

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,	)	Case No. 2016 09 3928
	)	
Plaintiffs,	)	Judge James Brogan
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	<b><u>EXHIBIT E TO DEFENDANTS' BRIEF IN</u></b>
	)	<b><u>OPPOSITION TO PLAINTIFFS' MOTION FOR</u></b>
Defendants.	)	<b><u>LEAVE TO FILE FOURTH AMENDED</u></b>
	)	<b><u>COMPLAINT</u></b>
	)	

Respectfully submitted,

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Redick

**CERTIFICATE OF SERVICE**

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *EXHIBITS TO DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT* was filed electronically with the Court on this 17th day of September, 2018. The parties, through counsel, may access this document through the Court's electronic docket system.

/s/ James M. Popson

James M. Popson (0072773)

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiffs,	)	JUDGE PATRICIA COSGROVE
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	<u>DEFENDANTS' MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT ON PLAINTIFF MATTHEW</u>
Defendants.	)	<u>JOHNSON'S INDIVIDUAL CLAIMS IN THE</u>
	)	<u>THIRD AMENDED COMPLAINT</u>

Pursuant to Ohio R. Civ. P. 56(B), Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick ("Defendants") respectfully move this Court for summary judgment on Plaintiff Matthew Johnson's individual claims in the Third Amended Complaint. Defendants are entitled to judgment as a matter of law on Plaintiff's breach of fiduciary duty (Claim Seven) and unjust enrichment (Claim Eight). A Memorandum in Support of this motion and a sample Judgment Entry are attached.

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IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.	)	CASE NO. CV-2016-09-3928
	)	
Plaintiff,	)	JUDGE PATRICA COSGROVE
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v.	)	
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KISLING, NESTICO & REDICK, LLC,	)	<b><u>MEMORANDUM IN SUPPORT OF</u></b>
et al.,	)	<b><u>DEFENDANTS' MOTION FOR SUMMARY</u></b>
	)	<b><u>JUDGMENT ON PLAINTIFF MATTHEW</u></b>
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	)	<b><u>THIRD AMENDED COMPLAINT</u></b>
	)	

I. **INTRODUCTION**

Plaintiff Matthew Johnson's lawsuit is based upon conjured conspiracy theory that Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick ("Defendants") had a financial and ownership interest in a lending company called Liberty Capital Funding LLC ("Liberty Capital"); or that Defendants steered Plaintiff to Liberty Capital for a pre-settlement loan because Defendants stood to benefit financially from such a loan via a kickback" payment from Liberty Capital. for steering Plaintiff to Liberty Capital. There are no facts to support this theory, and salacious innuendo is insufficient to create a genuine issue of material fact.

Affidavits from Nestico, Redick, Plaintiff Johnson's, and Ciro Cerrato, the owner of Liberty Capital, and the filing with the Florida Secretary of State, establish that Defendants did not have an ownership or financial interest in Liberty Capital and that there were no kickbacks to Defendants, and no self-dealing by Defendants. Plaintiffs have nothing to refute these facts and further discovery would serve only as tool to harass Defendants. Plaintiff cannot prove his breach of fiduciary duty and unjust enrichment claims. Therefore, Defendants are entitled to summary judgment as a matter of law on these claims.

## II. FACTUAL BACKGROUND

### A. Plaintiff voluntarily obtained a loan from Liberty Capital.

Plaintiff was involved in an automobile accident that resulted in personal injuries.<sup>1</sup> (Third Am. Compl., ¶ 13.) Plaintiff retained KNR as counsel for this personal injury matter. (Jenna Wiley Affidavit, ¶ 1, attached as Ex. A.) While a client of KNR, Plaintiff twice requested information from KNR regarding a possible advanced loan on his claim. (*Id.*, ¶¶ 4 and 7.) He first sought information about an interest free loan, which was a distribution from the medical payments coverage available under his insurance policy with Erie Insurance. (*Id.*, ¶ 4.) KNR worked with Plaintiff to obtain his medical payments coverage. (*Id.*, ¶¶ 5-6.)

After having exhausted his unemployment benefits and medical payments coverage, Plaintiff asked about a financial boost while his claim was pending. (*Id.*, ¶ 7.) In response, KNR informed Plaintiff that his only option was to obtain a loan against his case. (*Id.*, ¶ 8.) KNR explained to Plaintiff that he would have to pay interest on the loan, which was “essentially...paying money to borrow money.” (*Id.*) Based on this, KNR provided Plaintiff with Liberty Capital’s contact information. (*Id.*, ¶ 9.) Plaintiff responded that he would be willing to look into this loan arrangement. (*Id.*, ¶ 8.) Plaintiff proceeded to contact Liberty Capital and eventually purportedly received a \$250 loan from Liberty Capital at an annual interest rate of 49%, compounded semi-annually. (*Id.*, ¶¶ 10-12; Third Am. Compl., ¶ 13.) The 49% interest rate is stated in bold face type on page 1 of the loan agreement, above where Plaintiff signed his initials. (Wiley Affidavit, Ex. A.) Furthermore, only after Plaintiff completed the application and returned it to Liberty Capital did KNR receive a copy, and then, only to acknowledge that Plaintiff had applied for and received a loan. (*Id.*, KNR03287.)

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<sup>1</sup> Defendants are not admitting all of the allegations in the Third Amended Complaint, except as expressly admitted in their Answers. In fact, Defendants denied many of the allegations. (Defendants’ Answers.) Nevertheless, Defendants cite to some of these contested allegations in order to satisfy the summary judgment standard of construing all facts in favor of Plaintiff. Even construing these contested facts in Plaintiff’s favor, there is still no genuine issue of material fact for the jury to decide. Defendants are still entitled to summary judgment.

**B. Without any supporting facts, Plaintiff wildly speculates about alleged kickbacks between KNR and Liberty and self-dealing by KNR.**

Without any facts as support, Plaintiff then alleges that Defendants assisted in forming Liberty Capital. (Third Am. Compl., ¶ 133.) In addition, Plaintiff alleges, based on pure innuendo, that Defendants had a financial or ownership interest in Liberty Capital. (*Id.*, ¶ 134.) As a result of this alleged relationship, Defendants purportedly received alleged kickbacks from Liberty Capital or received a financial benefit or kickback from each loan a KNR client made with Liberty Capital. (*Id.*)

Plaintiff then contends that Defendants failed to disclose these facts. (*Id.*, ¶¶ 13 and 130.) As a result, Defendants allegedly breached their fiduciary duty and were unjustly enriched. (*Id.*, Claims 7-8.)

**C. Defendants did not and do not have a financial interest in Liberty Capital.**

The actual facts tell a completely different story – one that cannot be disputed and one that cannot support Plaintiff's claims. Defendants had no ownership or financial interest in Liberty Capital. (Nestico Affidavit, ¶ 2, attached as Ex. B; Redick Affidavit, ¶ 2, attached as Ex. C; Ciro Cerrato Affidavit, ¶¶ 1-2, attached as Ex. D., Robert Horton Affidavit attached as Ex. F, ¶¶ 34-38.) Defendants never received any financial benefit or alleged kickback when KNR clients use Liberty Capital to secure an advance on a potential future recovery. (Nestico Affidavit, ¶ 3; Redick Affidavit, ¶ 3; Cerrato Affidavit ¶ 3; Horton Affidavit, ¶36.) Defendants never were involved in any self-dealing with any account at, or client of, Liberty Capital or KNR. (Nestico Affidavit, ¶ 4; Redick Affidavit, ¶ 4; Horton Affidavit, ¶¶34, 37.) In other words, Defendants never received any financial benefit from Liberty Capital for any loan transaction between Liberty Loan and any of KNR's clients. (*Id.*; Cerrato Affidavit, ¶ 4.) Defendants did not form (e.g., drafting and filing of the articles of incorporation, opening up bank accounts, drafting documents, contributing assets or money, etc.), or assist in forming, Liberty Capital. (Nestico

Affidavit, ¶ 2; Redick Affidavit, ¶ 2; Horton Affidavit, ¶¶34-38; Liberty Capital's Florida Secretary of State Documents, attached as Ex. A to Cerrato Affidavit.)

**D. This Motion is Ripe for Adjudication**

Plaintiff Johnson has been a party to this case since July 5, 2017 (Second Amended Complaint). Plaintiff Johnson's discovery responses served on October 24, 2017, identified no evidence – documentary or otherwise – to support the theories of liability alleged in the Complaint. (Affidavit of James M. Popson and accompany electronic mail exhibits, attached as Ex. G). Plaintiff has not produced any documents whatsoever in response to discovery requests in this matter.

Absent any evidence to support these claims, Defendants filed a Motion for Leave to file this Motion for Summary Judgment in November 3, 2017, and attached most of the evidence described herein establishing that Defendants never had an ownership interest in Liberty Capital and never received any “kickback payments” as recklessly and falsely alleged by Johnson. Nor are Defendants in possession of any documents establishing the alleged relationship that simply does not exist. At a hearing on January 5, 2018, the Court granted Plaintiff's counsel 60 days to secure the deposition testimony of Mr. Cerrato who is apparently a resident of Florida. Plaintiff's counsel has failed to do so, and claims that Mr. Cerrato is evading service of a subpoena.

Most recently, Plaintiff's counsel has asserted (again, recklessly and falsely) that Defendants are somehow “complicit” in Mr. Cerrato's uncooperative behavior. (See Ex. G, Affidavit of James M. Popson and accompany electronic mail exhibits). The basis for this assertion is the mere fact that Defense counsel was able to secure an affidavit from Mr. Cerrato, while Plaintiff counsel has been unable to secure similar cooperation from the witness. (Id.) Defense counsel has provided the last known address and telephone number of Mr. Cerrato. (Id.) Apparently Plaintiff counsel has located the witness's business office and had a telephone conversation with him, but has been unable, or unwilling to expend the resources necessary to properly serve the witness.



Recognizing that he has failed to comply with the 60 day deadline, Plaintiff counsel has now taken the position that *Defense Counsel* is required to contact Mr. Cerrato and *advise him* to cooperate with Plaintiff's efforts to serve him. Plaintiff has falsely accused the witness of wrong-doing, and is now attempting to impose unwarranted discovery burdens on Defendants because the witness has (not surprisingly) taken offense and does not wish to speak to him.

Defense counsel properly responded that he is not counsel for Mr. Cerrato and cannot advise the witness with regard to accepting service of a subpoena. It is not the responsibility of a party to track down a third party witness and serve a subpoena – regardless of whether the witness is in Ohio or a foreign jurisdiction. Defendants have met their obligation to cooperate in discovery as it relates to this issue by providing the last known address and telephone number of the witness. Nevertheless, Plaintiff counsel has accused Defendants of being “complicit” in the witness's obstruction of discovery. The effort and costs associated with the task of service of *Plaintiff's* subpoena properly rests with the party that issued the subpoena. No authority exists for the proposition that a party can be compelled to participate in serving of a subpoena on a third party witness – even if the third party witness is improperly evading service.

Despite Plaintiff counsel's desperate effort to portray the facts otherwise, Defendants have not attempted to obstruct discovery on Mr. Cerrato and should not be subjected to any adverse consequences as a result of Plaintiff's failure to serve him. This Motion would and should be granted even if the Court ignored the affidavit of Mr. Cerrato submitted in support of this Motion. The affidavits of Ms. Wiley, Mr. Nestico, Mr. Redick, and Mr. Horton, as well as the public documents available from the Florida Secretary of State, are more than sufficient to support summary judgment as it relates to Plaintiff Johnson's fabricated claims.

This motion is ripe for consideration. Plaintiff should not be afforded an unlimited amount of time to respond merely because they cannot obtain service on Mr. Cerrato. This is particularly true where Plaintiff has *failed to produce any evidence whatsoever* in response to discovery requests asking for anything at all that supports these sinister allegations of wrong-

doing by Defendants. The failure to do so suggests that Plaintiff never had a good faith basis to bring these claims to begin with, and only filed the claims as a platform to launch a fishing expedition for purposes of embarrassing Defendants, and as a tool of harassment to increase Defendants' costs in defending phantom allegations of misconduct.

### III. ANALYSIS AND ARGUMENT

#### A. Plaintiff cannot offer evidence of kickbacks and self-dealing by Defendants.

Plaintiff simply offers innuendo and conjecture with regard to the claim that Defendants received kickbacks from the Liberty Capital loans and/or engaged in self-dealing. For example, Plaintiff contends: "The allegations above support a strong inference that Defendants assisted in Liberty Capital's formation." (Third Am. Compl., ¶ 133.) Plaintiff also asserts: "The allegations above support a strong inference that Defendants retained an ownership interest in Liberty Capital or obtained a kickback benefits for referring KNR clients for loans." (*Id.*, ¶ 134.). Similar statements are set forth in Plaintiff's discovery responses. "At this time and subject to the above objections, Plaintiff refers the Defendant to the documents cited in and quoted from in the Complaint showing that Nestico directed KNR attorneys to recommend Liberty Capital to KNR clients only weeks after the company was formed, and weeks after he had asked KNR attorneys to send him the agreements that KNR used with other loan companies, including the KNR emails quoted in paragraphs 101–118." (Ex. E, Response to Interrogatory No. 1).

These allegations merely invite conjecture and speculation based upon innuendo. Referring a client to a "newly formed" lender does not suggest, much less prove, an improper relationship between the attorney and the lender. Reviewing agreements with other loan companies prior to recommending a "newly formed" company to clients is precisely what one would expect an attorney to do. Plaintiff is not entitled to an *assumption* of some insidious motive to overcome summary judgment. He must offer *facts* demonstrating either ownership or illicit payments, and there are no *facts* to back up these allegations. Indeed, the affidavits of Nestico, Redick, Wiley, and Cerrato establish, the allegations are completely false.

No amount of discovery will change this. In fact, Plaintiff's responses to Defendants' Interrogatories on the "inference" allegations above provide no additional support other than the factually deficient allegations in the Third Amended Complaint. (Plaintiff's Responses to KNR's First Set of Interrogatories to Plaintiff Johnson, No. 22 and 23, a copy of which is attached as Ex. E.)<sup>2</sup> Plaintiff cannot rely only on false "inference" allegations in the Third Amended Complaint to defeat summary judgment. See *Plikerd v. Mongeluzzo*, 73 Oho App. 3d 115, 120-121, 596 N.E.2d 601 (3rd Dist. 1992) ("The allegations of the complaint are not sufficient to defeat a motion by the defendant for summary judgment. The plaintiff must support the allegations with counteraffidavits or other materials.") Because of the lack of factual allegations, this is merely a fishing expedition that is not supported in fact or law.

Black's Law Dictionary defines self-dealing and kickbacks. Self-dealing is "[p]articipation in a transaction that benefits oneself instead of another who is owed a fiduciary duty." Black's Law Dictionary. A kickback is "[a] return of a portion of a monetary sum received, esp. as a result of coercion or secret agreement." *Id.* None of the above speculation establishes either a kickback or self-dealing. Further, as outlined in Nestico, Redick, and Cerrato's affidavits, there are no facts that can establish either a kickback scheme (there was no money exchanged from Defendants to Liberty Capital for Liberty Capital to return a portion of it to Defendants) or self-dealing (Defendants received no financial benefit from Plaintiff's Liberty Capital loan). Indeed, the facts establish the opposite. Based on the actual facts rather than innuendo, Plaintiff's entire argument of a grand scheme of kickbacks and self-dealing has no foundation.

Plaintiff Johnson and his counsel filed this claim without sufficient evidence to form a good faith basis to believe the claim was meritorious. Merely referring a client to a service vendor does not support an inference that an attorney maintains a financial interest in the vendor, nor does it raise an inference that "kick-backs" were paid to the attorney or that some

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<sup>2</sup> Interrogatory No. 22 refers to paragraph 119 of the Second Amended Complaint and Interrogatory No. 23 refers to paragraph 120 of the Second Amended Complaint. Paragraph 119 is now paragraph 133 of the Third Amended Complaint and Paragraph 120 is now paragraph 134 of the Third Amended Complaint.

illicit “scheme” is afoot. Plaintiff (more specifically Plaintiff’s counsel) has chosen to use words such as “kick-back” and “scheme” in an effort to sensationalize these false allegations, and leverage the case by garnering adverse media attention directed at Defendants. This claim and the salacious terms selected to support it were filed for purposes of harassment and to drive up the cost of litigation. Plaintiff has failed to back up these sensational allegations with real facts. Thus, Defendants are entitled to judgment as a matter of law, and possibly further relief pursuant to Civ. R. 11 and R.C. 2323.51.

**B. The breach of fiduciary duty claim should be dismissed as a matter of law.**

Plaintiff asserts a breach of fiduciary duty claim. (Third Am. Compl., Claim 7.) The elements of a breach of fiduciary duty claim are: (1) the existence of a duty arising from a fiduciary relationship; (2) the failure to observe the duty; and (3) an injury proximately resulting. *Vontz v. Miller*, 1st Dist. No. C-150693, 2016-Ohio-8477, ¶ 28. Again, Plaintiff sole basis for his breach of fiduciary duty claim is that Defendants had an ownership or financial interest in Liberty Capital and that they stood to benefit from Plaintiff’s loan with Liberty Capital. (Third Am. Compl., ¶¶ 133-134.) But as already established the facts do not support this assertion.

Plaintiff has *no evidence* to refute Defendants’ evidence that: (1) Defendants had no financial or ownership interest in Liberty Capital; (2) Defendants received no kickbacks or engaged in self-dealing; (3) Defendants received no financial benefit from the Liberty Capital loan; and (4) Defendants did not form (e.g., drafting and filing of the articles of incorporation, opening up bank accounts, drafting documents, contributing assets or money, etc.) or assist in forming Liberty Capital. (Nestico Affidavit, ¶¶ 2-4; Redick Affidavit, ¶¶ 2-4; Cerrato Affidavit, ¶¶ 2-4.) With these facts undisputed, Plaintiff’s innuendos cannot be a basis for a breach of fiduciary duty claim. There are simply *no facts* to support such a claim. Defendants are entitled to summary judgment on the breach of fiduciary duty claim as a matter of law.

C. **Plaintiff's unjust enrichment claim should be dismissed as a matter of law.**

Plaintiff asserts an unjust enrichment claim against Defendants. (Third Am. Compl., Claim 8.) The elements of an unjust enrichment claim are: (1) plaintiff conferred a benefit on defendant; (2) defendant knew of such benefit; (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, ¶ 43 (10th Dist.). Plaintiff contends that by agreeing to a loan with Liberty Capital in which Defendants allegedly had a financial interest, he conferred a benefit on Defendants, which Defendants should not be able to retain. (Third Am. Compl., ¶¶ 200-201.) The undisputed facts prove otherwise.

Once again, because Defendants had no financial or ownership interest in Liberty Capital, any loans between Plaintiff (or any of KNR's clients) and Liberty did not unjustly enrich Defendants. In addition, Plaintiff cannot offer any evidence of kickbacks or self-dealing regarding these loans no matter the amount of discovery that he seeks. Without this evidence, there is no unjust enrichment. Defendants are entitled to summary judgment on Plaintiff's unjust enrichment claim as a matter of law.

**IV. CONCLUSION**

For the foregoing reasons, Defendants are entitled to summary judgment on Plaintiff Johnson's claims as a matter of law and the claims should be dismissed with prejudice. Discovery will not change this outcome. Further, Defendants reserve the right to seek further relief pursuant to Civ. R. 11 and/or R.C. 2323.51.

Respectfully submitted,

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Counsel for Defendants

**CERTIFICATE OF SERVICE**

A copy of the foregoing Defendants' Motion for Summary Judgment was filed electronically with the Court on this 13th day of March 2018. The parties may access this document through the Court's electronic docket system.

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IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.	)	CASE NO. CV-2016-09-3928
	)	
Plaintiffs,	)	JUDGE PATRICIA COSGROVE
	)	
v.	)	
	)	<b><u>JUDGMENT ENTRY AND ORDER</u></b>
KISLING, NESTICO & REDICK, LLC,	)	<b><u>GRANTING MOTION FOR SUMMARY</u></b>
et al.,	)	<b><u>JUDGMENT ON PLAINTIFF MATTHEW</u></b>
	)	<b><u>JOHNSON'S INDIVIDUAL CLAIMS IN THE</u></b>
Defendants.	)	<b><u>THIRD AMENDED COMPLAINT</u></b>
	)	

Based on Defendants' Motion for Summary Judgment on Plaintiff Matthew Johnson's Individual Claims in the Third Amended Complaint, and after having fully reviewed and analyzed all briefs on this Motion, Defendants' Motion is well taken and granted in its entirety. There are no genuine issues of material fact that would prevent summary judgment on Plaintiff Johnson's claims for breach of fiduciary duty and unjust enrichment. Therefore, it is ordered and decreed that Defendants are entitled to summary judgment on Plaintiff Johnson's claims as a matter of law and those claims are hereby dismissed with prejudice.

IT IS SO ORDERED:

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Judge Patricia Cosgrove



IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS et al.,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiffs,	)	JUDGE ALISON BREAUX
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC,	)	<u>AFFIDAVIT OF JENNA WILEY</u>
et al.,	)	
	)	
Defendants.	)	

State of Ohio                    )  
  ) ss:  
County of Summit            )

I, Jenna Wiley, being first duly sworn, depose and state that the following is based upon my firsthand knowledge and the review of records and is true and accurate to the best of my belief and recollection:

1. I am a paralegal for Defendant Kisling, Nestico & Redick, LLC ("KNR"). My maiden name was Jenna Sanzone. Matthew Johnson retained KNR to represent him in his claim based on an automobile accident in which he suffered injuries. I was the paralegal working with Paul Steele, the attorney who initially represented Mr. Johnson with respect to injuries Mr. Johnson sustained in his 2012 auto accident.

2. Based on my experience working with attorneys employed by KNR, if a client needed money to pay medical and other bills before completing treatment or if it appeared settlement was not possible in the immediate future, the attorney or paralegal would explain the options available to the client including sending letters of protection, accessing no-fault medical payments coverage if purchased and available under the client's automobile policy, as well as pre-settlement loans available through third-party vendors.

Exhibit A

3. Based on my experience working with KNR attorneys as well as my own practices, KNR would advise clients against taking out loans unless the client needed the money immediately or if the client had no other options such as letters of protection or the availability of medical payments coverage that would not result in additional cost.

4. On April 1, 2012, Mr. Johnson sent me an email requesting information about an "interest free" loan that would be against a settlement of his claim that, from my prior communications with Mr. Johnson, I understood to mean a distribution from the medical payments coverage available under the insurance policy issued by Erie Insurance to Mr. Johnson, which would have to be paid back to Erie out of any settlement to satisfy Erie's contractual right of subrogation. He requested information about the loan because he was not working and needed to pay his rent and his loan on his truck. A true and accurate copy of the April 1, 2012 email is attached hereto as Exhibit 1 that KNR received and maintains in the ordinary course of its business.

5. On May 6, 2012, consistent with KNR's advice and Mr. Johnson's request, I informed him that I would continue our efforts to obtain the remaining balance owed him under his medical payments coverage to assist him with his financial affairs. The May 6, 2012 is included in the email chain attached hereto as Exhibit 1.

6. On May 10, 2012, in response to Mr. Johnson's email of May 9, 2012 advising that he had nearly finished with his chiropractic treatment, I advised him that I would continue to look for his remaining medical payments check and inform him as soon as it came in. A copy of the May 10, 2012 email is attached hereto as Exhibit 2 that KNR received and maintains in the ordinary course of its business.

7. On July 16, 2012, Mr. Johnson, having exhausted his unemployment benefits and medical payments coverage, sent another email asking about a “financial boost” while his claim was pending. He sent this email because of his outstanding bills. A true and accurate copy of the July 16, 2012 email is attached hereto as Exhibit 3 that KNR sent, received, and maintains in the ordinary course of its business.

8. On the same day, I responded that: “The only option available is for you to take out a loan against your case, but you have to pay interest on it ...so essentially you’re paying money to borrow money.” Mr. Johnson replied: “I’d be willing to look into it to see how worth it it would be to help my [sic] get ahead.” Exhibit 3.

9. In response to Mr. Johnson’s request, I provided him with Liberty Capital Funding LLC’s information. Exhibit 3.

10. Mr. Johnson contacted Liberty that day, and that afternoon, I received an email from Liberty requesting additional information regarding the case needed to evaluate Mr. Johnson’s loan application as set forth in the email attached hereto as Exhibit 4 that KNR received, sent and maintains in the ordinary course of its business.

11. On July 17, 2012, I received an email from Liberty attaching a copy of the loan papers already reviewed, initialed and executed by Mr. Johnson requesting that Mr. Steele acknowledge Mr. Johnson’s receipt of a pre-settlement loan in the amount of \$250.00. True and accurate copies of this email and the loan documents are attached as Exhibits 5 and 6 that KNR received and maintains in the ordinary course of its business.

12. Paul Steele signed the acknowledgment as requested, and I returned it by email to Liberty. To my knowledge, there were no further communications between KNR,

Liberty and Mr. Johnson regarding the loan before Liberty distributed the \$250.00 directly to Mr. Johnson.

Affiant Further Sayeth Naught.

*Jenna Wiley*  
JENNA WILEY

Sworn to before me and subscribed in my presence this 1 day of November, 2017.

*Kimberly M. Major*  
Notary Public



KIMBERLY M. MAJOR  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in  
Portage County  
My Comm. Exp. 3/13/22

Johnson, Mr. Matt Case #: 219935 ( )	Case Type: A Class: CH	DOI: 1/13/2012 Assigned: MARK	LIM Date: 1/11/2014 Date Opened: 2/20/2012
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3/24/2017 04:18 PM

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Case Note - Page 20 of 152

Date: 04/02/2012 10:51 AM Staff: PAUL Topic: E-Mail Case Status

From: Matthew Johnson [mailto:moose4u2nv@gmail.com]  
 Sent: Sunday, April 01, 2012 9:22 PM  
 To: Jenna Sanzone  
 Subject: Couple questions

Hey Jenna it's Matt Johnson I didn't want to call and bug you tomorrow so I thought I'd just send you an email.  
 I talked to Paul and in conversation told him that my unemployment is ending April 7th and no income will be coming in till the numbness is out of my arms and left leg from the pinched nerves. He mentioned an interest free loan that would go against the settlement from my insurance company. I've been losing sleep and worrying about bills that are going to be coming in April especially my truck payment and rent I would like to get 5k if possible to hold me over and pay my rent ahead a little and my truck so I know my major bills and need as in a roof over my head and a vehicle to get to doc appts and to seek work when ready.  
 If you could look into this for me that would be awesome I really just don't want to lose everything I have over something that's not my fault and out of my control. Between you and me all this stuff has my extremely depressed and don't even feel like myself anymore. I've been doing everything the docs tell me and just want to get better. I hope you guys can make something happen it would definately put me at ease for awhile. Thank you for all you guys are doing I really appreciate the service you have helped me obtain the docs have been great. Have a good day.

Matt

Exhibit 1

7/14/2017

RE: I remember

**RE: I remember**

Jenna Sanzone

Sent: Sunday, May 06, 2012 11:39 AM

To: Matthew [Johnson]

You're not a bother at all. We are still waiting on the remaining medical payments money to come to give to you, so that should help. And we do have that letter from the employer you were supposed to go back to work for, so that will account for the wages lost because of the accident. Most important aspect of this whole thing is to get the medical care you need so there isn't any permanent damage!

Let me know if you need anything else, otherwise I'll let you know as soon as the other check comes in. And thanks for the good wishes for my knee! Doesn't seem to be too terrible (unfortunately I've been through this twice before) as of this point- back to work I go tomorrow! Enjoy the rest of your weekend :)

Thanks,

Jenna Sanzone

Kisling, Nestico &amp; Redick

Paralegal

3412 W. Market St., Akron, Ohio 44333

Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo &amp; Youngstown

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

From: Matthew Johnson [mailto:moose4u2nv@gmail.com]

Sent: Sunday, May 06, 2012 12:32 PM

To: Jenna Sanzone

Subject: Re: I remember

I was under the impression that we were waiting for the MRI monies to clear and release that to me, I'm not far behind on anything a little boost would be nice. I'm in a financial situation that I've never been in before and its making me worry probably more than I should. I've been seeking employment in sales field being construction may not be good idea just yet figured I land sales job and like it may just stay there anyway when my body is 100%. The fact that the week after the accident I was supposed to be going to work for a contractor and would still be working for him and the amount of money ive lost out on as a result totally irks me, but I guess that's what I have you guys for. I'm def trying to keep my head up and stay positive and appreciate you guys I'm sure you guys think I'm annoying but I've just never had to deal with something like this so I apologize. Hope your knee feels better and heals quickly for you.

Matt

On May 6, 2012, at 10:57 AM, Jenna Sanzone &lt;jsanzone@knrlegal.com&gt; wrote:

&gt; Hey Matt,

&gt;

> Sorry I didn't get back to you sooner, I had knee surgery Friday and was out of the office. Anyway, 1st suggestion is to no longer try to do physically demanding sporting activities!! Since you are still healing, there is the chance that you could aggravate the injury even worse. Secondly, as far as your credit goes, having outstanding medical bills isn't going to hurt your credit. They're only on your credit score as outstanding and once they're paid in full they disappear. But then again, that doesn't account for missing car payments, etc. Unfortunately you're going to have to do whatever you can to mitigate the circumstances. What were you doing before the accident? Construction or something? It is unfortunate that your unemployment ran out

ps://mail.knrlegal.com/owa/?ae=Item&amp;t=IPM.Note&amp;id=AMB.RgAAAAALMZ6jSWpbRagIP1SNAIMdBwCLcFOxPmYJSJA7MK4b0v5UAAAA1QJ9AA... 1/2

7/14/2017

RE: I remember

but you're going to have to find a way to survive and pay your bills. Lord knows the last thing you want to do is have this accident make life any worse for you. As long as you're trying to get a job then that's one step in the right direction. I wish I had a better answer for you in regard to gaining employment, but unfortunately that part's on you.

>  
> Keep your head up...something will come along soon.  
>  
>  
>  
> Jenna Sanzone  
> Kisling, Nestico & Redick  
> Paralegal  
> 3412 W. Market St., Akron, Ohio 44333  
> Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

> Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown  
>  
>  
>  
>

> -----Original Message-----

> From: Matthew Johnson [<mailto:moose4u2nv@gmail.com>]  
> Sent: Friday, May 04, 2012 10:50 AM  
> To: Jenna Sanzone  
> Subject: I remember

> I feel like I bug you when I call so I thought I'd email you and spare you the phone call. I remember what I called for the other day. I got a phone call from my landlord for one, about being a Lil behind on my rent. I put that check you guys got to my toward my truck but still 30 days behind. Been interviewing for sales jobs figured its not physically demanding but haven't landed one yet. I'm not trying to be a burden trying to tough it out but have lost my unemployment benefits. Hoping this whole accident doesn't ruin my credit in the process. I guess I may just be freaking out a Lil bit been doing what I can to get better and yesterday didn't make it off the first tee box swung the club and could tell it was a bad idea, luckily they reimbursed me for the round. Any insight? If I don't hear from you have a great weekend.

> Matt  
>  
>

7/14/2017

RE: Chiropractor

**RE: Chiropractor**

Jenna Sanzone

Sent: Thursday, May 10, 2012 4:41 PM

To: Matthew [Johnson]

I'll let you know as soon as a check comes in. Glad to hear you're wrapping things up. Hopefully you feel better soon.

Thanks,

Jenna Sanzone

Kisling, Nestico & Redick

Paralegal

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Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

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

From: Matthew Johnson [<mailto:moose4u2nv@gmail.com>]

Sent: Wednesday, May 09, 2012 5:39 PM

To: Jenna Sanzone

Subject: Chiropractor

I have a visit Friday and a final evaluation on Monday and I should be all done with chiropractor care. He is writing another script for four more deep tissue visits because of the amount of time it's taking her to get the knots out. I'm feeling pretty good still numbness in my right arm/hand, have a possible job in the works. My cams are going out in my truck so when that check comes its going to be a blessing. My only question is does the chiropractor give me paperwork to give to you for "release" of care or give to you directly? Just want to know what is needed from my end so I don't hold anyone up. Have a great night hope your knee is getting better by the day.

Matt

**Exhibit 2**



7/16/2017

RE: Anymore help available

**RE: Anymore help available**

Jenna Sanzone  
Sent: Monday, July 16, 2012 11:43 AM  
To: Matthew [Johnson]

Liberty Capital Funding  
1-866-612-6000

Tell them you're a client of Kisling, Nestico & Redick, attorney is Paul Steele

Jenna Sanzone  
Kisling, Nestico & Redick  
Paralegal  
3412 W. Market St., Akron, Ohio 44333  
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown

-----Original Message-----  
From: Matthew Johnson [mailto:moose4u2nv@gmail.com]  
Sent: Monday, July 16, 2012 12:22 PM  
To: Jenna Sanzone  
Subject: Re: Anymore help available

I'd be willing to look into it to see how worth it it would be to help my get ahead.  
Matt

On Jul 16, 2012, at 12:12 PM, Jenna Sanzone <jsanzone@knrlegal.com> wrote:

> The only option available is for you to take out a loan against your case, but you have to pay interest on it...so essentially you're paying money to borrow money. But if the need is necessary I can definitely get you the information.

>  
> Thanks,  
>  
>  
>  
> Jenna Sanzone  
> Kisling, Nestico & Redick  
> Paralegal  
> 3412 W. Market St., Akron, Ohio 44333  
> Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007  
>  
> Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown  
>  
>  
>

> -----Original Message-----  
> From: Matthew Johnson [mailto:moose4u2nv@gmail.com]  
> Sent: Monday, July 16, 2012 12:02 PM  
> To: Jenna Sanzone  
> Subject: Anymore help available

**Exhibit 3**

> Hi Jenna,

7/3/2017

RE: Anymore help available

>

> This doesn't need to waste phone time just wondering if there was any financial boost available anymore till the end I'm busting my butt to get caught up on bills and almost there since I'm working a little more I just iced and heat on my back and stretching more than I was and it feels better so that's good. I missed a couple days work because of it though and just thought I would email and ask you.

>

>

> Matt

>

>

7/13/2017

RE: Matthew Johnson

**RE: Matthew Johnson**

Jenna Sanzone

**Sent:** Monday, July 16, 2012 2:08 PM

**To:** Ciro [Cerrato]

**Importance:** High

**Attachments:** Police Report.pdf (168 KB) ; image001.jpg (5 KB) ; image002.jpg (1 KB) ; image003.jpg (1 KB) ; image004.jpg (1 KB) ; image005.jpg (1 KB)

Date of Accident: 1/13/2012

Description of Accident: He was driving his truck and was forced off the road by a METRO Bus

At Fault Insurance: **Ohio Transit Risk Pool (METRO)**

UM / MP: **Erie Insurance**

Injuries: **neck and shoulders, collar bone**

Treatment : **ER, Chiropractor, M.D., Neurologist, Massage Therapist**

Thank you,



Jenna Sanzone

**Kisling, Nestico & Redick**

*Paralegal*

3412 W. Market St., Akron, Ohio 44333

Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

*Locations: Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo & Youngstown*



**From:** Ciro Cerrato [mailto:lcfunding1@gmail.com]

**Sent:** Monday, July 16, 2012 2:03 PM

**To:** Jenna Sanzone

**Subject:** Matthew Johnson

Hi Jenna,

Matthew has contacted us for an advance on his settlement. Can you please send the Police Report and provide the info below?

Date of Accident:

Description of Accident:

At Fault Insurance:

UM / MP:

Injuries:

Treatment :

**Exhibit 4**

7/13/2017

RE: Matthew Johnson

Thank you,

---

**Ciro Cerrato**  
**Liberty Capital Funding L.L.C.**  
lcfunding1@gmail.com  
PH 1.866.612.6000  
Fax: 561.423.0931

7/13/2017

RE: Matthew Johnson Contract

**RE: Matthew Johnson Contract**

Jenna Sanzone

**Sent:** Tuesday, July 17, 2012 10:36 AM

**To:** Ciro [Cerrato]

**Importance:** High

**Attachments:** Atty Acknowledgment Matt J~1.PDF (45 KB) ; image001.jpg (5 KB) ; image002.jpg (1 KB) ; image003.jpg (1 KB) ; image004.jpg (1 KB) ; image005.jpg (1 KB)



Jenna Sanzone  
Kisling, Nestico & Redick  
Paralegal  
3412 W. Market St., Akron, Ohio 44333  
Main: 330-869-9007 | Fax: 330-869-9008 | Outside Ohio: 800-978-9007

*Locations: Akron, Canton, Cleveland, Cincinnati,  
Columbus, Dayton, Toledo & Youngstown*



**From:** Ciro Cerrato [mailto:lcfunding1@gmail.com]

**Sent:** Tuesday, July 17, 2012 11:21 AM

**To:** Jenna Sanzone

**Subject:** Matthew Johnson Contract

Attached. Please have signed.

Thanks,

—  
**Ciro Cerrato**  
*Liberty Capital Funding L.L.C.*  
[lcfunding1@gmail.com](mailto:lcfunding1@gmail.com)  
PH 1.866.612.6000  
Fax: 561.423.0931

**Exhibit 5**

FAX COVER SHEET

TO	Matthew Johnson
COMPANY	
FAX NUMBER	13306283743
FROM	Ciro Cerrato
DATE	2012-07-16 21:22:46 GMT
RE	Matthew Johnson Contract

COVER MESSAGE

Please initial EVERY page and sign on pg7.

Fax back to 561.423.0931

Thanks,

LCF

866.612.6000

If Need to fax call me at (330) (618-5640)  
 first so I can go Retrieve it.  
 FAX to (330) 6283743.  
 I would like direct deposit.

Thanks,  
 MATT

Exhibit 6

My name is Matthew Johnson and I reside at 2427 Edwin Ave, Akron, OH 44305. I am entering into this non-recourse civil litigation advance agreement ("Agreement") with Liberty Capital Funding LLC ("Company") as of 7/17/2012.

1. I accept the sum of \$250.00 from Company. I direct the funds to be distributed as follows: \$250.00 payable to Matthew Johnson.

2. I assign to Company an interest in the proceeds from my Legal Claim (defined below) equal to the funded amount of \$250.00 plus all other fees and costs to be paid out of the proceeds of my legal claim. I understand that the amount I owe at the end of the first six month interval shall be based upon the amount funded plus the displayed annual percentage rate of return (APRR) charge plus the below listed fees. Each six month interval thereafter shall be computed by taking prior six month balance owed and accessing the displayed six month APRR charge to that total (semi-annual compounding) plus the below listed fees. This shall continue for thirty-six months or until the full amount has been repaid.

**MANDATORY DISCLOSURE STATEMENT**

**1. Total amount of funding received by consumer \$ 250.00**

**2. Itemized fees:**

<b>Application Fee</b>	<b>\$ 0.00</b>
<b>Processing</b>	<b>\$ 20.00</b>
<b>Attorney review</b>	<b>\$ 0.00</b>
<b>Broker</b>	<b>\$ 0.00</b>
<b>Delivery Fee</b>	<b>\$ 50.00</b>
<b>Total fees:</b>	<b>\$ 0.00</b>

**3. Total amount to be repaid by consumer - (plus itemized fees)**

<b>* if at 6 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)</b>	<b>\$ 398.40</b>
<b>if at 12 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)</b>	<b>\$ 496.01</b>
<b>if at 18 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)</b>	<b>\$ 617.53</b>
<b>if at 24 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)</b>	<b>\$ 768.82</b>
<b>if at 30 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)</b>	<b>\$ 957.18</b>
<b>if at 36 months: (you will actually pay 24.50% based upon a 49.00% APRR with semi-annual compounding)</b>	<b>\$ 1191.69</b>

Seller Initials

MWJ

"The "if at 6 months" payment means any payment I make between the day after I get the money and 6 months from that date. The "if at 12 months" payment means any payment I make between the 6 months date and the 12 month date. This is how all the payment dates are calculated.

**DEFINITIONS**

3. "Customer or Seller" is *Matthew Johnson* who gets the money.

4. "Company or LCF" is Liberty Capital Funding LLC, Liberty Capital Funding LLC who gives the money.

5. "Legal Claim" means (a) the matter which occurred on or about 1/13/2012 which is captioned *Matthew Johnson* ; (b) all applicable proceedings, proceedings on appeal or remand, enforcement, ancillary, parallel, or alternative dispute resolution proceedings and processes arising out of or relating to such case; (c) any other proceedings founded on the underlying facts giving rise to such case in which Customer is a party; and (d) any arrangements made with Customer with another party to such case which resolves any of the Customer's claims against such party.

6. "Proceeds" means all property or things of value payable on account of the Legal Claim including, without limitation, cash, negotiable instruments, contract rights, annuities and securities whether obtained by judgment, settlement, arbitration award or otherwise. Without limitation, "Proceeds" shall include a reasonable estimate of the monetary value of all non-cash benefits receivable by Customer on account of the Legal Claim.

**OBLIGATION TO REPAY IS CONTINGENT**

7. If my Legal Claim is lost and no money is awarded or owed to me then I do not have to repay any money to Company. If I am successful on my Legal Claim and I am awarded or owed money, Company shall receive its money before I receive any remaining monies.

**FEES AND COSTS**

8. I agree to pay the entire amounts listed on the schedule on page 1. I understand that all fees and costs will be added to the APRR sums that I pay company out of the proceeds of my legal claim.

9. The annual percentage rate of return (APRR) is charged starting from the date of this Agreement until the first date of the scheduled payment period(s) listed on page 1. So for example if you make a payment in month 5, you shall pay the full amount owed listed in "if at 6 months" and so on.

10. In the case of multiple fundings, each funding will be treated as a separate and independent transaction and these fees shall accrue on each funded sum from the date

Seller Initials

MSJ



of each individual funding.

**ASSIGNMENT OF PROCEEDS**

11. I hereby assign to and grant to Company an assignment, lien and security interest in the proceeds of the Legal Claim in the amount listed on the last line of the Mandatory Disclosure Statement (\$1191.69), which is the amount I would be required to repay after 36 months from today. Nonetheless, I will pay Company the amount that is due at the time of payment, which shall fully satisfy my obligation to Company under this Agreement, whether that amount is lower or higher than \$1191.69.

12. If this assignment and / or lien violates any law, then I agree to pay Company all of the funds due under this Agreement immediately upon the payment of the Legal Claim proceeds as a separate and independent contractual obligation.

13. I direct my attorney, and any future attorney representing me in my Legal Claim, to honor this assignment and/ or lien.

14. The amount due under this Agreement shall be deducted from any money collected as a result of my Legal Claim and will be paid immediately upon collection to Company. The only payments that will take priority over this, and be paid first, are my attorney's fees and costs, legitimate medical liens and payment to any statutory lien holders.

15. I will not receive any money from the proceeds of the Legal Claim until Company has been paid in full. I acknowledge that my receipt or use of any funds prior to the full re-payment to Company may constitute an illegal conversion.

**REPRESENTATIONS AND WARNINGS**

16. Company has explained to me that the cost of this transaction may be more expensive than traditional funding sources such as a bank, credit card, finance company or obtaining money from a friend or relatives.

17. I acknowledge that my attorney has not offered any tax or financial advice. My attorney has made no recommendations regarding this transaction other than the appropriate statutory disclosures.

18. Company has advised me to consult a lawyer of my own choosing before signing this Agreement. I have either received such legal advice or knowingly choose not to.

19. Company has advised me to consult a financial or tax professional of my own choosing before proceeding with this transaction. I have either received such professional advice or knowingly choose not to.

Seller Initials     MWS

20. Because Company is taking a significant and genuine risk in giving me this funding, I understand that they expect to make a profit. However, Company will be paid only from the proceeds of my Legal Claim, and agrees not to seek money from me directly if my Legal Claim is not successful.

21. I have every intension of pursuing my legal claim to its conclusion. I understand that if I decide not to pursue the Legal Claim, I must notify Company by writing, email or fax within FIVE (5) BUSINESS DAYS of that decision.

22. I agree that I will not knowingly create additional assignments of or liens against the proceeds of the Legal Claim without the prior written consent of Company except for those liens or assignments that naturally arise during the prosecution of any Legal Claim (e.g. medical, Medicare, etc as permitted by law). I specifically promise not to create any assignments and / or liens against the proceeds of the Legal Claim in connection with any additional fundings or loans from other companies or persons that I might receive after the date of this Agreement. Any additional unauthorized funding may be deemed a default under this agreement by Company and may result in all sums becoming immediately due and owing. Upon notification of customers desire to seek additional funding, Company may demand the name of such other funding company and seek to offer a lower cost solution to customer; seek to be "bought out" of its position; do nothing but maintain its position and await the conclusion of the legal claim.

23. Company reserves the right to decline any further advances agreed upon but not yet made under this Agreement if, in the sole discretion of Company, the circumstances of the Legal Claim have adversely changed. This shall not affect my obligations to Company regarding any funds that actually were advanced, including but not limited to fees and charges.

**OTHER PROVISIONS**

**24. THE COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM.**

25. I understand that I am not assigning my cause of action (the Legal Claim) to Company, but rather I am assigning a right to a portion of and granting a lien against any proceeds of my Legal Claim. Company will play no role whatsoever in the prosecution or the settlement of my legal claim.

26. I have instructed my attorney to cooperate with Company and to give Company periodic updates of the status of my Legal Claim as Company requests. I consent to the sharing of this information. If I change attorneys, I will notify Company within 48 hours of

Seller Initials MSJT

the change, and provide Company with the name, address and phone number of my new attorney.

27. I understand that the risk of me not recovering in my Legal Claim is Company's risk. If I do not recover money, I will owe Company nothing.

28. This is a non-recourse funding and is not a loan, but if a Court of competent jurisdiction determines that it is a loan, then I agree that interest shall accrue at the maximum rate permitted by law or the terms of this agreement, whichever is less.

29. If any provision of this Agreement shall be deemed invalid or unenforceable, it shall not affect the validity or enforceability of any other provision. This written Agreement represents the entire agreement between the parties. It may only be modified in writing. No prior understandings, representations or agreements between us can change the written terms of this Agreement.

30. Company has fully explained to me the contents of this Agreement and all of its principal terms, and answered all questions that I had about this transaction. This was done in English or French or Spanish (*when appropriate*), the language I speak best.

31. Company will send any notices required under this Agreement to me at the address listed above, and to my attorney, at the address listed in this paragraph: If I move, I will notify Company of my new address within 72 hours.

Paul Steele  
3412 West Market Street  
Akron, OH 44333

32. I represent to Company that there are no pending tax claims, child support liens, criminal allegation(s) or charge(s) against me.

33. If there is a dispute as to the amount owed at the time that my Legal Claim is resolved, it is expressly understood that my attorney shall not disburse any proceeds to me, or to anyone else on my behalf, except for the fees and/or actual disbursements incurred by my attorney in connection with the prosecution of my Legal Claim, until such dispute is resolved. I hereby make the foregoing an irrevocable direction to my attorney, or his successors. Additionally, my attorney shall keep the proceeds in his or her client trust account while any dispute is pending. If this dispute continues beyond a 120 day period, my attorney may elect to transfer the funds from his or her client trust account and deposit the proceeds with a court of competent jurisdiction.

34. I consent to my credit report being run at any time in connection with my applying for and receiving this funding.

35. I further instruct my attorney to not attempt to assert any type of "equitable fund" or

Seller Initials

MWJ

attorney's fees or costs to be paid by Company for my attorneys' efforts to pay Company their proceeds.

**MISSTATEMENTS, FRAUD, CRIMINAL ACTS**

36. I will be liable to Company for all sums advanced, together with outstanding fees and charges, and regardless of the outcome of my Legal Claim, if and only if I make a material misstatement in this application or in connection with my Legal Claim, or commit a fraudulent or criminal act either in connection with this transaction or in a matter that would adversely and significantly impact on my Legal Claim or the ability of Company to recover from the proceeds under this agreement.

**CONSUMER'S RIGHT TO CANCELLATION:**

**37. YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE (5) BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM COMPANY.**

To cancel this agreement you must either return to the company the full amount of disbursed funds by delivering the company's uncashed check to the company's offices in person, within five business days of the disbursement of funds, or mail a notice of cancellation and include in that mailing a return of the full amount of the disbursed funds in the form of the company's uncashed check, or a registered or certified check or money order, by insured, registered or certified United States mail, postmarked within five business days of receiving funds from the company, at the address specified in the contract for the cancellation.

**CHOICE OF LAW, VENUE AND FEES/COSTS FOR DISPUTE RESOLUTION**

38. I agree that any disputes that may arise out of this Agreement shall be adjudicated in Florida. This Agreement will be interpreted in accordance with the laws of the State of Florida.

39. I understand that if Company does not receive payment as required by this Agreement and Company needs to take action to pursue such payment, Company may collect, in addition to the amount due and owing, reasonable attorney's fees and costs incurred in enforcing its rights. I agree that an amount equal to one third (33 1/3%) of the amount due and owing is a reasonable attorney's fee. More generally, I and Company agree that the prevailing party in any legal action arising out of this Agreement shall be entitled to reasonable attorney's fees and costs, and one-third (33\_% ) of the sum at issue is a reasonable attorney's fee. Additionally, either party may demand that such dispute be heard under the rules of the American Arbitration Association before a single arbitrator with his or her decision being considered final and non-appealable by either party.

Seller Initials     MWS

40. I understand that if a dispute arises between myself and the company concerning this agreement, that the responsibilities of my attorney, representing me in my legal claim, shall not be any greater than my attorneys responsibilities under the Florida Rules of Professional Conduct.

**INSTRUCTIONS**

41. This Agreement may be executed in separate counterparts. A signature transmitted by FAX or Email shall be effective with the same force and effect as an original signature.

42. I will instruct my attorney to mail all payments to:

Liberty Capital Funding LLC  
8276 Calabria Lakes Dr.  
Boynton Beach, FL 33473

The payment instructions set forth herein are irrevocable and are not subject to modification in any manner, except by Company or any successor to Company so identified by them and only by written notice to me canceling or modifying the payment instructions contained herein. A copy of this contract shall be provided to both me and my attorney. I hereby accept funding from Company under the terms of this Agreement, grant Company a Security Interest and Lien under the terms hereof, and assign the proceeds of my Legal Claim as specified in this Agreement on the 17<sup>th</sup> day of July, 2012.

**DO NOT SIGN THIS CONTRACT BEFORE YOU HAVE READ IT COMPLETELY, OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.**

  
\_\_\_\_\_  
Seller

Seller Initials AWJ

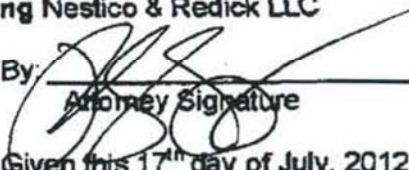
**ATTORNEY ACKNOWLEDGMENT OF ASSIGNMENT OF PROCEEDS OF CLAIM**

I, Paul Steele of Kisling Nestico & Redick LLC, am counsel to Matthew Johnson in the Legal Claim which arose on or about 1/13/2012 in which Matthew Johnson is expected to receive proceeds from its resolution. I hereby acknowledge the assignment and/or placement of a lien upon the proceeds of the above Legal Claim by my client and granted to Liberty Capital Funding LLC pursuant to a Funding Agreement between both parties. I understand that I am instructed to follow Matthew Johnson's Irrevocable direction and authorization to pay such sums that shall be due and owing at the time of the resolution of the above Legal Claim. At such time that the above Legal Claim is ready for disbursement, I shall contact the above Company for a proper pay-off amount I shall at disbursement time send said check made payable to Liberty Capital Funding LLC located at 8276 Calabria Lakes Dr. Boynton Beach, FL 33473.

If any dispute arises over the amount owed LCF, it is expressly understood that I shall pay LCF the non-disputed amount owed by Matthew Johnson. I shall not disburse any proceeds to Matthew Johnson or to anyone else on Matthew Johnson's behalf, except for my attorney's fees (not to exceed 40%) and/or actual disbursements incurred by me in connection with the prosecution of this Legal Claim, until such dispute is resolved. I shall keep the proceeds in my client trust account while any dispute is pending. If the dispute continues beyond 120 days, I may notify LCF and Matthew Johnson and then transfer the funds from my client trust account and deposit the proceeds with a court of competent jurisdiction. I am being paid per a written contingent fee agreement and all proceeds of the civil claim or action will be disbursed via my client trust account or settlement fund established to receive proceeds from the defendant on behalf of Matthew Johnson. I further represent that to the best of my knowledge Matthew Johnson has NOT taken any other fundings, advances, loans or any funding encumbrances on the above Legal Claim other than LCF herein. I agree to notify LCF if at any time I am no longer counsel on this Legal Claim, or I have joined additional co-counsel to also work on this Legal Claim. While I am not endorsing or recommending this transaction, I have reviewed the contract and all costs and fees have been disclosed to my client, including the annualized rate of return applied to calculate the amount to be repaid by my client. This document is part of the contract between Customer and Company for purposes of Ohio Revised Code Section 1349.55.

Dated: 7/17/12

Kisling Nestico & Redick LLC

By:   
Attorney Signature

Given this 17<sup>th</sup> day of July, 2012.

Seller Initials

MWJ