

SANDRA KURT
IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT
2017 SEP 28 PM 3:33

MEMBER WILLIAMS, *et al.*, (CASE NO.: CV-2016-09-3928
SUMMIT COUNTY
CLERK OF COURT () JUDGE ALISON BREAUX

Plaintiffs, (**ORDER**
(Granting in part and Denying in part
-vs- (Defendants', Alberto R. Nestico and Robert
(W. Redick, Motion for Judgment on the
KISLING, NESTICO & REDICK, (Pleadings on Plaintiffs' Second Amended
LLC, et al. (Complaint)
Defendants; ***

This matter comes before the Court on Defendants Alberto R. Nestico (Nestico) and Robert W. Redick's (Redick) Motion for Judgment on the Pleadings Regarding Plaintiffs' Second Amended Complaint, filed August 3, 2017. Plaintiffs Member Williams, Naomi Wright, and Matthew Johnson (Plaintiffs) filed their Opposition to Defendants' Motion for Judgment on the Pleadings Regarding the Second Amended Complaint on August 16, 2017. Defendants filed their Reply Brief in Support of Defendants Alberto R. Nestico and Robert W. Redick's Motion for Judgment on the Pleadings Regarding Plaintiffs' Second Amended Complaint on August 29, 2017. This Court has previously denied Plaintiffs' Motion for Leave to File *Instante* a Sur-Reply in Opposition to Defendants' Motion for Judgment on the Pleadings on Plaintiffs' Second Amended Complaint on September 15, 2017, and ordered same to be stricken from the record on September 28, 2017. The matter has been fully briefed and is ripe for consideration.

Upon due consideration of the evidence presented, the facts of this case, Civil Rules 9(B) and 12(C), and applicable law, this Court finds that Defendants' motion is well-taken as to Johnson's fraud claim and Plaintiffs' claims under the OCSPA and must be GRANTED. This Court finds Defendants' motion is not well-taken with respect to the remaining claims and must be DENIED.

ANALYSIS

A. FACTS AND ARGUMENTS PRESENTED

Plaintiffs' allegations are divided into three classes. The first class (the "Investigation Fees Class") alleges Defendants, Kisling, Nestico & Redick (KNR), Alberto R. Nestico (Nestico), and Robert W. Redick (Redick) have engaged, and continue to engage, in a deliberate scheme to defraud their clients by charging them expenses for investigations that are never actually performed. Plaintiff Member Williams (Williams) is the class representative. Williams has asserted claims of fraud, breach of fiduciary duty, unjust enrichment, and alleged violation of the Ohio Consumer Sales Practices Act ("OCSPA") against Nestico and Redick. Specifically, Williams contends she entered into a contingency fee agreement with KNR allowing KNR to "deduct only reasonable expenses from a client's share of" a settlement or judgment. *Second Amended Complaint*, ¶¶ 9 and 85. During the course of representation, KNR obtained a settlement for Plaintiff. According to Plaintiff, she signed a Settlement Memorandum outlining the settlement amount along with the fees and expenses that were deducted from that amount to be paid to KNR, with the remainder paid to Plaintiff. *Id.* Included in the fees and expenses to be paid to KNR was a \$50.00 fee paid to MRS Investigations, Inc. *Id.* at ¶ 85. Plaintiff asserts KNR never advised her of the purpose of the charge to MRS Investigations, Inc. and never obtained her consent to same. Plaintiff contends "[n]o services were ever provided to Plaintiff in connection with the \$50 payment to MRS Investigations, Inc." *Id.*

The second class (the "Chiropractor Class") alleges KNR, Nestico and Redick have engaged, and continue to engage, in a quid pro quo relationship with Akron Square Chiropractic (ASC). The alleged quid pro quo relationship involves: 1) KNR will refer its clients to ASC for treatment and ASC will, in turn, refer its clients to KNR for legal representation; 2) KNR pressures its clients to treat with ASC rather than elsewhere, regardless of client preference; 3) KNR's failure to negotiate lower rates and fees for ASC; and 4) clients paying ASC narrative fees for purportedly drafting worthless reports. Plaintiff Naomi Wright (Wright) is the class representative. Wright has asserted claims for breach of fiduciary duty, unjust enrichment, and an alleged violation or violations of the OCSPA against Nestico and Redick. *Id.*, ¶ 124(B), Claims 5-6; 12. Specifically, Wright contends Nestico and Redick

unlawfully solicited her through ASC and persuaded her to accept conflicting legal representation and unwanted medical care via deception and coercion. *Id.* at ¶ 10.

The third class (the “Liberty Class”) alleges KNR recommends its clients take out loans with Liberty Capital Funding, LLC (Liberty) at exorbitant interest rates in order to receive some immediate recovery. *Id.* at ¶¶ 98-120. Plaintiff Matthew Johnson (Johnson) is the class representative. Johnson has asserted claims for fraud, breach of fiduciary duty, unjust enrichment, and alleged violations of the OSCPA against Nestico and Redick. Specifically, Johnson contends KNR counseled him to take out a loan with Liberty at an annual interest rate of 49%. *Id.* at ¶ 107. This loan included a \$50.00 delivery fee and a \$20.00 processing fee that also accrued interest at 49%. *Id.* Johnson further contends Nestico and Redick were instrumental in the formation of, and retained interest in, Liberty. *Id.* at ¶¶ 119-120.

Defendants Nestico and Redick assert: 1) This Court has already dismissed Williams’ fraud and unjust enrichment claims in regard to Defendant Nestico; 2) Williams and Johnson have asserted no factual allegations in their Second Amended Complaint to support their claims that Nestico and Redick personally committed fraud; 3) Nestico and Redick do not individually owe Plaintiffs a fiduciary duty; 4) Plaintiffs have asserted no facts that Nestico and Redick were unjustly enriched; and 5) The OCSPA does not apply to attorneys and law firms. *Def.’ Mot.*, ¶¶ 5-10.

B. CIV. R. 12(C) STANDARD

Civ. R. 12(C) deals with whether or not a party is entitled to judgment as a matter of law. *Peterson v. Teodosio*, 34 Ohio St.2d 161, 166, 297 N.E.2d 113, 1973 Ohio LEXIS 364 (9th Dist., 1973). “Under Civ. R. 12(C), dismissal is appropriate where a court (1) construes the material allegations in the Complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.” *Id.* See also, *Whaley v. Franklin County Bd. of Comm’rs*, 92 Ohio St.3d 574, 2001 Ohio 1287, 752 N.E.2d 267, 2001 Ohio LEXIS 2152 (Ohio, 2001); *Smith v. Nagel*, 2007 Ohio 2894, 2007 Ohio App. LEXIS 3678 (Ohio, 2007). The Court must grant a motion for judgment on the pleadings if, after taking the factual allegations in the complaint as true and disregarding unsupported conclusions, it finds Plaintiff can prove no set of facts that would justify granting relief. *King*

v. Semi Valley Sound, LLC, 2011 Ohio 3567, 2011 Ohio App. LEXIS 3014 (9th Dist., 2011); *Traylor v. Timber Top, Inc.*, 2016-Ohio-283, 2016 Ohio App. LEXIS 246 (9th Dist., 2016); *Sacksteder v. Senney*, 2012-Ohio-4452, 2012 Ohio App. LEXIS 3914, (2nd Dist., 2012).

C. PRIOR ORDER OF COURT

On March 16, 2017, this Court granted Nestico's Motion for Judgment on the Pleadings Regarding Plaintiff's First Amended Complaint and dismissed Plaintiff's claims of fraud and unjust enrichment against Nestico with prejudice. On April 5, 2017, following a hearing in which the parties argued their respective positions, this Court granted Plaintiff's renewed Motion for Leave to Plead Second Amended Complaint. After a stay was issued on May 12, 2017 and the case was reactivated on June 29, 2017, this Court again granted Plaintiff's Renewed Motion for Leave to Plead Second Amended Complaint. Further, this Court denied Plaintiff's Motion for Reconsideration of the Court's March 16, 2017 Order Regarding Dismissal of Claims Against Defendant Nestico as moot, as the Court had granted Plaintiff's Motion for Leave to Plead Second Amended Complaint. Plaintiffs correctly state that the Court's intention, by denying Plaintiff's Motion for reconsideration "as moot" rather than on the merits, was to provide Plaintiffs the opportunity to amend their fraud and unjust enrichment claims in their Second Amended Complaint. Therefore, this Court **VACATES** its prior order dismissing the fraud and unjust enrichment claims against Nestico, and will proceed to address these claims as amended, below.

D. PLAINTIFFS' FRAUD CLAIM AGAINST DEFENDANT NESTICO AND DEFENDANT REDICK

Plaintiffs Williams and Johnson assert Nestico and Redick should be personally liable for KNR's purported fraud. Williams' claim relates to the Investigation Fees Class and Johnson's claim relates to the Liberty Class.

1. WILLIAMS' FRAUD CLAIM REGARDING THE INVESTIGATION FEES

Williams' argument rests on her assertion that Nestico and Redick: 1) knew the investigation fee was not a legitimate fee; 2) knew each client's settlement statement itemizing the investigation fee was false; 3) intended for the investigation fee to be added to settlement

statements their clients would be required to execute; and 4) intended Williams and similarly situated clients would rely upon these misrepresentations and be damaged as a result. Nestico and Redick assert they are not personally responsible for the liability of KNR under Civ. R. 9(B). Nestico and Redick argue there is nothing in the Second Amended Complaint that demonstrates they personally made a fraudulent representation or withheld information.

Civ.R. 9(B) provides in pertinent part:

Fraud, mistake, condition of the mind. In all averments of fraud or mistake, **the circumstances constituting fraud or mistake shall be stated with particularity.** Malice, intent, knowledge, and other condition of mind of a person may be averred generally. (Emphasis added).

* * *

Both Plaintiff and Defendant Nestico rely upon the holding in *Centennial Ins. Co. v. Vic Tanny Int'l of Toledo, Inc.*, 46 Ohio App. 2d 137, 142 (6th Dist. 1975). In *Centennial*, the 6th District Court of Appeals held that for an officer of a corporation to be held personally liable for the same conduct for which his corporate principal is liable, the officer must have “intentionally or inadvertently [bound] himself as an individual.” *Id.* Ohio Courts have long been reluctant to disregard a corporate entity in favor of holding an officer personally liable. *North v. Higbee Co.*, 131 Ohio St. 507, 3 N.E.2d 391, (Ohio, 1936); *E.S. Preston Associates, Inc. v. Preston*, 24 Ohio St. 3d 7, 492 N.E.2d 441 (Ohio, 1986). Ohio Courts have consistently been willing to disregard the corporate entity “only where the corporation has been used as a cloak for fraud or illegality or where the sole owner has exercised such excessive control over the corporation that it no longer has a separate existence.” *E.S. Preston*, at 11, citing *North v. Higbee Co.* The Supreme Court of Ohio has held a corporate entity should not be disregarded unless justice cannot be served otherwise. *Auglaize Box Board Co. v. Hinton*, 100 Ohio St. 505, 518-519, 126 N.E. 881 (Ohio, 1919).

In the case at bar, in order to establish her claim of fraud, Williams must demonstrate that Nestico and Redick: 1) personally made a false statement (or withheld information); 2) they personally knew it was a false statement; 3) they personally intended for Williams to act in reliance upon it; and 4) Williams in fact acted upon it and was injured. *Cincinnati Bible*

Seminary v. Griffiths, 1 Dist. No. C-830867, 1984 Ohio App. LEXIS 11028, *6 (citing *Centennial* at 142.) This Court finds Plaintiffs' Second Amended Complaint asserts specific allegations that: 1) Nestico and Redick were aware the investigation fee was not appropriately charged to some, if not all, clients; *Second Amended Complaint* at ¶¶ 4, 88; 2) Nestico and Redick were personally aware their staff was instructed to engage MRS Investigations, Inc. and AMC Investigations, Inc. to provide "sign-up" services to KNR clients; *Id.* at ¶ 88; 3) Nestico and Redick instructed their staff to seek reimbursement from KNR clients for investigative fees, which were for services that benefitted KNR and not the client; *Id.* at ¶¶ 4, 88; 4) Nestico personally reviewed and approved the investigative fee on Williams' and others' settlement memorandums; *Id.* at ¶¶ 74-75; 5) Nestico intended the inclusion of the investigative fee on Williams' settlement memorandum would result in KNR collecting the fee; *Id.* at ¶¶ 73, 9; 6) Williams was damaged as a consequence of paying a fee for services she did not receive; *Id.* at ¶¶ 140, 145; and 7) Nestico and Redick were personally enriched by Williams paying the investigative fees because their interests align directly with KNR. *Id.* at ¶ 123.

This Court acknowledges these are *allegations* and not *facts*, as Defendants argue, but dismissal under Civ. R. 12(C) is only appropriate if this Court "1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and 2) finds *beyond doubt*, that the Plaintiff[s] could prove *no set of facts* in support of [their] claim that would entitle [them] to relief." *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 664 N.E.2d 931 (1996). (Emphasis added). Based on the forgoing, this Court determines Nestico and Redick's Motion for Judgment on the Pleadings Regarding Plaintiffs' Second Amended Complaint is not well-taken with respect to Williams' fraud claim involving the investigation fees and is hereby denied.

2. JOHNSON'S FRAUD CLAIM REGARDING THE LIBERTY CLASS

Johnson's argument rests on his assertion that Nestico and Redick misrepresented their relationship with Liberty Capital Funding and failed to disclose to Johnson and similarly situated clients their financial interest in Liberty Capital and its loans. Nestico and Redick assert they are not personally responsible for the liability of KNR under Civ. R. 9(B). Nestico and Redick argue there is nothing in the Second Amended Complaint that demonstrates they personally made a fraudulent representation or withheld information. This Court finds the Second Amended Complaint does not plead with particularity the elements of Johnson's fraud

claim so that it meets the standard required by Civ. R. 9(B). While there are references to emails Nestico was copied on and/or authored in which KNR's staff was directed to recommend Liberty Capital Funding, no references to Redick are made at all. This Court finds Johnson has failed to plead with particularity the specific representations Nestico and Redick made, to whom they made said representations, and to what end, in accordance with Civ. R. 9(B). Based on the foregoing, this Court determines Nestico and Redick's Motion for Judgment on the Pleadings Regarding Plaintiffs' Second Amended Complaint is well-taken with respect to Johnson's fraud claim involving the Liberty Class and is hereby granted.

E. PLAINTIFFS' BREACH OF FIDUCIARY DUTY CLAIMS

Plaintiffs assert that Nestico and Redick are the sole equity partners and controlling shareholders of KNR and therefore owed all KNR clients a fiduciary duty, which they breached. Plaintiffs contend an attorney-client relationship existed between themselves and Nestico and Redick, and further, even if no attorney-client relationship existed, Nestico and Redick still owed their firm's clients a fiduciary duty because they exercised complete control and direction of KNR.

1. ATTORNEY-CLIENT RELATIONSHIP BETWEEN PLAINTIFFS AND NESTICO AND REDICK

Plaintiffs' Second Amended Complaint alleges an attorney-client relationship existed between Nestico and Redick and the Plaintiffs, and therefore alleges a fiduciary relationship existed. *Costin v. Wick*, 9th Dist. Lorain, No. 95CA006133, 1996 Ohio App. LEXIS 233, *8 (Ohio Code of Professional Responsibility acknowledges a fiduciary relationship exists between attorney and client). Plaintiffs contend that Nestico and Redick had ultimate control over KNR and used their names in the name of the legal corporation, and therefore it would be reasonable for clients to assume they were represented by KNR *and* Nestico and Redick, personally. This Court finds there exists no evidence in Plaintiffs' Second Amended Complaint to demonstrate an attorney-client relationship existed between Plaintiffs and Nestico and Redick, individually. There are no allegations that Plaintiffs ever directly communicated or otherwise interacted with Nestico and/or Redick before, during, or after their representation by KNR. Based on the foregoing, this Court determines no attorney-client privilege existed between Plaintiffs and Nestico and Redick, individually.

2. NESTICO AND REDICK'S FIDUCIARY DUTY AS THE CONTROLLERS OF KNR

Plaintiffs contend that Nestico and Redick have a fiduciary duty to all of KNR's clients, regardless of whether an attorney-client relationship existed between them individually. Plaintiffs cite to the fact that because Nestico's and Redick's names are contained within the company name, they created an aura of authoritativeness and trustworthiness, implemented regimented policies and procedures within KNR, and "used their domination and manipulation of information available only to them to deceive and defraud their clients." *Plaintiffs' Motion in Opposition*, at 15. This Court reasons that merely engaging a certain company does not automatically trigger an individual relationship with that company's namesake(s), particularly when a company is as large as KNR. However, the existence of a fiduciary duty is a question of fact to be determined during the course of discovery, not at the pleadings stage, and this Court does not find, "beyond doubt, that Plaintiff[s] could prove no set of facts in support of [their] claim." *Thompson v. Cent. Ohio Cellular*, 1996 Ohio App. LEXIS 3670, quoting *Lin v. Gatehouse Constr. Co.* (1992), 84 Ohio App. 3d 96, 99, 616 N.E.2d 519. This Court must apply the standard of review in ruling upon a motion for judgment on the pleadings pursuant to Civ. R. 12(C), consistently upheld by the Supreme Court of Ohio. *See, Calhoun v. Supreme Court of Ohio* (1978), 61 Ohio App.2d 1, 15 Ohio Op. 3d, 399 N.E.2d 559; *Vaught v. Vaught* (1981), 2 Ohio App. 3d 264, 2 Ohio B. Rep. 293, 441 N.E.2d 811; *Peterson v. Teodosio* (1973), 34 Ohio St. 2d 161, 63 Ohio Op. 2d 262, 297 N.E.2d 113. Based on the foregoing, the Court determines the existence of a fiduciary duty between Nestico and Redick and KNR's clients is a question of fact to be determined during the discovery stage.

F. PLAINTIFFS' UNJUST ENRICHMENT CLAIMS AGAINST NESTICO AND REDICK

Plaintiffs assert Nestico and Redick were personally unjustly enriched as a result of their contracts with KNR. In order to prevail on an unjust enrichment claim, the Plaintiffs must show: 1) plaintiff conferred a benefit on defendant; 2) defendant knew of such benefit; and 3) defendant retained the benefit under circumstances where it would be unjust to do so without payment. *Metz v. Am. Elec. Power Co.*, 172 Ohio App. 3d 800, 2007-Ohio-3520 (10th Dist., 2007); *Chestnut v. Progressive Cas. Inc. Co.*, 166 Ohio App.3d 299, 2006-Ohio-2080, (8th Dist., 2006); *Acquisition Services, Inc. v. Zeller*, 2013-Ohio-3455 (2nd Dist., 2013). Plaintiffs contend that as a result of the investigation fee being charged to Williams, KNR's referral of

ASC to Wright, and the referral of Liberty Capital Funds to Johnson, KNR received a benefit; ergo, Nestico and Redick personally received a benefit, conferred on them by Plaintiffs.

1. WILLIAMS' UNJUST ENRICHMENT CLAIM AGAINST NESTICO AND REDICK

Williams alleges the \$50.00 which was charged to her was income to KNR it would not have received but for collecting the investigation fee from her. Additionally, Williams alleges Nestico and Redick were well aware of this investigation fee, even when no investigation was performed. This Court reasons if the investigation fee was unjust, so was KNR's retention of it. Construing the claims plead by Williams in the Second Amended Complaint as true, this Court finds Williams has sufficiently pled her claim for unjust enrichment against Nestico and Redick in regards to the investigation fee.

2. WRIGHT'S UNJUST ENRICHMENT CLAIM AGAINST NESTICO AND REDICK

Wright alleges KNR is pursuing her for fees it claims it is owed under their representation contract. Wright contends KNR is seeking to enforce a lien against her which confers a benefit on KNR, and therefore, Nestico and Redick personally. Wright argues the lien is the result of her terminating KNR as counsel on the basis of Defendants' unjust conduct, at issue here, and therefore Defendants' do not have a legal right to the benefit of the lien. This Court reasons Wright's allegations of a quid pro quo relationship between ASC and KNR, if construed as true, amount to a sufficiently pled claim of unjust enrichment against Nestico and Redick in regards to the chiropractic class.

3. JOHNSON'S UNJUST ENRICHMENT CLAIM AGAINST NESTICO AND REDICK

Johnson alleges Nestico and Redick held an interest in Liberty Capital, and funds paid to Liberty Capital are unjustly paid as a result of its unlawful relationship with KNR. As with his fraud claim, Johnson's argument rests on his assertion that Nestico and Redick misrepresented their relationship with Liberty Capital Funding and failed to disclose to Johnson (and similarly situated clients) their financial interest in Liberty Capital and its loans. Specifically, Johnson alleges Liberty Capital made "kickback" payments to KNR for every client KNR referred to Liberty Capital. SAC at ¶ 4. Johnson further alleges Nestico and Redick, as the controlling and managing partners of KNR, were aware of this unlawful benefit and directed their staff to continue collecting it, enriching KNR and themselves, individually. Where Johnson's allegations do not meet the particularity requirement of Civ. 9(B) as they pertain to his fraud claim, a claim for unjust enrichment requires no such particularity.

Therefore, Johnson's allegation of a quid pro quo relationship between Liberty Capital Funding and KNR, if construed as true, amount to a sufficiently pled claim of unjust enrichment against Nestico and Redick in regards to the Liberty Capital class.

G. THE OHIO CONSUMER SALES PRACTICES ACT AND NESTICO AND REDICK

Each Plaintiff asserts claims against Nestico and Redick under the Ohio Consumer Sales Practices Act (OCSPA). Defendants contend these claims fail as a matter of law because the statute does not include attorneys and clients in the definition of "consumer transaction." O.R.C. §1345.01(A) provides: "Consumer transaction" does not include transactions between **attorneys**, physicians, or dentists and **their clients** or patients." (Emphasis added). The statute specifically excludes transactions between attorneys and clients, and therefore the Court reasons the drafter's intent was for the OCSPA to be inapplicable in the matter at hand. *See, Patton v. Diemer*, 35 Ohio St. 3d 68, 70 (1988) (where legislature chose not to include an exception it must be presumed none was intended, and vice-versa). Plaintiffs' argument rests upon the idea that Nestico and Redick were not "actually engaged in the practice of law" when they engaged in the alleged conduct that gives rise to their claims. However, Plaintiffs have previously argued that an attorney-client relationship *was present* between KNR's clients and Nestico and Redick individually (which this Court has already rejected, above), and, consistent with common sense, any involvement Nestico and Redick had or are alleged to have had with this lawsuit is directly in their capacities as managing partners in a major law firm. To now argue Nestico and Redick were not "actually engaged in the practice of law" is incongruous. Moreover, Ohio courts have consistently held the OCSPA does not apply to attorneys and law firms. *See, e.g., Patton, infra.; Burke v. Gammarino*, 108 Ohio App. 3d 138 142 (1st Dist. 1995) (where OCSPA does not apply to transactions between attorneys and their clients); *Bard v. Society Nat'l Bank*, 1998 Ohio App. LEXIS 4187 (10th Dist. 1998) (definition of "consumer transaction" does not include attorneys and their clients); *Lee v. Traci*, 8th Dist. No. 65368, 1994 Ohio App. LEXIS 2384 ("[I]t is clear that transactions between attorneys and their clients, which is the basis for the claim at issue, are not actionable under the [OCSPA] by virtue of the specific exclusion of attorney-client transactions from the definition of a deceptive act or practice in connection with a consumer transaction."). Based on the following, this Court finds Plaintiffs' claims under the OCSPA fail as a matter of law.

COURT ORDERS

This Court **VACATES** its prior order of March 16, 2017, dismissing the fraud and unjust enrichment claims against Nestico.

Defendants' Motion for Judgment on the Pleadings regarding Williams' fraud claim against Nestico and Redick is not well-taken and must be **DENIED**.

Defendants' Motion for Judgment on the Pleadings regarding Johnson's fraud claim against Nestico and Redick is well-taken and must be **GRANTED**.

Defendants' Motion for Judgment on the Pleadings regarding Plaintiffs' breach of fiduciary duty against Nestico and Redick is not well-taken and must be **DENIED**.

Defendants' Motion for Judgment on the Pleadings regarding Plaintiffs' unjust enrichment claims against Nestico and Redick is not well-taken and must be **DENIED**.

Defendants' Motion for Judgment on the Pleadings regarding Plaintiffs' OCSPA claims against Nestico and Redick is well-taken and must be **GRANTED**.

The **IN-PERSON** status conference of **October 16, 2017 at 1:00 p.m.** is hereby confirmed.

IT IS SO ORDERED



JUDGE ALISON BREAU

CC: ALL PARTIES OF RECORD