the: Seller shall deliver to Purchaser the following: USEF Transfer of Ownership.
Is that a particular type of document?
A. Could be. I -- Cathy does all that. I don't really.
Q. Now, when you're involved in one of these transactions and there's a transfer of ownership, do you keep these kinds of ancillary documents in a separate file?
A. Could be. I...
Q. You don't know?
A. Yeah.
Q. What is a current Coggins certificate?
A. It's the Coggins test. It's for a

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disease that horses sometimes have -- get. Luckily it never happens but it's required by law to have a current Coggins.
Q. Kind of like a termite letter?
A. Yes. Yes. You got it.
Q. And then Breed Registration Papers and Passport.
I've seen a passport before, and I think I've seen it for Nick, but I don't know what a breed registration paper is.
A. It's just a sheet of paper saying the horse is -- what kind of horse they are.
Q. Okay. And do you know if all that paperwork was done in connection with the sale of Raffle?
A. I don't know.
(PLF. EXH. 8, Online Banking Account Activity Transaction Details, Post Date August 21, 2017, was marked for identification.)
BY MR. ICHTER:
Q. Let me show you, sir, what has been marked as Exhibit Number 8. It is a wire transfer online banking transaction detail report the day before the agreement was signed, August 21, 2017,

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for $100,000. Have you seen that before?
A. No.
Q. Okay. Do you know whether or not Ms. Sims, in fact, paid $100,000 upon execution -- even before execution of the purchase and sales agreement we just went over?
A. I didn't know. I'm sure.
Q. You don't have any reason to doubt that?
A. Right.
Q. Right. Okay.
MS. ARMSTRONG: Object to -- well...
BY MR. ICHTER:
Q. And then with respect to the bill of sale -- by the way, the purchase and sale agreement, who drafted that? Do you know?
A. No.
Q. It sounded like your wife --
A. She probably did.
Q. Does she typically draft these kinds of --
A. A lot of times.
MR. ICHTER: Well, that saves money.
(PLF. EXH. 9, Bill of Sale for Raffle, dated August 22, 2017, was marked for identification.)

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BY MR. ICHTER:
Q. Let me show you, sir, what's been marked as Exhibit Number 9 -- sounds like the unauthorized practice of law.
Exhibit Number 9 purports to be a bill of sale for Raffle. And my first question is whether or not you recognize that.
A. I don't, but it looks -- I very rarely look at bill of sales, so...
Q. Okay. This -- in the paragraph down here says: This agreement shall serve as the office notice of transfer of ownership of -- with USEF for the above described horse.
Do you see that?
A. Yes.
Q. So does that mean that this is the document that y'all sent in to USEF?
A. It must be, yes.
Q. All right. And, again, this appears to have been signed by Chris Peterson. Do you recognize his signature?
A. No.
Q. Okay. And I trust you didn't witness it?
A. No.

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Q. Okay. Now, we talked before about the fact that when Ms. Sims found out about the roaring issues with Raffle that she made a demand that the agreement be rescinded and her money be refunded and that that was agreed to; correct?
A. Yes.
Q. Who was it who made you aware of that demand?
A. I think my wife.
Q. Okay. And what did she tell you?
A. She just said she had talked to Kelly and asked her how can we make this right and we want to do the right thing here and that was it. And then obviously had to call the owners and see if they were okay with that.
Q. Okay. So you called Chris Peterson?
A. Cathy did all that. I didn't.
Q. And I take it that he approved of the rescission?
A. I'm sure.
Q. Okay. And that some portion of the $100,000 was returned to Ms. Sims?
A. Yes.
(PLF. EXH. 10, Online Banking Account Activity Transaction Details, Post Date

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August 25, 2017, was marked for identification.)
BY MR. ICHTER:
Q. Okay. By the way, let me show you what's been marked as Exhibit Number 10. Ten purports to be another wire transfer document and it indicates that the merchant name for this is Glassy Mountain Farm. Do you recognize that name?
A. Yes.
Q. It shows an $85,000 amount and I'm curious if you know what this transaction is related to.
A. I'm imagining this is giving the money back, I'm guessing.
Q. Well, this is 8/25/17, within days of the transaction. So is Glassy --
MR. ICHTER: Hello? We just lost them. Let's go off.
THE VIDEOGRAPHER: Do you want me to go off the record?
MR. ICHTER: Yeah, please.
THE VIDEOGRAPHER: All right. We'll now go off the record. The time on the video monitor is 2:11 p.m. This will also conclude Media Unit Number 1.

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(A recess transpired.)
THE VIDEOGRAPHER: We will now go back on the record. This is beginning of Media Unit Number 2 in our video deposition today. The time on the video monitor is approximately 2:15 p.m.
BY MR. ICHTER:
Q. Mr. Geitner, are you familiar with something called Wind Aid?
A. Yes.
Q. What is Wind Aid?
A. It's a supplement that a horse gets.
Q. And what is its purpose?
A. It's to keep if they -- if a horse has allergies or dust, it's to help keep -- it's like a cough drop basically.
Q. Is that considered a medication?
A. No, that's a supplement.
Q. Is that something that the grooms will give to the horse?
A. They can, yes.
Q. Okay. Was Raffle on Wind Aid?
A. Yes.
Q. And did you have a conversation with Ms. Enteen where you told her in Aiken that -- that Raffle should take Wind Aid or some other similar

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type of product?
A. I could have. I don't recall, but I could have.
Q. Okay. And would that have been before the sale to Ms. Sims?
A. I'm guessing after.
Q. Okay. Why would you be having that conversation with Ms. Sims after?
A. She might have asked if we give any supplements and I'm guessing I said that's what we give. I will say probably 60 to 75 percent of my horses get that as well before a competition.
Q. Okay. So that's not one of those prohibited --
A. No.
Q. -- substances?
A. It's not a medicine. It's a supplement.
Q. Okay. We were talking about Exhibit Number -- did I put 10 on there? Ten or 11?
A. Ten.
Q. Ten. So the only $85,000 number that I'm familiar with is the $100,000 paid for Raffle less your 15 percent --
A. Okay. So this is from us.
Q. Yes.

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A. Okay. Got you. Yes, so that's what that is.
Q. That would have -- represent the amount paid for Raffle?
A. Minus commission.
Q. Okay. Excuse me. (Reading.) Do you know if Ms. Sims ever inquired of your wife as to whether or not Raffle was on supplements while he was in your care?
A. I don't know.
Q. Okay. If your wife told Ms. Sims we do not have Raffle on any supplements while he was here, that would have been wrong?
A. I don't know.
Q. You don't know if that's wrong?
A. I don't know if that's wrong or she said it.
Q. Okay. Well, I'm not asking you if she said it. I'm asking you if she said it would it be wrong?
A. I'm not sure you consider -- I use the word supplement but I don't exactly know what a Wind Aid would be. So she probably did not -- did not include that in supplements.
Q. Okay. If Wind Aid is not considered a

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medicine or a supplement, what would it be considered?
A. It has -- we coin the term supplement for something you put in their feed so I -- I don't really know what it would be. It's -- it's not a medicine.
Q. Okay. But, I mean, if -- to categorize it in some universe of product, it's not a medicine, it's not a supplement, what would you call it?
A. We can Google it and look it up. I...
Q. Well, I'm ask -- you're an expert. I'm asking you. Do you have another classification for it?
A. No, probably not.
Q. Okay. With respect to Nick, I think that you said you weren't involved in the vetting process?
A. Right.
Q. Were you involved in -- what other ways were you involved in the sale of Nick to Ms. Sims?
A. I was there in Kentucky when they were trying him.
Q. And other than witnessing them -- and that meant Ms. Sims riding him?
A. Yes.

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Q. Other than witnessing Ms. Sims riding him were you involved in any other way --
A. Not that I recall --
Q. -- in the transaction?
A. Not that I recall.
Q. Did you ride Nick for Ms. Sims prior to purchase?
A. I -- she watched me show him. I don't know if I rode him, but I competed him at that horse show.
Q. How did he do?
A. Great. He was, I think, ended up fifth or sixth overall.
Q. Out of how many?
A. Oh. 100-something.
Q. And this was in Kentucky?
A. Yes.
Q. Okay. Do you know what other due diligence was done with respect to the purchase of Nick?
A. No.
Q. Okay. Are you aware of any medical disclosures that were made concerning Nick?
A. No.
Q. Are you aware of any medical disclosure

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that should have been made concerning Nick?
A. No.
Q. Were you involved in any way in the preparation or execution of a bill of sale for Nick?
A. No.
(PLF. EXH. 11, Bill of Sale for Raffle, dated October 30, 2017, was marked for identification.)
BY MR. ICHTER:
Q. By the way, there were a couple of documents I wanted to get you to identify before -- yeah, I know it's Raffle -- that have to do with Raffle. Let me show you what's been marked as Exhibit Number 11. That's the bill of sale for the return of Raffle. Have you seen that before?
A. No.
Q. Were you aware of the fact that a bill of sale was executed by Ms. Sims and Mr. Peterson in late October of 2017 transferring Raffle back to Janet Peterson?
A. It was not, but I was pretty confident my wife had taken care of it.
(PLF. EXH. 12, Amendment to Purchase and Sale Agreement, dated October 31, 2017, was marked for identification.)

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BY MR. ICHTER:
Q. Okay. And were you aware of the fact that the purchase and sale agreement had been amended in connection with that rescission of the transaction? And I'll show you Exhibit Number 12 which purports to be that amendment.
A. No.
Q. Were you aware of the fact that of the $100,000 that was paid by Ms. Sims, as is indicated on Page 2 of this agreement, that only $83,334 was returned to Ms. Sims?
A. Yes.
Q. Okay. And I understand that that was because some portion of one year was prorated --
A. Right.
Q. -- is that correct? Okay. Did you return the commission that was paid to you by the Petersons?
A. I'm sure we did. I don't know, but I'm sure we did.
Q. Okay. And I take it that Ms. Sims did not receive any sort of compensation for any of the expenses incurred by her in connection with her short-lived ownership of Raffle?
A. Right.

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MR. ICHTER: Okay. Now back to Nick.
(PLF. EXH. 13, Bill of Sale for Eleventh Hour, "Nick", dated August 21, 2017, was marked for identification.)
BY MR. ICHTER:
Q. Let me show you what's been marked as Exhibit Number 13. It purports to be the bill of sale for the horse Eleventh Hour, also known as Nick, dated August 21, 2017. Do you recognize that document, have you seen it before?
A. I have not seen this.
Q. All right. Have you seen any bill of sale associated with the sale of Nick?
A. I don't recall.
Q. Were you ever asked to execute any document that transferred any purported ownership interest you had in the horse to Ms. Sims?
A. Not that I recall.
Q. Did anyone ever ask you to quitclaim your interest in -- in the horse Nick to Ms. Mackay or Ms. Sims?
A. No.
Q. Okay. You were not, however, listed as a seller of the horse; correct?
A. Correct.

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Q. How is it that you were one-half owner of the horse and the horse was sold without your execution of the bill of sale?
A. We had a handshake agreement.
Q. Do you know who prepared this bill of sale, sir?
A. No.
Q. Do you know who initially indicated that Tim Sims should be identified as the buyer?
A. No.
Q. Okay. This indicates a purchase price paid of $275,000. Do you see that?
A. Yes.
Q. And it indicates on Page 2 that that $275,000 is supposed to be wire transferred to Daniel Geitner Stables; correct?
A. Yes.
Q. Okay. And this transaction is on the same day as the Raffle transaction; correct?
A. Sure.
Q. Were you aware of that?
A. No.
Q. Okay. Do you know whether or not this bill of sale was ultimately signed by Tim Sims?
A. I did not know.

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Q. Okay. Have you ever seen the bill of sale that was executed by Brenda Mackay and Kelly Sims that passed title of Nick to Kelly Sims?
A. No. This is the first bill of sale that I've seen in years.
Q. Okay. And am I correct that Ms. Sims, on or about August 22, 2017, paid the full purchase price of $275,000 for Nick?
A. Sure.
Q. Okay. We talked earlier about the manner in which the purchase price for Nick was allocated as between you and Mr. Mackay. And I want you to tell me everything that you can remember about the communications that you and he had concerning how the money would be split.
MS. ARMSTRONG: I'll object to form, relevance, everything else but go ahead. You can answer.
MR. ICHTER: Everything else?
MS. ARMSTRONG: Mm-hmm. It has no bearing on this but, anyway...
BY MR. ICHTER:
Q. Okay.
A. I -- I -- it's -- it's been a while but I went and we had the conversation of, you know,

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we'd take out each of our expenses and we'd split it. I don't remember when -- when that was done, but...
Q. Okay. Did you have any communications at all with Mr. Mackay about the dollar amounts?
A. I'm sure we did, yes.
Q. Okay. Do you have a recollection of those communications?
A. No. I mean, I remember talking to them but I don't remember the dollar amounts.
Q. I'm not asking about the specific -- down to the penny --
A. Yeah.
Q. -- but what I'm asking you about is did he call you, did you call him?
A. I don't remember, to be honest. It's...
Q. Did -- did you report to him a dollar amount that were your expenses and how you had recorded them?
A. I'm sure we did. That's how we -- that's how we exchanged the funds.
Q. Okay. And did he ask you for a copy of your --
A. I don't know.
Q. -- accounting?

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A. I don't remember. I don't think he did because I didn't ask him a copy -- from him a copy. I mean, this was a handshake deal and, you know, that's -- I didn't ask him for anything.
Q. Okay. And his portion we saw was $145,000?
A. Yes. Yes.
Q. So that means $130,000 went to you?
A. Yes.
MR. ICHTER: Okay.
(PLF. EXH. 14, Text Messages with Daniel Geitner, was marked for identification.)
BY MR. ICHTER:
Q. Sir, let me show you what's been marked as Exhibit 14. Fourteen purports to be a series of text messages that are between you and Ms. Enteen. Do you recognize that?
A. Sure.
Q. Okay. And this was -- I think your wife indicated this was the way you typically would communicate with folks --
A. Yes.
Q. -- is through text messages? And in the middle of the page, first page, it says: Raffle is 300 and you will pay my commission?? I thought

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that's what we talked about.
A. Yeah.
Q. Do you see that?
A. Yeah.
Q. Okay. So you and Ms. Enteen talked about Raffle being sold for $300,000 and that her commission would be paid out of that amount; correct?
A. It appears that way.
Q. Okay. Now, does this conjure up some renewed recollection for you that you did not have before? Because you told me before you never talked to Ms. Enteen about paying her a commission.
A. Well --
MS. ARMSTRONG: Object to form. Wasn't his testimony.
THE WITNESS: Actually, I brought up the fact that this is a typical negotiation tactic of saying would you pay my commission, therefore lowering the price a little?
BY MR. ICHTER:
Q. Okay. And -- and is that what happened here, then?
A. It appears that way, yes.
Q. Okay. And so this goes on to say -- you

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respond: I think they would pay $30, and I think that might have been 300, out of that. We just turned down --
A. It's 30.
Q. Thirty, okay. We just turned down 250 to us so don't think much less.
Do you see that?
A. Mm-hmm.
Q. Can you translate that for me? What does that mean?
A. Basically she's offering that we get 270,000 and her commission is paid 30,000 on top.
Q. Okay. Was that your idea of the 30,000?
A. No. That was a suggestion that they might do that.
Q. Okay. And that was your suggestion?
A. Yes.
Q. In response to her idea that you would pay --
A. Of her making an offer.
Q. And then if you go to the picture at the bottom and if you can, could you read out loud what the exchange of the e-mails that follow is? Identify who they came from. The ones in dark appear to be Ms. Enteen's; correct?

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A. Yes.
Q. Okay. And start with small show, and I'll ask you questions.
A. Small show but happenstance and perspective were in it and had great trips also.
Q. Do you know what that's in reference to?
A. No idea.
Q. Okay. And your response is Yay!! Good job; right?
A. Yes.
Q. Does that conjure up any recollection for you?
A. That's generic. I wasn't...
Q. And then she writes to you what?
A. If you know anyone to show him to. He will get into indoors in ao and first years.
Q. Do you know who that's a reference to?
A. I'm guessing Carlos.
Q. Who's Carlos?
A. Which is another horse of theirs.
Q. And then on the next page it says -- top of the page: But can we price him at 300 so I can pay out of it please.
Do you see it?
A. Yeah.

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Q. And is that a reference to a situation in which a purchase price would be paid for a horse and a commission would be paid to Ms. Enteen out of that amount?
A. I'm guessing so. And, actually, now, that does look like Carlos.
Q. Okay. And your response, and it's hard to see on mine, but it looks like your response was an emoji of a thumbs up over in the other --
A. Okay. I don't see anything, but...
Q. Okay. Is that a response that you would give from time to time --
A. Yeah.
Q. -- to show your approval for something?
A. Yeah. (Indicating.)
Q. Who owned Carlos?
A. Kathleen Feeley.
Q. And was Carlos being sold?
A. I think he was on the market.
Q. And was Ms. Enteen involved in a possible purchaser for Carlos?
A. Ms. Enteen was the trainer for Kathleen.
Q. Okay. And were you --
A. I think she was asking me if I knew of anyone to buy the horse.

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Q. Were you an agent for anyone with respect to Carlos?
A. No.
(PLF. EXH. 15, Equine Bill of Sale, dated September 1, 2017, was marked for identification.)
BY MR. ICHTER:
Q. With respect to Epic, there was an equine bill of sale that was created in September -- well, it was dated September 15 of 2017; correct?
A. Yeah.
Q. Do you recognize that document, sir? It's been --
A. Yeah.
Q. -- marked as Exhibit 15. Is your signature on that document?
A. That's my signature.
Q. And you are signing off on that as the buyer?
A. Yes.
Q. Okay. And that is the equine bill of sale for Epic; correct?
A. Yes.
Q. Okay. Did you ever have any conversations with Bill Mackay about this bill of

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sale?
A. No.
Q. So if Mr. Mackay says -- and testified that you and he spoke about this bill of sale and he told you that it was unwise to put together a dummy bill of sale in an effort to cover the transfer of funds that you made to Ms. Enteen in connection with the sale of Nick, he would just be lying?
MS. ARMSTRONG: Object to form.
THE WITNESS: I don't recall that at all.
BY MR. ICHTER:
Q. Okay. Well, if he testified to it -- you say you don't recall it. If he testified that he does recall it and it happened --
A. I don't remember --
MS. ARMSTRONG: Object to the form.
THE WITNESS: -- him saying that.
BY MR. ICHTER:
Q. Would it be your testimony he was being dishonest?
A. Yes --
MS. ARMSTRONG: Object to form.
(PLF. EXH. 4, Settlement Agreement, was previously marked for identification.)

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BY MR. ICHTER:
Q. Now, you told me before that you had no other business dealings with Mr. Mackay other than ownership of Nick and you never had any written agreements with him. Let me show you what's been marked previously as Exhibit Number 4.
MS. ARMSTRONG: Do you have -- do you have a copy or no?
MR. ICHTER: No.
Q. Exhibit Number 4 purports to be a settlement agreement between Bill Mackay, Daniel Geitner, Lee Catherine Kassel, a/k/a Cathy Geitner, and Daniel Geitner Stables, Inc. Do you recognize that?
A. Yes.
MS. ARMSTRONG: I'll object to any questions concerning any settlement agreement between the Geitners and Bill Mackay. It's covered by a confidentiality agreement. There was to be no disclosure of that by any party. So if Mr. Mackay has disclosed that he's got a problem, but my client will not be answering any questions concerning that topic.
BY MR. ICHTER:
Q. Okay. Did you sign this document, sir?

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MS. ARMSTRONG: I'm instructing you -- my witness not to answer any questions concerning this exhibit or anything associated with any topic around it.
BY MR. ICHTER:
Q. Can you tell me why it is that you made $40,000 worth of payments to Mr. Mackay pursuant to the terms of the settlement agreement when you tell -- told me before that you hadn't even talked to Mr. Mackay other than to drop off a picture of Nick with him following the sale of Nick?
MS. ARMSTRONG: I'm objecting to any --
BY MR. ICHTER:
Q. Can you help me with that?
MS. ARMSTRONG: -- testimony concerning a confidential agreement that apparently has been violated by Mr. Mackay and my client will not answer any questions concerning the topic.
BY MR. ICHTER:
Q. Okay. Are you going to follow that advice, sir?
A. Yes.
MR. ICHTER: Okay.
(PLF. EXH. 5, Letter to William A. Mackay and Brenda Mackay from CJ

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Pangborn, dated March 8, 2018, was previously marked for identification.)
BY MR. ICHTER:
Q. Exhibit Number 5 is a letter from Smith Massey Brodie Guynn & Mayes, dated March 8, 2018, and transmits a $20,000 check from Daniel Geitner Stables, a final payment under the settlement agreement to Mr. Mackay and his wife. Have you seen that before, sir?
MS. ARMSTRONG: Same objection, instructing my client not to answer.
BY MR. ICHTER:
Q. Are you following that --
A. Yes.
Q. -- direction, sir? Did Mr. -- did you ever -- setting aside confidential settlement agreements, did you ever offer to pay -- before any agreement was signed did you ever offer to pay Bill Mackay any amount of money for him to keep quiet about the monies that were paid in connection with the sale of Nick?
MS. ARMSTRONG: Same objection, same instruction.
MR. ICHTER: Well, this has to do with before any agreement was signed.

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MS. ARMSTRONG: Same instruction, same objection.
MR. ICHTER: You're going to lose on that.
MS. ARMSTRONG: We'll see.
MR. ICHTER: Yes, we will, and you will pay for it, too.
MS. ARMSTRONG: As will Mr. Mackay, as will maybe perhaps you.
MR. ICHTER: Well, yeah. Right.
MS. ARMSTRONG: Yeah, right.
MR. ICHTER: Okay. Let's take a quick break.
THE VIDEOGRAPHER: We'll now go off the record. The time on the video monitor is 2:40 p.m.
(A recess transpired.)
THE VIDEOGRAPHER: We'll now go back on the record. The time on the video monitor is approximately 2:44 p.m.
MR. ICHTER: Ms. Armstrong, the last time I checked the law doesn't permit you to cover up fraud by paying off one of the victims to the detriment of the other victim and try and bind them to a confidentiality agreement about what has happened. That ain't going to happen. So you guys

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can answer questions about it now or you can answer questions about it later. But I guarantee you're going to be answering questions about it.

MS. ARMSTRONG: Good luck to you.

MR. ICHTER: Okay. Very good. We're done.

MR. LOTT: That's it?

MR. ICHTER: That's it.

MR. LOTT: All right. I don't think I have any questions. Madam Court Reporter, we don't need -- or videographer, we don't need a video. Just electronic transcript. My e-mail address is sufficient.

THE VIDEOGRAPHER: We'll now go off the record. This concludes the video deposition. The time on the video monitor is approximately 2:45 p.m.

THE COURT REPORTER: Lori, do you need a copy of the transcript?

MS. CHRISTMAN: No, I don't.

THE COURT REPORTER: Okay.

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

(The deposition was concluded at 2:45 p.m.)

CERTIFICATE OF REPORTER

I, Lori S. Mortge, Certified Court 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 record.

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 28th day of May, 2018 at West Columbia, Lexington County, South Carolina.

Lori S. Mortge, CCR
Lori S. Mortge
Certified Court
Reporter, CCR
My Commission expires
December 13, 2026

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REQUESTED INFORMATION INDEX

(No Information Requested)

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Exhibit B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COSTA & GRISSOM MACHINERY COMPANY, INC. and COSTA LEVIGATRICI S.p.A., Plaintiffs, v. QINGDAO GIANTWAY MACHINERY CO., LTD. and LOBO MACHINERY CORPORATION, Defendants.	CIVIL ACTION NO. 1:08-CV-2948-CAP

O R D E R

This matter is now before the court on defendant Qingdao Giantway Machinery Company, Ltd. and defendant Lobo Machinery Corporation's (collectively, "Giantway") motion to dismiss and motion for sanctions [Doc. No. 95] and on Giantway's motion for partial summary judgment [Doc. No. 96]. Also pending are the plaintiffs' consent motion for withdrawal of counsel [Doc. No. 147] and a motion by the plaintiffs' former counsel, the law firm of Adorno & Yoss, for leave to file a surreply [Doc. No. 150].

I. Case Overview

Plaintiff Costa & Grissom Machinery Company, Inc. ("CGMC") is a North Carolina company that markets a wide-belt sander "A" series machine ("A series machine") produced by Plaintiff Costa Levigatrici S.p.A. ("CL"), an Italian company. According to the complaint, the A series machine is an all-purpose sanding center

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controlled by a touch screen PC and software. It is built on a heavy-duty modular frame that can accommodate up to six interchangeable working units. In August 2008, CGMC was setting up an exhibit for the A series machine at the annual International Woodworking Fair ("IWF"), the largest woodworking show in the western hemisphere, when CGMC's employees saw a display by defendant Qingdao Giantway Machinery Co., Ltd., a Chinese company. Qingdao's display included a machine ("the IWF machine") with defendant Lobo Machinery Corporation's ("Lobo") logo on its front panel. CGMC contends that, with the exception of the logos on the machines, the IWF machine is identical to its A series machine. CGMC also contends that Giantway copied portions of CGMC's brochure for the machine.

In its original and proposed first amended complaint, CGMC alleged that the defendants removed the CGMC and CL logos from one of CGMC's A series machines, affixed Lobo's labels on the front of the machine, and attempted to pass the machine off as their own. Based on these allegations, CGMC claimed that the defendants had engaged in unfair competition, deceptive trade practices, and tortious interference with contractual relations, business relations, or potential business relations. CGMC sought a temporary restraining order ("TRO"), injunctive relief, and seizure

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of Giantway's machine, papers, and documents located in the state of Georgia. In addition, CGMC sought various damages.

On August 21, 2008, CGMC filed its complaint and a motion for a TRO, interlocutory injunction, seizure of counterfeit products, and expedited discovery in the Superior Court of Fulton County. The day after the complaint and motion for a TRO was filed, the Fulton County Superior Court held an emergency hearing on the TRO motion. Giantway was not represented by counsel at the hearing. As a result of that hearing, the court ordered Giantway to surrender the IWF machine to CGMC and to immediately deliver to CGMC copies of all documents reflecting sales orders, sales prospects, and sales contacts that the defendants had made at the IWF. The court instructed CGMC to absorb all costs associated with obtaining and returning the machine, and further required CGMC to report its findings concerning the source and origin of the IWF machine to the court at a preliminary injunction hearing scheduled for September 22, 2008. In the meantime, the court permitted the parties to engage in limited discovery.

On September 19, 2008, Giantway removed the case to this court. On September 23, 2008, CGMC filed the report it prepared at the direction of the Fulton County Superior Court regarding the origin of the IWF machine ("the report") [Doc. No. 5]. On September 26, 2008, Giantway filed its answer and counterclaim to

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CGMC's complaint [Doc. No. 12]. In the answer, Giantway denied CGMC's allegations. In addition, Giantway asserted counterclaims for wrongful seizure, product disparagement, defamation, tortious interference with business relationships, tortious interference with prospective business relations, and attorneys' fees. For relief, Giantway requested dismissal of CGMC's complaint, an order requiring CGMC to return the IWF machine to the defendants, compensatory and punitive damages, the costs of this action, and interest.

On October 15, 2008, CGMC filed a motion for leave to add CL as a plaintiff to this action and to further amend the complaint [Doc. No. 16]. Thereafter, on October 20, 2008, CGMC answered Giantway's counterclaims [Doc. No. 21]. In its answer, CGMC denied Giantway's allegations and denied that the defendants were entitled to any relief. Giantway opposed in part CGMC's motion to amend [Doc. No. 27]; thus, the court did not rule on it immediately.

On November 7, 2008, the undersigned held a telephone conference on Giantway's motion to compel the posting of a bond [Doc. No. 3], filed on the same day that this case was removed to this court. At the conference, the court determined that a bond was warranted under O.C.G.A. § 10-1-451 because CGMC was still in possession of the IWF machine. That same day, the court issued a written order granting the motion to compel the posting of bond and

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requiring CGMC to file with the clerk of court a $200,000 surety bond within ten days of the date of the order [Doc. No. 29].

After the court's order compelling the posting of a bond, this litigation devolved into a contentious motions practice. On November 24, 2008, CGMC - which had not yet posted its bond[1] - filed a motion and brief misconstruing this court's order compelling the posting of a bond and essentially asking the court to reconsider it [Doc. No. 31]. On December 3, 2008, Giantway filed a motion to compel a complete interrogatory response and motion for sanctions [Doc. No. 36] as well as a motion to compel a Rule 30(b)(6) deposition and motion for sanctions [Doc. No. 37]. On December 30, 2008, Giantway filed a motion and memorandum of law for Rule 11 sanctions [Doc. No. 41]. On that same day, before this court had the opportunity to rule on CGMC's first, contested, motion to amend the complaint, CGMC filed another motion to amend the complaint [Doc. No. 43]. Soon thereafter, CGMC contacted the undersigned's chambers to request a conference on all pending motions. The court instructed the parties to file a joint status report listing each of the motions upon which a hearing was requested [Doc. No. 46]. The parties complied with this order on

[1] The court notes that CGMC did not post a bond as ordered by the court in its November 7, 2008 order [Doc. No. 29] until threatened with sanctions more than four months after the original date the bond was due.

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February 11, 2009 [Doc. No. 57], but, based on the assertions made by the parties, the court concluded that no hearing was necessary. As the parties continued to file motions, the court began the laborious task of addressing the motions identified in the parties' joint status report. On March 24, 2009, this court issued a 47-page order [Doc. No. 80] addressing the parties' motions and conduct. In that order, the court first granted in part and denied in part CGMC's motions to amend [Doc. Nos. 16 and 43]. It granted CGMC's motions to amend to the extent that they sought to add CL as a plaintiff. Moreover, the court allowed CGMC to dramatically alter the scope of this case, changing it from a reverse-palming off case to a trade dress infringement action. The court next granted in part and denied in part Giantway's motion for Rule 11 sanctions [Doc. No. 41]. The court concluded that CGMC had blatantly misrepresented the seizure statute before the Fulton County Superior Court and this court, leaving out critical words that would have made CGMC's seizure of the machine unlawful. The court granted Giantway an award of its attorneys' fees incurred in filing the motion. Importantly, the court denied Giantway's motion for Rule 11 sanctions to the extent that it sought sanctions for CGMC's failure to withdraw its reverse palming off claims after its initial examination of the machine in September 2008. In making this determination, the court concluded that CGMC was entitled to

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additional discovery to explore these claims before sanctions were warranted for failure to withdraw them. The court denied CGMC's motion to vacate or reconsider the November 7, 2008, order requiring the posting of bond and denied CGMC's motion to reduce the amount of the bond that it was required to post. The court considered imposing sanctions against CGMC for failing to post the bond as directed, but the court ultimately exercised leniency and gave CGMC additional time to post the bond. The court warned CGMC that it would immediately impose sanctions if it again failed to comply with its directives regarding the bond.

Next, the court granted in part and denied in part Giantway's motion to compel an interrogatory response and motion for sanctions [Doc. No. 80]. The court, having granted CGMC leave to drastically alter the scope of the case, declined to compel a response to the interrogatory until after the parties had conferred. However, the court noted that Giantway filed the motion to compel in advance of CGMC's second motion for leave to amend the complaint, and further noted that - had CGMC not filed that second motion for leave to amend - the entry of an order compelling discovery would be appropriate. In making this finding, the court concluded that CGMC's failure to adequately respond to the interrogatory or to make timely objections sounded in bad faith; accordingly, the court

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awarded Giantway its expenses and attorneys' fees incurred in preparing the motion to compel.

Finally, the court addressed Giantway's motion to compel a Rule 30(b)(6) deposition and motion for sanctions [Doc. No. 80]. Although CGMC had produced its president and 10% owner, Scott Grissom, for a Rule 30(b)(6) deposition, it appeared from the testimony given during the deposition that Grissom had done nothing of substance to prepare for his deposition. For example, although Grissom was clearly on notice that he needed to testify regarding the study that CGMC conducted on the IWF machine and the ensuing report, he and his then-attorney, Cary Ichter, clarified that he did not review the report addressing the study's results prior to his deposition. In the order, the court referred to the following excerpt from Grissom's deposition testimony to demonstrate his lack of preparation and his attorney's reinforcement of that lack of preparation:

> A: I'm saying that I don't know what's in the report. I do not remember. It's been a month, over a month or right at a month.
>
> Q: I think you said that you studied it preparing for today, didn't you?
>
> MR. ICHTER: No, he didn't say that. He said he looked at the 30(b)(6) notice.

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MR. WHEAT: You're correct. I apologize. He did say he didn't do any studying preparing for today.

Mr. ICHTER: That's right.

Grissom Dep. at 72:14-24 [Doc. No. 136]. Because the court found that Grissom's deposition was a waste of time for both parties, it granted Giantway's motion to compel and allowed Giantway to conduct a continued Rule 30(b)(6) deposition. In addition, the court concluded that sanctions were appropriate in the form of attorneys' fees for time spent at and in preparation for the deposition and for time spent preparing for and filing the motion to compel. However, the court concluded that the attorneys' fees awarded should be borne not by CGMC, but rather by its counsel. The court made this determination after reviewing the following statement of CGMC's counsel (now former counsel), Cary Ichter, contained in a footnote in CGMC's response to the motion to compel.

> As lead Attorney of record for CGMC and the signatory of this Response, I hereby confirm and certify that I spent four hours with Mr. Grissom on October 15, 2008 preparing him for his 30(b)(6) deposition. Mr. Grissom and I reviewed Defendant's 30(b)(6) deposition notice, discovery requests, CGMC's Report and possible questions that Defense counsel may ask Mr. Grissom during his deposition. As lead counsel, I made a note during Mr. Grissom's deposition to correct his statement that other than reviewing Defendants' 30(b)(6) notice, he had not prepared for his deposition. However, during the deposition I was substituted by co-counsel to attend a previously

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> scheduled conference. It was my intention to correct the record; however, Defense counsel abruptly terminated the deposition before the record could be corrected. The fact that Defense counsel has made a mountain out of this molehill shows the extent to which Defendants are pushing to avoid trying this case on the merits -- preferring instead to focus on contrived discovery disputes.

Pl.'s Resp. Br. to Mot. to Compel Rule 30(b)(6) Dep. at 8 [Doc. No. 44]. In light of Ichter's interjection on the record during the deposition indicating that Grissom did not look at the report, the court found that it had two options. First, it concluded that it could find Icther's certification cited above to be completely untruthful. On the other hand, the court concluded that it could find that at least portions of Icther's certification were accurate, but then it concluded that it would be faced with the finding that Ichter suborned perjury with his interjection during the deposition. The court ultimately concluded that Ichter's actions, under either scenario, violated the integrity of the judicial system. Accordingly, it directed Ichter to pay the attorneys' fees granted to Giantway in regard to the motion to compel.

At the conclusion of its order, the court noted that there were many discovery motions still pending on the docket. However, in light of the significant amendments to the complaint, it noted that it would not rule on those motions until after the parties had

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an opportunity to reevaluate their discovery requests and contentions. Accordingly, the court directed the parties to file a joint report within twenty days regarding the status of their pending motions and outstanding discovery requests to date.

After the court issued its March 24, 2009, order, CGMC filed its amended complaint [Doc. No. 83] adding CL as a party and reducing and transforming this action from a reverse palming off action to a single-count trade dress infringement case. Also, CGMC finally deposited the $200,000.00 bond with this court four months late and only after being threatened with sanctions. Giantway filed declarations in regard to the attorneys' fees incurred in this case and awarded by this court [Doc. No. 85]. On April 6 and April 23, 2009, CGMC filed a motion for reconsideration of this court's March 24, 2009, order and a notice of appeal, respectively. This court denied the motion for reconsideration on June 11, 2009 [Doc. No. 114]. On July 24, 2009, the Eleventh Circuit dismissed CGCM's appeal sua sponte for lack of jurisdiction [Doc. No. 124]. Meanwhile, the parties continued to file motions, responses and reply briefs, including Giantway's motion to dismiss and motion for sanctions [Doc. No. 95] and Giantway's motion for partial summary judgment [Doc. No. 96].

On August 24, 2009, this court held a hearing on the pending motions. As a result of that hearing, all pending discovery

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motions were dismissed as moot or were withdrawn. In an order dated August 25, 2009, the court dismissed the plaintiffs' still-pending motion for a TRO as moot [Doc. No. 141]. The court further noted that it would reopen discovery if this case goes forward. The court spent the balance of the hearing listening to the parties' arguments regarding the pending motion to dismiss and touching briefly upon the pending motion for partial summary judgment. The court will address each of these motions in turn.

II. **Giantway's Motion to Dismiss and Motion for Sanctions [Doc. No. 95]**

In Giantway's motion to dismiss, it essentially contends that CGMC has engaged in such reprehensible behavior and abuse of the judicial process that this court should dismiss the plaintiffs' complaint and award Giantway its attorneys' fees and costs incurred in defending against this action. Although Giantway recognizes that CL was not added as a plaintiff to this action until March 30, 2009, Giantway contends that dismissal is appropriate as to both plaintiffs because CL is the manufacturer of CGMC's machines and is represented by the same attorneys that represent CGMC. Giantway further contends that CL's exclusive United States distributor is CGMC and that CGMC is a subsidiary or affiliate of CL. Giantway also argues that there is no doubt that CL is as much a driver behind this litigation as CGMC because discovery that should have

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been produced, showing that Giantway's machine and the plaintiffs' machines are not identical, is discovery that ultimately would have been in the possession, custody, or control of CL, and CL could and should have authorized their counsel to produce it. At a minimum, CGMC argues that CL, as the parent and manufacturer of the machine, was in a position to insist that CGMC cooperate in discovery and litigate this case in good faith.

Giantway alleges that this case has, in large part, been a sham; accordingly, it contends that dismissal is appropriate. In support of its theory of dismissal, Giantway focuses upon three main points: (1) CGMC misrepresented the Georgia seizure statute to this court and the Fulton County Superior Court by leaving out critical words that would have invalidated its request to seize the machine; (2) Scott Grissom, CGMC's Rule 30(b)(6) deponent, intentionally falsified his testimony during his deposition regarding his level of preparation; and (3) CGMC maintained reverse palming off claims until it filed its motion for leave to file a second amended complaint on December 30, 2008, despite knowing that the IWF machine was not the same size as any A series machine. Each of these contentions, along with CGMC and CL's responses, is discussed below.

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A. Arguments for Dismissal

1. CGMC misrepresented the Georgia Seizure Statute.

As discussed above, the court - in its March 24, 2009, order, sanctioned CGMC pursuant to Rule 11 for omitting words in its recitation of O.C.G.A. § 10-1-451 that would have made the seizure of Giantway's machine inappropriate. As a penalty, the court required CGMC's counsel to pay all fees incurred by Giantway in filing the portion of the Rule 11 motion and memoranda that related to CGMC's misrepresentations. The court further noted that it would address any additional damages caused by CGMC's misrepresentations when addressing Giantway's counterclaim alleging wrongful seizure.

In its motion to dismiss, Giantway reminds the court of CGMC's misrepresentation of the law to demonstrate that it was CGMC's goal to improperly and unlawfully engage in this litigation for the purpose of injuring and discouraging competitors. In defense, CGMC continues to argue that it did not quote O.C.G.A. § 10-1-451 and that it misrepresented the statute unintentionally in its race to seize the machine before it went back to China.[2] CGMC contends

[2] The court notes that indeed there are no quotation marks around the language used in CGCM's complaint that is followed by the statute citation. The first sentence of the statute, however, is repeated verbatim with the exception of seven words within the sentence that established a condition precedent to invoking the statute. The seven omitted words are the requirement that the

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that it has already been sanctioned for this mistake; thus, it contends that no further sanctions are warranted.

2. **Scott Grissom, CGMC's Rule 30(b)(6) deponent, intentionally falsified his testimony given under oath regarding his level of preparation for his deposition.**

Giantway next contends that dismissal and sanctions are appropriate in this case because of Grissom's perjured testimony regarding his preparation for CGMC's Rule 30(b)(6) deposition. As noted above and as detailed in this court's March 24, 2009, order, Grissom unequivocally testified at his deposition that he had done nothing to prepare for his deposition other than reviewing the Notice of Deposition and its exhibits. See Dep. of Scott Grissom at 4:25-12; 72:14-24 [Doc. No. 136]. He stated that he had not reviewed the report that CGMC prepared on the source and origin of the IWF machine in at least a month. He answered "I don't know" and "I can't remember" to many questions after long pauses. As noted above, in the March 24, 2009, order, the court -- under the belief that Grissom had not prepared - ordered a continued Rule 30(b)(6) deposition and ordered CGMC's attorney to pay the costs and fees Giantway incurred for time spent at and in preparation for

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movant be the owner of a trademark registered under Georgia law. It is relevant to point out that inclusion of these seven words would have shown the court adjudicating the TRO that CGCM did not qualify for the protection offered by the statute because CGCM did not own a trademark registered under Georgia law.

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the deposition and for time Giantway spent preparing for and filing the motion to compel. Now, in its motion to dismiss, Giantway contends that Grissom was untruthful about his level of preparation in his deposition because Grissom, in an affidavit filed on April 3, 2009, stated that:

> The day before the deposition, on October 15, 2009, I met with CGMC's counsel Cary Ichter in his office. We spent several hours together at that time preparing for the deposition. The vast majority of the time we spent preparing for the deposition was spent reviewing a report that I had assisted in preparing regarding the machine at issue in this case ("the Report"). During the course of our meeting, Mr. Ichter and I discussed the contents of the Report (the narrative portions and the attached photographs), the subjects that Mr. Ichter expected would be covered in the deposition based upon the Notice of Deposition, the issue that the case presented, and the like. I recall spending a significant amount of time reviewing the report during our time together. Mr. Ichter and I met again the morning of the deposition for approximately one hour to continue to prepare for the deposition. I cannot account for why it is I incorrectly answered the question, and at the moment, I cannot recall exactly what I was thinking at the time. I was, however, very nervous and, as a consequence, forgetful before the deposition and once the deposition began.

Grissom Aff. at ¶¶ 5-8 [Doc. No. 86, Ex. 4]. Giantway argues that, in light of Mr. Grissom's contradictory testimony, it is clear that he was untruthful either in his deposition or in his affidavit.

In defense, CGMC and CL argue that CGMC did not commit perjury regarding preparation for the Rule 30(b)(6) deposition. The

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plaintiffs acknowledge that Grissom "screwed up," but contend that he had no willful intent to testify falsely and that he simply made a mistake. CGMC and CL argue that Grissom had no reason to falsely testify about his level of preparation. They argue that they never corrected Grissom's testimony because the deposition was suspended rather than concluded. They also contend that it is unclear in this circuit as to whether substantive changes can be made via an errata sheet. They seem to imply that they did not correct Grissom's testimony via an errata sheet because it would be considered a substantive change to an answer.

3. **CGMC maintained a reverse palming off claim despite knowing that the Giantway machine was not the same size as any of CGMC's A series machines.**

On December 30, 2008, CGMC filed its second motion to amend its complaint. In this motion, CGMC proposed dropping its reverse palming off claim, which had formed the basis of its original complaint, and adding a trade dress infringement claim. The court allowed it to do so, noting Giantway's argument that CGMC should have dropped its reverse palming off claims in September 2008 when the report prepared at the direction of the Fulton County Superior Court provided no evidence that Giantway modified an A series machine and displayed it as its own. At the time, the court declined to sanction CGMC for not withdrawing the reverse palming

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off claims earlier because it concluded that CGMC had not yet had an adequate opportunity to explore those claims.

Now, Giantway once again moves for sanctions on the basis of CGMC's failure to timely withdraw the reverse palming off claims. Giantway argues that CGMC's amended responses to Giantway's Requests for Admissions ("RFAs") demonstrate that CGMC knew as early as September 2008, when it prepared the original report, that the Giantway machine was not an A series machine because it was not the same size as any of the A series machines. It argues, however, that CGMC kept this information secret until after Giantway moved to compel the production of technical drawings reflecting the size of the A series machines. The relevant RFAs, original responses, and amended responses are detailed below:

RFA 1. Admit that the outer cover of the machine displayed by or on behalf of Qingdao Giantway Machinery Co., Ltd. at the International Woodworking Fair (the "Qingdao Machine") is not the exact dimensions as the outer cover of any of Plaintiff's Wide-Belt Sander "A" Series Machines (the "A Series Machines").

2/11 Response: Plaintiff objects to Request No. 2 on the grounds that is vague, ambiguous, overly broad, and unduly burdensome because each and every A Series Machine is manufactured to the client's specifications. Plaintiff further objects to Request No. 2 to the extent it requests information not presently within the possession, custody, or control of CGMC. Each and every A Series machine manufactured by CGMC is no longer in its control, and CGMC cannot inspect and compare the Qingdao machine

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to each and every A Series Machine. CGMC, therefore, denies this request.

2/26 Response: Admitted.

RFA 2. Admit that the outer cover of the Qingdao Machine is not the exact size as the outer cover of any A Series Machines.

2/11 Response: Plaintiff objects to Request No. 2 on the grounds that is vague, ambiguous, overly broad, and unduly burdensome because each and every A Series Machine is manufactured to the client's specifications. Plaintiff further objects to Request No. 2 to the extent it requests information not presently within the possession, custody, or control of CGMC. Each and every A Series machine manufactured by CGMC is no longer in its control, and CGMC cannot inspect and compare the Qingdao machine to each and every A Series Machine. CGMC, therefore, denies this request.

2/26 Response: Admitted.

RFA 3. Admit that neither the dimensions nor the size of the outer cover of the Qingdao Machine corresponds with the dimensions or size specified in the technical drawings for the A Series Machines.

2/11 Response: Plaintiff objects to Request No. 3 on the grounds that is vague, ambiguous, overly broad, and unduly burdensome because each and every A Series Machine is manufactured to the client's specifications. The request also does not specify which set of technical drawings Defendants want to compare the Qindgao Machine to. CGMC, therefore, denies this request.

2/26 Response: Admitted.

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RFA 4. Admit that during Plaintiff's examination of the Qingdao Machine, Plaintiff noted that the cover of the Qingdao Machine is not the exact dimensions as the cover of any of the A Series Machines.

2/11 Response: Plaintiff objects to Request No. 4 on the grounds that is vague, ambiguous, overly broad, and unduly burdensome because each and every A Series Machine is manufactured to the client's specifications. Plaintiff further objects to Request No. 4 to the extent it requests information not presently within the possession, custody, or control of CGMC. Each and every A Series machine manufactured by CGMC is no longer in its control, and CGMC cannot inspect and compare the Qingdao machine to each and every A Series Machine. CGMC, therefore, denies this request.

2/26 Response: Admitted.

RFA 5. Admit that during Plaintiff's examination of the Qingdao Machine, Plaintiff noted that the cover of the Qingdao Machine is not the exact size as the cover of any of the A Series Machines.

2/11 Response: Plaintiff objects to Request No. 5 on the grounds that is vague, ambiguous, overly broad, and unduly burdensome because each and every A Series Machine is manufactured to the client's specifications. Plaintiff further objects to Request No. 5 to the extent it requests information not presently within the possession, custody, or control of CGMC. Each and every A Series machine manufactured by CGMC is no longer in its control, and CGMC cannot inspect and compare the Qingdao machine to each and every A Series Machine. CGMC, therefore, denies this request.

2/26 Response: Admitted.

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RFA 6. Admit that during Plaintiff's examination of the Qingdao Machine, Plaintiff noted that the cover of the Qingdao Machine did not correspond with either the dimensions or size specified in the technical drawings for the A Series Machines.

2/11 Response: Plaintiff objects to Request No. 6 on the grounds that is vague, ambiguous, overly broad, and unduly burdensome because each and every A Series Machine is manufactured to the client's specifications. The request also does not specify which set of technical drawings Defendants want to compare the Qindgao Machine to. CGMC, therefore, denies this request.

2/26 Response: Admitted.

Giantway contends that CGMC erred by not withdrawing its reverse palming off claims immediately and by not mentioning the differences in sizes in the initial report that it prepared for the court. In addition, Giantway contends that CGMC erred by not giving truthful answers to the RFAs until after Giantway moved to compel the production of the specifications for the A series machines that would have demonstrated that the original answers were wrong. Finally, Giantway contends that Scott Grissom again intentionally falsified his testimony during his deposition by claiming that the cabinets and frames on the parties' machines were identical when he knew that they were not identical, per the amended the RFAs. The pertinent portion of Mr. Grissom's testimony is as follows:

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Q: So you had the photographs. Other than the photographs, was any data noted prior to the report recorded anywhere.

A: Repeat the question, please.

Q: Okay. You took measurements. Did you write them down?

A: No.

Q: Did you make a record of them on a database?

A: No.

Q: Just retained them in your memory?

A No.

Q: What happened to them?

A: We didn't feel it was relevant.

Q. The Qingdao machine is a different size than you're a-Series Machine, isn't it?

A: No.

Q: The cabinets are identical size?

A: Yes.

Q: Identical?

A: Yes.

Q. Height?

A: Same.

Q. Width?

A: Same.

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Q: Depth?

A: Same.

Q: Identical, that's your testimony?

A: Yes.

Q: What else did you measure other than the cabinet?

A: The frame.

Q: The frame's identical?

Mr. Ichter: In terms of their dimension?

Mr. Wheat: Whatever he's testifying that they checked.

Mr. Ichter: Okay. Well, you just asked him about a measurement and then you asked him if they were identical.

By Mr. Wheat:

Q: Both. Were they identical in size?

A: Which part?

Q: Which part are we talking about?

A: I don't know.

Q: The frame.

A: Okay. Yes.

Q: Identical shape?

A: Yes.

Grissom Dep. at pp. 16-17 [Doc. No. 136].

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Giantway contends that there is no need to speculate about what Mr. Grissom meant when he said "identical" because he clarified it in his testimony:

> Q: Okay. Let's make sure that we're using the term the same way. By identical I mean exact 100 percent correspondence. Not essentially the same, not similar, 100 percent exact correspondence, is that what you mean by identical?
>
> A: Yes.

Grissom Dep. at p. 19:3-8 [Doc. No. 136].

In their joint response, CGMC and CL contend that they did not act in bad faith by not moving to withdraw their reverse palming off claims until December 30, 2008. They first argue that the differences in dimensions and components between the machines is irrelevant to the source of origin of the machine because each A series sander is built to different customer specifications. Thus, they contend that when CGMC performed its first analysis of the machines for the report, it ignored their size and dimensions because they appeared identical, and beyond that, because size is irrelevant. Nonetheless, CGMC and CL contend that Mr. Grissom's deposition testimony that the dimensions of the Giantway machine and the A series machine were identical was true because the size and dimensions were "essentially equal" and sufficiently "similar," both dictionary definitions of identical. In fact, the plaintiffs

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contend that CGMC's Chief Financial Officer could not even distinguish an A series machine from the Giantway machine.

CGMC and CL argue that when CGMC's initial analysis proved inconclusive, CGMC engaged an expert, Jon M. Crate of FAI Materials Testing Laboratory, to perform an independent analysis. They claim that the results they received on December 16, 2008, from this second analysis revealed de minimis differences in the dimensions of the machines. They claim that this analysis occurred two months after CGMC's Rule 30(b)(6) deposition and two weeks after Giantway filed the discovery motions that resulted in the March 24, 2009, order sanctioning CGMC. They claim that the differences between the machines revealed during this analysis were of no concern because, given the way the machines were built, CGMC would not expect them to be exactly the same. They claim that they withdrew their reverse palming off and related claims after they received Mr. Crate's analysis because other findings by Mr. Crate suggested that the IWF machine, while an impeccably close copy of a Series A machine, might not have been manufactured by CGMC.

CGMC and CL argue that Grissom did not perjure himself. As noted above, they first argue that Grissom's testimony was true. In support of this argument, they contend that the differences in size of the machines are measured in millimeters or fractions thereof and all fall within standard variations of A series

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machines. They argue that - to the naked eye - the machines appeared to be identical. Thus, they argue that Grissom's response was accurate. They argue that Grissom is neither an expert witness nor a professional witness. They argue that while he may have answered questions more accurately, to truly determine whether the Giantway machine precisely matched the measurements of each and every A series machine, CGMC would have had to approach every customer and measure each of the thousands of machines it has manufactured. Finally, they contend that Grissom's deposition notice did not specify that he should be familiar with the exact dimensions or specifications of the machines at issue, and Giantway's counsel did not present him with any documents regarding the dimensions of the machines.

Next, the plaintiffs contend that CGMC's discovery responses and conduct have been truthful and accurate. The plaintiffs argue that CGMC initially denied Giantway's RFAs because they required a detailed comparison of the cover of Giantway's machine to the cover of every A series machine ever manufactured. They argue that CGMC's refusal to do so did not demonstrate bad faith. The plaintiffs claim they altered their responses after the parties had a "meet and confer" conference because they did not want to provoke Giantway to file another motion to compel. The plaintiffs also contend that it was prohibitively expensive to produce engineering

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drawings and specifications; nonetheless, they contend that they did so after the "meet and confer conference". Thus, they argue that Giantway's allegation that CGMC withheld drawings is simply untrue.

At the hearing on this matter held on August 24, 2009, the plaintiffs supplemented the arguments in their response brief with new arguments. Although the court will not recite each and every argument here, it will highlight some of the more notable contentions. First, the plaintiffs contended that Grissom did not perjure himself when discussing the size of the machines at his deposition. The plaintiffs argued that, at his deposition, Grissom was referring to the size and dimensions of the machines' cabinets as opposed to the covers, which were addressed by the RFAs. Moreover, the plaintiffs contended that Mr. Wheat, counsel for Giantway, knew that Grissom was not referring to covers when he asked Grissom to compare the respective sizes of the machines because Wheat asked Grissom about depth and Wheat was aware that a cover does not have depth. August 24, 2009 Transcript at 43 [Doc. No. 148]. The plaintiffs then pointed to the dimensional analysis performed by Jon Crate and used it to argue that the cabinet of the IWF machine was almost identical in dimension to CGMC's machine in many respects. Furthermore, the plaintiffs claim that the IWF machine is more similar to the technical drawing of CGMC's machine

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than CGMC's actual machine in some other respects. They contend that "when Mr. Grissom, who eye-balled the machine and took some measurements, but did not indicate that he measured anything like this," said that the machines were identical, he did not perjure himself. Id. at 46:2-7. The plaintiffs again argued that the dimensions of the machine are not material to the case; thus, they contended that misstatements by Grissom were not material facts and could not constitute perjury.

The plaintiffs next went on to explain that their decision to alter their responses to Giantway's RFA's had nothing to do with Giantway's motion to compel discovery. Transcript at pp. 38-39 [Doc. No. 148]. Instead, they contended that it has always been their position that differences in the sizes of the parties' machines are irrelevant because each machine is manufactured to different specifications and because each handmade machine differs from the technical drawings to some respect. Id. at 39-40. The plaintiffs argued that they made this argument at the good faith conference, and Giantway argued that their original responses to the RFAs could not be accurate if each of the machines is different. The plaintiffs contend that since this is a non-issue in the case at this point, they admitted the RFAs to avoid future discovery disputes.

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B. Analysis of Motion to Dismiss

After extensively reviewing the record, the parties' briefs, and the transcript of the hearing on this matter, it is clear to this court that CGMC has needlessly prolonged this litigation through dishonesty and bad faith. As CGMC has pointed out, the court has previously sanctioned it for many of its wrong-doings. However, it appears to the court, based on the new evidence and arguments before it, that such sanctions were not proportionate to CGMC's bad behavior and, were insufficient to deter CGMC from future bad acts. Accordingly, the court must decide whether additional sanctions are appropriate to discourage this type of behavior in the future.

Federal courts have the inherent power to impose sanctions on parties, lawyers, or both. Byrne v. Nezhat, 261 F.3d 1075, 1121 (11th Cir. 2001). "This power is derived from the court's need 'to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases.'" Byrne, 261 F.3d at 1106 (citing Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991) (alteration in original)). According to the Eleventh Circuit, "'[t]he key to unlocking a court's inherent power is a finding of bad faith.'" Eagle Hospital Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1306 (11th Cir. 2009) (quoting Barnes v. Dalton, 158 F.3d 1212, 1214 (11th Cir. 1998)).

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This court will revisit the proceedings in this case to determine whether CGMC or its counsel has acted in bad faith. As discussed above, this case was filed as a reverse palming off action in the Fulton Superior Court on August 21, 2008. CGMC misrepresented the Georgia seizure statute in that filing, omitting critical words that would have made the seizure unlawful. Although CGMC contends that the omission of the critical terms was a mistake made in its race to the courthouse, CGMC did not rectify this mistake in its first amended complaint filed with this court or when this court had a hearing on whether CGMC should post a bond in relation to its seizure of the machine. As a result of CGMC's initial and continued misrepresentations to both the Fulton County Superior Court and this court, it was allowed to seize Giantway's machine and retain it for months to "examine the [m]achine for the purpose of determining whether the [m]achine, or portions thereof, were made by [CGMC]." Fulton County Superior Court August 22 Order at 2.

The fact that CGMC had possession of Giantway's machine obviously gave it a significant tactical advantage in this litigation. From a business perspective, it deprived Giantway, one of CGMC's competitors, from the use of its machine for months. From a litigation perspective, it gave CGMC alone the ability to examine and compare the parties' machines. Additionally, CGMC,

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despite a direct order of this court to do so, delayed in posting a bond for more than four months. Thus, not only did CGMC wrongfully seize the machine and retain it for months, it did so without any security for the defendant or any risk to itself by avoiding the obligation to post the bond.

The Fulton County Superior Court ordered CGMC to report to the court its findings concerning the source and origin of the machine within a month of the seizure. The Fulton County Superior Court did not give CGMC detailed instructions as to how to conduct their examination of the machine, leaving CGMC to be guided by its discretion and generally applicable principles of good faith. On September 23, 2008, CGMC filed its report in this court. In the report, CGMC basically stated that they did not know who manufactured the IWF machine. However, it did not drop its reverse palming off claims at that juncture, instead preferring to file a motion to amend, retaining those claims and adding a claim for trade dress infringement. Thereafter, Giantway began to propound discovery requests to learn more about the examination of the machine, and CGMC's bad behavior began in earnest. Rather than participating in a cooperative and honest manner in discovery, CGMC made misrepresentations in interrogatory responses about the differences between the parties' machines, refused to turn over documents in a timely fashion, and produced a Rule 30(b)(6) witness

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who appeared to be utterly unprepared and intent on confusing Giantway's attorney.[3] He gave multiple answers to many questions, thereby making it virtually impossible for Giantway to ask precise questions or receive precise answers at the deposition or in any discovery following the deposition. A good example of this problem is highlighted by Mr. Ichter's arguments at the August 24, 2009, hearing regarding the differences between cabinets and covers. As detailed briefly above, Mr. Ichter contended that CGMC's supplemental responses to the RFA's, which clarify that CGMC knew

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[3] The following deposition excerpt highlights Grissom's unwillingness to cooperate on even the most basic of questions:

Q: Do you have an engineering degree?
A: (No verbal comment).
Q: You don't know?
A: It's a difficult question to answer.
Q: Enlighten us. You don't know whether you have an engineering degree? Did you go to college?
A: Yes.
Q: Did you graduate?
A: Yes.
Q: What was your major?
A: Wood science and technology.
Q: Excuse me?
A: Wood science and technology.
Q: So the difficulty is you don't know whether that's an engineering degree?
A: It's not what you asked me.
Q: Do you have an engineering degree?
A: No.
Q: Are you certified by anyone as an engineer?
A: No.

Grissom Dep. at 41:10-42:4 [Doc. No. 136].

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at the initial inspection that the cover of the IWF machine was different in size and dimension from the A series machines, do not demonstrate that Grissom perjured himself when he claimed in his deposition that the machines' cabinets were identical because the cabinets and covers were different parts of the machine. Below are excerpts from the deposition where Giantway's counsel attempted to gain an understanding of how CGMC referred to the different parts of the machine:

Q: What is - when you say frame, what are you referring to?

A: The structure of the machine.

Q: There's a lot of structure in the machine. What specific? I mean, there's pulleys, there's rollers, there's belts, there's electronics. Which structure are you referring to?

A: The structure of the machine.

Q: Everything?

A: No.

Q: Okay. What are you referring to?

A: The pulley is not a structure.

Q: We'll use your term. What do you mean by structure?

A: The house, maybe, for a better word. Does that help?

Q: Exterior walls, interior walls?

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A: The carpet.

Q: The carpet?

A: The supporting structure.

Q: The frame?

A: The frame of the machine, that's correct.

Grissom Dep. at 17:25-18:23 [Doc. No. 136].

Q: The pieces of the frame, were they all identical shape?

A: Define the pieces.

Q: Well, go through the frame parts again. What did you say the frame was? Okay, the exterior walls, interior walls, the metal – what was your word? – supports?

A: Supporting structure, I'm pretty sure.

Q: Supporting structure, were they identical?

A: No.

Q: How were they different?

A: I talked about the supporting structure of the machine. You talked about supporting walls, the outside covers and all that.

Q: What were you referring to a moment ago when you said they weren't identical?

A: You stated pieces. I said the supporting structure of the frame.

Q: Okay. Supporting structure of the frame. Was each piece identical size, shape and identical placement in the Qingdao machine as compared to you're a-Series Machine.

A: It's difficult to answer your question.

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Q: How so?

A: Because your question is too broad.

Q: What's too broad about it?

A: I don't think you understand what the frame of the machine is.

Q: Break it down for me. What do you say the frame consists of? Name the parts for me.

A: Four post.

Q: Four post?

A: Supporting side rails.

Q: Supporting side rails.

A: That's it.

Id. at 19:9-20:19.

Q: Okay. What word do you use for the outer shell or cabinet of the machine? Is cabinet the word? I don't know. Let's use your language. Your vocabulary.

A: Can I get another cup of coffee first?

(A brief recess was taken)

Id. at 39:10-19

Q: . . . What would you call the outer shell or cabinet of one of these machines. Cabinet? I don't know?

A: Covers.

Q: Covers?

A: Covers, yeah.

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Q: So that would be the walls and the top and the bottom maybe, is that what you mean by covers?

A: What are you asking?

Q: I just –

A: What do we call it? We call it a lot of things.

Q: I want your word.

A: It depends on which part, okay?

Id. at 63:13-64:1.

As these excerpts highlight, it was clearly CGMC's goal to create evasive deposition testimony to confuse Giantway's counsel and muddle the record so that it would be difficult to determine what part of the machine Grissom was referring to at any given time.[4] Unfortunately, the confusing testimony referred to above was far from an isolated instance. Consider, for instance, the following excerpt, in which Grissom provided multiple, completely

[4] As Giantway's counsel pointed out at the hearing, Grissom himself stated, in the final deposition excerpt cited above, that they called the outer shell or *cabinet* of the machine a cover. It seems disingenuous to the court, that the plaintiffs' counsel attempted to create a distinction between the cabinets and the covers of the machines for the first time at the hearing on this matter. It seems to the court that if CGMC truly believed that the cabinets referred to by Grissom in pages 16 and 17 of his deposition were different from the covers referred to by Giantway in their RFAs, it would have made this distinction in its response brief and not reserved it until the hearing.

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contradictory answers regarding the role CGMC's attorneys played in the drafting of the report.

Q: Okay. You submitted a draft to your attorneys, they revised it?

A: Yes.

Q: What happened next with it?

A: They didn't revise the report.

Q: What did they revise?

A: A conclusion.

Q: Which conclusion did they revise?

A: We had no conclusion.

Q: So the attorneys wrote the conclusion, not you?

A: No.

Q: Well, who wrote it?

A: We wrote it.

Q: Which part did the attorneys do?

A: I don't know.

Grissom Dep. at 33:19-34:9 [Doc. No. 136].

CGMC used the report, discovery, and its responses to the motions to compel and motions for sanctions filed by CGMC to propound the following confusing and delay-inducing legal theory: differences between the parties' machines were "irrelevant" and did

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not demonstrate that the IWF machine was not a CGMC machine. Thus, although CGMC admittedly took time to measure the parties' machines and to compare the IWF machine to CGMC's technical drawings in its initial examination of the machine, it claims that it did not record any of the measurements. Moreover, even though CGMC found that there were components on the IWF machine not used by CGMC, CGMC found that these differences were irrelevant and chose not to put them in the report regarding source of origin.

Despite its contentions that the differences between the machines were irrelevant, CGMC continued to retain the IWF machine and even hired an expert to compare the differences between the machines, including the differences between the sizes of the machines. It claims that it withdrew its reverse palming off and related claims after it received Mr. Crate's analysis on December 16, 2008, because other findings by Mr. Crate suggested that the IWF machine might not have been manufactured by CGMC. Incredibly, even though CGMC realized from information available on December 16 that its reverse palming off claims were not viable, it did not simply amend its complaint to remove those claims – instead preferring to send litigious letters to Giantway offering to remove those claims in exchange for some action on Giantway's behalf. [Doc. No. 44, Ex. 12]. Apparently, those "negotiations" fell through, and on December 30, 2008, without movement by CGMC,

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Giantway was compelled to file its motion for Rule 11 sanctions based, in part, on CGMC's failure to timely withdraw its reverse palming off claims.

The parties' discovery issues continued to escalate, resulting in CGMC's supplemental RFAs discussed above. Although each party describes the circumstances leading to the change in the RFA responses differently, one thing is clear: CGMC completely changed its RFA responses in a two week period.[5] Regardless of which response was technically accurate, the fact remains that CGMC's answers are diametrically opposed. This leads the court to believe one of two things. First, the original answer was technically correct but was interposed for the purpose of delay, or second, the original answer was incorrect and was altered upon threat of additional discovery motions. Either scenario indicates bad faith.

On March 24, 2009, this court entered the discovery order sanctioning CGMC and its counsel of record [Doc. No. 80]. Thereafter, in an effort to somehow rectify the situation, CGMC filed a motion for reconsideration [Doc. No. 86]. Attached to the motion for reconsideration was the affidavit of Scott Grissom in which he claimed, for the first time, that he extensively prepared for the Rule 30(b)(6) deposition. Because this testimony

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[5] Importantly, CGMC does not contend that it further researched the issues inherent in the RFAs in this time period.

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completely contradicts his deposition testimony, it is still unclear to the court whether he adequately prepared for the deposition and intentionally falsified his deposition testimony about his preparation, or whether he did not prepare for the deposition and was untruthful to the court in affidavit form to somehow protect his counsel's interests. Either way, it is clear that Grissom testified dishonestly.

After CGMC filed Grissom's affidavit, thereby alerting Giantway to new inconsistencies in the record, Giantway filed the instant motion to dismiss and the court held a hearing on the same. Although CGMC contends that this motion to dismiss does not bring up any new evidence or grounds for this court to enter additional sanctions, the court disagrees. The motion to dismiss and CGMC and CL's arguments in response thereto demonstrate clearly how, at almost every stage in this litigation, CGMC and its counsel have engaged in deceptive behavior. In fact, the behavior has been so egregious and the deception so rampant that it is impossible for this court to determine now whether CGMC had any basis for the reverse palming off claim after it examined the machine, whether the report was conducted in good faith, and whether this case proceeded on anything other than pretense for the first several months of this case.

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The court finds that CGMC and its counsel have acted willfully in bad faith, vexatiously, wantonly, and for oppressive reasons. The misconduct was not that of counsel alone nor CGMC's agent alone. The acts of misconduct were not isolated and were part of an intentional course of misconduct in which both the president for CGMC and its counsel participated in concert with each other. Intentional misrepresentations were made to this court and the Superior Court of Fulton County, Georgia. This litigation has been delayed and disrupted by the actions of CGMC and its counsel. The actions discussed above have caused unnecessary delay, needless increase in the costs of litigation, and harassment of the defendant and its attorneys. For such conduct to go uncorrected would result in no meaning to the oath of a witness, no meaning to the conduct among attorneys, and no rule of law. Eagle Hospital Physicians, LLC v. SRG Consulting, Inc., et al., Case No. 1:04-cv-1015-JOF, 2007 WL 249290, at *10-11 (N.D. Ga. Aug. 28, 2007) (citing Lipin v. Bender, 84 N.Y.2d 562 (N.Y. 1994)), aff'd, 561 F.3d 1298 (11th Cir. 2009).

In light of the pervasive nature of the bad faith and dishonesty in this case, this court concludes that significant sanctions are warranted. The "[d]ismissal of a party's complaint or answer, or striking its defenses, as a sanction ... is a heavy punishment," appropriate "only as a last resort, when less drastic

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sanctions would not ensure compliance with the court's orders." In re Sunshine Jr. Stores, 456 F.3d 1296, 1305-06 (11th Cir. 2006). Although dismissal of CGMC's complaint would be appropriate, the court acknowledges that CL was only added as a plaintiff after the majority of the infractions discussed herein occurred. Moreover, the court acknowledges that the plaintiffs' former counsel of record has withdrawn and that the plaintiffs may indeed have a valid trade dress infringement claim against the defendants. Therefore, the court will consider lesser sanctions and will not dismiss the complaint.

Because of the bad faith and egregious conduct exercised by CGMC and its counsel, the court will exercise its inherent powers to grant an award of attorney's fees and costs to Giantway for all expenses incurred to date, with the exception of the filing of the second amended complaint and any actions taken in relation thereto since the filing. These fees should include all reasonable costs and expenses incurred by Giantway as a result of the wrongful seizure of its machine. Moreover, these costs and fees should certainly include those expenses incurred in relation to the pending motion to dismiss and motion for partial summary judgment.

The court grants such an award pursuant to its inherent power "to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases." Chambers, 501 U.S. at 43

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(citing Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962)). The court recognizes that these powers "must be exercised with restraint and discretion." Id. at 45. Accordingly, in this case, the court has chosen not to dismiss the plaintiffs' claims entirely but rather to impose a less drastic sanction: attorneys' fees. See id. (noting that the assessment of attorneys' fees is a less severe sanction than the outright dismissal of an action). In this case, CGMC has clearly acted in bad faith; accordingly, such an award is appropriate. Id. at 45-46 ("[A] court may assess attorney's fees when a party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.") (citations and internal punctuation omitted).

The court is aware that it has previously ruled that sanctions are warranted against CGMC's counsel in the form of attorneys' fees incurred by Giantway in filing its initial motion for Rule 11 sanctions. The court has not yet established a dollar amount for those sanctions. The court does not intend this order to allow a second recovery of the same fees. Accordingly, in determining the total amount of sanctions to be imposed pursuant to this order, the court will subtract the amount determined to be attributable to the conduct addressed in the March 24, 2009 order. All fees assessed pursuant to this order shall be payable jointly and severally by CGMC and its attorneys.

III. Motion for Summary Judgment [Doc. No. 96]

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Giantway seeks summary judgment as to its counterclaim alleging wrongful seizure of its machine. In this motion, Giantway seeks attorneys' fees for almost everything it has done in this case.

Damages are available under O.C.G.A. § 10-1-451(e) from "[any person who caused] seizure of goods which are not counterfeits . . . ." The damages available include:

(A) Any damages proximately caused to any person having a financial interest in the seized goods by the seizure of goods which are not counterfeit;

(B) Costs incurred in defending against seizure of noncounterfeit goods; and

(C) Upon a showing that the person causing seizure to occur acted in bad faith, expenses, including reasonable attorneys' fees expended in defending against the seizure of any noncounterfeit or noninfringing goods.

O.C.G.A. § 10-1-451(e).

This court has already determined that CGMC acted in bad faith in seizing the defendant's machine. Accordingly, the defendant is entitled to summary judgment on its counterclaim alleging unlawful seizure. Importantly, the court has already determined that sanctions against CGMC and its attorneys are warranted for the unlawful seizure of the machine as well as numerous examples of egregious misconduct detailed above. These sanctions will include reimbursement of all reasonable attorneys' fees and costs incurred by the defendant from the inception of this lawsuit to date, with

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the exception of the filing of the second amended complaint and any actions taken in relation thereto since the filing. The court will not award a double recovery of the costs and expenses to the defendant. As such, the motion for partial summary judgment [Doc. No. 96] is GRANTED, and judgment will be entered for the defendant on the wrongful seizure counterclaim. However, damages will not be awarded on this claim because the defendants are receiving all costs and expenses as sanctions based on the motion to dismiss.

IV. Determination of Reasonable Fees and Expenses

Currently pending before this court is the issue of the amount of reasonable attorneys' fees and costs incurred by Giantway from the date of the inception of this lawsuit through the filing of the second amended complaint plus the filing of the motion to dismiss [Doc. No. 95] and the motion for partial summary judgment [Doc. No. 96] and all related briefs and documents.

(1) This court finds that appointment of a Special Master is appropriate in order to expediently address this issue. The Clerk of Court is DIRECTED to assign this case to Magistrate Judge Walter Johnson to serve as Special Master for the purpose of determining and issuing a report and recommendation on the amount of reasonable attorneys' fees that will be issued as sanctions pursuant to this

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court's March 24, 2009, order and the instant order.[6] The court notes that the sole issue before the Special Master is amount of reasonable attorney fees and costs. This court has already determined that sanctions will be imposed against the plaintiffs and their attorneys of record during the period of time between the inception of this lawsuit and the filing of the second amended complaint on March 30, 2009, plus the costs and expenses of filing the motion to dismiss [Doc. No. 95] and the motion for partial summary judgment [Doc. No. 96]. The parties are limited in their arguments before the Special Master to the issue of reasonable attorney fees and costs incurred by the defendants during this designated period of time.

(2) As Special Master with regard to amount of reasonable costs and attorney fees, Magistrate Judge Johnson shall have the rights, powers, and duties provided in F.R.C.P. 53, or with this or other orders of the court. The Special Master may consider the declarations and reply briefings [Doc. Nos. 85, 98, 119, 120, and 143] and opposition briefings [Doc. Nos. 90, 125, and 150-2] filed

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[6] The court again notes that there is overlap between the costs and fees associated with the March 24, 2009, order and costs and fees associated with the instant order. The final award of fees and costs will not allow for a double recovery. The Special Master is DIRECTED within the Report and Recommendation to delineate the amount of reasonable costs and fees that are duplicated so as this court may issue a judgment in the proper amount.

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by the parties related to the March 24, 2009 order granting sanctions. The Special Master may also consider the declarations [Doc. No.122, 123, 143, and 144] and responsive briefing [Doc. No. 108] related to the defendants' motion for partial summary judgment and motion to dismiss. It is fully within the Special Master's discretion to direct additional briefing on these issues or to conduct a hearing. Furthermore, the Special Master may by order impose upon a party any sanction other than contempt and may recommend a contempt sanction against a party and contempt or any other sanction against a non-party.

(3) With the exception of scheduling and administrative matters, the parties shall not engage in any ex parte discussions with the Special Master, and the Special Master shall not engage in any ex parte discussions with any of the parties.

(4) The parties shall file with the Clerk all papers filed for consideration by the Special Master. The Special Master shall also file with the Clerk all reports or other communications with the undersigned.

(5) Any party seeking review of any ruling of the Special Master shall comply with the procedures and within the time limits specified in Federal Rule of Civil Procedure 53(f).

V. Conclusion

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(1) Giantway's motion to dismiss and motion for sanctions [Doc. No. 95] is DENIED in part and GRANTED in part. To the extent that Giantway seeks dismissal of this action, the motion is DENIED; to the extent that Giantway seeks sanctions against CGMC and its counsel, the motion is GRANTED. The court finds that Giantway is entitled to recovery of all reasonable costs and fees incurred from the inception of this lawsuit until the filing of the second amended complaint on March 30, 2009, plus the expenses of filing the motion to dismiss [Doc. No. 95] and motion for partial summary judgment [Doc. No. 96].

(2) Giantway's motion for partial summary judgment [Doc. No. 96] is GRANTED. At the conclusion of this case, judgment will be issued in favor of Giantway as to its counterclaim alleging unlawful seizure of its machine. Because Giantway is receiving all its reasonable costs and fees incurred as a result of the wrongful seizure, no damages will be awarded.

(3) The motion for leave to file a surreply [Doc. No. 150] filed by CGCM's former counsel, the law firm of Adorno & Yoss, is GRANTED. The surreply shall be considered in determining the amount of the sanction award pursuant to this court's March 24, 2009 order.

(4) The plaintiffs and their former and current attorneys' consent motion permitting Adorno & Yoss to withdraw and have its

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name stricken from the court's records as attorney of record in this action [Doc. No. 147] is DENIED. The court notes that this denial does not affect the withdrawal of the plaintiffs' former counsel. An order of the court is unnecessary for parties to obtain and substitute counsel. See L.R. 83.1E

(5) The Clerk is DIRECTED to assign this case to Magistrate Judge Johnson to act as Special Master with regard to determining the amount of reasonable costs and attorney fees incurred by the defendants.

SO ORDERED, this 2nd day of December, 2009.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge

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Exhibit C

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IN THE SUPERIOR COURT OF CHEROKEE COUNTY

STATE OF GEORGIA

KELLY SIMS,)
)
Plaintiff,) CAFN:
) 18-CVE-0059
v.)
)
SHARON ENTEEN PRUSSO a/k/a)
SHARON ENTEEN and)
FALCON RIDGE, INC.,)
)
Defendants.)

The deposition of KELLY SIMS, taken at the instance of the Defendants, pursuant to stipulations contained herein; the reading and signing of the deposition reserved, before Julie Breedlove, Certified Court Reporter, at 10:00 a.m., on July 10, 2018, at 3340 Peachtree Road, Suite 1530, Atlanta, Georgia.

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ALSO PRESENT:
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Doug Prusso

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PROCEEDINGS

10:00 a.m.

MS. ARMSTRONG: This will be the deposition of Kelly Sims, taken for all purposes pursuant to the Civil Practice Act. The time and date and location are pursuant to the notice of deposition. We will agree to the standard stipulations of reserving all objections until the time of use at trial except as to the form of the question or responsiveness of the answer, if that's fine with counsel.

MR. ICHTER: Sure. That's agreeable. But I did want to ask about one thing.

MS. ARMSTRONG: Okay.

MR. ICHTER: I sent you an e-mail after the aborted MacKay deposition about --

MS. ARMSTRONG: This doesn't need to be on the record.

MR. ICHTER: Yes, it does.

MS. ARMSTRONG: Okay, fine. Keep it on the record.

MR. ICHTER: -- about a statement that you made when Mr. MacKay left the room. I'm not sure when this was made in terms of before or after you and I spoke. But I followed up with an e-mail because I received in the statement that you put on the record that includes this sentence: "And the witness, Bill MacKay, prior to

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Ms. Enteen at the Ohio show?
A No. She was -- no.
Q You started to say "she was --." Where was she, and why was she not at the Ohio show?
A She was with the junior riders at either Washington or indoors.
Q What made you go to the Ohio show?
A That was the scenario where the registration for Tryon did not get done, and so we were shut out of that show. And I had shared with Sharon that I wanted to -- in the previous years when she would take the juniors to their -- those particular events, indoors and Washington, we'd have a period where showing would not occur for the rest of the folks at the barn. And I had indicated to Sharon that I wanted to still show while that was going on. And so that's how we got there.
Q And was the Ohio show a show that you located, or was it something that Ms. Enteen said to you, this would be a good opportunity for you while we're at indoors with the juniors?
A It was a show that I had asked about.
Q And who facilitated the entries? Was it Ms. Enteen, or was it Michael Leon, or --
A No idea.
Q You don't know who did the entries?
A Uh-uh (negative).

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Q And who did you take besides Raffle?
A I don't recall exactly. I know I took Nick, but I don't know the total number of horses I took.
Q So what was the time frame between the purchase of Raffle and the purchase of Nick/Eleventh Hour?
A It was the same. I tried them on the same day. They were purchased on the same day.
Q With respect to Eleventh Hour, did you actually participate in the purchase of Eleventh Hour, other than it was a horse that you had tried, or did your husband facilitate that purchase?
A Specifically what do you mean?
Q Did you decide to buy Raffle and Eleventh Hour on the same day?
A Yes.
Q Isn't it true that Eleventh Hour in fact was a surprise for you from your husband?
A Yes.
Q So he decided to purchase Eleventh Hour for you; is that correct?
A Yes, but my direction to Sharon, not knowing that, was that I wanted Raffle and Eleventh Hour both vetted in case Raffle did not pass. That was the direction she was given.
Q But in terms of the actual transaction, it was your husband, Tim Sims, that told Sharon, I'm buying Eleventh Hour

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for Kelly?
A Correct.
Q And so in terms of the vetting of the two horses, were you physically present for the vetting of either of the horses?
A No.
Q Did you ask Ms. Enteen to be physically present for the vetting of the horses?
A Yes.
Q And when did you ask her to be physically present? Was she there as you were trying the horses and you told her then, or how did that come about?
A Yes. She was there when we were trying the horses, and she said she was going to stay behind and she was going to have the horses vetted and bring them to Dr. Sutter.
Q To Dr. --
A Sutter.
Q And the horses were vetted; is that correct?
A As was Celtic Fire.
Q So you wanted all three vetted?
A I asked for Raffle and Eleventh Hour to be vetted. When Tim saw me ride also Celtic Fire and then I liked Celtic Fire, he asked for Celtic Fire to be vetted, to be added to that three. I have no idea what his intentions were.
Q You were not included in that decision?

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A In which decision?
Q To have Celtic Fire vetted.
A Correct.
Q And you were not involved in the conversations between your husband and Ms. Enteen regarding Eleventh Hour and its ultimate purchase?
A Not in the beginning.
Q Well, you weren't involved in it until after the money changed hands, correct?
A Correct.
Q Did you speak directly with Dr. Sutter about the vetting of Raffle and Eleventh Hour?
A About the prepurchase vetting at the time of the vetting?
Q Yes.
A No.
Q Did there come a time when you did speak with him?
A Yes.
Q And when was that?
A October of 2017.
Q And what brought that direct communication about?
A Raffle's disqualification.
Q Did you review the report from Dr. Sutter about Raffle and Eleventh Hour?
A Yes.

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mischaracterizes her testimony But you can answer it.

THE WITNESS: I believe it based on what was said to Michael Leon, based on the question I asked him to ask, and I believe it based on a text that shows how she structures her deals. That's why I believe it.

BY MS. ARMSTRONG: (Resuming)

Q She who?

A Kelley Farmer.

Q The way Kelley Farmer structures her deals?

A Yes.

Q And what documentation have you seen of Kelley Farmer's to show you how she structures her deals?

A I saw a text.

Q Whose text?

A Kelley Farmer's text.

Q Between you and who? Between Kelley Farmer and who?

A And Michael Leon.

Q Did she text you?

A And Michael.

Q Is this about a new transaction, the purchase of a new horse and the way she was going to structure it with Michael Leon?

A It was about horses in general. There wasn't any specific horse.

Q And when did you see this text?

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A I don't remember. Earlier this year.

Q And as best you can recall sitting here, what did the text from Kelley Farmer say to Michael Leon?

A It said -- it listed off horses that would be for sale, and it would say 300,000, 30 to you.

Q So it wasn't about True Story or True Enough?

A No.

Q It was about how if Michael Leon facilitated a transaction, what he would get?

A That text was about that. The conversation was specifically about True 1 and True 2.

Q Did you sit and hear that conversation?

A No.

Q So you don't know, other than Michael Leon telling you, whether al the conversation took place, because you didn't ask Kelley Farmer about it when you could have two weeks ago, or what was said, correct?

A Correct.

Q With respect to Rock A Bye and Henry, what issues do you have with respect to the commission that you paid Falcon Ridge for that horse?

A I believe that the same thing took place and -- the same that I just described.

Q On what do you base that belief?

A Because that seems to be the pattern.

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Q Nothing other than you're just guessing? You have no evidence --

A I have Mr. MacKay telling me how --

Q On Rock A Bye/Henry?

A -- Nick's deal was structured.

MR. ICHTER: You're interrupting her.

BY MS. ARMSTRONG: (Resuming)

Q We're talking about Rock A Bye/Henry.

MR. ICHTER: If you will let her finish her answers, please.

BY MS. ARMSTRONG: (Resuming)

Q We're talking about Rock A Bye/Henry.

A Well, you're asking me what I'm basing it on, and I'm answering you. You don't like my answer, but I'm answering you.

Q No, no -- what evidence do you have about Rock A Bye/Henry that Falcon Ridge or Sharon Enteen --

A That clearly she does this as a rule, or does it to me as a rule -- spotted me a mile away and decided this is what she's going to do. So therefore, if she's going to do it on more than one, why would she not have done it on Rock A Bye? So that's what it's for.

Q So let's break that down. So you're basing it on -- you're smearing what you saw in a text between Michael Leon and Kelley Farmer on horses unrelated to any of the horses involved

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in this litigation?

A No, ma'am.

Q That's number one.

A We're sitting here because of Nick. The other horses are subsequently being looked at and asked about and being confirmed because of the Nick situation.

Q So we're sitting here about Nick, a horse that --

A -- she got a double commission on.

Q Until -- no representations one way or another were made to you about the purchase of that horse?

A That doesn't change the fact that it was done.

Q Okay. And when did you decide that Falcon Ridge or Ms. Enteen were paid double commissions on Nick?

A When Mr. MacKay called me.

Q And when was that?

A December the 26th.

Q And what did Mr. MacKay say to you in his phone call to you on December the 26th?

A Well, he said a lot of things. What specifically do you want to know?

Q Everything he said to you. Everything you can remember.

A He talked to me about -- he asked how Nick was. He asked about his stall. He asked if he had a window. He asked about riding him. He asked if I give him sugar cubes. He

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STATE OF SOUTH CAROLINA
CIRCUIT COURT IN THE COUNTY OF AIKEN

KELLY SIMS, Plaintiff, v. SHARON ENTEEN-PRUSSO aka SHARON ENTEEN and FALCON RIDGE, INC., Defendants.	Case No. 2018CP0200675

PLAINTIFF'S REPLY TO NON-PARTY DANIEL GEITNER'S MEMORANDUM IN OPPOSITION TO AWARD OF ATTORNEYS' FEES

On December 5, 2018, the Court granted Plaintiff's *Motion to Compel Non-Party Daniel Geitner to Comply with Subpoena and South Carolina Rules of Deposition* (the "Motion") and directed "Plaintiff's counsel … to submit an Affidavit to the Court regarding Plaintiff's costs of th[e] [M]otion within fourteen (14) days…" (the "Order"). On December 14, 2018, Plaintiff's counsel submitted their Affidavits. On December 19, 2018, Mr. Geitner filed his *Memorandum in Opposition to Award of Attorneys' Fees* (the "Memorandum"). Plaintiff hereby briefly replies to same.

1. Mr. Geitner argues he was substantially justified in refusing to comply with this Court's subpoena and the South Carolina Rules of Civil Procedure governing the conduct of depositions.

a. First, Mr. Geitner argues he was not required to oppose the Motion in writing. Mr. Geitner, however, was required to articulate a cogent argument in defense of his refusal to comply with the South Carolina Rules of Civil Procedure. As the Court set forth in its Order, Mr. Geitner never did so. No reasonable person could conclude a private contractual

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arrangement would trump the compulsory powers of a court with competent jurisdiction—as evidenced by Mr. Geitner's continuing failure to identify a single case from any jurisdiction supporting his position at his deposition.

b. Second, Mr. Geitner argues Plaintiff failed to provide the Court with authority holding a third-party witness—as opposed to a party—was prohibited from refusing to answer deposition questions about facts deemed confidential by private contract. The Court did, however—to wit, Rule 30(j)(3), SCRCP. Furthermore, Mr. Geitner's distinction between witnesses and parties is one without a difference, as illustrated by Mr. Geitner's failure to articulate the significance of this point both at the hearing on the Motion and in the Memorandum.[1]

c. Third, Mr. Geitner argues the Georgia court should have resolved this issue. The Court already soundly rejected this argument, which, after all, is a post hoc rationalization for Mr. Geitner's conduct at his deposition (which, as the Court will recall, included lying under oath). [*See* Order at p. 10 n.7.]

2. Mr. Geitner argues he was not required to a file a motion for a protective order pursuant to Rule 30(j)(3), SCRCP because his deposition was neither suspended nor terminated. It does not matter under Rule 30 (j)(3) whether Mr. Ichter "suspended" the deposition or whether Ms. Armstrong "terminated" it. The applicable rule forbade Mr. Geitner's counsel from

[1] Mr. Geitner was under a subpoena of this Court pursuant to the South Carolina Interstate Depositions and Discovery Act, which expressly provides that the South Carolina Rules of Civil Procedure govern. Rule 30(j)(3) refers not to parties, but to "counsel" and the "witness," Rule 30(j)(9) refers not to parties, but only to "the violator," and Rules 37(a), 37(a)(2), and 37(a)(4) refer not only to parties, but also to "persons affected thereby," the "deponent" or the "deponent whose conduct necessitated the motion."

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instructing the witness not to answer unless she raised a privilege, a court order allowed a non-answer, or she intended to file a motion. None of these conditions existed.

3. Mr. Geitner also argues $14,486.69 in fees is unwarranted.

a. Mr. Geitner misconstrues *Blumberg v. Nealco*, which simply identifies factors to be considered and weighted according to the case; they are not elements to be satisfied before fees may be awarded. Mr. Geitner's apparent confusion of factors to be considered with elements to be satisfied must account for his counsel's unnecessary[2] and erroneous[3] drive to besmirch Mr. Ichter's reputation. The fact is that the refusal of the discovery was wrong, the motion was necessary, the motion was granted, and the motion cost over $14,000.

b. With respect to Plaintiff's fees from Ichter Davis LLC, which initially totaled $11,447.00:

i. Plaintiff withdraws her request for $175 in fees based on Mr. Davis' 6/12/18 time entry.

ii. Plaintiff withdraws $66.50 from her request for $133 in fees based on Ms. Lemieux's 10/31/18 time entry. Time incurred in connection with the deposition of non-party Kelly Goguen is not recoverable, but Ms. Lemieux also spent time compiling materials for the hearing on the Motion.

iii. Plaintiff withdraws $275 from her request for $3,850 in fees based on Mr. Ichter's 11/5/2018 time entry. The vast amount of Mr. Ichter's time (at least 6.5 hours)

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[2] The case involving "Italian made industrial word working machinery" referenced in Mr. Stanton's Affidavit was not *Costa & Grisson Machinery Co., Inc. v. Qinqdao Giantway Machinery Co.*

[3] ***The sanctions order was subsequently vacated.***

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was attributable to the Motion, with the only exceptions being a telephone call with Mr. Mackay and an email exchange with Mr. Pappas.

iv. Plaintiff seeks, and the Court should award, the fees and costs associated with Mr. Ichter's PHV application. The subpoena had to be issued in South Carolina to be valid since Mr. Geitner does not live in Georgia. Given that Mr. Ichter is not licensed to practice on South Carolina, his admission PHV was necessary, and completely appropriate, to prosecute the Motion. Had Mr. Geitner answered the questions he was asked in his deposition, the Motion would have been unnecessary and Mr. Ichter would not have needed to be admitted PHV.

v. Plaintiff withdraws her request for $275 based on Mr. Ichter's 6/15/18 time entry. Mr. Ichter's conference with Mr. Davis touched upon the Motion, but the fee involved is not substantial enough to fight over.

vi. Plaintiff seeks, and the Court should award, the fees incurred for all the time spent on hearing preparation and travel (Mr. Ichter's entries on 11/4/18 and 11/5/18). These fees were directly related to the Motion and necessary to successfully prosecute the Motion. Sizeable amounts of time are not per se unreasonable.

vii. To simplify issues for the Court, Plaintiff withdraws her request for $665 in fees based on Ms. Berland's 11/13/18 time entry. This addresses Mr. Geitner's double-billing issue.

viii. Plaintiff incurred more than an additional $980 in fees replying to Mr. Geitner's *Memorandum*. These fees are based on the following:

12.20.18	WDD	Draft reply to Mr. Geitner's *Memorandum* opposing fee	2.8 hours at $350 per hour	$980

		Affidavits		
12.21.18	WDD	Exchange e-mails with Mr. Stanton and review and revise Reply	Time not yet tracked	TBD

The undersigned are of the considered opinion this amount was reasonable and necessary to prosecute the Motion and protect Plaintiff's interests.

Accordingly, the total of Plaintiff's fees from Ichter Davis LLC the Court should award is ***at least*** $11,447.00 (*i.e.*, $11,447, less $1,456.50, plus $980, plus additional time not yet tracked).

c. With respect to Plaintiff's submitted fees from Mr. Stanton, which total $3,039.69, everything Mr. Stanton did as local counsel was solely for the filing and arguing of the Motion. Georgia counsel had to hire local counsel to file the Motion in this Court. Mr. Stanton's billings pertained to no other issues. Furthermore, while Mr. Geitner points to certain time entries, he makes no arguments why, exactly, they are purportedly objectionable. As Mr. Stanton's Affidavit states, the time incurred for work performed was reasonable and necessary.

Furthermore, Plaintiff has incurred the following additional fees with Mr. Stanton since the granting of the Motion and submittal of fee affidavits pursuant to the Order:

12.18.18	MBS	Review incoming correspondence from Mr. Bowers; Review incoming correspondence from Judge Early (briefing by Geitner).	0.2 hour – N/C	$0
12.19.18	MBS	Review incoming NEF; Pull six filings and notices from ECF system, save, and forward to Mssrs. Ichter and Davis; Review incoming correspondence from Mr. Ichter; Respond.	0.7 hour at $190 per hour	$133

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12.20.18	MBS	Memo to Judge Early (request to reply); Review incoming correspondence from same; Look over memorandum, Armstrong Aff., and three exhibits submitted by Mr. Geitner's counsel; Review pertinent rules; Prepare memo to Mssrs. Ichter and Davis; Review incoming correspondence from Mr. Davis; Respond; Review draft reply; Prepare markup.	4.0 hours at $190 per hour	$760
12.20.18 and 12.21.18	MBS	Assuming no further briefing, affidavits, travel, or oral argument, estimated time only to finalize, file and send courtesy transmittals of Reply Brief.	1.0 hour at $190 per hour	$190

d. Mr. Geitner argues the nature, extent, and difficulty of Plaintiff's counsels' legal services does not support a fee award. While motions to compel may be routine as a general proposition, the Motion involved application of the Interstate Depositions and Discovery Act, a PHV application, extensive research on the specific issue of whether confidentiality agreements can trump compulsory discovery, and out-of-state travel. Furthermore, Mr. Geitner's deposition was both necessary and consequential. The record is clear that Mr. Geitner conspired with Defendant Enteen to defraud Plaintiff with respect to her purchase of Nick and then lied about material facts relating to that transaction under oath. Mr. Geitner's non-involvement in other equine transactions hardly makes his conduct, and discovery with respect to same, unimportant.

For these reasons, Plaintiff submits an award of $14,486.69, the same amount previously submitted, is justified. As the Court already concluded, "[t]he fact that Mr. Geitner offered no defense whatsoever to th[e] [M]otion or legal justification for his refusal to answer the questions

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posed, strongly support the award of such costs," and the fees sought to be recovered are not hypothetical—they were actually incurred by and charged to Plaintiff. A new proposed order will accompany this Reply.

Dated: December 21, 2018.

s/M. Baron Stanton
M. Baron Stanton
SC Bar No. 7970

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CERTIFICATION OF APPELLANT

Counsel for Appellant certifies that this *Record on Appeal* contains all material proposed to be included by any of the parties and not any other material and that this *Record on Appeal* complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "*Revised Order concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.*"

Respectfully submitted, this the 22nd day of August, 2019.

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