Supreme Court of Ohio Clerk of Court - Filed October 05, 2015 - Case No. 2015-1470

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* ANGELA M. FORD, ESQ.,	:	
	:	**CASE NO. 2015-1470**
Relator,	:	
	:	
-vs-	:	**ORIGINAL ACTION**
	:	**IN PROHIBITION**
HONORABLE ROBERT P. RUEHLMAN,	:	**AND MANDAMUS**
	:	
Respondent.	:	

MOTION OF STANLEY M. CHESLEY AND THE LAW FIRM OF WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A. TO INTERVENE

VOLUME V OF V

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Marion H. Little, Jr., Esq. (0042679)
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Email: James.Harper@hcpros.org
Email: michael.friedmann@hcpros.org

Attorneys for Respondent
the Honorable Robert P. Ruehlman

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Fax: (513) 651-6981
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Attorneys for Proposed Intervenor
Stanley M. Chesley

EXHIBIT B

WRIT
ELEISSA C. LAVELLE, ESQ.
Nevada State Bar No. 293
FABIAN & CLENDENIN, P.C.
601 South Tenth Street, Suite 204
Las Vegas, NV 89101
Telephone: (801) 323-2207
Facsimile: (877) 898-1168
E-Mail: elavelle@fabianlaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

MILDRED ABBOTT, et al. Plaintiffs, vs. STANLEY M. CHESLEY, et al. Defendants.	**CASE NO.** A-15-718827-F **DEPT. NO.** XXX **WRIT OF EXECUTION**

THE PEOPLE OF THE STATE OF NEVADA

TO THE SHERIFF OF CLARK COUNTY, GREETINGS:

On September 19, 2014 a judgment was entered in favor of Plaintiffs (all of whom are identified in Exhibit A attached hereto and incorporated herein by reference) as Judgment Creditors and against Defendant Stanley Chesley, as Judgment Debtor, as set forth in the Amended Order of the Boone Circuit Court, Division III, Commonwealth of Kentucky, entered on September 19, 2014 in Case No. 05-CI-436 (the "Foreign Judgment"), upon which there is due in United States Currency the principal sum and amount of Forty-two Million and no/100 Dollars ($42,000,000), together with pre-judgment interest at the rate of 8% per annum from August 1, 2015 through September 16, 2014 and post-judgment interest on said principal amount the rate of 12% per annum from September 17, 2014 upon the principal amount until satisfied. Interest accrues on the unpaid balance at the rate of $80,439.01 per day.

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

On May 21, 2015, Plaintiffs caused to be filed an "Application for Filing of Foreign Judgment Pursuant to NRS 17.330," which included an Exemplified Copy of the Foreign Judgment and the Affidavit of Judgment Creditor's Attorney pursuant to NRS 17.360 (collectively, the "Application"). Notice of the Filing of the Application, together with a copy of the Application, were served by Certified Mail, Return Receipt Requested upon the Judgment Debtor and his counsel on May 26, 2015. More than thirty (30) days plus additional time for mailing pursuant to statute have elapsed without challenge of any kind by Defendant as authorized by the NRS 17.360, rendering the Foreign Judgment valid and enforceable in the State of Nevada.

There has been no satisfaction of any portion of principal, pre-judgment interest, post-judgment interest. Interest will continue to run on the unpaid balance from issuance of this writ to date of levy and thereafter, to the extent any portion of the Foreign Judgment remains unsatisfied and to which sum must be added all commissions and costs of executing this Writ.

The amounts due on the Foreign Judgment as of July 7, 2015 are as follows:

JUDGMENT TOTAL	$42,000,000.00
Less Satisfaction	$17,868,298.00
Unpaid Principal Balance	$24,131,702.00
Plus post judgment Interest (calculated on the unpaid principal balance through July 7, 2015)	$2,493,529.23
NET BALANCE	**$26,625,231.23**
Levy Fee	18.00
Interest from Date of Issuance	
SUBTOTAL	26,625,260.23
Commission	133,178.81
TOTAL LEVY	26,758,439.04

Make Check Payable To:
Constable
302 E. Carson Ave., 5th floor
Las Vegas, NV. 89155
702-455-4099
Put Case # & Name on Check

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

NOW, THEREFORE, you are commanded to satisfy the judgment for the total amount due out of the following described personal property:

1. Defendant Stanley Chesley's share of all distributions to be made from the Castano Directed Distribution Trust, Suzanne Vandever Foulds, Trustee;
2. Defendant Stanley Chesley's share of all distributions to be made from the Waite Sohnelder Bayless & Chesley Deferred Compensation Trust, as beneficiary of the Castano Directed Distribution Trust;
3. Account at Wells Fargo Bank in the name of the Castano Directed Distribution Trust, Suzanne Vandever Foulds, Trustee and Christopher Guidroz, Co-Trustee, 3196 Topaz Street, Las Vegas, Nevada 89121.

NOW, THEREFORE, SHERIFF OF CLARK COUNTY, you are hereby commanded to satisfy this judgment with interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any workweek, 75 percent of the disposable earnings of the debtor during that week or 50 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 206(a)(1), and in effect at the time the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, if any, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what you have done.

STEVEN D. GRIERSON
CLERK OF COURT

JUL 10 2015

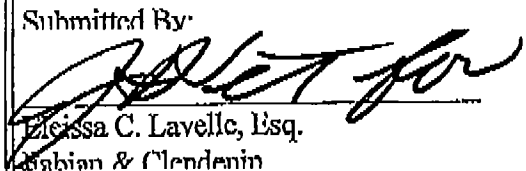
By: MICHELLE MCCARTHY
Deputy Clerk

DISTRICT COURT SEAL

//

//

Submitted By:



Eleissa C. Lavelle, Esq.
Gabian & Clendenin
601 South Tenth Street, Suite 204
Las Vegas, NV 89101

RETURN

- ☐ Not satisfied $_____
- ☐ Satisfied in sum of $_____
- ☐ Costs retained $_____
- ☐ Commission retained $_____
- ☐ Costs incurred $_____
- ☐ Commission incurred $_____
- ☐ Costs Received $_____

REMITTED TO JUDGMENT CREDITOR $_____

DOUG GILLESPIE, SHERIFF
CLARK COUNTY

By: _____
Deputy Date

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ____ day of _____, 2015, he/she served a copy of the Writ of Execution and Notice of Execution pursuant to N.R.S. 21.075 and 21.076 by personally depositing a copy of the same in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid, regular U.S. Mail, addressed to the following at their last known addresses:

Stanley M. Chesley
9005 Carmargo Road
Cincinnati, Ohio 45243
Judgment Debtor

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd, LLC
400 West Market Street, 32nd Floor
Louisville, Kentucky 40202
Attorney for Judgment Debtor

Frank Benton IV, Esq.
P.O. Box 72218
Newport, Kentucky 41072
Attorney for Judgment Debtor

_____
Sheriff / Constable,
Clark County, Nevada

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

EXHIBIT C

CONSTABLE'S OFFICE
LAS VEGAS TOWNSHIP

July 15, 2015

SHERYL G SNYDER ESQ GRIFFIN TERRY SUMNER EST FROST
400 W MARKET ST 32ND FL
BROWN TODD LLC
LOUISVILLE, KY 40202

RE: Court Case Number A-15-718827-F **NAME: STANLEY M CHESLEY**

In accordance with the Court's order, we are sending you a copy of the *Writ of Execution,* and the *Writ of Garnishment* for the above case. Additionally, we are enclosing a $5.00 Notary Fee in order for the Writ of Garnishment to be notarized.

Please respond and return the notarized Writ of Garnishment to this office within twenty (20) working days. If you have any questions, please do not hesitate to call.

Sincerely,

JL

Las Vegas Township Constable Office

3 enclosures

302 E. Carson Ave 5th Floor • Box 552110
Las Vegas, NV 89155-2110
(702) 455-4099 • Fax: (702) 385-2436

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PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW - FOR ADDITIONAL SECURITY FEATURES SEE BACK

0007437 Office AU # | 11-24 / 1210(8)

CASHIER'S CHECK

0743701448

Remitter: BRENDA L ROUBIDOUX TAYLOR
Operator I.D.: reno1286

July 13, 2015

PAY TO THE ORDER OF ***FROST BROWN TODD, LLC***

Five dollars and no cents

$5.00

Payee Address:
Memo:

WELLS FARGO BANK, N.A.
1700 E CHARLESTON BLVD
LAS VEGAS, NV 89104
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US $ 5.00

Richard Levy
CONTROLLER

⑈0743701448⑈ ⑆121000248⑆4861 511947⑈

WRIT
ELEISSA C. LAVELLE, ESQ.
Nevada State Bar No. 293
FABIAN & CLENDENIN, P.C.
601 South Tenth Street, Suite 204
Las Vegas, NV 89101
Telephone: (801) 323-2207
Facsimile: (877) 898-1168
E-Mail: elavelle@fabianlaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

MILDRED ABBOTT, et al. Plaintiffs, vs. STANLEY M. CHESLEY, et al. Defendants.	**CASE NO.** **A-15-718827-F** **DEPT. NO.** **XXX** **WRIT OF EXECUTION**

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NET BALANCE	**$26,625,231.23**
Levy Fee	18.00
Interest from Date of Issuance	
SUBTOTAL	26,625,254.23
Commission	133,178.78
TOTAL LEVY	26,758,433.01

Make Check Payable To:
Constable
302 E. Carson Ave.- 5th floor
Las Vegas, NV. 89155
702-455-4099
Put Case # & Name on Check

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

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2. Defendant Stanley Chesley's share of all distributions to be made from the Waite Sohnelder Bayless & Chesley Deferred Compensation Trust, as beneficiary of the Castano Directed Distribution Trust;
3. Account at Wells Fargo Bank in the name of the Castano Directed Distribution Trust, Suzanne Vandever Foulds, Trustee and Christopher Guidroz, Co-Trustee, 3196 Topaz Street, Las Vegas, Nevada 89121.

NOW, THEREFORE, SHERIFF OF CLARK COUNTY, you are hereby commanded to satisfy this judgment with interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any workweek, 75 percent of the disposable earnings of the debtor during that week or 50 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 206(a)(1), and in effect at the time the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, if any, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what you have done.

STEVEN D. GRIERSON
CLERK OF COURT

By: MICHELLE MCCARTHY
Deputy Clerk

JUL 10 2015
Date

DISTRICT COURT SEAL

//

//

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

Submitted By:

Eleissa C. Lavelle, Esq.
Fabian & Clendenin
601 South Tenth Street, Suite 204
Las Vegas, NV 89101

RETURN

- ☐ Not satisfied $_____
- ☐ Satisfied in sum of $_____
- ☐ Costs retained $_____
- ☐ Commission retained $_____
- ☐ Costs incurred $_____
- ☐ Commission incurred $_____
- ☐ Costs Received $_____

REMITTED TO JUDGMENT CREDITOR $_____

DOUG GILLESPIE, SHERIFF
CLARK COUNTY

By: _____
Deputy Date

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ____ day of _____, 2015, he/she served a copy of the Writ of Execution and Notice of Execution pursuant to N.R.S. 21.075 and 21.076 by personally depositing a copy of the same in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid, regular U.S. Mail, addressed to the following at their last known addresses:

Stanley M. Chesley
9005 Carmargo Road
Cincinnati, Ohio 45243
Judgment Debtor

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd, LLC
400 West Market Street, 32nd Floor
Louisville, Kentucky 40202
Attorney for Judgment Debtor

Frank Benton IV, Esq.
P.O. Box 72218
Newport, Kentucky 41072
Attorney for Judgment Debtor

_____
Sheriff / Constable,
Clark County, Nevada

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

WRIT
ELEISSA C. LAVELLE, ESQ.
Nevada State Bar No. 293
FABIAN & CLENDENIN, P.C.
601 South Tenth Street, Suite 204
Las Vegas, NV 89101
Telephone: (801) 323-2207
Facsimile: (877) 898-1168
E-Mail: elavelle@fabianlaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

MILDRED ABBOTT, et al. Plaintiffs, vs. STANLEY M. CHESLEY, et al. Defendants.	**CASE NO.** A-15-718827-F **DEPT. NO.** XXX **WRIT OF GARNISHMENT** This WRIT must be answered, signed and returned to: Constable Las Vegas Township 302 E. Carson Ave., 5th Floor Las Vegas, NV 89155

THE STATE OF NEVADA TO:

~~WELLS FARGO BANK, N.A.~~ Frost, Brown, Todd

You are hereby notified that you are attached as garnishee in the above entitled action and you are commanded not to pay any debt from yourself to or for the benefit of the Defendant Stanley M. Chesley, through the Waite Sohnelder Bayless & Chesley Deferred Compensation Trust, as a beneficiary of the Castano Directed Distribution Trust, and that you must retain possession and control of all personal property, money, credits, debts, effects and choses in action of said Defendant in order that the same may be dealt with according to law. Where such property consists of wages, salaries, commissions or bonuses the amount you shall retain shall be in accordance with 15 U.S. Code 1673 and Nevada Revised Statutes 31.295. Plaintiff believes that you have property, money, credits, debts, effects and choses in action in your hands and under our custody and control belonging to said Defendant described as: quarterly

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

distributions from the Castano Directed Distribution Trust to or for the benefit of Stanley M. Chesley, through the Wait Sohnelder Bayless & Chesley Deferred Compensation Trust.

YOU ARE REQUIRED within 20 days from the date of service of this Writ of Garnishment to answer the interrogatories set forth herein and to return your answers to the office of the Sheriff or Constable which issued the Writ of Garnishment. In case of your failure to answer the interrogatories within 20 days, a Judgment by Default in the amount due the Plaintiff may be entered against you.

IF YOUR ANSWERS TO the interrogatories indicate that you are the employer of the Defendant, this Writ of Garnishment shall be deemed to CONTINUE FOR 120 DAYS or until the amount demanded in the attached Writ of Execution is satisfied.

YOU ARE FURTHER DIRECTED to forward all funds due to the Defendant each payday or distribution date in the future, UP TO 120 DAYS, less any amount which is exempt and less $3.00 per pay period not to exceed $12.00 per month which you may retain as a fee for compliance. The $3.00 fee does not apply to the first pay period covered by this Writ.

YOU ARE FURTHER REQUIRED to serve a copy of your answers to the Writ of Garnishment on Plaintiff's attorney whose address appears below.

Sheriff / Constable – Clark County

By: _____
Title Date

Issued at direction of:

Eleissa C. Lavelle, Esq.
FABIAN & CLENDENIN
601 South Tenth Street, Suite 204
Las Vegas, NV 89101

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The undersigned, being duly sworn, states that I received the within WRIT OF GARNISHMENT on the ____ day of _____, 2015 and personally served the same on the ____day of _____, 2015 by showing the original WRIT OF GARNISHMENT, informing of the contents and delivering and leaving a copy, along with the statutory fee of $5.00, with _____ at _____, County of Clark, State of Nevada.

By:_____
Title Date

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH

1. Are you in any manner indebted to the Defendant Mildred Abbott, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars:

   ANSWER:_____

   _____

   _____

2. Are you an employee of the Defendant? If so, state the length of your pay period and the amount the Defendant presently earns during a pay period.

   ANSWER:_____

   _____

   _____

3. Did you have in your possession, in your charge or under your control, on the date the WRIT OF GARNISHMENT was served upon you any money, property, effects, goods, chattels, rights, credits or choses in the action of the Defendant, or in which Defendant is

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

interested? If so, state its value and state fully all particulars.

ANSWER:_____

4. Do you know of any debts owing to the Defendant, whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to the Defendant, or in which Defendant is interested, and now in possession or under the control of others? If so, state particulars:

ANSWER:_____

5. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

ANSWER:_____

6. NOTE: If an employer, without legal justification, refuses to withhold the earnings of a Defendant demanded in a WRIT OF GARNISHMENT or knowingly misrepresents the earnings of the Defendant, the Court shall order the employer to pay the Plaintiff the amount of arrearages caused by the employer's refusal to withhold or his misrepresentation of the Defendant's earnings. In addition, the Court may order the employer to pay the Plaintiff punitive damages in an amount not to exceed $1,000 for each pay period in which the employer has, without legal justification, refused to withhold the Defendant's earnings or has misrepresented the earnings.

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this ____day of _____, 2015.

_____
Garnishee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ____ day of _____, 2015, he/she served a copy of the Writ of Garnishment in Aid of Execution pursuant to N.R.S. 21.076 by personally depositing a copy of the same in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid, regular U.S. Mail, addressed to the following at their last known addresses:

Stanley M. Chesley
9005 Carmargo Road
Cincinnati, Ohio 45243
Judgment Debtor

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd, LLC
400 West Market Street, 32nd Floor
Louisville, Kentucky 40202
Attorney for Judgment Debtor

Frank Benton IV, Esq.
P.O. Box 72218
Newport, Kentucky 41072
Attorney for Judgment Debtor

_____
Sheriff/Constable, Clark County, Nevada

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

EXHIBIT D

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2015-5224 DIVISION "F-07"

MILDRED ABBOTT, ET AL.

VERSUS

STANLEY M. CHESLEY

FILED: _____ _____

DEPUTY CLERK

EX PARTE PETITION TO MAKE FOREIGN JUDGMENT EXECUTORY

NOW INTO COURT, through undersigned counsel, come plaintiffs the PF Judgment Creditors ("Judgment Creditors" or "Plaintiffs").[1] Plaintiffs present this *Ex Parte Petition to Make Foreign Judgment Executory* against defendant and judgment debtor Stanley M. Chesley ("Chesley" or "Defendant").[2] In accordance with the provisions of the Louisiana Enforcement of Foreign Judgments Act, R.S. 13:4241, *et seq.*, Plaintiffs state as follows:

1.

Plaintiffs obtained a money judgment, entitled "Second Amended Judgment," signed on October 20, 2014, and entered on October 22, 2014 (the "Judgment"), against Defendant in the Boone Circuit Court, Division III, Commonwealth of Kentucky, Docket No. 05-CI-436, in the amount of $42,000,000.00, with prejudgment interest at a rate of 8% per annum from April 1, 2002, to the date of Judgment, and postjudgment interest at the rate of 12% per annum from the date of Judgment until paid. A copy of the Judgment, authenticated in accordance with applicable law, is attached hereto as Exhibit "A."

2.

The Judgment is currently on appeal, but no bond was posted by Defendant and thus execution of the Judgment is not suspended under Kentucky law. *See* KY. R. CIV. P. 73.04 ("Whenever an appellant entitled thereto desires a stay on appeal, as provided in Rule 62.03, he

---

[1] The PF Judgment Creditors are a group of 382 judgment creditors; a list of those creditors is attached as Exhibit "B-1." Their respective domiciles are listed in Exhibit "C."

[2] Chesley is domiciled in Cincinnati, Ohio.

{N3035641.1}

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

may present to the clerk or the court for approval an executed supersedeas bond with good and sufficient surety."); *Elk Horn Coal Corp. v. Cheyenne Res., Inc.*, 163 S.W.3d 408, 420 (Ky. 2005) ("The failure to post a bond, however, leaves the party who obtained the judgment free to execute on it[.]").

3.

Since rendition, $17,868,298.00 of the $42 million Judgment has been satisfied. This leaves $24,131,702.00 due and owing on the Judgment.

4.

The last-known address for the Defendant is as follows:

Stanley M. Chesley
9005 Carmargo Road
Cincinnati, Ohio 45243

5.

The last-known address for the Plaintiffs is as follows:

PF Judgment Creditors
c/o Angela M. Ford, PSC
836 Euclid Avenue, Suite 311
Lexington, Kentucky 40502

6.

Pursuant to R.S. 13:4243(A), the above address information is supported by the affidavit of an authorized representative of Plaintiffs, attached hereto as Exhibit "B."

7.

In sum, Plaintiffs are entitled to have the Judgment made executory in Louisiana under the Louisiana Enforcement of Foreign Judgments Act. Nevertheless, in accordance with R.S. 13:4246, Plaintiffs reserve the right to bring an action to enforce the Judgment under La. Code Civ. Proc. art. 2541, if desired.

WHEREFORE, plaintiffs, the PF Judgment Creditors, pray:

(1) that their motion be granted and the Court enter a judgment making the foreign Judgment executory in the State of Louisiana and recognizing the award in favor of the PF Judgment Creditors and against Stanley M. Chesley for $24,131,702.00, with prejudgment interest at a rate of 8% per annum from April 1, 2002, to the

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

date of Judgment, and postjudgment interest at the rate of 12% per annum from the date of Judgment, October 20, 2014, until paid;

(2) that the Clerk send notice of this *Ex Parte Petition to Make Foreign Judgment Executory* in accordance with the provisions of the Louisiana Enforcement of Foreign Judgments Act, R.S. 13:4241, *et seq.*, by certified mail to Chesley, at the address indicated above, and make a note of mailing in the record; and

(3) for such additional legal and equitable relief as the court may deem just and proper.

Respectfully submitted,

R. PATRICK VANCE (La. # 13008)
TYLER J. RENCH (La. # 34049)
Jones Walker LLP
201 St. Charles Avenue, Suite 5100
New Orleans, Louisiana 70170
Telephone: (504) 582-8336
Facsimile: (504) 589-8336
pvance@joneswalker.com
trench@joneswalker.com

Attorneys for plaintiffs, the PF Judgment Creditors

CERTIFICATE OF SERVICE

Pursuant to R.S. 13:4243(B), I hereby certify that a copy of the above *Ex Parte Petition to Make Foreign Judgment Executory* has been served on the judgment debtor by placing a copy of same in the U.S. Mail, postage prepaid, to the addresses listed above this 1st day of June 2015.

{N3035641.1}

ELECTRONICALLY FILED 08/21/2015 11:40 / MOTN / A 1500067 / CONFIRMATION NUMBER 433835

FILED
ENTERED
BOONE CIRCUIT/DISTRICT COURT
OCT 2 2 2014
DIANNE MURRAY, CLERK
BY: D.C.

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION III
CASE NO. 05-CI-00436

MILDRED ABBOTT, et al. **PLAINTIFFS**

V.

STANLEY M. CHESLEY, et al. **DEFENDANTS**

SECOND AMENDED JUDGMENT

This Court conducted a hearing in this matter on July 15, 2014 on Plaintiffs' Motion for Partial Summary Judgment as to Defendant Stanley M. Chesley ("Chesley"). The Plaintiffs were represented by Hon. Angela Ford. The Defendants were represented by Hon. Sheryl G. Snyder and Hon. Frank V. Benton, IV. The Court having reviewed Plaintiffs' Motion, Chesley's Response, Plaintiffs' Reply, having heard argument from counsel, and being in all ways sufficiently advised, finds as follows:

This Court, by the March 8, 2006 Order of Senior Status Judge William Wehr, previously granted summary judgment against Defendants William J. Gallion, Shirley Allen Cunningham, Jr. and Melbourne Mills, Jr. on Plaintiffs' breach of fiduciary duty claims in their representation of Plaintiffs in the *Darla Guard, et al. v. A.H. Robbins Company, et al.* lawsuit which involved injuries Plaintiffs suffered as a result of ingesting the "fen-phen" diet drug. The Court awarded damages in the amount of $42 million (by Order of August 1, 2007) and ruled the Defendants were jointly and severally liable to the Plaintiffs. The Supreme Court of Kentucky affirmed the partial summary judgment against Gallion, Cunningham and Mills, including that each was jointly and severally liable for the amounts owed. Plaintiffs now ask this Court to order summary judgment on their breach of fiduciary claims against Chesley, that Chesley be jointly and

Exhibit A

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severally liable with Gallion, Cunningham and Mills for the amounts owed to Plaintiffs, and that Chesley disgorge all fees he collected in the *Guard* matter.

The Kentucky Bar Association instituted disciplinary proceedings relating to Chesley's actions in the *Guard* matter in *Kentucky Bar Association v. Chesley*, KBA File 13785. The Trial Commissioner conducted a hearing and found that Chesley had violated eight (8) different ethics rules. The Trial Commissioner recommended that Chesley be permanently disbarred from the practice of law in Kentucky, and that he pay $7,555,000.00 in restitution to the *Guard* case clients. The Board of Governors of Kentucky adopted the Trial Commissioner's Report. The Supreme Court of Kentucky found Chesley guilty of violations of eight provisions of SCR 3.130 and followed the Board's recommendation that Chesley be permanently disbarred. The Supreme Court did not order that Chesley pay restitution. *Kentucky Bar Ass'n v. Chesley*, 393 S.W.3d 584 (Ky. 2013).

Plaintiffs argue that summary judgment is appropriate as to their breach of fiduciary duty claims through the doctrine of issue preclusion or collateral estoppel. Issue preclusion would bind Chesley to the factual and legal determinations made in the disciplinary proceedings before the Trial Commissioner, the Board of Governors, and the Supreme Court of Kentucky regarding the settlement of the *Guard* matter that resulted in his disbarment. Chesley disagrees.

The Trial Commissioner found, and the Supreme Court ratified, that Chesley violated the following specific provisions of SCR 3.130:

SCR 3.130-1.5(a) by accepting over $20 million in attorney's fees, which exceeded the amount established by client contracts and contracts with co-counsel, and which were otherwise unreasonable.

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SCR 3.130-1.5(c) by failing to provide clients with a written statement of the outcome of the matter, as well as the remittance to the client and the method of its determination. The contractual contingency fee contracts for the clients were either for 30% or 33 1/3% plus expenses of up to 3%. A 49% contingency fee was actually charged to the clients. Chesley's contractual agreement with class counsel was for 21% of fees upon successful settlement of the case, which should have been $12,941,638.46 and not the $20 million plus he received. He was paid $7,555,000 in excess of his proper fee.

SCR 3.130-1.5(e)(2) by dividing fees without consent of clients.

SCR 3.130-5.1(c)(1) by knowingly ratifying specific misconduct of other lawyers.

SCR 3.130-1.8(g) by representing two or more clients in making an aggregate settlement of the claims without consent of the clients or disclosure to them of the existence and nature of all claims. Chesley was class counsel pursuant to his agreement with Gallion, Cunningham and Mills and therefore had the same duties as them with regarding the requirements of SCR 3.130-1.8(g).

SCR 3.130-3.3(a) by making a false statement of material fact to the tribunal.

SCR 3.130-8.1(a) by making a false statement of material fact in connection with a disciplinary matter.

SCR 3.130-8.3(c) (now SCR 3.130-8.4(c)) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Issue preclusion, also known as collateral estoppel, "allows the use of an earlier judgment by one not a party to the original action to preclude relitigation of matters litigated in the earlier action." *Miller v. Admin. Office of Courts*, 361 S.W.3d 867 (Ky. 2011). A non-party in the former action may assert res judicata, a close cousin to issue preclusion, against a party to the former

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action as long as the party against whom res judicata is pleaded had a realistically full and fair opportunity to present his case. *Id.* (quoting *Moore v. Commonwealth*, 94 S.W.2d 317 (Ky. 1997). Additionally, the Supreme Court has addressed whether administrative agencies acting in a judicial capacity are entitled to the same res judicata effect as judgments of a court, finding that they do. *Ky. Bar Ass'n v. Harris*, 269 S.W.3d 414 (Ky. 2008).

Chesley's hearing before the Trial Commissioner was held November 5-6 and 12-13, 2009 before Judge Rod Messer and continued to September 13-15 and 20-24, 2010 before Judge William L. Graham. Chesley was represented at various times by Kent Westberry, Esq., James Gary, Esq., Frank Benton, IV, Esq., Scott Cox, Esq., Mark Miller, Esq., Sheryl Snyder, Esq. and Hon. Susan Dlott. Prior to the hearing, the testimony of five out of state witnesses was provided by video depositions, including 44 exhibits. During the several days the hearing was held, a total of 43 witnesses gave testimony either in person or by deposition, with the Trial Commissioner considering 124 exhibits. Additionally, the Trial Commissioner allowed time for the parties to submit briefs at the conclusion of the Hearing. The Court finds Chesley had a realistically full and fair opportunity to present his case before the Trial Commissioner.

Certain elements must be met for issue preclusion to operate as a bar to further litigation: "(1) at least one party to be bound in the second case must have been a party in the first case; (2) the issue in the second case must be the same issue as the first case; (3) the issue must have been actually litigated; (4) the issue was actually decided in that action; and (5) the decision on the issue in the prior action must have been necessary to the court's judgment and adverse to the party to be bound." *Id.* quoting *Yeoman v. Commonwealth Health Policy Bd.* 983 S.W.2d 459 (Ky. 1998).

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The Court finds these elements have been met with regard to Plaintiffs' Motion in this matter and the findings in *KBA v. Chesley*. Chesley was a party bound by the KBA matter. The facts and circumstances at issue in the instant Motion were those at issue in the KBA matter. The facts and circumstances were litigated in the KBA matter before the Trial Commissioner at a hearing held November 5-6 and 12-13, 2009 and September 13-15 and 20-24, 2010, and reviewed by the Board of Governors and the Supreme Court of Kentucky. The Trial Commissioner made factual findings and legal conclusions, which were adverse to Chesley, and which were affirmed by the Board of Governors and the Supreme Court of Kentucky, said facts being those at issue in the instant Motion. The factual findings and legal conclusions by the Trial Commissioner, the Board of Governors and the Supreme Court of Kentucky were necessary for the outcome of the KBA matter.

This Court finds Chesley is bound by the factual findings and legal conclusions in the KBA matter. The Supreme Court found that by entering into an agreement with Gallion, Cunningham and Mills, Chesley signed on as co-counsel and was one of the attorneys representing the Plaintiffs in the *Guard* matter. He, therefore, assumed the same ethical responsibilities as Gallion, Cunningham and Mills, and the same responsibilities he would have with any other client. *Kentucky Bar Ass'n v. Chesley*. Chesley had the duty to know his fee responsibilities to his clients, specifically that he was to receive no more than 21% of one-third of the $200,450,000.00 settlement, $14,031,500.00. *Id.* Chesley received $20,497,121.81. *Id.* The Supreme Court found that Chesley knowingly participated in a scheme to skim millions of dollars in excess attorney's fees from unknowing clients, and that he received and retained fees that he knew were improperly taken. *Id.* The Supreme Court further found that he purposefully attempted to avoid conversation and correspondence that would expose his knowledge of the

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nefarious schemes of his co-counsel. *Id.* This Court finds that no genuine issues of material fact exist, and summary judgment is appropriate on Plaintiffs' Breach of Fiduciary claims. Chesley entered into an attorney-client relationship with the Plaintiffs in *Guard.* He breached his duty by accepting excess fees in the amount of $6,465,621.81. Chesley's conduct caused Plaintiffs to receive only a portion of the settlement monies they were entitled to.

Plaintiffs also asks the Court to order that Chesley is jointly and severally liable with Gallion, Cunnigham and Mills for the monies owed to Plaintiffs. The Supreme Court of Kentucky affirmed Judge Wehr's finding in this matter that Gallion, Cunningham and Mills were jointly and severally liable to Plaintiffs. The Supreme Court found that Gallion, Cunningham and Mills breached attorney-client contracts and therefore joint and several liability is not precluded by KRS 411.182. The Supreme also found that by the manner in which Gallion, Cunnungham and Mills combined their efforts in the Fen-Phen litigation, they engaged in a joint enterprise, or joint adventure, an informal partnership existing for a limited purpose and duration, for which joint and several liability is properly assessed under KRS 362.220. *Abbott v. Chesley,* 413 S.W.3d 589 (Ky. 2013).

The Supreme Court enumerated the essential elements of a joint enterprise: (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose among the members; and (4) an equal right to a voice in the direction of the enterprise. *Id.* citing *Huff v. Rosenberg,* Ky., 496 S.W.2d 352 (1973). The Supreme Court adopted the findings of the Trial Commissioner in *KBA v. Chesley,* and this Court found above that issue preclusion bars the further litigation of Plaintiffs' breach of fiduciary duty claims against Chesley.

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This Court now finds that no genuine issues of material fact exists, and as a matter of law Chesley is jointly and severally liable with Gallion, Cunningham and Mills for the $42 million in damages awarded the Plaintiffs against Gallion, Cunningham and Mills by this Court's Order of August 7, 2007. Chesley signed on as co-counsel representing the Plaintiffs in the *Guard* matter when he entered into his fee-division contract with Gallion, Cunningham and Mills. Chesley shared the common purpose to be carried with Gallion, Cunningham and Mills. They agreed on how they would share the work and how they would share the profits. Chesley maintained a voice in the managerial control of the enterprise. The Court therefore finds that pursuant to KRS 362.220, Chesley is jointly and severally with Gallion, Cunningham and Mills for the damages the Plaintiffs suffered.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for Partial Summary Judgment is **GRANTED** as to Plaintiffs' Breach of Fiduciary claims against Stanley M. Chesley.

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that Stanley M. Chesley is jointly and severally liable with Defendants William J. Gallion, Shirley Allen Cunningham, Jr. and Melbourne Mills, Jr. for the existing judgment amount of $42 million owed to Plaintiffs, along with pre-judgment simple interest at a rate of 8% per annum from April 1, 2002, and post-judgment interest compounded annually at the rate of 12% per annum thereon from the date of this Judgment.

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for Partial Summary Judgment as to disgorgement is **DENIED.**

This Order is Final and Appealable. There is no just cause for delay.

DATED this 20th day of October, 2014.

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JAMES R. SCHRAND, JUDGE
BOONE CIRCUIT COURT

COPIES TO:

ALL ATTORNEYS OF RECORD

CERTIFICATE

I, DIANNE MURRAY, clerk of the Boone District/Circuit Court, thereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record

This 22 day of October, 2014

DIANNE MURRAY
BOONE DISTRICT/CIRCUIT COURT

KNelton D.C.

STATE OF KENTUCKY
COUNTY OF BOONE

I, DIANNE MURRAY, Clerk of the Circuit/District Courts, do hereby certify that the foregoing is a true and correct copy of the original as recorded in my office.

This 29 day of May 2015

DIANNE MURRAY

By: Jan Mez D.C.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2015-5224 DIVISION "E,09"

MILDRED ABBOTT, ET AL.

VERSUS

STANLEY M. CHESLEY

FILED: _____ _____
DEPUTY CLERK

AFFIDAVIT OF JUDGMENT CREDITORS

COMMONWEALTH OF KENTUCKY)
COUNTY OF FAYETTE)

Comes the affiant, Angela M. Ford, after having been first duly cautioned and sworn and states as follows:

1. Affiant, Angela M. Ford, is an attorney licensed to practice law in the Commonwealth of Kentucky.

2. Affiant is counsel for Judgment Creditors and Plaintiffs in Civil Action 05-CI-00436, Mildred Abbott, *et al.* v. Stanley M. Chesley, *et al.*, Boone Circuit Court, Division III, Commonwealth of Kentucky.

3. Affiant's address is Angela M. Ford, PSC, Chevy Chase Plaza, 836 Euclid Avenue, Suite 311, Lexington, KY 40502, telephone: 859.268.2923.

4. The last known address for the Judgment Creditors is:

PF Judgment Creditors
c/o Angela M. Ford, PSC
836 Euclid Avenue, Suite 311,
Lexington, KY 40502

5. There are 382 Plaintiffs/Judgment Creditors in Abbott et al, v. Chesley, et al. Attached is a list of those creditors.

6. The last known address for Defendant in this action, Stanley M. Chesley, is 9005 Carmargo Road, Cincinnati, OH 45243.

7. The Second Amended Judgment of the Boone Circuit Court, Division III, Commonwealth of Kentucky, signed by the Honorable James R. Schrand, Boone Circuit Judge, on October 20, 2014, and filed with the Boone Circuit Court on October 22, 2014, in Case No. 05-CI-436 (the Judgment"), is valid and enforceable.

8. The Judgment is currently on appeal, but no bond was posted by Chesley and thus execution of the Judgment is not suspended under Kentucky law.

{N3036425.1}

Exhibit B

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9. As of March 31, 2015, $17,868,298.00 of the Judgment has been satisfied and $24,131,702.00 remains due and owing together with pre-judgment interest at the statutory rate of 8% per annum and post judgment interest from October 20, 2014, at the statutory rate of 12% per annum until paid.

I declare under penalty of perjury under the laws of the State of Louisiana that the foregoing is true and correct.

Comes the affiant and further sayeth naught.

Angela M. Ford, Affiant

Subscribed and sworn to before me by Angela M. Ford, who is personally known to me, on this the 29 day of May 2015.

Notary Public, Kentucky at Large

Peter L. Ecabert
Notary Public - State at Large
Kentucky - Notary ID # 475
My Commission Expires: 10/17/2 .6

My Commission Expires: _____

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2015 JUL -1 P 2:08
CLERK
DISTRICT

LIST OF PLAINTIFFS

Mildred Abbott Estate, Danny Abney Estate, Lisa Abraham, Elizabeth Adams, Cathy (f/k/a Kathy) Adams, Phyliss Adams, Ruby Adams c/o Gloria Little, Ruby Adamson, Susan Adkins, Clantha Akers, Effie Elizabeth Alsip, Juanita Alton, JoAnn Alvey Estate, Phyliss Applegate Estate, Cindy Armstrong-Kemp, Susan Arvin, Clara Atkinson, Linda Back, Vickie Bailey, Mary Ann Bailey, Jamie Bailey, Charlotte Baker, Carla Baldwin, Marilyn Barnes, Lee Bartley, Jr., Teresa Baumgardner, Debra Bays-Plybon, Linda Beggs, Patricia Belcher, Leisa Belding, Eleanor Berry, Margie Berry, Margaret Bingham, Emma Black Estate, Sharon Blair, Janice Blair, Carol Boggs, Lori Boone, Joie Botkins, Kathy Bowling, Angie Lynn Bowman, Virginia Braden, LaDonna Brame, James Branham, Kathy Branham, Ruby Branham, Norma Brewer, Alma Brock Estate, Glenna Brock-Powell-Renner Estate, Joyce Brown, Barbara Brown, Sharon Brown, Edith Browning Estate, Wathalee Brumfield Estate, Linda Brumley, Billie Brumley-Bradford, Kimberly Brummett, Teresa Bruner, Patricia Bryant, Leslie Bullock-Pennington, Warren Burgess Estate, Janice Burton, Tina Bush, Sherrie Butler, Donna Campbell, Loretta Canada, Buel Cantrell, Debbie Carman-Staton, Tonya Carter, Wallace Carter, Charlotte Cason-Custard, Lisa Caudill-Trustly, Connie Centers, Tony Childress, Gloria Clark, William Clark, Rosemary Click, Pamela S. Clift, Allen Coker, Shirley Coleman, Tara Coleman, Debra Collier, Margaret Collier, Linda Colvin, Phyliss Combs, Ronnie Cook, Mark Cornn, Sanda Cotton-Giley, Nadine Couch, Joseph Cowley, Jo Ann Cox, Barbara Crain, Doris Creech, Deloris Criswell, Pamela Crowe, Tracy Curtis, Doris W. Dabney (now Christopherson), Mary Daughtery, Ginger Davidson-Gibson, Elizabeth Davis, Sandra Davis, Mae Biddle Dawson, Karen Dean, Jan Delaney, Regina DeSpain-Kliessendorff, Judy Dile, Al Doser, Belva Dotson, Teresa Duff, Linda Dunaway, Tami Edwards-Engle, Amanda Edwards-Wood, Martha Elliot, Saundra Erp, Charlotte Estepp, Sarah Estates, Susan Ezell, Melissa Faye-Beamon, Janet Fentress, Sheila Fitch Estate c/o Penny L. Hines, Esq., Vickie D. Flannery, Benita Flynn, Tara Foster-Gifford-McCutchen, Rhoda Franklin, Timothy Franklin, Freda Frizzell, Beulah Fugate, Clark Fulks Estate, Patricia Gaunce, Barbara Gay, Ken Gayheart, Joni Gibson, Jessie Gibson Estate, Gladys Gilbert, Stephanie Gist, Ruby Godbey, Rosemary Godby, Joyce Goff-Wells, Debra Goode-Miranda Estate, Joyce Gordon, Tammie Grant, Amy Gray, Sherry Green, Donna Green, Norma Hall, Allie Hall, Geraldine Hall, Barbara Hampton, Rhonda Hancock, Leona Gall Handley, Joyce Hanley, Rebecca Harris, Debra Harrison, Joy Hassler-Miller, Yolanda Hayden, Barbara Heizer, Barbara Hellmueller, Wanda Helton, Gary Hendrickson, Vickie Henry, Marcus Highley, Charlene Hill, Karen Hillard, Janice Hilton, Linda Hinkle, Jacqueline Hocker, Myra Hood, Vicky Hood, Lora Hoover, Evelyn Hopkins, Charlene

Exhibit B-1

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Horn, Mary Horning, Lisa Hoskins, Cloyd Hoskins, Marilyn Howard; Louisa Moss Howard, Donna Howser-Nakagawa, Charlotte Hughes, Marcia Hughes-Harness, Marjorie Hulse Estate, Sheila Humphreys, Margaret Hunt (n/k/a Mesaris), Wanda Hunter, Brenda Hutchcraft, Lorene Hutcherson, Katherine Hutchison, Emma Ison, Della Jackson, Mary Ann Jackson, Katina Jackson, Evelyn Jackson Estate, Linda James, Debbie Jeffrey, Garnet Johnson-Coleman, Ernestine Johnstone, Kathy Jones, Beulah Jones, Judy Jones, Linda Jones, Troy Jones, Gerry Jones, Betty Jordan, Betty Kelly Estate, April-Keltner-Nuxoll, Patricia Kennedy-Stutz, Gerald King, Katherine King, Patti Kitts, Betty Kluck, Lucille Krey, Linda Larkins, Emily Lewis, Milton Lewis Estate, Angela Lewis-Mullinix, Sandra Dee Littleton, Sherry Long, Linda Long Estate, Kathy Lovan-Day, Rebecca Lovell Estate, Charlotte Lush, Linda Malone-McGowan, Paula Mann, Pamela Marlowe, Malanei Marro, Mary Martin, Bobbie Marton, Linda Martin, Connie Mason, Joni McClanahan, Lavonna McDaniel, Connie McGirr, Roberta McGuire, Tammy McGuire-Robinson, Jacqueline McMurtry, Sheila Lynn Meece, Wanda Metzger, Linda L. Miller, Delores Miller, Marie Miller, Michael Miller Estate, Nellie Miller, Linda F. Miller, Leslie Minton, Kathy Miracle Estate, Beverly Mitchell, Eudora Montgomery, Rhonda Moore, Margaret Moore, April Morris, Donna Muddiman-Cornish, Mary Napier, Wanda Faye Neace, Elizabeth Neal, Linda Nevels, Diana Newlin-Riddle, Wilma Noe, Kathy Nolan-Dinsmore, Glenora Pace, Louverna Parks, Myrtle Parrish, Judith Peck, Lisa Peek, Recie Pennington, Jeff Perkins, Helen Perkins, JoAnn (Perkins) Spencer, Stacy Perkins, Doris Phelps, Sonja Pickett, Norma Pickett Estate, Brian Powel, Mary P'Pool-Holland, Trena Preson, Suzanna Price, Rita Profitt-Norman, Lynne Pursel, Sharon Rainwater, Billie Reese, Anthony Rentas Estate, Arlie Rhodes Estate, Evelyn Rhodes, Raymond Riley Estate, Levetta Rivera, Odena Roaden, Billie June Roberts, Patricia Roberts, Renee Roberts, Fetina Robinson, Patricia N. Robinson, Carol Rogers, Vina Rose, Cathy Rose, Larry Rosenberry Estate, Mary Sams, Kathy Sands, Thomas Sapp, Justus Scharold, Maxine Seals, Crystal Seals-Gibson, Lisa Sexton Estate, Monica Sexton-Napier, Margaret Sharon, Michelle Sharpe-Roberts, Janet Short-Roberts, Laureda Short Estate, Loretta Sidwell (now Dishman), Ada Sizemore Estate, April Slatten-Jones, Carole Slone, Elaine Smith, Barbara Smith, Freda Smith, Sharon Smith Estate, Darcy Snowden-Talbert, Peggy Spears, Cora Stapleton, Paul Stauffer Estate, Corina Stearns, Nancy Stephens, Connie Stephens Estate, Sharon Stevenson Estate, Marlene Stewart, Loretta Stidham Estate, Betty Stone, Lesta Irene Stout, Donna Stromowsky, Connie Sturgill, Marjorie Sudduth Estate, Lisa Swiger, Ella Tackett Estate, Priscilla Tafolla Estate, Charles Tapley, Ella Taylor, Linda Taylor, Mary Taylor, Jeanne Thomas, Nancy

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Thompson, Karen Thompson-McClain, James G. Thurman, Roy Toler Estate, Linda Toler Estate, Elizabeth Trent, Jennifer Trimble, Joetta Tucker, Deborah Turner, Patricia Turner, Drucilla Turner, Valorie Turner, Linda Vance-Self, Linda Vannarsdall-Collins, Debbie Vogt-Schneider, Bobbie Walker, Lane Walker Estate, Loraine Wallen, Cindy Walters, Martin Ward Estate, Elizabeth Washburn, Wanda Watkins, Cheryl Watson, Judy Whitaker, Kim White, Patricia White, Mary White-Lynch, Catherine Whitlock, Joyce Whitt, Betty Jean Widner, Gloria Williams Estate, Bethany Willinger, Geneva Wilson, Melody Winer, Connie Wolfe, Bill Wombles, Artie Woods, Fern Wooten, Edwina Wright, Roger Dale Wright, Sandra Wright, Debora Wright-Mitsui, Tammy Wright, Sheila Yates, Karen Young-Coffield, Sandra Zeman Balentine.

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CLERK
DISTRICT COURT

DOMICILES OF PLAINTIFFS

Patricia Kennedy-Stutz	Orange Beach	AL
Sandra Zeman-Balentine	Pell City	AL
Jeanne Thomas	Fayetteville	AR
Ginger Davidson-Gibson	Sun City Center,	FL
Debra Goode-Miranda Estate c/o Stphen F. Baker, Esq.	Winterhaven	FL
Geraldine Hall	Port Charlotte	FL
Linda Martin	Fort Myers	FL
Carole Slone	Palm Bay	FL
Myrtle Parrish	Lithia Springs	GA
Cheryl Watson	Alpharetta	GA
Al Doser	Olney	IL
Brenda Hutchcraft	Macedonia	IL
Maxine Seals	Chicago	IL
Karen Thompson-McClain	Centralia	IL
Teresa Duff	Indianapolis	IN
Gary Hendrickson	Indianapolis	IN
Larry Roseberry Estate	Columbus	IN
Connie Wolfe	Hanover	IN
Mildred Abbott Estate	Cawood	KY
Danny Abney Estate	Irvine	KY
Lisa Abraham	Wallins Creek	KY
Elizabeth Adams	Prestonsburg	KY
Cathy (f/k/a Kathy) Adams	Versailles	KY
Phyllis Adams	Lexington	KY
Ruby Adamson	Georgetown	KY
Susan Adkins	Versailles	KY
Clantha Akers	Lexington	KY
Effie Elizabeth Alsip	Corbin	KY
Juanita Alton	Somerset	KY
JoAnn Alvey Estate	Louisville	KY
Phyllis Applegate Estate	Richmond	KY
Cindy Armstrong-Kemp	Owensboro	KY
Susan Arvin	Lexington	KY
Clara Atkinson	Lynch	KY
Linda Back	Lexington	KY
Vickie Bailey	Hopkinsville	KY
Mary Ann Bailey	Cumberland	KY
Jamie Bailey	Columbia	KY
Charlotte Baker	Manchester	KY
Carla Baldwin	Lexington	KY
Marilyn Barnes	Monticello	KY
Lee Bartley, Jr.	Somerset	KY
Teresa Baumgardner	Mayfield	KY
Debra Bays-Plybon	Argillite	KY
Lelsa Belding	Lexington	KY
Eleanor Berry	Ashland	KY
Margie Berry	Berea	KY
Margaret Bingham	Nicholasville	KY
Emma Black Estate	Morehead	KY
Sharon Blair	Cumberland	KY
Janice Blair	Russell Springs	KY
Carol Boggs	Ironton	KY
Lori Boone	Lexington	KY

Exhibit C

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Joie Botkins	Manchester	KY
Kathy Bowling	Busy	KY
Angie Lynn Bowman	Williamstown	KY
Virginia Braden	Burnside	KY
LaDonna Brame	Wingo	KY
James Branham	Lexington	KY
Kathy Branham	Lexington	KY
Ruby Branham	Georgetown	KY
Norma Brewer	Lancaster	KY
Alma Brock Estate	London	KY
Joyce Brown	Lexington	KY
Barbara Brown	Morehead	KY
Sharon Brown	Olive Hill	KY
Edith Browning Estate	Corbin	KY
Wathalee Brumfield Estate	Richmond	KY
Billie Brumley-Bradford	Elsmere	KY
Kimberly Brummett	London	KY
Teresa Bruner	Lexington	KY
Patricia Bryant	Williamsburg	KY
Leslie Bullock-Pennington	Somerset	KY
Warren Burgess Estate	Georgetown	KY
Janice Burton	Somerset	KY
Tina Bush	Ary	KY
Sherrie Butler	Tompkinsville	KY
Donna Campbell	Lexington	KY
Loretta Canada	Somerset	KY
Buel Cantrell	West Liberty	KY
Debbie Carman-Staton	Hustonville	KY
Tonya Carter	Lexington	KY
Wallace Carter	Lawrenceburg	KY
Charlotte Cason-Custard	Cynthiana	KY
Lisa Caudill-Trusty	Walton	KY
Connie Centers	Lawrenceburg	KY
Tony Childress	Lexington	KY
Gloria Clark	Lynch	KY
William Clark	Versallles	KY
Rosemary Click	Flatwoods	KY
Pamela S. Clift	Lexington	KY
Allen Coker	Somerset	KY
Shirley Coleman	Lexington	KY
Debra Collier	Whitesburg	KY
Linda Colvin	Campbellsville	KY
Phyllis Combs	Lexington	KY
Ronnie Cook	Bledsoe	KY
Mark Cornn	Frankfort	KY
Nadine Couch	Manchester	KY
Joseph Cowley	Lexington	KY
Jo Ann Cox	Lawrenceburg	KY
Barbara Crain	Louisville	KY
Doris Creech	Corbin	KY
Deloris Criswell	Monticello	KY
Pamela Crowe	Lawrenceburg	KY
Tracy Curtis	Lexington	KY
Doris W. Dabney (now Christopherson)	Somerset	KY

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Mary Daughtery	Danville	KY
Elizabeth Davis	Pikeville	KY
Sandra Davis	Whitley City	KY
Mae Biddle Dawson	Cynthiana	KY
Karen Dean	Harrodsburg	KY
Jan Delaney	Nicholasville	KY
Regina DeSpain-Kliessendorff	Bardstown	KY
Judy Dile	Campbellsville	KY
Belva Dotson	Feds Creek	KY
Linda Dunaway	Cumberland	KY
Tami Edwards-Engle	Lexington	KY
Amanda Edwards-Wood	Lebanon	KY
Martha Elliot	Maysville	KY
Saundra Erp	Somerset	KY
Charlotte Estepp	Corinth	KY
Sarah Estes	Eubank	KY
Susan Ezell	Carlisle	KY
Melissa Faye-Beamon	Brooksville	KY
Janet Fentress	Somerset	KY
Sheila Fitch Estate c/o Penny L. Hines, Esq.	Somerset	KY
Vickie D. Flannery	Ashland	KY
Tara Foster-Gifford-McCutchen	Monticello	KY
Rhoda Franklin	Versailles	KY
Freda Frizzell	Salt Lick	KY
Beulah Fugate	Carrie	KY
Clara Fulks Estate	Eddyville	KY
Patricia Gaunce	Versailles	KY
Barbara Gay	Lancaster	KY
Ken Gayheart	Richmond	KY
Joni Gibson	Somerset	KY
Jessie Gibson Estate	Somerset	KY
Gladys Gilbert	Olive Hill	KY
Stephanie Gist	Lexington	KY
Rosemary Godby	Nazareth	KY
Joyce Goff-Wells	Somerset	KY
Joyce Gordon	Danville	KY
Tammie Grant	Ashland	KY
Amy Gray	Nicholasville	KY
Sherry Green	Lancaster	KY
Donna Green	Lexington	KY
Norma Hall	Lexington	KY
Allie Hall	Quincy	KY
Barbara Hampton	Pineville	KY
Leona Gail Handley	Nicholasville	KY
Joyce Hanley	Lexington	KY
Rebecca Harris	Georgetown	KY
Debra Harrison	Irvine	KY
Joy Hassler-Miller	Corbin	KY
Yolanda Hayden	Lexington	KY
Barbara Heizer	Lexington	KY
Barbara Hellmueller	Lexington	KY
Wanda Helton	Partridge	KY
Vickie Henry	Owensboro	KY
Marcus Highley	Mt. Sterling	KY

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Charlene Hill	Nicholsville	KY
Karen Hillard	Georgetown	KY
Janice Hilton	Lexington	KY
Jacqueline Hocker	Nicholasville	KY
Myra Hood	Lexington	KY
Vicky Hood	Somerset	KY
Lora Hoover	Ft. Wright	KY
Evelyn Hopkins	Lexington	KY
Charlene Horn	Winchester	KY
Mary Horning	Lexington	KY
Linda Hoskins	Stanton	KY
Cloyd Hoskins	London	KY
Marilyn Howard	Lexington	KY
Donna Howser-Nakagawa	Lawrenceburg	KY
Charlotte Hughes	Garrett	KY
Marcia Hughes-Harness	Science Hill	KY
Marjorie Hulse Estate	Lexington	KY
Margaret Hunt (n/k/a Mesaris)	Dawson Springs	KY
Wanda Hunter	Corinth	KY
Lorene Hutcherson	Somerset	KY
Katherine Hutchison	Cynthiana	KY
Emma Ison	Corbin	KY
Della Jackson	London	KY
Mary Ann Jackson	Lexington	KY
Katina Jackson	Lexington	KY
Evelyn Jackson Estate	Manchester	KY
Linda James	Stanford	KY
Debbie Jeffrey	Paducah	KY
Garnet Johnson-Coleman	Pikeville	KY
Ernestine Johnstone	Harrodsburg	KY
Kathy Jones	London	KY
Beulah Jones	Corbin	KY
Judy Jones	Corbin	KY
Linda Jones	Stanford	KY
Troy Jones	Lexington	KY
Gerry Jones	Nancy	KY
Betty Jordan	Lexington	KY
Gerald King	Richmond	KY
Katherine King	Berea	KY
Patti Kitts	Jamestown	KY
Linda Larkins	White Plains	KY
Emily Lewis	Flatwoods	KY
Milton Lewis Estate	Manchester	KY
Angela Lewis-Mullinix	Flatwoods	KY
Sandra Dee Littleton	Mount Sterling	KY
Sherry Long	Coldiron	KY
Linda Long Estate	Somerset	KY
Kathy Lovan-Day	White Plains	KY
Charlotte Lush	Louisville	KY
Linda Malone-McGowan	Cynthiana	KY
Paula Mann	Jamestown	KY
Pamela Marlowe	Fredonia	KY
Malanei Marro	Independence	KY
Mary Martin	Harrodsburg	KY

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Bobbie Martin	Lexington	KY
Connie Mason	Tollesboro	KY
Joni McClanahan	Georgetown	KY
Lavonna McDaniel	Stanton	KY
Connie McGirr	Lancaster	KY
Roberta McGuire	Mount Vernon	KY
Tammy McGuire-Robinson	Mount Vernon	KY
Jacqueline McMurtry	Louisville	KY
Sheila Lynn Meece	Somerset	KY
Wanda Metzger	Nicholasville	KY
Linda L. Miller	Salyersville	KY
Delores Miller	Richmond	KY
Marie Miller	Perryville	KY
Nellie Miller	Paducah	KY
Linda F. Miller	Maysville	KY
Leslie Minton	Sheperdsville	KY
Kathy Miracle Estate, c/o Shane Romines, Esq. - Copeland & Romines Trust Account	Corbin	KY
Beverly Mitchell	Somerset	KY
Eudora Montgomery	Midway	KY
Rhonda Moore	Elkhorn City	KY
Margaret Moore	Winchester	KY
April Morris	Ewing	KY
Donna Muddimann-Cornish	Versailles	KY
Mary Napier	Evarts	KY
Wanda Faye Neace	Bonnyman	KY
Elizabeth Neal	Harrodsburg	KY
Linda Nevels	Monticello	KY
Wilma Noe	Lily	KY
Kathy Nolan-Dinsmore	Lily	KY
Glenora Pace	Mt. Eden	KY
Louverna Parks	Jackson	KY
Lisa Peek	Kings Mountain	KY
Recie Pennington	Smilax	KY
Jeff Perkins	Somerset	KY
Helen Perkins	Woodbine	KY
JoeAnn (Perkins) Spencer	Nicholasville	KY
Stacy Perkins	Lexington	KY
Doris Phelps	Kings Mountain	KY
Sonja Pickett	Versailles	KY
Norma Pickett Estate c/o Angela VanVlyman, Execx.	Columbia	KY
Brian Powell	Paris	KY
Mary P'Pool-Holland	Hopkinsville	KY
Trena Preston	Hazard	KY
Suzanne Price	Hazard	KY
Rita Profitt-Norman	Georgetown	KY
Lynne Pursel	Louisville	KY
Sharon Rainwater	Nancy	KY
Billie Reese	Louisville	KY
Anthony Rentas Estate	Crab Orchard	KY
Arlie Rhodes Estate	Manchester	KY
Evelyn Rhodes	Louisville	KY
Raymond Riley Estate	Williamstown	KY
Levetta Rivera	Lexington	KY
Odena Roaden	Somerset	KY

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Billie June Roberts	Stanford	KY
Patricia Roberts	Owingsville	KY
Renee Roberts	Stamping Ground	KY
Fetina Robinson	Winchester	KY
Patricia N. Robinson	Princeton	KY
Carol Rogers	Cynthiana	KY
Vina Rose	Mt. Sterling	KY
Mary Sams	Georgetown	KY
Kathy Sands	Georgetown	KY
Thomas Sapp	Maysville	KY
Justus Scharold	Ryland Height	KY
Crystal Seals-Gibson	Wallins Creek	KY
Lisa Sexton Estate	Clay City	KY
Monica Sexton-Napier	Lawrenceburg	KY
Margaret Sharon	Midway	KY
Michelle Sharpe-Roberts	Eubank	KY
Janet Short-Roberts	Nichosville	KY
Laureda Short Estate	Winchester	KY
Ada Sizemore Estate	Hyden	KY
April Slatten-Jones	Versailles	KY
Elaine Smith	West Liberty	KY
Barbara Smith	Corbin	KY
Freda Smith	Versailles	KY
Sharon Smith Estate	South Williamson	KY
Darcy Snowden-Talbert	Lexington	KY
Peggy Spears	Somerset	KY
Cora Stapleton	Hellier	KY
Paul Stauffer Estate	Richmond	KY
Corina Stearns	Russell Springs	KY
Connie Stephens Estate	Berea	KY
Sharon Stevenson Estate	Nancy	KY
Marlene Stewart	Rush	KY
Loretta Stidham Estate	Olive Hill	KY
Betty Stone	Nicholasville	KY
Donna Stromowsky	Louisville	KY
Connie Sturgill	Harlan	KY
Marjorie Sudduth Estate	Frankfort	KY
Lisa Swiger	Salyersville	KY
Ella Tackett Estate	Hazard	KY
Priscilla Tafolla Estate	Allen	KY
Charles Tapley	Mt. Sterling	KY
Ella Taylor	Georgetown	KY
Linda Taylor	Danville	KY
Mary Taylor	Lexington	KY
Nancy Thompson	Berea	KY
James G. Thurman	Frankfort	KY
Elizabeth Trent	London	KY
Jennifer Trimble	Versailles	KY
Joetta Tucker	Central City	KY
Deborah Turner	Lawrenceburg	KY
Patricia Turner	Lexington	KY
Drucilla Turner	Lexington	KY
Valorie Turner	Lexington	KY
Linda Vance-Self	Hustonville	KY

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Linda Vannarsdall-Collins	Georgetown	KY
Bobbie Walker	Hazard	KY
Lane Walker Estate	Manchester	KY
Loraine Wallen	Mousie	KY
Cindy Walters	Mt. Sterling	KY
Martin Ward Estate	Lexington	KY
Elizabeth Washburn	Middlesboro	KY
Wanda Watkins	Garrett	KY
Judy Whitaker	Science Hill	KY
Kim White	Jeffersonville	KY
Patricia White	Harlan	KY
Catherine Whitlock	Georgetown	KY
Joyce Whitt	West Liberty	KY
Betty Jean Widner	Evarts	KY
Gloria Williams Estate	Lexington	KY
Bethany Willinger	Lexington	KY
Geneva Wilson	Nortonville	KY
Melody Winer	Lexington	KY
Bill Wombles	Manchester	KY
Artie Woods	Monticello	KY
Fern Wooten	London	KY
Edwina Wright	Somerset	KY
Roger Dale Wright	Ashland	KY
Sandra Wright	Virgie	KY
Debora Wright-Mitsui	Burlington	KY
Tammy Wright	Thealka	KY
Shelia Yates	Calvert City	KY
Karen Young-Coffield	Nicholasville	KY
Michael Miller Estate	Lexington	KY
Linda Hinkle	Baldwin	LA
Margaret Collier	Chelmsford	MA
Debbie Vogt-Schneider	Ocean Springs	MS
Tara Coleman	Kernersville	NC
Sandra Cotton-Gilley	Wells	NV
Lucille Krey	Las Vegas	NV
Ruby Adams, c/o Gloria Little	Cincinnati	OH
Glenna Brock-Powell-Renner Estate	Dayton	OH
Linda Brumley	West Union	OH
Ruby Godbey	Miamisburg	OH
Louisa Moss Howard	Fairfield	OH
Betty Kelly Estsate	Cedarville	OH
Rebecca Lovell Estate	Dayton	OH
Judith Peck	Cincinnati	OH
Mary White-Lynch	Springfield	OH
Nancy Stephens	Fairland	OK
Cathy Rose	Woodruff	SC
Linda Beggs	Hendersonville	TN
Rhonda Hancock	Goodlettsville	TN
Diana Newlin-Riddle	Knoxville	TN
Loretta Sidwell (now Dishman)	Rocky Top	TN
Lesta Irene Stout	Rutledge	TN
Bernita Flynn	Cypress	TX
Patricia Belcher	Pennington Gap	VA
Timothy Franklin Ro	Big Stone Gap	VA

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April Keltner-Nuxoll	Jonesville	VA
Betty Kluck	Ewing	VA
Roy Toler Estate	Pound	VA
Linda Toler Estate	Wise	VA
Sheila Humphreys	New Haven	WV

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EXHIBIT E

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2015-5224 DIVISION "F-01"

MILDRED ABBOTT, ET AL.

VERSUS

STANLEY M. CHESLEY

FILED: _____ _____

DEPUTY CLERK

JUDGMENT

Considering the allegations of the foregoing petition, the facts sworn in the accompanying affidavit, and the presence of an attached judgment, duly authenticated in accordance with applicable law, and having concluded that the requirements of the Louisiana Enforcement of Foreign Judgments Act, R.S. 13:4241, *et seq.*, have been satisfied,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the October 20, 2014 Amended Order of the Boone Circuit Court, Division III, Commonwealth of Kentucky, Docket No. 05-CI-436, in favor of the PF Judgment Creditors,[1] and against Stanley M. Chesley ("Chesley"), is hereby made **EXECUTORY** in this Court;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chesley is liable to the PF Judgment Creditors in the amount of **$24,131,702.00**, with prejudgment interest at a rate of 8% per annum from April 1, 2002, to the date of Judgment, and postjudgment interest at the rate of 12% per annum from October 20, 2014, until paid.

New Orleans, Louisiana, this 2nd day of June 2015.

A TRUE COPY
DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

JUDGE
JUDGE
CHRISTOPHER J. BRUNO
DIVISION "F"

[1] The PF Judgment Creditors are a group of 382 judgment creditors; a full list of those creditors is attached to this Judgment.

{N3035641.1}

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FILED
2015 JAN -1 P 2:03
CIVIL
DISTRICT COURT

LIST OF PLAINTIFFS

Mildred Abbott Estate, Danny Abney Estate, Lisa Abraham, Elizabeth Adams, Cathy (f/k/a Kathy) Adams, Phyliss Adams, Ruby Adams c/o Gloria Little, Ruby Adamson, Susan Adkins, Clantha Akers, Effie Elizabeth Alsip, Juanita Alton, JoAnn Alvey Estate, Phyliss Applegate Estate, Cindy Armstrong-Kemp, Susan Arvin, Clara Atkinson, Linda Back, Vickie Bailey, Mary Ann Bailey, Jamie Bailey, Charlotte Baker, Carla Baldwin, Marilyn Barnes, Lee Bartley, Jr., Teresa Baumgardner, Debra Bays-Plybon, Linda Beggs, Patricia Belcher, Leisa Belding, Eleanor Berry, Margie Berry, Margaret Bingham, Emma Black Estate, Sharon Blair, Janice Blair, Carol Boggs, Lori Boone, Joie Botkins, Kathy Bowling, Angie Lynn Bowman, Virginia Braden, LaDonna Brame, James Branham, Kathy Branham, Ruby Branham, Norma Brewer, Alma Brock Estate, Glenna Brock-Powell-Renner Estate, Joyce Brown, Barbara Brown, Sharon Brown, Edith Browning Estate, Wathalee Brumfield Estate, Linda Brumley, Billie Brumley-Bradford, Kimberly Brummett, Teresa Bruner, Patricia Bryant, Leslie Bullock-Pennington, Warren Burgess Estate, Janice Burton, Tina Bush, Sherrie Butler, Donna Campbell, Loretta Canada, Buel Cantrell, Debbie Carman-Staton, Tonya Carter, Wallace Carter, Charlotte Cason-Custard, Lisa Caudill-Trustly, Connie Centers, Tony Childress, Gloria Clark, William Clark, Rosemary Click, Pamela S. Clift, Allen Coker, Shirley Coleman, Tara Coleman, Debra Collier, Margaret Collier, Linda Colvin, Phyliss Combs, Ronnie Cook, Mark Cornn, Sanda Cotton-Giley, Nadine Couch, Joseph Cowley, Jo Ann Cox, Barbara Crain, Doris Creech, Deloris Criswell, Pamela Crowe, Tracy Curtis, Doris W. Dabney (now Christopherson), Mary Daughtery, Ginger Davidson-Gibson, Elizabeth Davis, Sandra Davis, Mae Biddle Dawson, Karen Dean, Jan Delaney, Regina DeSpain-Kliessendorff, Judy Dile, Al Doser, Belva Dotson, Teresa Duff, Linda Dunaway, Tami Edwards-Engle, Amanda Edwards-Wood, Martha Elliot, Saundra Erp, Charlotte Estepp, Sarah Estates, Susan Ezell, Melissa Faye-Beamon, Janet Fentress, Sheila Fitch Estate c/o Penny L. Hines, Esq., Vickie D. Flannery, Benita Flynn, Tara Foster-Gifford-McCutchen, Rhoda Franklin, Timothy Franklin, Freda Frizzell, Beulah Fugate, Clark Fulks Estate, Patricia Gaunce, Barbara Gay, Ken Gayheart, Joni Gibson, Jessie Gibson Estate, Gladys Gilbert, Stephanie Gist, Ruby Godbey, Rosemary Godby, Joyce Goff-Wells, Debra Goode-Miranda Estate, Joyce Gordon, Tammie Grant, Amy Gray, Sherry Green, Donna Green, Norma Hall, Allie Hall, Geraldine Hall, Barbara Hampton, Rhonda Hancock, Leona Gail Handley, Joyce Hanley, Rebecca Harris, Debra Harrison, Joy Hassler-Miller, Yolanda Hayden, Barbara Heizer, Barbara Hellmueller, Wanda Helton, Gary Hendrickson, Vickie Henry, Marcus Highley, Charlene Hill, Karen Hillard, Janice Hilton, Linda Hinkle, Jacqueline Hocker, Myra Hood, Vicky Hood, Lora Hoover, Evelyn Hopkins, Charlene

Exhibit to Judgment

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Horn, Mary Horning, Lisa Hoskins, Cloyd Hoskins, Marilyn Howard, Louisa Moss Howard, Donna Howser-Nakagawa, Charlotte Hughes, Marcia Hughes-Harness, Marjorie Hulse Estate, Sheila Humphreys, Margaret Hunt (n/k/a Mesaris), Wanda Hunter, Brenda Hutchcraft, Lorene Hutcherson, Katherine Hutchison, Emma Ison, Della Jackson, Mary Ann Jackson, Katina Jackson, Evelyn Jackson Estate, Linda James, Debbie Jeffrey, Garnet Johnson-Coleman, Ernestine Johnstone, Kathy Jones, Beulah Jones, Judy Jones, Linda Jones, Troy Jones, Gerry Jones, Betty Jordan, Betty Kelly Estate, April-Keltner-Nuxoll, Patricia Kennedy-Stutz, Gerald King, Katherine King, Patti Kitts, Betty Kluck, Lucille Krey, Linda Larkins, Emily Lewis, Milton Lewis Estate, Angela Lewis-Mullinix, Sandra Dee Littleton, Sherry Long, Linda Long Estate, Kathy Lovan-Day, Rebecca Lovell Estate, Charlotte Lush, Linda Malone-McGowan, Paula Mann, Pamela Marlowe, Malanei Marro, Mary Martin, Bobbie Marton, Linda Martin, Connie Mason, Joni McClanahan, Lavonna McDaniel, Connie McGirr, Roberta McGuire, Tammy McGuire-Robinson, Jacqueline McMurtry, Sheila Lynn Meece, Wanda Metzger, Linda L. Miller, Delores Miller, Marie Miller, Michael Miller Estate, Nellie Miller, Linda F. Miller, Leslie Minton, Kathy Miracle Estate, Beverly Mitchell, Eudora Montgomery, Rhonda Moore, Margaret Moore, April Morris, Donna Muddiman-Cornish, Mary Napier, Wanda Faye Neace, Elizabeth Neal, Linda Nevels, Diana Newlin-Riddle, Wilma Noe, Kathy Nolan-Dinsmore, Glenora Pace, Louverna Parks, Myrtle Parrish, Judith Peck, Lisa Peek, Recie Pennington, Jeff Perkins, Helen Perkins, JoAnn (Perkins) Spencer, Stacy Perkins, Doris Phelps, Sonja Pickett, Norma Pickett Estate, Brian Powel, Mary P'Pool-Holland, Trena Preson, Suzanna Price, Rita Profitt-Norman, Lynne Pursel, Sharon Rainwater, Billie Reese, Anthony Rentas Estate, Arlie Rhodes Estate, Evelyn Rhodes, Raymond Riley Estate, Levetta Rivera, Odena Roaden, Billie June Roberts, Patricia Roberts, Renee Roberts, Fetina Robinson, Patricia N. Robinson, Carol Rogers, Vina Rose, Cathy Rose, Larry Rosenberry Estate, Mary Sams, Kathy Sands, Thomas Sapp, Justus Scharold, Maxine Seals, Crystal Seals-Gibson, Lisa Sexton Estate, Monica Sexton-Napier, Margaret Sharon, Michelle Sharpe-Roberts, Janet Short-Roberts, Laureda Short Estate, Loretta Sidwell (now Dishman), Ada Sizemore Estate, April Slatten-Jones, Carole Slone, Elaine Smith, Barbara Smith, Freda Smith, Sharon Smith Estate, Darcy Snowden-Talbert, Peggy Spears, Cora Stapleton, Paul Stauffer Estate, Corina Stearns, Nancy Stephens, Connie Stephens Estate, Sharon Stevenson Estate, Marlene Stewart, Loretta Stidham Estate, Betty Stone, Lesta Irene Stout, Donna Stromowsky, Connie Sturgill, Marjorie Sudduth Estate, Lisa Swiger, Ella Tackett Estate, Priscilla Tafolla Estate, Charles Tapley, Ella Taylor, Linda Taylor, Mary Taylor, Jeanne Thomas, Nancy

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Thompson, Karen Thompson-McClain, James G. Thurman, Roy Toler Estate, Linda Toler Estate, Elizabeth Trent, Jennifer Trimble, Joetta Tucker, Deborah Turner, Patricia Turner, Drucilla Turner, Valorie Turner, Linda Vance-Self, Linda Vannarsdall-Collins, Debbie Vogt-Schneider, Bobbie Walker, Lane Walker Estate, Loraine Wallen, Cindy Walters, Martin Ward Estate, Elizabeth Washburn, Wanda Watkins, Cheryl Watson, Judy Whitaker, Kim White, Patricia White, Mary White-Lynch, Catherine Whitlock, Joyce Whitt, Betty Jean Widner, Gloria Williams Estate, Bethany Willinger, Geneva Wilson, Melody Winer, Connie Wolfe, Bill Wombles, Artie Woods, Fern Wooten, Edwina Wright, Roger Dale Wright, Sandra Wright, Debora Wright-Mitsui, Tammy Wright, Sheila Yates, Karen Young-Coffield, Sandra Zeman Balentine.

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EXHIBIT F

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock St. Denver, CO 80202 Phone: (720) 865-8301	DATE FILED: July 31, 2015 10:39 AM FILING ID: 5FC2920D1FEB6 CASE NUMBER: 2015CV32712
Plaintiffs: MILDRED ABBOTT, et al. v. **Defendants:** STANLEY M. CHESLEY, et al.	▲ **COURT USE ONLY** ▲
JACKSON KELLY PLLC John S. Zakhem, Esq. #30089 John L. Skari, Jr., Esq. #40209 1099 18th Street, Suite 2150 Denver, CO 80202 Phone: 303-390-0003 Fax: 303-390-0117 jlskari@jacksonkelly.com	Case Number: Division: Courtroom:

NOTICE OF FILING OF FOREIGN JUDGMENT

To: Stanley M. Chesley, Judgment Debtor
9005 Carmargo Road
Cincinnati, OH 45243

You are hereby notified that on July 31, 2015, a judgment against you in the amount of $42,000,0000.00 originally entered in Boone Circuit Court in the Commonwealth of Kentucky has been entered in the records of this Court under the provisions of the Uniform Enforcement of Foreign Judgment Act §13-53-101 - §13-53-108, Colorado Revised Statutes.

Plaintiffs / Judgment Creditors: Mildred Abbott, et al.
c/o Angela M. Ford, PSC
836 Euclid Ave., Suite 311
Lexington, KY 40502

Date: 7/31/2015

Angela M. Ford, Attorney for Judgment Creditors

JDF 139 9/10 NOTICE OF FILING OF FOREIGN JUDGMENT

RECEIVED 8-6-15 SGS

CERTIFICATE OF MAILING

I certify that on July 31, 2015, I mailed a true and correct copy of the ***Notice of Filing of Foreign Judgment and the Judgment Creditor Affidavit in Support of Foreign Judgment,*** by placing it in the United States Mail, postage pre-paid to the parties listed below.

☐Judgment Creditor
☒Judgment Creditors' Attorney
☐Clerk/Deputy Clerk

Stanley M. Chesley
9005 Carmargo Road
Cincinnati, OH 45243

Attorneys for Judgment Debtor:

Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd, LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

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DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock St. Denver, CO 80202 Phone: (720) 865-8301	DATE FILED: July 31, 2015 10:39 AM FILING ID: 5FC2920D1FEB6 CASE NUMBER: 2015CV32712
Plaintiffs: MILDRED ABBOTT, et al. v. **Defendants:** STANLEY M. CHESLEY, et al.	▲ **COURT USE ONLY** ▲
JACKSON KELLY PLLC John S. Zakhem, Esq. #30089 John L. Skari, Jr., Esq. #40209 1099 18th Street, Suite 2150 Denver, CO 80202 Phone: 303-390-0003 Fax: 303-390-0117 jlskari@jacksonkelly.com	Case Number: Division: Courtroom:

JUDGMENT CREDITOR AFFIDAVIT IN SUPPORT OF FOREIGN JUDGMENT

I, Angela M. Ford, Esq., attorney for Plaintiffs / Judgment Creditors, by and through local counsel Jackson Kelly PLLC, file this Affidavit pursuant to §13-53-104, C.R.S. and state the following:

1. **Information about the Plaintiffs:** ☒ Judgment Creditors ☐ Judgment Debtor

   Mildred Abbott, et al.
   c/o Angela M. Ford, PSC
   836 Euclid Ave., Suite 311
   Lexington, KY 40502

   Please see the attached Exhibit A for a list of each Plaintiff / Judgment Creditor and their corresponding address.

   Attorney for Plaintiffs / Judgement Creditors: Angela M. Ford
   Angela M. Ford, PSC
   836 Euclid Avenue, Suite 311
   Lexington, KY 40502

2. **Information about the Defendant:** ☐ Judgment Creditor ☒ Judgment Debtor

   Defendant / Judgment Debtor: Stanley M. Chesley
   9005 Carmargo Road
   Cincinnati, OH 45243

   Attorneys for Defendant / Judgment Debtor:

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Sheryl G. Snyder, Esq.
Griffin Terry Sumner, Esq.
Frost Brown Todd, LLC
400 West Market St., 32nd Floor
Louisville, KY 40202

Frank Benton, IV, Esq.
P.O. Box 72218
Newport, KY 41072

3. Attached to this Affidavit as Exhibit B is an authenticated copy of the judgment in the amount of $42,000,000.00 originally entered in Boone Circuit Court in the Commonwealth of Kentucky on October 22, 2014.

4. A stay of execution on the judgment has not been granted and no bond has been posted.

VERIFICATION AND ACKNOWLEDGMENT

I, Angela M. Ford, Esq. swear/affirm under oath, and under penalty of perjury, that I have read the forgoing *JUDGMENT CREDITOR AFFIDAVIT IN SUPPORT OF FOREIGN JUDGMENT* and that the statements set forth therein are true and correct to the best of my knowledge.

Angela M Ford 7/31/2015
Signature Date

The foregoing instrument was acknowledged before me in the County of Collier, State of Florida, this 31 day of July, 2015, by the Petitioner.

My Commission Expires: 07/08/2018.

Notary Public/Deputy Clerk

KIMBERLY VARGAS
MY COMMISSION #FF125414
EXPIRES July 8, 2018
(407) 398 0153 FloridaNotaryService.com

7/31/15
Signature of Attorney Date

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Last Name	First Name	City	State	Zip
Abbott Estate	Mildred	Cawood	KY	40915
Abney Estate	Danny	Irvine	KY	40336
Abraham	Lisa	Wallins Creek	KY	40873
Adams	Elizabeth	Prestonsburg	KY	41653
Adams	Cathy (f/k/a Kathy)	Versailles	KY	40383
Adams	Phyllis	Lexington	KY	40504
Adams, c/o Gloria Little	Ruby	Cincinnati	OH	45212
Adamson	Ruby	Georgetown	KY	40324
Adkins	Susan	Versailles	KY	40383
Akers	Clantha	Lexington	KY	40509
Alsip	Effie Elizabeth	Corbin	KY	40701
Alton	Juanita	Somerset	KY	42501
Alvey Estate	JoAnn	Louisville	KY	40241
Applegate Estate	Phyllis	Richmond	KY	40475
Armstrong-Kemp	Cindy	Owensboro	KY	42303
Arvin	Susan	Lexington	KY	40505
Atkinson	Clara	Lynch	KY	40855
Back	Linda	Lexington	KY	40504
Bailey	Vickie	Hopkinsville	KY	42240
Bailey	Mary Ann	Cumberland	KY	40823
Bailey	Jamie	Columbia	KY	42728
Baker	Charlotte	Manchester	KY	40962
Baldwin	Carla	Lexington	KY	40515
Barnes	Marilyn	Monticello	KY	42633
Bartley, Jr.	Lee	Somerset	KY	42503
Baumgardner	Teresa	Mayfield	KY	42066
Bays-Plybon	Debra	Argillite	KY	41121
Beggs	Linda	Hendersonville	TN	37075
Belcher	Patricia	Pennington Gap	VA	24277
Belding	Leisa	Lexington	KY	40503
Berry	Eleanor	Ashland	KY	41101

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CASE NUMBER: 2015CV32712

EXHIBIT A

Berry	Margie	Berea	KY	40403
Bingham	Margaret	Nicholasville	KY	40340
Black Estate	Emma	Morehead	KY	40351
Blair	Sharon	Cumberland	KY	40823
Blair	Janice	Russell Springs	KY	42642
Boggs	Carol	Ironton	KY	45638
Boone	Lori	Lexington	KY	40515
Botkins	Joie	Manchester	KY	40962
Bowling	Kathy	Busy	KY	41723
Bowman	Angie Lynn	Williamstown	KY	41097
Braden	Virginia	Burnside	KY	42519
Brame	LaDonna	Wingo	KY	42088
Branham	James	Lexington	KY	40515
Branham	Kathy	Lexington	KY	40515
Branham	Ruby	Georgetown	KY	40324
Brewer	Norma	Lancaster	KY	40444
Brock Estate	Alma	London	KY	40741
Brock-Powell-Renner Estate	Glenna	Dayton	OH	45404
Brown	Joyce	Lexington	KY	40509
Brown	Barbara	Morehead	KY	40351
Brown	Sharon	Olive Hill	KY	41164
Browning Estate	Edith	Corbin	KY	40701
Brumfield Estate	Wathalee	Richmond	KY	40475
Brumley	Linda	West Union	OH	45693
Brumley-Bradford	Billie	Elsmere	KY	41018
Brummett	Kimberly	London	KY	40744
Bruner	Teresa	Lexington	KY	40511
Bryant	Patricia	Williamsburg	KY	40769
Bullock-Pennington	Leslie	Somerset	KY	42501
Burgess Estate	Warren	Georgetown	KY	40324
Burton	Janice	Somerset	KY	42503
Bush	Tina	Ary	KY	41712
Butler	Sherrie	Tompkinsville	KY	42167
Campbell	Donna	Lexington	KY	40576-1533

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Canada	Loretta	Somerset	KY	42503
Cantrell	Buel	West Liberty	KY	41472
Carman-Staton	Debbie	Hustonville	KY	40437
Carter	Tonya	Lexington	KY	40508
Carter	Wallace	Lawrenceburg	KY	40342
Cason-Custard	Charlotte	Cynthiana	KY	41031
Caudill-Trusty	Lisa	Walton	KY	41094
Centers	Connie	Lawrenceburg	KY	40342
Childress	Tony	Lexington	KY	40502
Clark	Gloria	Lynch	KY	40855
Clark	William	Versailles	KY	40383
Click	Rosemary	Flatwoods	KY	41139
Clift	Pamela S.	Lexington	KY	40514
Coker	Allen	Somerset	KY	42503
Coleman	Shirley	Lexington	KY	40505
Coleman	Tara	Kernersville	NC	27824
Collier	Debra	Whitesburg	KY	41858
Collier	Margaret	Chelmsford	MA	1824
Colvin	Linda	Campbellsville	KY	42718-9265
Combs	Phyllis	Lexington	KY	40511
Cook	Ronnie	Bledsoe	KY	40810
Cornn	Mark	Frankfort	KY	40602-0642
Cotton-Gilley	Sandra	Crawfordsville	IN	47933
Couch	Nadine	Manchester	KY	40962
Cowley	Joseph	Lexington	KY	40509
Cox	Jo Ann	Lawrenceburg	KY	40342
Crain	Barbara	Bardstown	KY	40004
Creech	Doris	Corbin	KY	40701
Criswell	Deloris	Monticello	KY	42633
Crowe	Pamela	Lawrenceburg	KY	40342
Curtis	Tracy	Lexington	KY	40503
Dabney (now Christopherson)	Doris W.	Somerset	KY	42501
Daughtery	Mary	Danville	KY	40422
Davidson-Gibson	Ginger	Sun City Center,	FL	33573

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Davis	Elizabeth	Pikeville	KY	41501
Davis	Sandra	Whitley City	KY	42653
Dawson	Mae Biddle	Cynthiana	KY	41031
Dean	Karen	Harrodsburg	KY	40330
Delaney	Jan	Nicholasville	KY	40356
DeSpain-Kliessendorff	Regina	Bardstown	KY	40004
Dile	Judy	Campbellsville	KY	42718
Doser	Al	Olney	IL	62450
Dotson	Belva	Feds Creek	KY	41524
Duff	Teresa	Indianapolis	IN	46202
Dunaway	Linda	Cumberland	KY	40823
Edwards-Engle	Tami	Lexington	KY	40514
Edwards-Wood	Amanda	Lebanon	KY	40033
Elliot	Martha	Maysville	KY	41056
Erp	Saundra	Waynesburg	KY	40489
Estepp	Charlotte	Corinth	KY	41010
Estes	Sarah	Eubank	KY	42576
Ezell	Susan	Carlisle	KY	40311
Faye-Beamon	Melissa	Brooksville	KY	41004
Fentress	Janet	Somerset	KY	42503-5664
Fitch Estate c/o Penny L. Hines, Esq.	Sheila	Somerset	KY	42501
Flannery	Vickie D.	Ashland	KY	41101
Flynn	Bernita	Cypress	TX	77433
Foster-Gifford-McCutchen	Tara	Monticello	KY	42633
Franklin	Rhoda	Versailles	KY	40383-1508
Franklin Ro	Timothy	Big Stone Gap	VA	24219
Frizzell	Freda	Salt Lick	KY	40371
Fugate	Beulah	Carrie	KY	41725
Fulks Estate	Clara	Eddyville	KY	42038
Gaunce	Patricia	Versailles	KY	40383
Gay	Barbara	Lancaster	KY	40444
Gayheart	Ken	Richmond	KY	40475
Gibson	Joni	Somerset	KY	42503
Gibson Estate	Jessie	Somerset	KY	42501

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Gilbert	Gladys	Olive Hill	KY	41164
Gist	Stephanie	Lexington	KY	40516
Godbey	Ruby	Miamisburg	OH	45342
Godby	Rosemary	Nazareth	KY	40048
Goff-Wells	Joyce	Somerset	KY	42501
Goode-Miranda Estate c/o Stphen F. Baker, Esq.	Debra	Winterhaven	FL	33880
Gordon	Joyce	Danville	KY	40422
Grant	Tammie	Ashland	KY	41102-9463
Gray	Amy	Nicholasville	KY	40356
Green	Sherry	Lancaster	KY	40444
Green	Donna	Lexington	KY	40508
Hall	Norma	Lexington	KY	40505
Hall	Allie	Quincy	KY	41166
Hall	Geraldine	Port Charlotte	FL	33954
Hampton	Barbara	Pineville	KY	40977
Hancock	Rhonda	Goodlettsville	TN	37072-3346
Handley	Leona Gail	Nicholasville	KY	40356
Hanley	Joyce	Lexington	KY	40504
Harris	Rebecca	Georgetown	KY	40324
Harrison	Debra	Irvine	KY	40336
Hassler-Miller	Joy	Corbin	KY	40701
Hayden	Yolanda	Lexington	KY	40511
Heizer	Barbara	Lexington	KY	40509
Hellmueller	Barbara	Lexington	KY	40503
Helton	Wanda	Partridge	KY	40862
Hendrickson	Gary	Indianapolis	IN	46250
Henry	Vickie	Owensboro	KY	42301
Highley	Marcus	Mt. Sterling	KY	40353
Hill	Charlene	Nicholsville	KY	40356
Hillard	Karen	Georgetown	KY	40324
Hilton	Janice	Lexington	KY	40509
Hinkle	Linda	Baldwin	LA	70514
Hocker	Jacqueline	Nicholasville	KY	40356
Hood	Myra	Lexington	KY	40505

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Hood	Vicky	Somerset	KY	42503
Hoover	Lora	Ft. Wright	KY	41011
Hopkins	Evelyn	Lexington	KY	40505
Horn	Charlene	Winchester	KY	40391
Horning	Mary	Lexington	KY	40515
Hoskins	Linda	Stanton	KY	40380-8920
Hoskins	Cloyd	London	KY	40741
Howard	Marilyn	Lexington	KY	40514
Howard	Louisa Moss	Fairfield	OH	45240
Howser-Nakagawa	Donna	Lawrenceburg	KY	40342
Hughes	Charlotte	Garrett	KY	41630
Hughes-Harness	Marcia	Science Hill	KY	42553
Hulse Estate	Marjorie	Lexington	KY	40517
Humphreys	Sheila	New Haven	WV	25265
Hunt (n/k/a Mesaris)	Margaret	Dawson Springs	KY	42408-9612
Hunter	Wanda	Corinth	KY	41010
Hutchcraft	Brenda	Macedonia	IL	62860
Hutcherson	Lorene	Somerset	KY	42501
Hutchison	Katherine	Cynthiana	KY	41031
Ison	Emma	Corbin	KY	40701
Jackson	Della	London	KY	40741
Jackson	Mary Ann	Lexington	KY	40391
Jackson	Katina	Lexington	KY	40511
Jackson Estate	Evelyn	Manchester	KY	40962
James	Linda	Satsuma	FL	32189
Jeffrey	Debbie	Paducah	KY	42003
Johnson-Coleman	Garnet	Pikeville	KY	41502
Johnstone	Ernestine	Harrodsburg	KY	40330
Jones	Kathy	London	KY	40743
Jones	Beulah	Corbin	KY	40701
Jones	Judy	Corbin	KY	40701
Jones	Linda	Stanford	KY	40484
Jones	Troy	Lexington	KY	40509
Jones	Gerry	Nancy	KY	42544

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Jordan	Betty	Lexington	KY	40511
Kelly Estsate	Betty	Cedarville	OH	45314
Keltner-Nuxoll	April	Jonesville	VA	24263
Kennedy-Stutz	Patricia	Orange Beach	AL	36561
King	Gerald	Richmond	KY	40475
King	Katherine	Berea	KY	40403
Kitts	Patti	Jamestown	KY	42629
Kluck	Betty	Ewing	VA	24248
Krey	Lucille	Las Vegas	NV	89135
Larkins	Linda	White Plains	KY	42464
Lewis	Emily	Flatwoods	KY	41139
Lewis Estate	Milton	Manchester	KY	40962
Lewis-Mullinix	Angela	Flatwoods	KY	41139
Littleton	Sandra Dee	Mount Sterling	KY	40353
Long	Sherry	Coldiron	KY	40819
Long Estate	Linda	Somerset	KY	42501
Lovan-Day	Kathy	White Plains	KY	42464
Lovell Estate	Rebecca	Dayton	OH	45459
Lush	Charlotte	Louisville	KY	40291
Malone-McGowan	Linda	Cynthiana	KY	41031
Mann	Paula	Jamestown	KY	42629
Marlowe	Pamela	Fredonia	KY	42411
Marro	Malanei	Independence	KY	41051.8106
Martin	Mary	Harrodsburg	KY	40330
Martin	Bobbie	Lexington	KY	40517
Martin	Linda	Fort Myers	FL	33913
Mason	Connie	Tollesboro	KY	41189
McClanahan	Joni	Georgetown	KY	40324
McDaniel	Lavonna	Stanton	KY	40380
McGirr	Connie	Lancaster	KY	40444
McGuire	Roberta	Mount Vernon	KY	40456
McGuire-Robinson	Tammy	Mount Vernon	KY	40456
McMurtry	Jacqueline	Louisville	KY	40291
Meece	Sheila Lynn	Somerset	KY	42501

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Metzger	Wanda	Nicholasville	KY	40356
Miller	Linda L.	Salyersville	KY	41465
Miller	Delores	Richmond	KY	40475
Miller	Marie	Perryville	KY	40468
Miller Estate	Michael	Lexington	KY	40517
Miller	Nellie	Paducah	KY	42003
Miller	Linda F.	Maysville	KY	41056
Minton	Leslie	Sheperdsville	KY	40165
Miracle Estate, c/o Shane Romines, Esq. - Copeland &	Kathy	Corbin	KY	40702
Mitchell	Beverly	Somerset	KY	42501
Montgomery	Eudora	Midway	KY	40347
Moore	Rhonda	Elkhorn City	KY	41522
Moore	Margaret	Winchester	KY	40391
Morris	April	Ewing	KY	41039
Muddimann-Cornish	Donna	Versailles	KY	40383
Napier	Mary	Evarts	KY	40828
Neace	Wanda Faye	Bonnyman	KY	41719
Neal	Elizabeth	Harrodsburg	KY	40330
Nevels	Linda	Monticello	KY	42633
Newlin-Riddle	Diana	Knoxville	TN	37932
Noe	Wilma	Lily	KY	40740
Nolan-Dinsmore	Kathy	Lily	KY	40740
Pace	Glenora	Mt. Eden	KY	40046
Parks	Louverna	Jackson	KY	41339-0286
Parrish	Myrtle	Lithia Springs	GA	31022
Peck	Judith	Cincinnati	OH	45202
Peek	Lisa	Kings Mountain	KY	40442
Pennington	Recie	Smilax	KY	41764
Perkins	Jeff	Somerset	KY	42501
Perkins	Helen	Woodbine	KY	40771
(Perkins) Spencer	JoeAnn	Nicholasville	KY	40356
Perkins	Stacy	Lexington	KY	40503
Phelps	Doris	Kings Mountain	KY	40442
Pickett	Sonja	Versailles	KY	40383

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Pickett Estate c/o Angela VanVlyman, Execx.	Norma	Columbia	KY	42728
Powell	Brian	Paris	KY	40361
P'Pool-Holland	Mary	Hopkinsville	KY	42240
Preston	Trena	Hazard	KY	41702
Price	Suzanne	Hazard	KY	41702
Profitt-Norman	Rita	Georgetown	KY	40324
Pursel	Lynne	Louisville	KY	40217
Rainwater	Sharon	Nancy	KY	42544
Reese	Billie	Louisville	KY	40216
Rentas Estate	Anthony	Crab Orchard	KY	40419
Rhodes Estate	Arlie	Manchester	KY	40962
Rhodes	Evelyn	Louisville	KY	40242
Riley Estate	Raymond	Williamstown	KY	41097
Rivera	Levetta	Lexington	KY	40517
Roaden	Odena	Somerset	KY	42503
Roberts	Billie June	Stanford	KY	40484
Roberts	Patricia	Owingsville	KY	40360-2204
Roberts	Renee	Stamping Ground	KY	40379
Robinson	Fetina	Winchester	KY	40391-8600
Robinson	Patricia N.	Princeton	KY	42445
Rogers	Carol	Cynthiana	KY	41031
Rose	Vina	Mt. Sterling	KY	40353
Rose	Cathy	Woodruff	SC	29388
Roseberry Estate	Larry	Columbus	IN	47201
Sams	Mary	Georgetown	KY	40324
Sands	Kathy	Georgetown	KY	40324
Sapp	Thomas	Maysville	KY	41056
Scharold	Justus	Ryland Height	KY	41015-9582
Seals	Maxine	Chicago	IL	60651
Seals-Gibson	Crystal	Wallins Creek	KY	40873
Sexton Estate	Lisa	Clay City	KY	40312
Sexton-Napier	Monica	Lawrenceburg	KY	40342
Sharon	Margaret	Midway	KY	40347
Sharpe-Roberts	Michelle	Eubank	KY	42567

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Short-Roberts	Janet	Nichosville	KY	40356
Short Estate	Laureda	Winchester	KY	40391
Sidwell (now Dishman)	Loretta	Rocky Top	TN	37769
Sizemore Estate	Ada	Hyden	KY	41749
Slatten-Jones	April	Versailles	KY	40383
Slone	Carole	Palm Bay	FL	32909
Smith	Elaine	West Liberty	KY	41472
Smith	Barbara	Corbin	KY	40701
Smith	Freda	Versailles	KY	40383
Smith Estate	Sharon	South Williamson	KY	41503
Snowden-Talbert	Darcy	Lexington	KY	40517
Spears	Peggy	Somerset	KY	42501
Stapleton	Cora	Hellier	KY	41534-0081
Stauffer Estate	Paul	Richmond	KY	40475
Stearns	Corina	Russell Springs	KY	42642-1575
Stephens	Nancy	Fairland	OK	74343
Stephens Estate	Connie	Berea	KY	40403
Stevenson Estate	Sharon	Nancy	KY	42544
Stewart	Marlene	Rush	KY	41168
Stidham Estate	Loretta	Olive Hill	KY	41164
Stone	Betty	Nicholasville	KY	40356
Stout	Lesta Irene	Rutledge	TN	37861
Stromowsky	Donna	Louisville	KY	40218
Sturgill	Connie	Harlan	KY	40831-9706
Sudduth Estate	Marjorie	Frankfort	KY	40601
Swiger	Lisa	Salyersville	KY	41465
Tackett Estate	Ella	Hazard	KY	41701
Tafolla Estate	Priscilla	Allen	KY	41601
Tapley	Charles	Mt. Sterling	KY	40353-8313
Taylor	Ella	Georgetown	KY	40324
Taylor	Linda	Danville	KY	40422
Taylor	Mary	Lexington	KY	40505
Thomas	Jeanne	Fayetteville	AR	72701
Thompson	Nancy	Berea	KY	40403-8706

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Thompson-McClain	Karen	Centralia	IL	62801
Thurman	James G.	Frankfort	KY	40601
Toler Estate	Roy	Pound	VA	24279
Toler Estate	Linda	Wise	VA	24293
Trent	Elizabeth	London	KY	40741
Trimble	Jennifer	Versailles	KY	40383
Tucker	Joetta	Central City	KY	42330
Turner	Deborah	Lawrenceburg	KY	40342
Turner	Patricia	Lexington	KY	40504
Turner	Drucilla	Lexington	KY	40516
Turner	Valorie	Lexington	KY	40505
Vance-Self	Linda	Hustonville	KY	40437
Vannarsdall-Collins	Linda	Georgetown	KY	40324
Vogt-Schneider	Debbie	Ocean Springs	MS	39564
Walker	Bobbie	Hazard	KY	41701
Walker Estate	Lane	Manchester	KY	40962
Wallen	Loraine	Mousie	KY	41839
Walters	Cindy	Mt. Sterling	KY	40353
Ward Estate	Martin	Lexington	KY	40517
Washburn	Elizabeth	Middlesboro	KY	40965
Watkins	Wanda	Garrett	KY	41630
Watson	Cheryl	Alpharetta	GA	30004
Whitaker	Judy	Science Hill	KY	42553
White	Kim	Jeffersonville	KY	40337
White	Patricia	Harlan	KY	40835
White-Lynch	Mary	Springfield	OH	45502
Whitlock	Catherine	Georgetown	KY	40324
Whitt	Joyce	West Liberty	KY	41472
Widner	Betty Jean	Evarts	KY	40828
Williams Estate	Gloria	Lexington	KY	40515
Willinger	Bethany	Lexington	KY	40503
Wilson	Geneva	Nortonville	KY	42442
Winer	Melody	Lexington	KY	40502
Wolfe	Connie	Hanover	IN	47243

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Wombles	Bill	Manchester	KY	40962
Woods	Artie	Monticello	KY	42633
Wooten	Fern	London	KY	40744
Wright	Edwina	Somerset	KY	42503
Wright	Roger Dale	Ashland	KY	41101
Wright	Sandra	Virgie	KY	41572
Wright-Mitsui	Debora	Burlington	KY	41005
Wright	Tammy	Thealka	KY	41240
Yates	Shelia	Calvert City	KY	42029
Young-Coffield	Karen	Nicholasville	KY	40356
Zeman-Balentine	Sandra	Pell City	AL	35125

Totals

Yes

No

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DATE FILED: July 31, 2015 10:39 AM
FILING ID: 5FC2920D1FEB6
CASE NUMBER: 2015CV32712

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

* * *

CERTIFICATION

ACT OF

CONGRESS

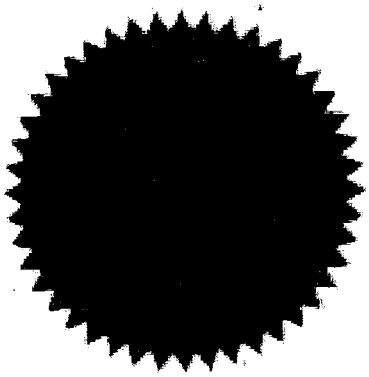

EXHIBIT B

AOC-065 Rev. 12-04 Page 1 of 1 Commonwealth of Kentucky Court of Justice *www.kycourts.net* 28 U.S.C. Sec.1738; FRCP Rule 44	**CERTIFICATION ACT OF CONGRESS**	(FOR OUT OF STATE USE) County BOONE

UNITED STATES OF AMERICA

STATE OF KENTUCKY,
SS.
BOONE County

I, DIANNE MURRAY, Clerk of CIRCUIT Court, in and for the State and County aforesaid, do hereby certify that the foregoing is a full, true and correct copy of CASE# 05-CI-436 SECOND AMENDED JUDGMENT ENTERED 10-22-2014

in the above-styled case, as appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Court aforesaid, at the city of BURLINGTON, this 15th day of JUNE, 2015.

Clerk

STATE OF KENTUCKY,
SS.
BOONE County

I, JAMES R. SCHRAND, Judge of the CIRCUIT Court in the state and county aforesaid, do certify that DIANNE MURRAY, who has signed the foregoing certificate, is, and was at the time of same, Clerk of said Court, duly elected and qualified; that all his/her official acts as such are entitled to full faith and credit, and that his/her foregoing attestation is in due form of law.

GIVEN UNDER MY HAND, at the City of BURLINGTON,
this 15th day of JUNE, 2015.

Judge

STATE OF KENTUCKY,
SS.
BOONE County

I, DIANNE MURRAY, Clerk of the CIRCUIT Court in the State and county aforesaid, do certify that JAMES R. SHCRAND who signed the foregoing certificate, is and was at the time of signing same, Judge of said Court, duly elected and qualified; that all of his/her official acts as such are entitled to full faith and credit, and that his/her foregoing attestation is in due form of law.

GIVEN UNDER MY HAND, at the City of BURLINGTON,
this 15th day of JUNE, 2015.

Clerk

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ENTERED
BOONE CIRCUIT/DISTRICT COURT
OCT 22 2014
DIANNE MURRAY, CLERK
BY: D.C.

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION III
CASE NO. 05-CI-00436

MILDRED ABBOTT, et al. **PLAINTIFFS**

V.

STANLEY M. CHESLEY, et al. **DEFENDANTS**

SECOND AMENDED JUDGMENT

This Court conducted a hearing in this matter on July 15, 2014 on Plaintiffs' Motion for Partial Summary Judgment as to Defendant Stanley M. Chesley ("Chesley"). The Plaintiffs were represented by Hon. Angela Ford. The Defendants were represented by Hon. Sheryl G. Snyder and Hon. Frank V. Benton, IV. The Court having reviewed Plaintiffs' Motion, Chesley's Response, Plaintiffs' Reply, having heard argument from counsel, and being in all ways sufficiently advised, finds as follows:

This Court, by the March 8, 2006 Order of Senior Status Judge William Wehr, previously granted summary judgment against Defendants William J. Gallion, Shirley Allen Cunningham, Jr. and Melbourne Mills, Jr. on Plaintiffs' breach of fiduciary duty claims in their representation of Plaintiffs in the *Darla Guard, et al. v. A.H. Robbins Company, et al.* lawsuit which involved injuries Plaintiffs suffered as a result of ingesting the "fen-phen" diet drug. The Court awarded damages in the amount of $42 million (by Order of August 1, 2007) and ruled the Defendants were jointly and severally liable to the Plaintiffs. The Supreme Court of Kentucky affirmed the partial summary judgment against Gallion, Cunningham and Mills, including that each was jointly and severally liable for the amounts owed. Plaintiffs now ask this Court to order summary judgment on their breach of fiduciary claims against Chesley, that Chesley be jointly and

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severally liable with Gallion, Cunningham and Mills for the amounts owed to Plaintiffs, and that Chesley disgorge all fees he collected in the *Guard* matter.

The Kentucky Bar Association instituted disciplinary proceedings relating to Chesley's actions in the *Guard* matter in *Kentucky Bar Association v. Chesley,* KBA File 13785. The Trial Commissioner conducted a hearing and found that Chesley had violated eight (8) different ethics rules. The Trial Commissioner recommended that Chesley be permanently disbarred from the practice of law in Kentucky, and that he pay $7,555,000.00 in restitution to the *Guard* case clients. The Board of Governors of Kentucky adopted the Trial Commissioner's Report. The Supreme Court of Kentucky found Chesley guilty of violations of eight provisions of SCR 3.130 and followed the Board's recommendation that Chesley be permanently disbarred. The Supreme Court did not order that Chesley pay restitution. *Kentucky Bar Ass'n v. Chesley,* 393 S.W.3d 584 (Ky. 2013).

Plaintiffs argue that summary judgment is appropriate as to their breach of fiduciary duty claims through the doctrine of issue preclusion or collateral estoppel. Issue preclusion would bind Chesley to the factual and legal determinations made in the disciplinary proceedings before the Trial Commissioner, the Board of Governors, and the Supreme Court of Kentucky regarding the settlement of the *Guard* matter that resulted in his disbarment. Chesley disagrees.

The Trial Commissioner found, and the Supreme Court ratified, that Chesley violated the following specific provisions of SCR 3.130:

SCR 3.130-1.5(a) by accepting over $20 million in attorney's fees, which exceeded the amount established by client contracts and contracts with co-counsel, and which were otherwise unreasonable.

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SCR 3.130-1.5(c) by failing to provide clients with a written statement of the outcome of the matter, as well as the remittance to the client and the method of its determination. The contractual contingency fee contracts for the clients were either for 30% or 33 1/3% plus expenses of up to 3%. A 49% contingency fee was actually charged to the clients. Chesley's contractual agreement with class counsel was for 21% of fees upon successful settlement of the case, which should have been $12,941,638.46 and not the $20 million plus he received. He was paid $7,555,000 in excess of his proper fee.

SCR 3.130-1.5(e)(2) by dividing fees without consent of clients.

SCR 3.130-5.1(c)(1) by knowingly ratifying specific misconduct of other lawyers.

SCR 3.130-1.8(g) by representing two or more clients in making an aggregate settlement of the claims without consent of the clients or disclosure to them of the existence and nature of all claims. Chesley was class counsel pursuant to his agreement with Gallion, Cunningham and Mills and therefore had the same duties as them with regarding the requirements of SCR 3.130-1.8(g).

SCR 3.130-3.3(a) by making a false statement of material fact to the tribunal.

SCR 3.130-8.1(a) by making a false statement of material fact in connection with a disciplinary matter.

SCR 3.130-8.3(c) (now SCR 3.130-8.4(c)) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Issue preclusion, also known as collateral estoppel, "allows the use of an earlier judgment by one not a party to the original action to preclude relitigation of matters litigated in the earlier action." *Miller v. Admin. Office of Courts*, 361 S.W.3d 867 (Ky. 2011). A non-party in the former action may assert res judicata, a close cousin to issue preclusion, against a party to the former

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action as long as the party against whom res judicata is pleaded had a realistically full and fair opportunity to present his case. *Id.* (quoting *Moore v. Commonwealth,* 94 S.W.2d 317 (Ky. 1997). Additionally, the Supreme Court has addressed whether administrative agencies acting in a judicial capacity are entitled to the same res judicata effect as judgments of a court, finding that they do. *Ky. Bar Ass'n v. Harris,* 269 S.W.3d 414 (Ky. 2008).

Chesley's hearing before the Trial Commissioner was held November 5-6 and 12-13, 2009 before Judge Rod Messer and continued to September 13-15 and 20-24, 2010 before Judge William L. Graham. Chesley was represented at various times by Kent Westberry, Esq., James Gary, Esq., Frank Benton, IV, Esq., Scott Cox, Esq., Mark Miller, Esq., Sheryl Snyder, Esq. and Hon. Susan Dlott. Prior to the hearing, the testimony of five out of state witnesses was provided by video depositions, including 44 exhibits. During the several days the hearing was held, a total of 43 witnesses gave testimony either in person or by deposition, with the Trial Commissioner considering 124 exhibits. Additionally, the Trial Commissioner allowed time for the parties to submit briefs at the conclusion of the Hearing. The Court finds Chesley had a realistically full and fair opportunity to present his case before the Trial Commissioner.

Certain elements must be met for issue preclusion to operate as a bar to further litigation: "(1) at least one party to be bound in the second case must have been a party in the first case; (2) the issue in the second case must be the same issue as the first case; (3) the issue must have been actually litigated; (4) the issue was actually decided in that action; and (5) the decision on the issue in the prior action must have been necessary to the court's judgment and adverse to the party to be bound." *Id.* quoting *Yeoman v. Commonwealth Health Policy Bd.* 983 S.W.2d 459 (Ky. 1998).

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The Court finds these elements have been met with regard to Plaintiffs' Motion in this matter and the findings in *KBA v. Chesley*. Chesley was a party bound by the KBA matter. The facts and circumstances at issue in the instant Motion were those at issue in the KBA matter. The facts and circumstances were litigated in the KBA matter before the Trial Commissioner at a hearing held November 5-6 and 12-13, 2009 and September 13-15 and 20-24, 2010, and reviewed by the Board of Governors and the Supreme Court of Kentucky. The Trial Commissioner made factual findings and legal conclusions, which were adverse to Chesley, and which were affirmed by the Board of Governors and the Supreme Court of Kentucky, said facts being those at issue in the instant Motion. The factual findings and legal conclusions by the Trial Commissioner, the Board of Governors and the Supreme Court of Kentucky were necessary for the outcome of the KBA matter.

This Court finds Chesley is bound by the factual findings and legal conclusions in the KBA matter. The Supreme Court found that by entering into an agreement with Gallion, Cunningham and Mills, Chesley signed on as co-counsel and was one of the attorneys representing the Plaintiffs in the *Guard* matter. He, therefore, assumed the same ethical responsibilities as Gallion, Cunningham and Mills, and the same responsibilities he would have with any other client. *Kentucky Bar Ass'n v. Chesley*. Chesley had the duty to know his fee responsibilities to his clients, specifically that he was to receive no more than 21% of one-third of the $200,450,000.00 settlement, $14,031,500.00. *Id.* Chesley received $20,497,121.81. *Id.* The Supreme Court found that Chesley knowingly participated in a scheme to skim millions of dollars in excess attorney's fees from unknowing clients, and that he received and retained fees that he knew were improperly taken. *Id.* The Supreme Court further found that he purposefully attempted to avoid conversation and correspondence that would expose his knowledge of the

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nefarious schemes of his co-counsel. *Id.* This Court finds that no genuine issues of material fact exist, and summary judgment is appropriate on Plaintiffs' Breach of Fiduciary claims. Chesley entered into an attorney-client relationship with the Plaintiffs in *Guard.* He breached his duty by accepting excess fees in the amount of $6,465,621.81. Chesley's conduct caused Plaintiffs to receive only a portion of the settlement monies they were entitled to.

Plaintiffs also asks the Court to order that Chesley is jointly and severally liable with Gallion, Cunnigham and Mills for the monies owed to Plaintiffs. The Supreme Court of Kentucky affirmed Judge Wehr's finding in this matter that Gallion, Cunningham and Mills were jointly and severally liable to Plaintiffs. The Supreme Court found that Gallion, Cunningham and Mills breached attorney-client contracts and therefore joint and several liability is not precluded by KRS 411.182. The Supreme also found that by the manner in which Gallion, Cunnungham and Mills combined their efforts in the Fen-Phen litigation, they engaged in a joint enterprise, or joint adventure, an informal partnership existing for a limited purpose and duration, for which joint and several liability is properly assessed under KRS 362.220. *Abbott v. Chesley,* 413 S.W.3d 589 (Ky. 2013).

The Supreme Court enumerated the essential elements of a joint enterprise: (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose among the members; and (4) an equal right to a voice in the direction of the enterprise. *Id.* citing *Huff v. Rosenberg,* Ky., 496 S.W.2d 352 (1973). The Supreme Court adopted the findings of the Trial Commissioner in *KBA v. Chesley,* and this Court found above that issue preclusion bars the further litigation of Plaintiffs' breach of fiduciary duty claims against Chesley.

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This Court now finds that no genuine issues of material fact exists, and as a matter of law Chesley is jointly and severally liable with Gallion, Cunningham and Mills for the $42 million in damages awarded the Plaintiffs against Gallion, Cunningham and Mills by this Court's Order of August 7, 2007. Chesley signed on as co-counsel representing the Plaintiffs in the *Guard* matter when he entered into his fee-division contract with Gallion, Cunningham and Mills. Chesley shared the common purpose to be carried with Gallion, Cunningham and Mills. They agreed on how they would share the work and how they would share the profits. Chesley maintained a voice in the managerial control of the enterprise. The Court therefore finds that pursuant to KRS 362.220, Chesley is jointly and severally with Gallion, Cunningham and Mills for the damages the Plaintiffs suffered.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for Partial Summary Judgment is **GRANTED** as to Plaintiffs' Breach of Fiduciary claims against Stanley M. Chesley.

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that Stanley M. Chesley is jointly and severally liable with Defendants William J. Gallion, Shirley Allen Cunningham, Jr. and Melbourne Mills, Jr. for the existing judgment amount of $42 million owed to Plaintiffs, along with pre-judgment simple interest at a rate of 8% per annum from April 1, 2002, and post-judgment interest compounded annually at the rate of 12% per annum thereon from the date of this Judgment.

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion for Partial Summary Judgment as to disgorgement is **DENIED.**

This Order is Final and Appealable. There is no just cause for delay.

DATED this 20th day of October, 2014.

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JAMES R. SCHRAND, JUDGE
BOONE CIRCUIT COURT

COPIES TO:

ALL ATTORNEYS OF RECORD

CERTIFICATE

I, DIANNE MURRAY, clerk of the Boone District/Circuit Court, thereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record

This 22 day of October, 2014

DIANNE MURRAY
BOONE DISTRICT/CIRCUIT COURT

KNelson D.C.

STATE OF KENTUCKY
COUNTY OF BOONE

I, DIANNE MURRAY, Clerk of the Circuit/District Courts, do hereby certify that the foregoing is a true and correct copy of the original as recorded in my office.

This 29 day of May 2015

8 DIANNE MURRAY

By: Jan Nelly D.C.

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STANLEY M. CHESLEY	:	Case No. A1500067
	:	
Petitioner,	:	Judge Ruehlman
	:	
v.	:	**ORDER GRANTING MOTION FOR LEAVE TO FILE STATEMENT OF SUPPLEMENTAL FACTS IN SUPPORT OF PETITION**
ANGELA M. FORD, ESQ., et al.	:	
Respondents.	:	

This cause was heard upon Petitioner Stanley M. Chesley's ("Chesley") Motion for Leave to File Statement of Supplemental Facts in Support of Petition for Permanent Injunction (the "Motion"), the Memorandum in Support thereof, any memoranda or other filings in opposition to the Motion, the pleadings and other filings to date in this matter, and the record before this Court. The Court hereby finds that said Motion is well taken and it should be and is **GRANTED**.

Accordingly, it is hereby **ORDERED, ADJUDGED AND DECREED** that Chesley is granted leave to file its supplemental facts in support of the petition, and that the proposed Verified Statement of Supplemental Facts attached hereto as Exhibit A is deemed filed as of the date of this Order.

Petitioner's counsel shall arrange for proper service in accordance with the Ohio Rules of Civil Procedure.

IT IS SO ORDERED.

_____
Judge Ruehlman

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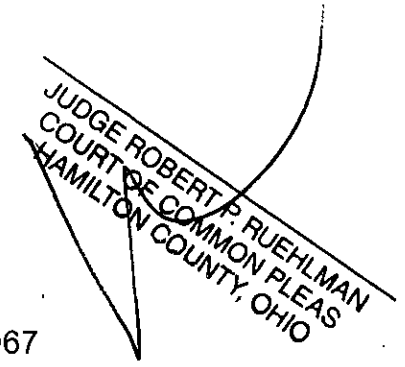
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



Mr. Stanley M. Chesley	:	Case No. A1500067
Petitioner,	:	Judge Ruehlman
v.	:	**ORDER GRANTING MOTION OF INTERVENOR WAITE SCHNEIDER BAYLESS & CHESLEY CO., L.P.A. FOR DECLARATORY AND INJUNCTIVE RELIEF**
Angela M. Ford, Esq., *et al.*	:	
Respondents.	:	

ENTERED
AUG 2 6 2015

This matter came before the Court on the Motion of Intervenor Waite Schneider Bayless & Chesley Co., L.P.A. ("WSBC") for Declaratory and Injunctive Relief (the "Motion"). The Court being fully advised and having fully reviewed the Motion, the Objection field by Defendant Angela M. Ford ("Ford") to the Motion, the Reply filed by WSBC, and the record in this case, now therefore:

THE COURT FINDS THAT:

A. The Court has subject matter jurisdiction over this matter and personal jurisdiction over Defendant Ford and the other named Defendants.

B. Terms not otherwise defined herein shall have the meaning ascribed to them in the Motion or as otherwise indicated.

C. The Court entered a restraining order on January 6, 2015 (the "January 6 Order"). The January 6 Order was the first judicial decision addressing the subject matter of that Order.

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EXHIBIT
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D. The Court subsequently issued a valid and still enforceable restraining order on January 14, 2015 Order (the "Restraining Order") which prohibited certain actions of Ford including but not limited to the below:

> Ford, the Unknown Respondents, and any other person acting on behalf of the Unknown Respondents *are enjoined from taking any action to collect the Chesley* Judgment in the State of Ohio, from any *Ohio resident, Ohio citizen or Ohio domiciled entity*; Restraining Order, paragraph 3. (emphasis added).
>
> Ford, the Unknown Respondents, and any other person acting on behalf of the Unknown Respondents are *enjoined from issuing any subpoena seeking documents or testimony* to any *Ohio resident, Ohio citizen* or *Ohio domiciled entity* (other than Chesley) if the purpose of the requested documents or testimony would be to obtain information related to any effort to enforce the Chesley Judgment; Restraining Order, paragraph 4. (emphasis added).

D. At some point in time, Ford actually became aware of the Restraining Order.

E. Ford has failed to domesticate the Chesley Judgment (as defined in the Restraining Order) in Ohio.

G. Ford was litigating the substantive issues in the Restraining Order in this Court well before she asked the Kentucky Court to enter the orders on the Transfer Motion, the CSH Compel Motion and the Chesley Compel Motion.

H. Ford filed the Transfer Motion, the CSH Compel Motion and the Chesley Compel Motion in direct violation of the Restraining Order.

I. As between this Court and the Kentucky Court, this Court, whose power was first invoked by the institution of proper proceedings acquired jurisdiction, to the exclusion of all other tribunals, has exclusive authority to adjudicate upon the whole

issue and to settle the rights of the parties with respect to the matters set forth in the Complaint, Restraining Order and the Motion.

J. As a result of this Court having exclusive jurisdiction over the matters set for in the Complaint, Motion and Restraining Order, the orders of the Kentucky Court in relation to the Transfer Motion and the Chesley Compel Motion, including but not limited to the Transfer Order (the "Kentucky Orders")[1], are unenforceable as to any Ohio resident, Ohio citizen or Ohio domiciled entity that Ford seeks directly or indirectly, to aid in the collection of the Chesley Judgment and/ or subpoena seeking documents or testimony that would aid in the collection of the Chesley Judgment.

K. WSBC is a domiciled Ohio entity. WSBC is not a party to the Kentucky Case and the Defendants in this case do not have a judgment against WSBC.

L. Rehme is an Ohio citizen and/or resident.

M. Mr. Chesley is an Ohio citizen and/or resident.

N. The trust established by the Windup Agreement is an Ohio domiciled entity trust formed under and governed by, Ohio law.

O. Mr. Chesley owns no shares of WSBC and has only a contingent reminder interest in the Windup Agreement trust (the "Trust") holding the shares of WSBC.

P. Mr. Chesley and WSBC are separate and independent entities.

Q. Intervention in this matter under Civ. Rule 24(A)(2) by WSBC is warranted because WSBC's unique interests are not adequately represented by the existing parties.

[1] A copy of the Kentucky Orders are attached to the Objection of Ford as Exhibits A, E and F thereto.

S. Intervention in this matter under Civ. Rule 24(B)(2) by WSBC is also warranted.

The Court having being fully advised in the premises and having determined that the legal and factual basis set forth in the Motion establish cause for the relief granted herein; now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. WSBC shall be and hereby is, permitted to intervene as a party in interest/plaintiff in this action.

2. WSBC is ORDERED to disregard and not effectuate any of the Kentucky Orders as same may apply to WSBC or the Trust either directly or indirectly, including but not limited to the Transfer Order.

3. Rehme is ORDERED to disregard and not effectuate any of the Kentucky Orders as same may apply to Rehme as trustee of the Trust or otherwise, including but not limited to the Transfer Order.

4. Rehme is ORDERED to not effectuate the Transfer Order in any capacity seeking, among other things, to transfer the interest of Mr. Chesley in the WSBC Shares, which interest technically does not exist as Mr. Chesley has only a contingent remainder interest in the Trust.

5. Rehme is ORDERED to decline any request from Mr. Chesley for WSBC's financial records to the extent such request emanates from a discovery request directed to Mr. Chesley in Kentucky or an Order in the Kentucky Case.

6. The Restraining Order remains in full force and effect.

ITS IS SO ORDERED.

Entered this 7th August, 2015

Robert P. Ruehlman, Judge
Hamilton County Court of Common Pleas

JUDGE ROBERT P. RUEHLMAN
Court of Common Pleas
Hamilton County, Ohio

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TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS

COMMON PLEAS DIVISION

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Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 437085

STANLEY M CHESLEY

vs.

ANGELA M FORD

A 1500067

JUDGE
ROBERT P RUEHLMAN

FILING TYPE: INTERVENING COMPLAINT

PAGES FILED: 19

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Mr. Stanley M. Chesley	:	Case No. A1500067
Petitioner,	:	Judge Ruehlman
v.	:	**COMPLAINT OF INTERVENOR WAITE SCHNEIDER BAYLESS & CHESLEY CO., L.P.A. FOR DECLARATORY AND INJUNCTIVE RELIEF**
Angela M. Ford, Esq, *et al.*	:	
Respondents.	:	

For its Complaint against Respondents, Intervening Plaintiff Waite Schneider Bayless & Chesley Co., L.P.A. ("WSBC") states as follows:

1. WSBC is an Ohio professional corporation with its principal place of business in Cincinnati, Hamilton County, Ohio. WSBC has no business operations or presence outside of Ohio. Thomas F. Rehme, Trustee ("Rehme") is the owner of all of the stock of WSBC, as evidenced by the Wind-Up Agreement dated April 15, 2013.

2. WSBC incorporates and adopts herein all of the allegations in Plaintiff Stanley M. Chesley's First Amended and Supplemental Verified Petition for Declaratory Judgment and Injunctive Relief (the "First Amended Petition").

3. On January 14, 2015, this Court entered an Order (the "January 14 Order"). Paragraph 3 of the January 14 Order provides:

> Ford, the Unknown Respondents, and any other person acting on behalf of the Unknown Respondents *are enjoined from taking any action to collect the Chesley Judgment in the State of Ohio, from any Ohio resident, Ohio citizen or Ohio domiciled entity*. (emphasis added).

Paragraph 4 of the January 14 Order provides:

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EXHIBIT
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> Ford, the Unknown Respondents, and any other person acting on behalf of the Unknown Respondents are *enjoined from issuing any subpoena seeking documents or testimony* to any *Ohio resident*, *Ohio citizen* or *Ohio domiciled entity* (other than Chesley) if the purpose of the requested documents or testimony would be to obtain information related to any effort to enforce the Chesley Judgment. (emphasis added).

4. WSBC is an Ohio resident, Ohio citizen, or Ohio domiciled entity, as those terms are used in the January 14 Order.

5. All of WSBC's assets and personal property are located in Ohio.

6. WSBC is a direct or third-party beneficiary of the January 14 Order and is entitled to the protections afforded by that Order.

7. Independent of the January 14 Order, WSBC is entitled to the procedural and substantive rights and protections afforded to it by Ohio law.

8. Ford and the other Respondents have no right to interfere with, attach, or otherwise affect WSBC or its assets or operations other than through legal actions commenced in Ohio. And, because this case has already been filed and the Court has subject matter and personal jurisdiction over Ford and the other Respondents, any and all actions directed to WSBC must be pursued through this case and before this Court.

9. Respondent Ford filed two motions in this case: a motion to dismiss and a motion to dissolve the January 14 Order. The filing of these motions conclusively proves that Ford was duly served in this matter, that Ford had actual knowledge of the January 14 Order, and that she was actively and actually litigating the issues addressed by the January 14 Order in this Court.

10. On May 14, 2015, the Court held a hearing on the motions filed by Ford.

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11. The Court orally denied both motions from the bench at the May 14 hearing.

12. A week later, on May 21, 2015, Ford filed a Motion (the "Transfer Motion") in the Boone County Kentucky Circuit Court (Case No. 05-CI-436) (the "Kentucky Case") asking the Kentucky Court to enter an order that requires "Defendant Chesley's [an Ohio resident and citizen] beneficial interest in the shares of his former law firm, Waite, Schneider, Bayless & Chesley Co., L.P.A. ("WSBC") [an Ohio domiciled entity] be transferred to Plaintiffs, with all distributions pursuant to that interest to be made to Plaintiffs through their counsel." The Transfer Motion also requested that the Court order "Defendant Chesley [an Ohio citizen] and his counsel to provide a copy of the Order Thomas F. Rehme, who holds those shares [of an Ohio domiciled entity] in trust [established under Ohio law] for Defendant Chesley's benefit, and order Defendant Chesley [an Ohio citizen] to direct Mr. Rehme to make payments as ordered."

13. WSBC is not a party to the Kentucky Case.

14. Neither Ford nor any other Respondents have ever asserted any claims against WSBC.

15. The Transfer Motion directly violates WSBC's rights and protections under Ohio law and the January 14 Order and improperly purports to interfere with, or limit, the rights and duties of Rehme. The Transfer Motion also violates the terms of the Wind-Up Agreement concerning WSBC.

16. On June 23, 2015, the Kentucky Court entered an Order granting the Transfer Motion. A copy of the Kentucky Court's June 23, 2015 Order is attached as Exhibit A.

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17. The Kentucky Court's entry of the June 23, 2015 Order attached as Exhibit A exceeded its jurisdiction and powers, violated this Court's June 14 Order, improperly encroached on this Court's previously established jurisdiction over the subject matter of Ford and Respondents rights with respect to, among other things, WSBC and its information, and adversely affected WSBC and Rehme.

18. Also in the Kentucky Case, Ford, as counsel for Respondents, caused a subpoena to be served on Clark Schaefer & Hackett ("CSH"), WSBC's accounting firm. CSH is an Ohio entity. The scope of the documents requested in CSH subpoena is vague but could be construed to be very broad. Pursuant to the subpoena served on CSH, Ford and respondents appear to have demanded that CSH produced to Ford in Kentucky WSBC's confidential and proprietary financial information and information that is protected by the attorney client privilege. Such information includes, but is not limited to, the wages, earnings, and other personal, private data or confidential information of WSBC's past and current employees, vendors, and other parties with whom WSBC has transacted business over the past 10 years, as well as the identity of WSBC's clients and the amount of fees paid by them to WSBC.

19. The purpose of the subpoena to CSH is to obtain information and/or assets directed to the collection of the Judgment against Mr. Chesley.

20. On June 23, 2015, the Kentucky Court entered an Order directing CSH to produce, among other things, certain WSBC records and information. A copy of the Kentucky Court's Order is attached as Exhibit B.

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21. The Kentucky Court's Order (Exhibit B) improperly encroaches on this Court's prior established jurisdiction over the parties and the subject matter of, among other things, Ford and Respondents rights with respect to WSBC and its information.

22. The Kentucky Court's Order (Exhibit B) also directly contravenes this Court's January 14 Order.

23. The CSH subpoena directly violates the Court's January 14 Order.

24. Ford's service of the CSH subpoena directly violates the Court's January 14 Order.

25. In addition, Respondents have also served written discovery on Mr. Chesley in Kentucky demanding that he produce WSBC's financial records to Respondents.

26. Mr. Chesley does not own WSBC.

27. The discovery directed to Chesley seeking production of WSBC documents and information in Kentucky violates applicable law and this Court's January 14 Order.

28. The discovery was served on Chesley to avoid or circumvent this Court's January 14 Order and has the effect of violating WSBC's rights.

29. Ford ultimately filed a motion to compel against Mr. Chesley in Kentucky seeking, among other things, an Order directing him to produce the WSBC documents and information to her in the Kentucky Case.

30. On June 23, 2015, the Kentucky Court entered an Order granting the motion to compel and ordering Mr. Chesley to produce WSBC's documents and information in Kentucky notwithstanding that WSBC is not a party to that case, that

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Chesley does not own WSBC, and that such Order directly violates this Court's previously established jurisdiction and dominion over the issues pertaining to Respondents rights, if any, to obtain information concerning WSBC for purposes of collecting the Judgment against Chesley. A copy of the Kentucky Court's June 23, 2015 Order with respect to that issue is attached as Exhibit C.

31. The Kentucky Court's Order (Exhibit C) improperly encroaches on this Court's prior established jurisdiction over the parties and the subject matter of, among other things, Ford and Respondents rights with respect to WSBC and its information.

32. The Court's January 23, 2015 Order directing Chesley to produce WSBC documents and information in Kentucky violates applicable law and the January 14 Order.

33. On August 19, 2015, this Court held a hearing on WSBC's motion to intervene and for declaratory and other relief. The Court granted the WSBC motion and entered its written Order regarding that motion on August 26, 2015, in which, among other things, the Court found that WSBC and Chesley are separate and distinct.

34. While this case has been pending, Ford and Respondents have taken various actions to directly interfere with WSBC and/or to attach, garnish, or seize WSBC assets. For example, Ford and Respondents have attempted to garnish funds payable to WSBC by the Castano Trust in Nevada. Ford and Respondents have also threatened to interfere with the payment of other fees to WSBC by asserting a direct right to receive such funds to satisfy the Chesley Judgment.

35. WSBC asserts that Ford and Respondents have no right to attach, garnish or seize any WSBC assets, and that their efforts to do so interfere with WSBC's ability

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to satisfy its own obligations, which take priority over the obligations, if any, of Chesley to pay the Chesley Judgment.

36. In addition to the claims asserted by Chesley in the First Amended Petition, a dispute has arisen between WSBC and Respondents regarding, among other things,

> (i) the proper Court and venue for determinations regarding Respondent's rights, if any, to obtain WSBC documents and information for purposes of collecting their Judgment against Chesley;
>
> (ii) the obligations, if any, of WSBC in regard to the Transfer Motion and related Kentucky Order;
>
> (iii) the enforceability of the Kentucky Court's Order regarding the Transfer Motion as to WSBC;
>
> (iv) the propriety of Ford's efforts to obtain WSBC information through third parties, CSH and Chesley, rather than by directly obtaining it from WSBC through this case;
>
> (v) the obligation of WSBC for any portion of the Chesley Judgment and Ford and the Plaintiff's rights, if any, to seize WSBC assets to satisfy that judgment; and
>
> (vi) the appropriate remedy for Ford's violations of this Court's January 14 Order.

37. All necessary parties to the foregoing disputes are parties to this action.

38. WSBC is entitled to a declaration of its rights and obligations with respect to the foregoing matters.

39. WSBC is also entitled to a finding of contempt against Ford and Respondents for their violations of the January 14 Order.

WHEREFORE, WSBC demands judgment against Ford and Respondents as follows:

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A. For a determination that all issues pertaining to Ford and Respondents rights and procedures for obtaining information from, or regarding, WSBC for the purpose of collecting the Chesley Judgment shall be determined by this Court;

B. For an Order making final the Court's August 26, 2015 determination that WSBC and Chesley are separate and distinct entities;

C. For an Order determining that WSBC is not liable for Chesley's debts or obligations, including the Chesley Judgment entered in the Kentucky case, and that Ford and the other Respondents have no right to seize WSBC assets.

D. For an Order enjoining Respondents from obtaining any confidential, financial, propitiatory or other information regarding WSBC from Mr. Chesley, Rehme or any other party, and specifically requiring that such efforts be conducted solely in this case;

E. For an Order directing Rehme to decline and reject any request from Mr. Chesley for WSBC's financial records to the extent such request emanates from a discovery request directed to Mr. Chesley in Kentucky;

F. For an Order directing and determining WSBC and/or Rehme's duties and responsibilities, if any, under the Kentucky Order related to the Transfer Motion including any Kentucky Order directing Mr. Chesley to transfer and assign to Respondent Ford all of his "beneficial interest in" the stock of WSBC, as well as any Kentucky issued Order directing Rehme to pay any funds that would otherwise be directed to Mr. Chesley to Ford; and

G. For an Order granting such other and further relief as this Court deems just and proper.

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Respectfully submitted,

/s/ Eric W. Fehr
Donald J. Rafferty (0042614)
Eric W. Fehr (0085309)
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Email: drafferty@ctks.com

Attorneys For Intervening Plaintiff, Waite Schneider Bayless & Chesley Co., L.P.A..

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the **COMPLAINT OF INTERVENOR WAITE SCHNEIDER BAYLESS & CHESLEY CO., L.P.A. FOR DECLARATORY AND INJUNCTIVE RELIEF** was served this 4th day of September, 2015, via regular U.S. Mail upon the following:

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/s/ Donald J. Rafferty
Donald J. Rafferty

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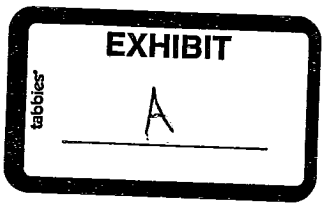
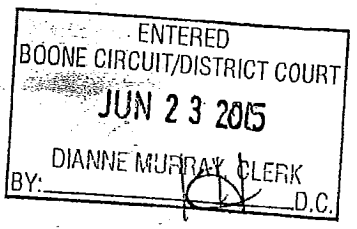


COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION III
CASE NO. 05-CI-00436



MILDRED ABBOTT, et al. **PLAINTIFFS**

V.

STANLEY M. CHESLEY, et al. **DEFENDANTS**

ORDER

This matter comes before the Court on the Plaintiff's Motion to Transfer Beneficial Interest in Property Held in Trust. The Court having read the memorandums filed by the parties, reviewed the file, and being in all ways sufficiently advised, hereby finds as follows:

This Court entered judgment against Defendant Chesley on August 1, 2014, finding him jointly and severally liable as a matter of law for the $42 million in damages previously awarded to Plaintiffs against Defendant's Gallion, Cunningham, and Mills. Said Judgment was made final pursuant to CR 54.02 and Defendant Chesley did not post a supersedeas bond to secure a stay of enforcement pending appeal.

As part of post-judgment discovery, Defendant Chesley disclosed the Wind-Up Agreement for his former law firm, Waite, Schneider, Bayless & Chesley, Co., L.P.A. ("WSBC"). The Wind-Up Agreement provides that Defendant Chesley would transfer his shares in WSBC to Thomas F. Rehme to hold in trust for the exclusive purposes of winding up WSBC for the benefit of its employees, creditors, and Chesley. Per the Agreement, Mr. Rehme is authorized to liquidate corporate assets and distribute proceeds to creditors as required and the pay out the remainder to Defendant Chesley as long as Defendant Chesley does not receive any legal fees other than for services performed prior to the effective date of his retirement.

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Both prior to and after Defendant Chesley was disbarred in Kentucky and his retirement of his Ohio bar license, he transferred more than $59 million dollars from his personal accounts to WSBC. $1,322,000 of that amount was transferred on or after the date of the Wind-Up Agreement.

Defendant Chesley still owns a beneficial interest in WSBC. Plaintiffs argue that this interest is subject to execution for the purpose of satisfying Plaintiff's Judgment against Defendant Chesley. To this end, Plaintiff requests that the Court order that Defendant Chesley's beneficial interest in WSBC be transferred to Plaintiffs and that any distributions that would be made to Defendant Chesley be made to the Plaintiffs through their counsel.

Defendant Chesley objects, arguing that WSBC is an Ohio legal professional association formed and maintained under Chapter 1785 of the Ohio Revised Code and, therefore, an Order such as the Plaintiff is requesting exceeds this Court's jurisdiction. The Court disagrees.

There is no dispute that this Court has personal jurisdiction over Defendant Chesley. He is a party to the case at hand and a valid judgment has been entered against him, a judgment which the Plaintiffs are within their rights to seek the Court's assistance to collect.

The law is clear that when the Judgment state has personal jurisdiction over the judgment debtor, that state may exercise that jurisdiction to take action on that judgment. *See Estates of Ungar ex rel. Strachman v. Palestinian Authority*, 715 F.Supp.2d 253, 262-64 (D.R.I. 2010). The Restatement (Second) Conflict of Laws § 55 (1971) states that, " a state has power to exercise judicial jurisdiction to order a person, who is subject to its judicial jurisdiction, to do, or not do, an act in the state, although the carrying out of the decree may affect a thing in another state." Furthermore, K.R.S. § 426.384 gives the Court the authority to enforce the surrender of money,

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securities, or any other property of the defendant in the execution and enforcement of a judgment.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Defendant Chesley shall direct that his beneficial interest in the shares of WSBC be transferred to Plaintiffs within fourteen (14) days of the date of this Order and all distributions pursuant to said interest are to be made to Plaintiffs through their counsel;
2. Defendant Chesley is hereby Ordered to direct Thomas F. Rehme to make all payments derived from Chesley's interest in the shares of WSBC payable to the Plaintiffs through their counsel, Hon. Angela Ford;
3. If for any reason, including but not limited to any action by another court in any other jurisdiction, monetary payment(s) is/are made to Chesley from his interest in WSBC, Chesley and his attorney shall immediately turn over said payment(s) to Plaintiffs' counsel, Angela Ford;
4. Defendant Chesley and his counsel are to provide a copy of this Order to Thomas F. Rehme.

DATED this 23rd day of June, 2015.

JAMES R. SCHRAND, JUDGE
BOONE CIRCUIT COURT

COPIES TO: ALL ATTORNEYS OF RECORD

CERTIFICATE
I, DIANNE MURRAY, clerk of the Boone District/Circuit Court, thereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record
This 23 day of June, 2015
DIANNE MURRAY
BOONE DISTRICT/CIRCUIT COURT
D.C.

ELECTRONICALLY FILED 09/04/2015 16:43 / IC / A 1500067 / CONFIRMATION NUMBER 437085

EXHIBIT
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ENTERED
BOONE CIRCUIT/DISTRICT COURT
JUN 23 2015
DIANNE MURRAY, CLERK
BY: D.C.

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION III
CASE NO. 05-CI-00436

MILDRED ABBOTT, et al. **PLAINTIFFS**

V.

STANLEY M. CHESLEY, et al. **DEFENDANTS**

ORDER

This matter comes before the Court on the Motion to Compel Non-Party Clark, Schaefer, Hackett & Company to Comply with Subpoena Duces Tecum and for an Order Requiring Production of Requested Tax Return Information. The Court having reviewed the Memorandums filed, the Court file, and being in all ways sufficiently advised, finds as follows:

On April 20, 2015 the Plaintiffs served a subpoena duces tecum on Clark, Schaefer, Hackett & Company ("CSH"). On the date set forth for production, Plaintiffs' counsel received a faxed letter from CSH that set forth various objections to this subpoena. There were no documents included along with these objections. Plaintiffs were unable to adequately resolve this issue, so they then filed the instant motion with this Court.

CSH set forth several objections to the subpoena. Their first objection was that they were not given a reasonable time to comply. The subpoena was served on April 20, 2015 and production was requested on April 28, 2015. Although CR 45 does not set forth a minimum time allowable for compliance with a subpoena, it does provide for objections within ten (10) days or before the time for compliance has run. CSH raised their objections within the appropriate time.

CSH further argues that the subpoena places an undue burden and expense upon them to comply. However, Plaintiffs have arranged for the copying of the documents at no charge to

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CSH, and there are digital means to transmit documents from CSH's location to where the Plaintiffs' counsel is located in Lexington, Kentucky. In light of this, the Court finds that the subpoena is not unreasonable or oppressive pursuant to CR 45.02.

CSH next objects to the subpoena on its face, stating that it is vaguely worded and amorphous. They argue that Plaintiffs did not define any of the terms employed in the subpoena, which leaves them in the untenable position of having to speculate as to what should be produced. CSH expresses their fear that they will be accused of reading the subpoena too narrowly and, therefore, requests that the Court assist them to define the terms of the subpoena in a definite and certain manner. The subpoena states that CSH is to provide as follows:

> All communications and records in all forms, including but not limited to, federal and state income tax returns, gift tax returns, financial statements and work papers, related to Stanley Chesley, the firm Waite, Schneider, Bayless, Chesley, and any entity in which Stanley Chesley or Waite, Schneider, Bayless, Chesley has held interest from 2005 to present. Public companies are not included in this request.
>
> All documents related to Trusts created by Stanley Chesley or to which Stanley Chesley has transferred assets of any kind.

The Court finds the Plaintiffs' request to be definite and certain. There is no need for the terms of such to be defined by this Court.

CSH next contends that subpoena violates the injunction entered by the Ohio Court in *Stanley Chesley v. Angela M. Ford.* CSH points to the section of the injunction that states that, "Respondents are enjoined from issuing any subpoena, seeking documents, or testimony to any Ohio resident, Ohio citizen, or Ohio domiciled entity..." However, CSH has offices located in the State of Kentucky from which they transact business. The injunction set forth by the Ohio Court, whether be still in effect or not, cannot limit this Court's ability to Order a business

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located and transacting business in Kentucky to comply with Kentucky law to secure a Judgment from a Kentucky case.

CSH then argues that service on the subpoena has not been perfected. Citing CR 45.02(3), they claim that the Plaintiffs are required to serve said subpoena on all non-parties who may be affected by the potential production. Plaintiffs served a copy of the subpoena on Defendant Chesley. It is undisputed that Defendant Chesley is the sole beneficial owner of the shares of Waite, Schneider, Bayless & Chesley ("WSBC"). Therefore service has been perfected as to Chesley and WSBC. CSH claims that Plaintiffs had a responsibility to also serve other investors in entities in which he had an interest and those involved with Mr. Chesley through some type of trust. The Plaintiffs are not equipped with the knowledge of who these entities are and therefore do not have the ability to procure service on them. To rule otherwise would be in contradiction to the intent of CR 45.02(3).

Finally, citing 26 U.S.C. § 7216, CSH argues that federal law precludes them from honoring and complying with the subpoena insofar as it seeks tax return information. However, 26 U.S.C. § 7216 itself provides exceptions which allow disclosure. One exception found under 26 U.S.C. § 7216(b)(1)(B) is a Court Order.

THEREFORE IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The Plaintiffs' Motion to Compel Non-Party Clark, Schaefer, Hackett & Company to Comply with Subpoena Duces Tecum and for an Order Requiring Production of Requested Tax Return Information is **GRANTED**.
2. Schaefer, Hackett & Company shall have twenty-one (21) days in which to comply with the terms of Plaintiffs' subpoena by producing and permitting inspection and copying of the requested documents.

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3. Schaefer, Hackett & Company shall be required to provide all requested tax return information. This Order shall serve as their authority to do so under 26 U.S.C. § 7216(b)(1)(B).

DATED this 23rd day of June, 2015.

JAMES R. SCHRAND, JUDGE
BOONE CIRCUIT COURT

COPIES TO: ALL ATTORNEYS OF RECORD

I, DIANNE MURRAY, clerk of the Boone District/Circuit Court, thereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record
This 23 day of June, 2015
DIANNE MURRAY
BOONE DISTRICT/CIRCUIT COURT
D.C.

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EXHIBIT
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ENTERED
BOONE CIRCUIT/DISTRICT COURT
JUN 23 2015
DIANNE MURRAY, CLERK
BY: D.C.

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION III
CASE NO. 05-CI-00436

MILDRED ABBOTT, et al. **PLAINTIFFS**

V.

STANLEY M. CHESLEY, et al. **DEFENDANTS**

ORDER

This matter is before the Court on Plaintiffs' Second Motion for Contempt Against Defendant Stanley M. Chesley and His Counsel and/or to Compel Discovery Responses. The Court having reviewed the Plaintiffs' Motion, the Defendant's Response, the parties' exhibits, and having heard argument from counsel, and being in all ways sufficiently advised, finds as follows:

Plaintiffs have served interrogatories and requests for production of documents regarding Defendant Chesley's assets available to satisfy the Judgment. These interrogatories were initially served on December 3, 2014. On December 19, 2014, it was agreed that Defendant Chesley would be given a thirty day extension to answer said discovery. After Chesley first answered Plaintiffs' Interrogatories and Requests, he provided supplemental answers on February 24, 2015, April 7, 2015 and June 2, 2015.

Plaintiffs argue Chesley's answers and responses are still deficient with regard to Interrogatories No. 1, 3, 5, 6, 14, 16 and 22 and Requests for Production No. 1, 2, 6 and 12. Plaintiffs ask the Court to find Chesley and his counsel in contempt and order them to turn over to the Plaintiffs all documentation they were previously ordered by this Court to produce. Plaintiffs further request an award of attorney's fees and expenses.

The Court finds Defendant Chesley has failed to comply with its previous orders. This failure to comply includes, but is not limited to, Defendant Chesley's failure to fully respond to

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Plaintiffs' request for information and documents related to Chesley's interest in Waite, Schneider, Bayless & Chesley Co., L.P.A. (WSBC).

Chesley argues he is unable to provide responsive information with respect to WSBC because said information is in the custody and control of the Trustee pursuant to the April 15, 2013 Wind-Up Agreement and that said Trustee is represented by separate counsel. The Court disagrees.

Chesley has provided information in discovery that shows that prior to and after his disbarment in Kentucky and his retirement of his Ohio bar license, he transferred more than $59 million dollars from his personal accounts to WSBC. $1,322.000 of that amount was transferred on or after the date of the Wind-Up Agreement. Additionally, pursuant to the Wind-Up Agreement: 1) Chesley is the sole shareholder of WSBC, as well as its president; 2) Chesley's shares are to be held in trust for the exclusive purposes of winding up the Corporation for the benefit of its employees, creditors and Chesley; and 3) Chesley reserves the right to amend the Wind-Up Agreement, including substituting a new Trustee.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Plaintiffs' Second Motion for Contempt Against Defendant Stanley M. Chesley and His Counsel and/or to Compel Discovery Responses is **GRANTED IN PART** and **DENIED IN PART;**
2. Plaintiffs' Motion to Compel Responses as to Interrogatory No. 1 is **GRANTED.** Chesley's response shall include the period of 2005 to the present. It shall include, but not be limited to, information related to WSBC;
3. Plaintiffs' Motion to Compel Responses as to Interrogatories No. 3, 5, 6, 14, 16 and 22 is **DENIED**;

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4. Plaintiff's Motion to Compel Responses as to Request for Production of Documents No. 1 is **GRANTED**. Chesley's response shall include the most recent monthly and year end statements, as well as the year end statements for the last six (6) years, and shall include, but not be limited to, information related to WSBC.

5. Plaintiff's Motion to Compel Responses as to Request for Production of Documents No. 2 is **GRANTED**. Chesley's response shall include all of the year-end financial statements prepared since 2005, and shall include, but not be limited to, information related to WSBC.

6. Plaintiff's Motion to Compel Responses as to Request for Production of Documents No. 6 and 12 is **DENIED.**

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that Defendant Chesley shall respond as Ordered above within twenty-one (21) days of the date of entry of this Order.

IT IS FURTHER HEREBY ORDERED AND ADJUDGED that Plaintiffs' request for reasonable expenses, including attorneys' fees is **GRANTED.** Counsel for Plaintiffs shall submit an affidavit regarding same.

DATED this 23rd day of June, 2015.

JAMES R. SCHRAND, JUDGE
BOONE CIRCUIT COURT

COPIES TO:

ALL ATTORNEYS OF RECORD

CERTIFICATE

I, DIANNE MURRAY, Clerk of the Boone District/Circuit Court, thereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record

This 23 day of June, 2015

DIANNE MURRAY
BOONE DISTRICT/CIRCUIT COURT

D.C.

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TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS

COMMON PLEAS DIVISION

ELECTRONICALLY FILED
September 8, 2015 10:39 AM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 437166

STANLEY M CHESLEY

vs.

ANGELA M FORD

A 1500067

JUDGE
ROBERT P RUEHLMAN

FILING TYPE: MOTION

PAGES FILED: 17

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EXHIBIT

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exhibitsticker.com

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STANLEY M. CHESLEY	:	Case No. A1500067
	:	Judge Ruehlman
Petitioner,	:	
	:	**MOTION FOR ENFORCEMENT**
v.	:	**OF RESTRAINING ORDER IN**
	:	**RESPONSE TO RESPONDENTS'**
ANGELA M. FORD, ESQ., et al.	:	**EFFORTS TO SEIZE PROPERTY IN**
	:	**OHIO WITHOUT OBEYING OHIO**
Respondents.	:	**LAW**
	:	
	:	A memorandum in support is attached

COMES NOW Petitioner Stanley M. Chesley ("Chesley") who moves for an Order that enforces the Court's January 14, 2015 Order (the "Restraining Order"), validates Ohio law, finds Respondent Angela M. Ford ("Ford") in violation of the Restraining Order and directs that Chesley is not required to obey an order that is improper in Ohio.

Chesley needs an order that (a) protects him from being forced to obey the below described "Transfer Order", (b) prohibits Ford from making any filing seeking to coerce Chesley to obey the Transfer Order[1], (c) holds that the Transfer Order is not self effectuating, and (d) finds that the Transfer Order should not be enforced against any Ohioans or Ohio property[2] including Chesley's bank account in Ohio.

A proposed order granting this motion will be filed.

---

[1] A copy of the Transfer Order was attached as Exhibit A to the complaint filed by Intervenor Waite Schneider Bayless & Chesley Co., LPA. ("WSBC") filed on September 4, 2015.

[2] This finding would reinforce Chesley's belief that (a) any failure by him to obey the Transfer Order is due to the illegality of that order in his home state, (b) obeying the Transfer Order would breach the Wind-Up Agreement and Ohio law does not permit him to be compelled to breach that contract and (c) his failure to obey the Transfer Order is not a sign of disrespect to the Kentucky court.

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Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
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MEMORANDUM IN SUPPORT OF MOTION

This Memorandum In Support of Motion provides the facts and law needed for the Court to issue an order granting the Motion.

RELEVANT FACTS

The Motion relates to the shares that Chesley previously owned in WSBC. Chesley previously disclosed that his shares in WSBC were transferred in trust and he produced to Ford a copy of the Wind-Up Agreement[3] that established the trust. Under the terms of the Wind-Up Agreement:

> (a) Chesley transferred all of his shares to Ohio attorney Thomas R. Rehme ("Rehme" or the "Trustee") and Chesley retained no interest in those shares;
> (b) Rehme agreed that those shares were "to be held in trust for the exclusive purpose of winding up the Corporation for the benefit of its employees, creditors, and [Chesley];"[4]
> (c) provides that Chesley "hereby resigns from all positions with the Corporation, including that of President and an employee;"[5]
> (d) WSBC is to maintain professional liability insurance covering Chesley;[6] and
> (e) requires WSBC to indemnify Chesley from a broad range of claims and obligations.[7]

With certain limitations, under the Wind-Up Agreement Chesley retains an interest in any proceeds that remain after the Trustee liquidates WSBC's assets and pays WSBC's creditors.[8]

WSBC, an Ohio entity, is not a party to the Kentucky litigation.

Rehme, an Ohioan, is not a party to the Kentucky litigation.

The Wind-Up Agreement was executed in Ohio.

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[3] A copy of the Wind-Up Agreement was provided to this Court by counsel for WSBC.
[4] Wind-Up Agreement, Section 1.
[5] *Id.* at Section 2.
[6] *Id.* at Section 4.1(h).
[7] *Id.* at Sections 5.1 and 5.2.
[8] *Id.* at Section 4.1(g). The Transfer Order is also some kind of super garnishment requiring Chesley to transfer to Respondent Ford any money he may receive from WSBC.

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THE TRANSFER ORDER REQUIRES CHESLEY DO THE IMPOSSIBLE

The Wind-Up Agreement is governed by Ohio law.[9] It is therefore appropriate for this Court applying Ohio law to construe and interpret that agreement. Of import at this time is whether Chesley divested himself of all his "interest" in the "shares of WSBC" [as those terms are used in the Transfer Order] when in the Wind-Up Agreement Chesley agreed that he "transfers and assigns" all of his shares in WSBC to Rehme.

It is Chesley's position that he no longer has any interest "in the shares of" WSBC that can be the subject of an assignment as required by the Transfer Order. In other words, Chesley in fact cannot obey the Transfer Order.

Despite the fact that Chesley transferred and assigned away his interest in his shares of WSBC, Ford sought and obtained an order in Kentucky that purports to require Chesley to transfer to Ford his beneficial interest in his shares of WSBC. On June 23, 2015 the Kentucky court entered the Transfer Order designed to, *inter alia*, ensure that the Trustee who owns WSBC (Rehme) pay to Ford any funds that would otherwise be payable to Chesley pursuant to the Wind-Up Agreement (the "Transfer Order"). The explicit purpose of the Transfer Order is to control the behavior of Rehme. Ford seeks to make a puppet of an Ohioan (Rehme) who is not party to the Kentucky litigation.

THE COURT PREVIOUSLY ADDRESSED THE TRANSFER ORDER

On August 19, 2015 the Court held a hearing on WSBC's motion for protection from Ford's violation of the Restraining Order, including Ford's using the Transfer Order to threaten Rehme. After full briefing and spirited argument by counsel, on August 27, 2015 the Court entered its Order Granting Motion of Intervener Waite Schneider Bayless & Chesley Co., L.P.A.

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[9] *Id.* at Section 7.

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for Declaratory and Injunctive Relief. In that order, the Court made the following findings which are binding in this case:

> I. As between this Court and the Kentucky Court, this Court, whose power was first invoked by the institution of proper proceedings acquired jurisdiction, to the exclusion of all other tribunals, has exclusive authority to adjudicate upon the whole issue and to settle the rights of the parties with respect to the matters set forth in the Complaint, Restraining Order and the Motion [as those terms are used in the quoted order].
>
> J. As a result of this Court having exclusive jurisdiction over the matters set for in the Complaint, Motion and Restraining Order, the orders of the Kentucky Court in relation to the Transfer Motion and the Chesley Compel Motion, including but not limited to the Transfer Order (the "Kentucky Orders"), are unenforceable as to any Ohio resident, Ohio citizen or Ohio domiciled entity that Ford seeks directly or indirectly, to aid in the collection of the Chesley Judgment and/ or subpoena seeking documents or testimony that would aid in the collection of the Chesley Judgment.
>
> K. WSBC is a domiciled Ohio entity. WSBC is not a party to the Kentucky Case and the Defendants in this case do not have a judgment against WSBC.
>
> L. Rehme is an Ohio citizen and/or resident.
>
> M. Mr. Chesley is an Ohio citizen and/or resident.
>
> N. The trust established by the Windup Agreement is an Ohio domiciled entity trust formed under and governed by, [sic] Ohio law.
>
> O. Mr. Chesley owns no shares of WSBC and has only a contingent reminder interest in the Windup Agreement trust (the "Trust") holding the shares of WSBC.

The Court has already reached many of the factual and legal conclusions that support the relief requested herein.

FORD ATTACKS A BRIDGE TOO FAR IN KENTUCKY AND OHIO

Ford had actual notice of the January 14, 2015 hearing that resulted in the Restraining Order. Ford filed multiple unsuccessful motions in federal and state court seeking to escape the

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limitations of the Restraining Order. Paragraph 3 of the Restraining Order states that so long as Ford does not obey Ohio law and properly domesticate the Kentucky judgment:

> Ford, the Unknown Respondents, and any other person acting on behalf of the Unknown Respondents *are enjoined from taking any action to collect the Chesley Judgment in the State of Ohio, from any Ohio resident, Ohio citizen or Ohio domiciled entity.* (emphasis added).

Displaying unexpected arrogance concerning her ability to control a non-party Ohioan (Rehme) through the Kentucky case and while ignoring both the Restraining Order and the terms of the Wind-Up Agreement, Ford filed a motion in Kentucky seeking an order directing Chesley to assign to Ford all of Chesley's "beneficial interest in" the stock of WSBC. Ford sought the Transfer Order while ignoring that Chesley transferred all of his interest in the shares of WSBC to Rehme over 2 years before Ford filed her motion. Ford also chose to ignore the facts that (i) WSBC and its trustee owner are Ohioans and not parties to the Kentucky litigation and (ii) WSBC is not a party to the Kentucky case.

Recently, Ford's counsel compounded Ford's arrogance. Ford's counsel overstated the effect of the Transfer Order by declaring it to be self effectuating. The Transfer Order directs Chesley to execute an assignment document[10] and so Ford knows the Transfer Order is not self effectuating. Despite the lack of an executed assignment, Ford's counsel told this Court that:

> By operation of the Kentucky court's order, Chesley's interest in WSBC now belongs to the judgment creditors. They are now beneficiaries of the trust, and Rehme [the Ohio Trustee] must act for their benefit. . . .
>
> Furthermore, this [Ohio] Court has no authority to interfere with or alter Rehme's obligation as trustee to the beneficiaries. There can be no dispute to that, as a matter of law, the judgment creditors are now the beneficiaries under the trust. Rehme has obligations as a matter of law. He must act for their benefit. Failure to do so exposes him to claims for breach of his fiduciary duties.

[10] Chesley has not received any proposed assignment document for review and/or execution.

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It is audacious that Ford is threatening Rehme while no assignment document has been executed by Chesley – a perfect demonstration of why the Court must protect Ohioans who are not party to the Kentucky case (WSBC, Rehme, WSBC's Ohio employees, WSBC's Ohio creditors, Chesley's family, etc.). Specifically, currently, protection is need by interdicting Ford's use of the Transfer Order as a weapon against Ohioans who are not party to the Kentucky Case.

Ford's overreach is thus tripled: first she violated the Restraining Order by seeking the Transfer Order in Kentucky; then Ford's Ohio counsel misrepresented the Transfer Order as self effectuating; and finally, Ford used the Transfer Order to threaten Ohioans who are not party to the Kentucky case and thus not bound by the Transfer Order. The Transfer Order cannot be allowed to have any impact in Ohio.

THE TRANFER ORDER NEUTERS OHIO LAW AND THIS COURT

The Transfer Order threatens the orderly and consistent administration of WSBC and interrupts proper application of the law governing execution of the Chesley Judgment in Ohio. Enforcement of the Transfer Order or Chesley's obeying the Transfer Order would (i) violate this Court's Restraining Order, (ii) make a nullity of Ohio Revised Code 2329.021, *et seq*., (iii) improperly permit a Kentucky Court to exercise control over Ohio citizens and property located in Ohio, (iv) deprive Chesley of certain rights provided by Ohio law, (v) eviscerate the protections in two separate sets of Ohio Revised Code sections that direct how debts are collected in Ohio on Ohio property, and (vi) force Chesley to violate the Wind-Up Agreement that appointed Rehme as the trustee owner of WSBC thus leaving WSBC's trustee owner and creditors without certainty going forward.

A. Ford is Violating the Court's Existing Order.

The Restraining Order provides in Paragraph 3 that:

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> Ford, the Unknown Respondents, and any other person acting on behalf of the Unknown Respondents *are enjoined from taking any action to collect the Chesley Judgment in the State of Ohio, from any Ohio resident, Ohio citizen or Ohio domiciled entity.* (emphasis added).

The Restraining Order was entered after a hearing of which Ford had actual knowledge. The Restraining Order remained in place while this case was removed to Federal Court by Ford and then remanded to this Court. After remand, on May 14, 2015, this Court held a hearing on Ford's motions to dismiss this case and to terminate the Restraining Order. There is no question that: (a) Ford was actually aware of the Restraining Order; (b) this Court's Restraining Order was the first judicial decision addressing the subject matter of that Order; (c) the Court has personal jurisdiction over Ford in this matter; and (d) Ford is actually litigating the substantive issues in the Restraining Order in this Court. The Restraining Order controls Ford's behavior.

At the May 14, 2015 hearing the Court orally denied Ford's motions to dismiss this litigation or dissolve the Restraining Order. Despite the clear language of the Restraining Order, Ford is trying to force WSBC (an Ohio entity domiciled in Ohio) and Rehme (an Ohio citizen) to pay to her money (Ohio property)[11] otherwise payable to Chesley.

The purpose of this litigation and the Restraining Order is to require Ford to comply with Ohio law in connection with any efforts to collect from Ohio assets, residents, citizens, and parties — nothing more and nothing less. Despite the issuance of the Restraining Order and knowledge of the same, Respondents have failed to comply with Ohio law.

Ford's seeking the Transfer Order and efforts to use that order in Ohio are in direct contradiction of the Restraining Order. The Transfer Order should not be permitted to have any impact in Ohio, on non-party Ohioans or property located in Ohio. This restriction should include the Transfer order's purported garnishment of Chesley's bank account located in Ohio.

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[11] The situs of Chesley's intangible contingent interest in WSBC, if any, is the state of Chesley's residence, Ohio. *Anderson v. Durr* (1919) 100 Ohio St. 251, 259.

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B. Ford Asks the Kentucky Court to Usurp this Court's Jurisdiction.

Exactly a week after her anti-Restraining Order motions were orally denied and the Restraining Order reaffirmed, on May 21, 2015 Ford filed the transfer motion in the Kentucky case seeking an order requiring that Chesley's "beneficial interest in the shares of his former law firm, Waite, Schneider, Bayless & Chesley Co., L.P.A. be transferred to Plaintiffs, with all distributions pursuant to that interest to be made to Plaintiffs through their counsel."

The Transfer Order admits that this Court had already addressed the issue of Ohio assets and execution in Ohio on property located in Ohio. At Ford's request, the Transfer Order tries to circumvent the fact that this Court has control over Ohio assets by directing that if the Transfer Order is not enforceable against WSBC and Rehme, then the Transfer Order becomes a super garnishment against Chesley and certain nonparties; the Transfer Order states "Chesley and his counsel shall immediately turnover" to Ford payments received from Rehme. In other words, if the Kentucky Court cannot seize Chesley's interest in WSBC (if any), the Transfer Order directs the garnishment of money in the pockets of Chesley.[12]

Reviewing the Restraining Order and the Transfer Order leads to the conclusion that this Court and the Kentucky court both assert jurisdiction over certain assets located in Ohio owned by Ohioans. This Court can and should defend its <u>first established jurisdiction over enforcement of the Chesley Judgment in Ohio</u> concerning assets in Ohio that might be seized to pay that judgment. Even if the Kentucky Court can exercise jurisdiction over enforcement of the judgment in Ohio, applicable law clearly gives this Court priority and exclusive jurisdiction because the January 14, 2015 Restraining Order predates the June 23, 2015 Transfer Order. "As between courts of concurrent jurisdiction, the tribunal whose power is first invoked by the

[12] It is beyond irony that Ford also tried to actually garnish Chesley's counsel using a writ of garnishment issued in Nevada. Ford knows what a real garnishment is and it is not use of the Transfer Order against a nonparty.

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institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties. (*John Weenink & Sons Co. v. Court of Common Pleas* [1948], 150 Ohio St. 349, approved and followed.)" Quoted in *Knowlton Properties v. Knowlton*, (1992) 63 Ohio St. 3d 671, 681. (emphasis added).

This Court's Restraining Order enforcing Ohio law with respect to enforcement of the judgment in Ohio to protect Ohio citizens, domiciles and property takes precedence over the Transfer Order because this Court first obtained and exercised jurisdiction over the issue: enforcement of the judgment in Ohio on assets in Ohio. This Court's jurisdiction is primary and superior to the Kentucky court's jurisdiction, if any, over WSBC, Rehme, the trust created by the Wind-Up Agreement and property in Ohio. The Transfer Order should not be enforced.

C. The Transfer Order Renders Ohio Law Meaningless.

Ohio enacted the Uniform Enforcement of Foreign Judgments Act ("UEFJA") as Ohio Revised Code 2329.021, *et seq*. Ford has chosen to ignore that statute and use a Kentucky court in an effort to circumvent applicable Ohio laws and procedures.

A court in a sister state must have personal jurisdiction to award a money judgment against a party. If the mere fact of personal jurisdiction is enough to seize a judgment debtor's assets located in a different state, no judgment creditor would ever need to domesticate a judgment in a foreign state and collection protections enacted in the foreign state would always be worthless. If what Ford seeks is allowed and the Transfer Order effective, why did 47 states and 3 other jurisdictions enact a version of the UEFJA?

Ford is not the first collection lawyer who tried to evade the law of the state where assets are located. Those efforts regularly fail. A persuasive precedent is *Elkhart Coop. Equity Exch. v. Hicks*, 823 P.2d 223 (Kan. App. 1991). In that case, a Kansas court ordered a judgment debtor

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to "surrender to Kansas officials certain nonexempt property (or documents of title to said property) located in Oklahoma." 823 P.2d at 224. The Kansas Court of Appeals held "that a state has no power to reach property beyond its borders, and that he [defendant] cannot be required to bring property located out-of-state before the Kansas court to surrender to the sheriff for satisfaction of the judgment. . . . *Id.* at 226. *Accord, Baxter State Bank v. Bernhardt*, 186 F.R.D. 621, 624 (D. Kan. 1999) ("According to a recent decision from the Kansas Court of Appeals, Kansas courts have no jurisdictional authority to order a non-resident judgment debtor to bring out-of-state property into Kansas to satisfy a judgment.") (citing *Elkhart*, 823 P.2d at 226).

Another persuasive precedent is *Sargeant v. Al-Saleh*, 137 So.3d 432 (Fla. App. 2014). The Florida Court of Appeals held that "the [trial] court lacked jurisdiction to compel the turnover of property located outside the State of Florida." 137 So.3d at 433. The Florida appellate court reasoned that permitting such a transfer would evade the legal protections in the situs state for other creditors, as well as statutory protections for the debtor:

> [W]e are concerned about the practical implications of permitting Florida trial courts to order judgment debtors to turn over assets located outside the state. First, there may be competing claims to the foreign assets and we believe "that claims against a single asset should be decided in a single forum – and . . . that the forum should be, as it traditionally has been, a court of the jurisdiction in which the asset is located."

Id. at 435 (citations omitted).

The Transfer Order sweeps away rights of both Chesley and the Trustee under Ohio law, such as statutory exemptions for judgment debtors. As the Florida court recognized in *Sargeant*, the only proper venue for the adjudication of those rights and issues is the asset situs, Ohio.

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D. The Transfer Order Voids the Protections of Ohio Law.

The Transfer Order and the implications of Ford's action become even more troubling when one considers the way in which her conduct has the effect of depriving Ohioans of the rights and protections afforded to them under Ohio law.

Chesley has previously outlined the extensive procedural protections provided to him and all Ohioans (e.g. Chesley's spouse and children, Rehme and WSBC all of whom Ford has said she intends to target) by Ohio Revised Code 2329.021 *et seq*. such as disclosure of the exact amount owed which would insure that Ford did not seize from innocent third parties more than the amount owed on the Chesley Judgment. If the Transfer Order is effective, those protections vanish and will never be available to any innocent third-party Ohioan targeted by an out-of-state judgment creditor.

E. Ohio Has Collection Procedures In Place For Precisely This Situation.

The Turnover Order is in essence an affirmative injunction that is explicitly intended to be effective in Ohio. As such, the Transfer Order should only be effective if Ford had no adequate remedy at law, that is, no legal way to reach Chesley's contingent interest, if any, in the trust controlled by Mr. Rehme. See, *Board of Edu, Dayton City School Dist v. Dayton Education Association* (1992) 80 Ohio App.3d 758 (Montgomery Cty. App.)

Ohio law provides a very clear path for Respondents to initiate collection proceedings in Ohio (i.e., to domesticate their Judgment and execute on assets using Ohio law). See O.R.C. 2329.021 *et seq*. Respondents simply need to comply with that statute and then they would be free to use Ohio's courts to pursue assets and parties. If or when Ford domesticates the judgment in accord with Ohio law, this Court will be able to assure that Ford complies with Ohio law and to provide Chesley and Ford's other Ohio targets with the procedural and substantive protections

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to which he is entitled as a matter of Ohio law. For example, this Court may make determinations regarding possible exemptions that may shield assets from seizure by Ford using an Ohio garnishment, creditor's bill or other action permitted by Ohio law against Ohioans and property in Ohio. See O.R.C. Sections 2333.03 *et seq.* and 2333.01. Under either statute, there are procedural protections for Chesley.[13] The Transfer Order sweeps away Ohio law and all of those rights.

Ford's plan is cunning and devious. She knows that WSBC operates a retirement plan[14] that might make payments to Chesley that are exempt from execution under, *inter alia*, Ohio Revised Code 2329.66(10). Ford ignored the Restraining Order and asked the Kentucky court to enter the Transfer Order in an effort to deprive Chesley of Ohio's exemptions.

Until such time as Respondents actually follow Ohio law and properly domesticate the Judgment, this Court should issue an Order protecting Chesley from implementation of the Transfer Order in any way.

F. Violation of the Wind-Up Agreement.

Paragraph 6 of the Wind-Up Agreement states: "Transferor [Chesley] may not assign this Agreement." Ford has had possession of the Wind-Up Agreement for months and she knows that implementation of the Transfer Order would put Chesley in violation of that agreement.

That breach might terminate or impair the Wind-Up Agreement and would expose many innocent third parties (including several Ohioans) to uncertainty and possible non-payment of amounts due them. Potential victims of Ford's actions and the Transfer Order include WSBC's

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[13] Likewise, the Transfer Order's extra territorial super garnishment provisions aimed as Chesley's bank account in Ohio render irrelevant Ohio's garnishment statutes and the procedural protections they provide to both judgment debtors and garnishees.

[14] The existence of a "pension or deferred compensation trust" established by WSBC as that term is used in O.R.C. Section 2339.66(10) was disclosed to Ford in interrogatory answers provided by Chesley to Ford in February of 2015. Besides attacking the deferred compensation trust through the Transfer Order, Ford has tried unsuccessfully in Nevada to garnish funds payable to the compensation trust. Like the Transfer Order, Ford's writ of garnishment in Nevada seeks to seize this potentially exempt asset in violation of Ohio law.

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creditors, employees, current business partners (e.g. the landlord) and former employees as detailed in WSBC's motion filed with this Court on June 26, 2015.

CONCLUSION

In this filing, Chesley has demonstrated that the protection the Court provided to WSBC against the Transfer Order should be extended to him.

There is no question that this Court has (i) personal jurisdiction over Chesley, WSBC, Ford and Rehme, (2) *in rem* jurisdiction over Chesley's Ohio property and (3) subject matter jurisdiction over issues related to enforcement of the Kentucky judgment in Ohio. Ford actively contested the jurisdiction of this Court and the Court ruled that jurisdiction exists and declined to dissolve the Restraining Order before Ford filed her motion seeking the transfer order.

Having determined that it has personal jurisdiction over Ford and subject matter jurisdiction over this case, this Court should ensure that Ford complies with its orders. Ford's request for the Transfer Order violated this Court's Restraining Order, undermined this Court's jurisdiction, and tries to make many entities violate Ohio law. The Court should not countenance such conduct. Accordingly, the Court should enter an Order upholding the integrity of its duly entered Restraining Order by declaring that Chesley, WSBC and Rehme are not required to honor the Transfer Order unless and until this Court enters an order directing them to do so.

Chesley requests that the Court enter an Order:

A. Finding that this Court has *in rem* jurisdiction over Chesley's contingent beneficial interest in WSBC and other assets in Ohio explicitly mentioned in Chesely's filings in this matter that were and are intended to be protected by the Restraining Order and that this jurisdiction attached before entry of the Transfer Order. Further finding that the Court has subject matter jurisdiction over issues related to enforcement of the Kentucky judgment in Ohio.

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As a result of those findings, as a matter of law, the Court should rule that the Transfer Order has no impact on Chesley's interest, if any, in WSBC or the trust established by the Wind-Up Agreement or Chesley's property in Ohio;

B. Directing and determining that any assignment of Chesley's contingent beneficial interest in the trust that owns WSBC executed pursuant to the Transfer Order would breach the Wind-Up Agreement and be legally ineffective under Ohio law. As a result, if Chesley is compelled to obey the Transfer Order and execute a putative assignment in favor of Ford, Mr. Rehme should be ordered to ignore that assignment;

C. Explicitly applying the restrictions in the Restraining Order to Chesley's "beneficial interest in the stock of" WSBC, if any, and any funds Chesley receives from WSBC so that Ohio property may only be seized or garnished if Respondents first domesticate the judgment and then follow Ohio collection laws. This relief would protect Chesley's interest in the trust controlled by Rehme and also protect Chesley from Ford's ham handed effort to garnish funds from Chesley's Ohio bank account;

D. Directing Rehme to ignore the Transfer Order because he is not a party to the Kentucky case and as a citizen of Ohio is protected from the use of the Kentucky judgment unless that judgment is properly domesticated under Ohio law;

E. Finding that Chesley cannot be compelled to breach the Wind-Up Agreement by making an effort to assign any rights under that contract;

F. Interpreting the Wind-Up Agreement, a contract controlled by Ohio law, to find that Chesley has no interest of any sort "in the shares of WSBC" (as that phrase is used in the Transfer Order) that he can assign to Ford because, as a matter of Ohio contract law, all of his interest in the shares of WSBC was transferred away pursuant to the Wind-Up Agreement.

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Therefore, as a matter of Ohio law, any assignment required by the Transfer Order would have no impact;

G. Holding Ford in contempt of the Restraining Order and as a result (i) consider directing that a hearing be held on what sanction should be imposed on Ford and if an award to compensate Chesley for attorney fees incurred in dealing with the Transfer Order is appropriate, and (ii) ordering that Ford will face significant sanctions if she files any motion or other document that seeks to enforce the Transfer Order;

H. Directing Ford to send a copy of the Restraining Order to each of her clients who is one of Chesley's judgment creditors to insure that none of them unknowingly violate the Restraining Order; and

I. Granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Vincent E. Mauer

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CERTIFICATE OF SERVICE

I hereby certify that a on this 8th day of September, 2015, a copy of the foregoing was served by first class U.S. Mail, postage prepaid, upon:

Brian S. Sullivan, Esq.
Christen M. Steimle, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Donald J. Rafferty, Esq.
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Cincinnati, Ohio 45202

/s/ Vincent E. Mauer

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	Case No. 1:15-cv-83
	:	
Petitioner	:	Judge Michael Barrett
v.	:	
	:	
Angela M. Ford, Esq.	:	
	:	
And	:	
	:	
Unknown Judgment Creditors	:	
	:	
Respondents.	:	

MOTION FOR REMAND BECAUSE COMPLETE DIVERSITY DOES NOT EXIST TO SUPPORT SUBJECT MATTER JURISDICTION OR MOTION FOR EXTENSION OF TIME TO AMEND PLEADING, IF NEEDED

Petitioner Stanley M. Chesley ("Chesley"), through counsel: (i) informs the Court that this matter should be remanded to the Hamilton County, Ohio Court of Common Pleas due to the fact that subject matter jurisdiction does not exist because there is not complete diversity between Petitioner and all the respondents; and (ii) if needed, moves the Court for more time to amend the Verified Petition [defined below] in the event that the Court determines that certain currently Unknown Respondents must be added by Chesley before the Court can fully consider the remand question.

Acting on behalf of about 400 individual judgment creditors, Respondent Angel M. Ford, Esq. ("Ford") removed this matter to this Court on the ground that subject matter jurisdiction exists under 28 U.S.C. Section 1332 asserting that none of the Respondents share Chesley's Ohio citizenship. See paragraph 8 of Ford's Notice of Removal. As discussed below, that assertion is wrong and so there is not complete diversity between Petitioner and the Respondents. Hence, this case must be remanded to the Hamilton County, Ohio Court of Common Pleas.

EXHIBIT
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PROCEDURAL HISTORY IN STATE COURT

Prior to Ford's removal of this matter, the record in Hamilton County Common Pleas Court included these events. All of these documents are now part of this Court's record:

1. The three documents Chesley filed to initiate this matter – (a) Verified Petition For Declaratory Judgment And Injunctive Relief (the "Petition"), (b) Petitioner's Motion For Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction (the "Petitioner's Motion"), and (c) Petitioner's Verified Memorandum in Support of Motion for Injunctive Relief (the "Verified Supporting Memo"). These three documents are collectively "Chesley's Filings";

2. The Court's January 7, 2015 initial temporary restraining order (the "Temporary Restraining Order"). Ford had actual notice of this order the day it was entered and did not object to this order while it was effective;

3. The state court's now operative January 14, 2015 Restraining Order Against Certain Actions By Respondents And Setting Hearing (the "Restraining Order"). The Restraining Order was entered after a hearing of which Ford had seven days actual notice but in which she chose not to participate in any way; and

4. Chesley's Combined (1) Verified Motion and (2) Supporting Memorandum Seeking Amplification of Restraining Order. This filing addresses Ford's assertion in Kentucky that Chesley is seeking a defacto stay of enforcement of the Chesley Judgment [defined below].[1]

BACKGROUND

This matter arises from the criminal activity of two former lawyers, William J. Gallion and Shirley A. Cunningham (jointly the "Criminals"). The Criminals and Melbourne Mills, Jr. ("Mills")[2] colluded to misappropriate some settlement proceeds owed their clients in a Kentucky pharmaceutical products liability action styled *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* Boone County, Kentucky Circuit Case No. 98-CI-00795 (the "Settled Case").

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[1] As of this writing, Ford's motion requesting that Chesley be forced to dismiss this litigation is still pending in Kentucky. Despite that fact, Ford brings the same defacto stay assertion to this Court in her newly filed motion to dismiss this matter.

[2] Collectively, the Criminals and Mills will be referred to as the "Criminal Defendants" because all three were accused of federal crimes but only the Criminals were convicted. Chesley was never criminally charged.

Respondent Angela M. Ford, Esq. ("Ford") is a licensed Kentucky lawyer who represents an unknown number of clients in this matter; some of Ford's clients reside in Ohio. Ford is a respondent herein primarily in her capacity as agent for her clients. In 2005, Ford filed an action accusing Chesley, the Criminal Defendants and others of mishandling a portion of the settlement proceeds generated by the Settled Case. That case is styled *Mildred Abbott, et al. v. Stanley M. Chesley, et al.* Boone Circuit Court Case No.05-CI-436 (the "Abbot Case"). Chesley did not mishandle any settlement proceeds in the Settled Case.

The Abbott Case was initially assigned to Special Judge Wehr sitting by designation in the Boone Circuit Court. Judge Wehr found that the Criminal Defendants breached contractual duties they owed to their clients who were the plaintiffs in the Settled Case by charging more in attorney fees than permitted by the Criminal Defendants' contracts with their clients. On August 1, 2007 Judge Wehr held that the Criminal Defendants owed the Abbott Case plaintiffs $42,000,000 plus interest ("the "Criminal Defendants Judgment"). At the same time, Judge Wehr declined to enter a similar judgment against Chesley; Judge Wehr's decision was affirmed by the Kentucky Court of Appeals the Kentucky Supreme Court.

Although the precise numbers and timing are unknown to Chesley: Ford admits that she collected at least $17,000,000 of the Criminal Defendants Judgment; and Ford has made distributions to her clients of certain amounts collected against the Criminal Defendants Judgment.

After seven years, and two decisions by the Kentucky Supreme Court, Judge Schrand of the Boone Circuit Court determined that Chesley was collaterally stopped from defending against the claim that he was jointly liable for the $42,000,000 in damages awarded in the Criminal Defendants Judgment (the "Chesley Judgment").

This litigation concerns the application of Ohio[3] procedural law to Ford's threatened efforts to domesticate the Chesley Judgment in Ohio and then use the newly created Ohio judgment to issue subpoenas and seize assets.

DIVERSITY DOES NOT EXIST

Ford's only stated basis for removal is the alleged existence of complete diversity between Chesley an Ohio resident and all the respondents.

Chesley's Verified Petition Judgment names "Unknown Respondents" because Ford has failed to identify the current judgment creditors. Ford contends that her clients are specifically identified on the "settlement grid" created about 12 years ago in the Settled Case. The Verified Petition and Chesley's other filings detail precisely the issues surrounding the current identity of the judgment creditors. See pages 14 through 18 of the Verified Supporting Memo.

Regardless of their current number and the current identity of the judgment creditors, those persons or entities (e.g. probate estates and bankruptcy estates) are real and described in the Verified Petition – they are not fictitious persons. Ford asserts that there are 381 or 382 judgment creditors while the maximum possible universe of those persons is the 463 people identified in one or more of Ford's Filings.

Ford contends that her clients are specifically identified on the "settlement grid" created about 12 years ago in the Settled Case.[4] As detailed in the Chesley Filings, Ford made that assertion in open court and if multiple filings. Ford is estopped from now asserting that the persons on the settlement grid are not her clients. Ford decided to rely on the settlement grid and

[3] As shown in the Verified Petition, Ohio law dominates this dispute. One of the two major arguments asserted by Ford in her motion to dismiss this matter also cites to Ohio law.

[4] A copy of the settlement grid is attached to and verified by the Affidavit of Mr. Frank Benton (the "Benton Affidavit").

tell the Boone Circuit Court it lists her clients; Ford cannot now say the Ohioans listed on the settlement grid are not her clients and Chesley's judgment creditors.

A review of the settlement grid relied on by Ford lists the names and addresses of Ford's clients and shows that Ford's clients include <u>six persons on the settlement grid were then residents of Ohio</u>.

As of 2007 when Ford filed her Eighth Amended Complaint in the Abbott Case, five of the six of the Ohio residents [as identified on the Ford used settlement grid] were still listed by Ford as her clients.[5] The Ohio citizens on the settlement grid that Ford says lists her clients are:

Judith Peck (now Wage man) at 2166 Eastern Ave., Cincinnati, Ohio;
Jayne Adams at 1077 Theatre Street, Chillicothe, Ohio;
Carol Boggs at 3415 at County Road, Ironton, Ohio;
Linda Brimley at 415 W. Mulberry Street, West Union, Ohio;
Patricia Kennedy at 7594 Shawnee Lane, West Chester, Ohio; and
Betty Kelly at 117 W. Park wood, Fairborn, Ohio.

Admittedly, the settlement grid is over ten years old and that list contains more names than Ford asserts are her clients; that is the reason Chesley, in fact, does not know his current judgment creditors or their current citizenship. But, the age of the settlement grid is unimportant because Ford is estopped from denying that those persons are her clients and judgment creditors, holders of the Chesley Judgment.

Due to Ford's assertion in her remand filing that none of the judgment creditors are citizens of Ohio, Chesley undertook to learn what Ford undoubtedly knows – the current status of those six Ohio residents. As detailed in the Benton Affidavit[6], as of early 2015, several of the six Ohioans shown on the settlement grid remain citizens of Ohio and one died recently in Ohio – meaning an Ohio probate estate should become a Chesley judgment creditor.

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[5] See the Eighth Amended Complaint attached to and verified by the Benton Affidavit.
[6] The Benton Affidavit and its attachments are filed separately in this matter.

It is clear that Ford's clients include several citizens of Ohio.

SUBJECT MATTER JURISDICTION

There is no doubt that this case can only be removed if none of the Respondents share Chesley's Ohio citizenship. See 28 U.S.C. Section 1332(a)(1). The diversity asserted by Ford is untrue if one of the Respondents was a resident of Ohio on the date this case was filed.

This issue goes to the heart of this Court's subject matter jurisdiction in this case. As a result, if there is one Ohio Respondent, the Court has no jurisdiction over this case and so it must be remanded. In fact, subject matter jurisdiction concerns can be raised at any time. See 28 U.S.C. Section 1777(c) which states in relevant part "[A] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." (emphasis added).

This Court has the authority to add parties to this litigation if needed. See Fed. Rules of Civil Procedure 17 (real party in interest) and 19 (indispensible parties) and 28 U.S.C. Section 1447(a) (" . . . the district court may issue all necessary orders and process to bring before it all proper parties whether served by process . . . ."

THE CITIZENSHIP OF THE JUDGMENT CREDITORS IS RELEVANT NOW

Chesley asserts that the citizenship of the Unknown Respondents is at issue in this matter at this time because Ford knows that her clients[7] are Chesley's judgment creditors and several are Ohio citizens. Contrary to Ford's assertion, the judgment creditors are not fictitious and their

[7] It is beyond irony that a significant focus of Chesley's Verified Petition is the names and address of his current judgment creditors and the lack of that information is why Chesley sued "Unknown Respondents." Having kept that information from Chesley, Ford now uses Chesley confusion and ignorance that she caused in support of her effort to move this matter to federal court.

citizenship matters. Ford relies on 28 U.S.C. Section 1441(b)(1) but that section does not apply because the holders of the Chesley Judgment – Ford's clients, the "Unknown Respondents" – are thoroughly described in Chesley's Verified Petition.

Several courts have considered Section 1441(b)(1) in situations like this one – the initially unidentified parties are known by one side of the case (the party in favor of diversity) and well described (but not named) in the pleading of the party who asserts diversity does not exist. Chesley suggests that the Court consider *Lampton v. Columbia Sussex Corp.*, 2010 WL 3075752 (E.D. Mich. Aug 5, 2010) in which the injured plaintiff sued the property owner (from which she was diverse) and the unknown, but described, general manager of that property. Columbia Sussex asserted that the property manager's citizenship could be ignored because he was a "fictitious person" under Section 1441(b)(1).

In *Lampton*, as in our case, the party with knowledge of the name and citizenship of the supposedly fictitious person refused to provide that information to the party asserting that diversity did not exist.

The *Lampton* case has an excellent summary of when "doe defendants" should be ignored under Section 1441(b)(1). A review of that analysis leads to the conclusion that the "Unknown Respondents" should not be ignored herein because they are identified with adequate specificity and because Ford is estopped from denying that they are her clients, Chesley's judgment creditors.

Although it was done for the six Ohio residents, it should be noted that Chesley cannot practically track down and name all of the Unknown Respondents. As described in the Verified Petition, Ford claims that 381 or 382 of the 414 (or 416) persons listed on the settlement grid are

her clients[8] and Ford's various filings in the Abbott Case have identified 463 plaintiffs. To eliminate 81 or so potential judgment creditors from Ford's various filings, Chesley would need to know which of those persons are not his judgment creditors. This fact that could be determined by trying to find current phone numbers and asking those persons if they have received funds from Ford as part of Ford's distributions described in Chesley's Filings. Of course, the first time Chesley or his counsel called a person that person is a Ford client (and therefore a judgment creditor), Chesley's counsel may be in violation of certain ethical rules related to contacting represented parties.

CONCLUSION

This matter should be remanded because complete diversity does not exist.

Respectfully submitted,

/s/ Vincent E. Mauer

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2015, I electronically filed the document on behalf of Petitioner Stanley M. Chesley with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

/s/ Vincent E. Mauer

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[8] Ford herself told Judge Schrand that her clients are "variable." See the transcript that is Exhibit G to the Verified Supporting Memo, one of the Chesley Filings.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	Case No. 1:15-cv-83
	:	
Petitioner	:	Judge Michael Barrett
v.	:	
	:	
Angela M. Ford, Esq.	:	
	:	
And	:	
	:	
Unknown Judgment Creditors	:	
	:	
Respondents.	:	

NOTICE OF FILING THE AFFIDAVIT OF FRANK BENTON IN SUPPORT OF PETITIONER'S MOTION FOR REMAND BECAUSE COMPLETE DIVERSITY DOES NOT EXIST TO SUPPORT SUBJECT MATTER JURISDICTION

Attached hereto is the Affidavit of Frank V. Benton IV, Esq. in support of Petitioner's motion for remand filed on February 13, 2015.

Respectfully submitted,

/s/ Vincent E. Mauer

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Fax 513-651-6981
vmauer@fbtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2015, I electronically filed the document on behalf of Petitioner Stanley M. Chesley with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

/s/ Vincent E. Mauer

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EXHIBIT
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	Case No. 1:15-cv-83
Petitioner	:	Judge Michael Barrett
v.	:	
Angela M. Ford, Esq.	:	
And	:	
Unknown Judgment Creditors	:	
Respondents.	:	

AFFIDAVIT OF FRANK V. BENTON, IV

1. Affiant, Frank V. Benton, IV, states under oath that he is an attorney licensed to practice law in the Commonwealth of Kentucky and has been engaged in the practice of law for 36 years. Affiant is an attorney of record in the *Mildred Abbott, et al. v. Stanley M. Chesley, et al.*, Case No.05-CI-436 (the "Abbott case") which is pending in the Boone Circuit Court. Affiant has represented Stanley M. Chesley, petitioner herein, since the inception of the *Abbott* case in 2005.

2. The genesis of the *Abbott* case results from a mass tort case against A.H. Robbins Company, Dr. Rex Duff and Bariatrics, Inc. over injury caused by the use of the diet drug known as Fen-Phen; *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* Boone Circuit Case No. 98-CI-00795. A.H. Robbins Company was the manufacturer and Dr. Duff and Bariatrics, Inc. were distributors of the diet drug. The *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* case (also known as *Guard, et al. v. A. H. Robbins Company, et al.)* was based on personal injury due to ingestion of the diet drug combination Fen Phen leading to heart valve damage of varying degrees.

3. The basic allegation in the *Abbott* case involves the misappropriation of settlement funds in the *Moore/Guard* case. During the discovery stage in the *Abbott* case, affiant learned that

William Gallion, Melbourne Mills and Shirley Cunningham, the attorneys representing the *Moore/Guard* plaintiffs, developed a settlement grid that was prepared for A.H. Robbins Company which showed the names and addresses of the individual plaintiffs and the settlement amount each plaintiff was to receive. The individual settlement amount for each plaintiff was based on the severity of the injury to each plaintiff. Each plaintiff was required by A.H. Robbins Company to sign a release before the settlement funds would be paid to Gallion, Mills and Cunningham to be distributed to each plaintiff.

4. Attorney Angela Ford filed the *Abbott* case on behalf of many of the plaintiffs in the *Moore/Guard* case, former clients of Gallion, Mills and Cunningham. Recently, affiant compared the most recent *Abbott* case complaint (Eighth Amended Complaint) filed by Ford to the settlement grid prepared by Gallion, Mills and Cunningham. The caption for the Eighth Amended Complaint is attached hereto. There are five Ohio citizens listed in both the settlement grid and the 8th Amended Complaint: Judith Peck (now Wageman) at 2166 Eastern Ave., Cincinnati, Ohio; Carol Boggs at 3415 County Road, Ironton, Ohio; Linda Brimley at 415 W. Mulberry Street, West Union, Ohio; Patricia Kennedy at 7574 Brookstone Drive, West Chester, Ohio; and Betty Kelly at 117 W. Parkwood, Fairborn, Ohio. Affiant utilized the current Cincinnati Bell telephone book and a Google search and determined that these particular clients of Ford (now judgment creditors) are presently citizens of Ohio. One of the Ohio citizens has passed away (Betty Kelly) on December 14, 2014 but was a citizen of Ohio at the time of her death.

5. Based on the above information, it is clear that diversity does not exist in the within matter as at least four individuals and most likely the personal representative of the Betty Kelly estate are currently Ohio respondents.

Frank V. Benton, IV

Commonwealth of Kentucky
County of Campbell

Subscribed and sworn to before me by Frank V. Benton, IV, this 16th day of February, 2015.

Notary Public
My Commission Expires: 3/21/16

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Mr. Stanley M. Chesley	:	Case No. 1:15-CV-83
	:	
	:	Judge Peter C. Economus
Petitioner	:	
v.	:	
	:	**PETITIONER STANLEY M.**
Angela M. Ford, Esq., et al.	:	**CHESLEY'S REPLY IN**
	:	**SUPPORT OF MOTION**
	:	**FOR REMAND**
Respondents.	:	

Respondent Angela Ford's ("Ford") Response in Opposition to Petitioner Stanley M. Chesley's Motion for Remand (the "Response") asserts only two arguments: (1) that this court has subject matter jurisdiction over the case on diversity grounds, and thus remand is improper unless a non-diverse defendant is added to the Verified Petition; and (2) that if Petitioner Stanley M. Chesley (Chesley) seeks to add such a defendant he must first seek leave to amend. While Chesley has asserted and will continue to assert that the original Verified Petition establishes that this Court lacks diversity jurisdiction, Chesley's recently filed Motion for Leave to File First Amended Verified Petition For Declaratory Judgment and Injunctive Relief (the "Motion for Leave") roundly defeats both of Ford's arguments.

As an initial matter, Chesley understands that diversity jurisdiction is determined at the time of the complaint and removal; he has never debated that point. *Curry v. U.S. Bulk Transp. Inc.*, 462 F.3d 536, 540 (6th Cir. 2006). For that reason, Chesley's arguments in the Motion for Remand are based on the allegations originally set forth in his Verified Complaint, not arguments that arose after removal. In fact, though Ford's Response devotes half a page to the standard for removal when defendants are sued under fictitious names, it neglects to respond directly to Chesley's assertion that the Unknown Respondents were never fictitious parties in the

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first place. (*See* Response p. 3.) From the very outset, Chesley has provided evidence, in the form of two affidavits and two verified filings, establishing that the Ohio Defendants are real people living in Ohio who fit the exact description of the Unknown Respondents named in the original Verified Petition. Ford, on the other hand, has provided no evidence whatsoever and has never disputed that these persons are Ford's clients and Chesley's judgment creditors.

Furthermore, even if the Unknown Defendants *were* fictitious parties, the Ohio Defendants have since been identified in the proposed First Amended Verified Petition. As noted above, Ford's Response asserts that remand is improper unless a non-diverse defendant "is actually added to the case." (*Id.*) This is more or less exactly what Chesley's First Amended Verified Petition seeks to do. While the Verified Petition does not *add* any new defendants, it does substitute the exact identities of the Ohio Defendants for some of the Unknown Respondents. This serves to clarify the jurisdictional facts as they existed *at the time of removal*, fleshing out Chesley's already-existing claims against Ford and the Ohio Defendants. Consequently, if this Court grants leave to file the First Amended Verified Petition, which it should, remand will not only be proper, it will be mandatory. *Curry*, 462 F.3d at 541.

Finally, Ford's Response designates a specific process for amending complaints when diversity will be destroyed. (*Response*, at pp. 4-5.) While the Response does not provide any authority from the Southern District of Ohio for her assertion that Chesley must seek leave to amend his Verified Petition, Chesley has done just that—ultimately filing his Motion for leave on March 6, 2015. This filing moots Ford's entire argument that Chesley "has not requested leave to amend and has not provided any rationale under Section 1447(e)." (*Id.*, at p.5.)

For the foregoing reasons and for the reasons set forth in the Motion for Remand and the Motion for Leave, Petitioner Stanley M. Chesley respectfully requests that this Court remand this action to the Hamilton County Court of Common Pleas.

Respectfully submitted,

/s/ Vincent E. Mauer

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2015, I electronically filed the document on behalf of Petitioner Stanley M. Chesley with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

/s/ Vincent E. Mauer

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

		Case No. 1:15-cv-83
Stanley M. Chesley,	:	
	:	Judge Peter Economus
Petitioner,	:	
	:	
v.	:	
	:	
Angela M. Ford, Esq., et al.,	:	
	:	
Respondent.	:	

PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO DECLARE THE RESTRAINING ORDER DISSOLVED OR TO DISSOLVE THEM

Petitioner Stanley M. Chesley ("Chesley") respectfully submits this Memorandum in Opposition to Respondent Angela M. Ford's Motion to Declare the Restraining Order Dissolved or To Dissolve Them (the "Motion").

BACKGROUND FACTS

There are two sets of facts relevant to this motion: facts in Kentucky that led to the "Chesley Judgment"[1]; and facts in Ohio. A complete description of the relevant facts is available in Chesley's Filings (defined below). Chesley's discussion of the facts herein will be limited to providing important facts that demonstrate why the Motion must be denied.

Ohio Facts. Chesley filed his: (a) Verified Petition For Declaratory Judgment And Injunctive Relief ("Verified Petition"); (b) Petitioner's Motion For Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction ("Petitioner's Motion"); (c) Petitioner's Verified Memorandum in Support of Motion for Injunctive Relief (the "Verified Supporting Memo"); and (d) Combined (1) Verified Motion and (2) Supporting

[1] Capitalized terms not defined herein have the same meaning as in Chesley's Filings.

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Memorandum Seeking Amplification of Restraining Order ("Amplification Motion")[2] because Ford threatened several actions in Ohio against Ohio citizens, residents, domiciliaries and property.

Chesley's Filings include a thorough discussion of Ford's threats to subpoena, depose and attempt to seize assets from Ohio citizens. Ford is also trying to seize assets from Chesley and Chesley has admitted that all of his assets are located in Ohio.

On January 7, 2015, the Ohio Court of Common Pleas (the "Court of Common Pleas") entered an Ex Parte TRO, and set hearing to rule on a preliminary injunction on January 14, 2015. At the preliminary injunction hearing, the Court of Common Pleas entered an order prohibiting Ford from taking certain actions in Ohio without complying with Ohio procedural rules (the "Injunction"). Although Ford received actual notice of the January 14th preliminary injunction hearing, she chose not to attend. On February 5, 2015 Ford removed this action to Federal Court on diversity grounds. Ford now seeks to dissolve the Injunction issued in the Court of Common Pleas.

Kentucky Facts. After nearly ten years and two Kentucky Supreme Court decisions, Ford obtained for her 381-plus clients in the Abbott Case (the "Unknown Respondents" herein) summary judgment holding Chesley jointly liable for a seven year old $42,000,000 judgment entered against two criminals and a third accused but not convicted former lawyer, what all parties label the "Chesley Judgment."

As demonstrated in the Affidavit of Frank Benton (Doc. 11, Attachment 1), several of Chesley's judgment creditors were and remain Ohio citizens.

[2] Collectively, those four filings are "Chesley's Filings." Three of the filings are verified so that the facts stated therein and the documents attached thereto are evidence that this Court may consider. Also available as evidence is the Affidavit of Frank V. Benton, IV filed with this Court on February 16, 2015 ("Benton Aff.").

ARGUMENT

A. The January 14, 2015 Order was not a Temporary Restraining Order

Ford's initial argument seems to be that because the Injunction is in fact just a temporary restraining order masquerading as a preliminary injunction, the order has expired by virtue of Federal Rule of Civil Procedure 65(b)(2). Yet, the Court of Common Plea's *Ex Parte* Order provides, "This matter will come on for a hearing on the Motion's request for a **preliminary injunction** and consideration of the status of the Unknown Respondents on January 14, 2015 at 9 a.m. o'clock." (*See* Notice of Filing Doc. 1-1, Exhibit A p. 97.) Thus, as the Court of Common Pleas made clear, a temporary restraining order had already been entered and the January 14th hearing was set to consider whether the court should grant a *preliminary injunction*, and the order issued pursuant to that hearing was, accordingly, not a temporary restraining order.

Fed. R. Civ. P. 65(b)(2) is inapplicable to the matter at hand. By its own terms, that section applies only to temporary restraining orders granted "without notice," and Ford cites to no mandatory authority that contradicts the express language of the statute. Here, Ford had notice that a preliminary injunction hearing was to take place on January 14, 2015. In fact, Petitioner's counsel submitted an affidavit stating that he not only mailed the notifying documents to Ms. Ford on the very day that the Ex Parte TRO was granted, he also emailed her a copy of the Court's Ex Parte Order. Petitioner's counsel further testified that Ms. Ford responded to that e-mail, which demonstrates that she had actual knowledge of the proceedings. Thus, even if the Injunction was in fact a temporary restraining order as Ford claims, the 14 day deadline imposed by Fed. R. Civ. P. 65(b)(2) would not apply.

B. **Ohio Courts have Personal Jurisdiction over Ford**

Using NO evidence, Ford next argues that both this Court and the Ohio Court of Common Pleas lack jurisdiction over her. However this fails to mesh with the facts. Federally, a court can only exercise personal jurisdiction if jurisdiction is (1) authorized under the applicable state law; and (2) consistent with due process. *Youn v. Track, Inc.*, 324 F.3d 409, 417 (6th Cir. 2003). As the Ohio long-arm statute, O.R.C. 2307.382, is not coextensive with an 14th Amendment analysis, both prongs must be separately considered. *Kauffman Racing Equip., L.L.C. v. Roberts*, 930 N.E.3d, 784, 792 (2010). The long arm statute enumerates nine different ways an out of state defendant may be subject to the jurisdiction of an Ohio state court. O.R.C. 2307.382(A)(1)-(9). Meanwhile, the due process analysis hinges on whether Ford has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe co. v. Washington*, 326 U.S. 310, 316, (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Minimum contacts are present when the Defendant's conduct and connection with the state are strong enough that he can "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). In is also necessary that the Defendant purposefully avail himself of the forum state, its benefits, and the protection of its laws. *Youn*, 324 F.3d at 417.

As part of this analysis, the Supreme Court distinguishes between general jurisdiction and specific jurisdiction. *Id*. at 417-18. If a defendant has substantial contacts with the forum state that are "continuous and systematic," the court may exercise personal jurisdiction even when the defendant's actions were not directly related to the defendant's contacts with the state. *Id.* Otherwise the forum state may only exercise jurisdiction in those cases where the suit arises out of the defendant's contacts with the state. *Id.*

As argued in the Motion for Leave to File the Amended Verified Petition, Chesley's judgment creditors are Ford's clients and several of them are Ohioans. Furthermore, Ford herself asserts that she has a contract with each of her clients. Pursuant to those contracts, Ford has collected money owed to those Ohioans and withheld from their distributions several amounts that Ford herself calculated and controlled.

Money aside, it must be true that Ford directed many communications to her Ohio clients over the 10 years that the Abbott Case has been pending. Those communications meet the requirements of Ohio's long arm statute and the constitution's due process requirements. *Schneider v. Hardesty*, 669 F.3d 693 (Sixth App. 2012).[3] In *Schneider*, a defendant wrote two "to whom it may concern" letters that he knew would be forwarded to persons possibly including Ohioans. Applying the lessons of *Schneider* to our facts, Ford's many communications to multiple Ohioans and contracts with each of several Ohioans meet Ohio's long arm statue because she is conducting business in this state and contracting to supply services to Ohioans. See O.R.C. sub-sections 2307.382(A)(1) and (2).

Applying the lessons of *Schneider* to our facts, Ford "purposefully availed" herself of the opportunity to do business in Ohio when she made contracts with Ohioans.[4] Moreover, Ford's known many contacts with multiple Ohioans (contracts, communications and the sending of money) arise specifically from the Abbott Case and have a substantial connection with this case. The requirements of due process are met. Jurisdiction over Ford can be exercised in Ohio.

---

[3] Brian Sullivan, Esq., Ford's counsel, was involved in this case. He knows that Ohio has jurisdiction over Ford.

[4] In Youn v. Track, Inc., 324 F.3d 409, 419 (6th Cir.2003), the court said that a single act can satisfy the purposeful availment prong of the due process analysis. *Id.*

C. **Chesley is Not Challenging the Full Faith and Credit Due**

Petitioner's next argument asserts that in granting the Injunction, the Court of Common Pleas failed to afford the Kentucky judgment full faith and credit. This argument is misplaced and fails to acknowledge that Chesley does not seek redetermination of the merits of the Kentucky judgment; rather, he seeks only a determination that the judgment is procedurally proper for execution under Ohio law.

There are two means of domesticating a foreign judgment in Ohio: through the procedures set forth in the *Uniform Enforcement of Foreign Judgments Act* ("UEFJA"), Ohio Rev. Code Section 2329.022, or through the commencement of a new lawsuit in Ohio in which the plaintiff asks the court to domesticate the foreign judgment in Ohio. In both instances, the relief sought by Chesley is entirely appropriate.

Ohio's version of the UEFJA provides, in relevant part, as follows:

> . . . . The clerk shall treat the foreign judgment in the same manner as a judgment of a court of common pleas. **A foreign judgment filed pursuant to this section has the same effect and is subject to the same procedures**, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of common pleas and may be enforced or satisfied in same manner as a judgment of a court of common pleas. (emphasis added).

Ohio Revised Code Section 2329.022. This provision is implemented in cases that give full faith and credit to the foreign judgment but apply Ohio law to the use or collection of the foreign judgment. See *Salyer v.* Eplion, No. 08CA18, 2009 WL 891797 (Ohio Ct. App. Mar. 31, 2009) (discussing the use of a Kentucky judgment in Ohio the court said "Rather, Appellee would have been required to obtain an Ohio certificate of judgment pursuant to his domesticated foreign judgment before his judgment would constitute a valid judgment lien capable of being foreclosed upon."). Accord, *First Am. Bank of Ashland v. Stonehenge Computer*, No. 1905, 1990 WL 71918 (Ohio Ct. App. May 25, 1990).

When a Kentucky judgment was brought to Ohio using a new lawsuit instead of the UEFJA, Ford would have to list her clients as plaintiffs – same result as use of the UEFJA.

The decision in *Rion v. Mom and Dad's Equipment Sales and Rentals*, 116 Ohio App 3d. 161 (Ohio Ct. App. 1996) provides a clear example of how Ohio courts implement Ohio procedural rules and insist on compliance with those rules in the context of enforcing foreign judgments. In *Rion*, the Ohio court allowed the domestication in Ohio of a 19 year old Florida judgment that was still enforceable in Florida but then denied execution against any Ohio property because Ohio's 15 year statute of limitations applied. Addressing the very issues raised in Ford's Filings, the court said:

> The "full faith and credit" language has also been codified in Section 1738, Title 28, U.S.Code. In essence, this constitutional provision requires the courts of this state to honor judgments from other states without re-examining the merits of their claims . . . . However, as stated by the Ohio Supreme Court "Full faith and credit does ***not*** mean that a judgment of a court in one state is automatically entitled to ***enforcement*** in another state." . . . (emphasis original)
>
> In this case, the validity of the **foreign judgment** is not questioned, only its enforceability. Thus, defendant has raised a defense under Ohio law, applicable to UEFJA proceedings by way of R.C. 2329.022. This defense is also valid. . . . Since plaintiffs brought their judgment to Ohio beyond the statutorily stated time period, enforcement is barred. (citations omitted)

The *Rion* case supports exactly what the Chesley's Filings seek: assurance that the Chesley Judgment will comply with applicable Ohio law before it is enforced in Ohio and the requirement that Ohio judgment enforcement procedures be followed.[5]

Though Ford later again argues that "The Restraining Orders interfere with Kentucky Law and Procedure," the above argument again applies. The Injunction only requires that Ford

[5] Other states (e.g. Arizona, Kansas, and Maryland) have the same rule: foreign judgments can be domesticated (some states say "registered" or "enrolled"), but local law applies to determining when, if and how that judgment can be enforced. *Bank v. Yoo*, 2005 WL 3817602 (Md. Circuit Court, Dec. 28, 2005) (holding that applying the forum state's statute of limitations does not violate the full faith and credit clause of the Constitution of the United States of America).

follow the correct procedure before domesticating the Kentucky judgment or acting in furtherance of that judgment. (*Motion to Dissolve* pp. 12-13.)

D. **The Injunction was Properly Granted under Ohio Law**

Ford's remaining arguments, that the "Restraining Orders are Contrary to Ohio Law," and that "Chesley Cannot Establish the Prerequisites for Injunctive Relief," seek to re-argue the merits of the Temporary Restraining Order and the Injunctions themselves. The merits of each of these filings have already been argued, heard, and considered. As a result of this process, the Court of Common Pleas saw fit to grant the Injunction at issue. (*See* Doc. 1-1, Exhibit A p. 89). As noted above, Ford knew of the January 14th hearing on the Injunction and *chose* not to attend. She cannot now use this Court as a makeshift court of appeals to voice untimely opposition to a motion to which she had every opportunity to respond. Rather than repeat verbatim the analysis which was set forth in the Court of Common Pleas, Chesley incorporates the arguments of his Verified Memorandum in Support of Motion for Injunctive Relief as if fully restated herein. (Doc. 1-1, Exhibit A p. 86-88).

In addition, though Plaintiff devotes a fair portion of final argument to the notion that Chesley cannot prove irreparable harm, Chesley does not allege mere monetary damages. Instead, as the Verified Memorandum sets forth in detail, if Ford proceeds to domesticate the Judgment in Ohio, Chesley will be robbed of any chance to make a rational settlement offer to any of the individual Unknown Respondents because he does not know how much money is owed or even *who* is owed. The Unknown Respondents, in turn, will be deprived of their right to determine if they want to settle with Chesley. This not only demonstrates the harm Chesley faces, but also undermines established public policy in favor of settlement. *See Krischbaum v. Dillon*, 567 N.E.2d 1291 (1991).

Finally, it is worth noting that Ford has moved this Court for an order dissolving the Injunction—a clear indication that Ford seeks to enforce the Kentucky judgment in Ohio. This runs directly counter to her argument, presented in her Motion to Dismiss, which was incorporated into this Motion by reference, that this matter presents no actual case or controversy. In short, she argues both that she is not seeking to domesticate the Kentucky judgment in Ohio while simultaneously arguing that this Injunction impermissibly inhibits her from domesticating the Kentucky judgment in Ohio. Neither argument can bear the weight of this contradiction.

CONCLUSION

Accordingly, Petitioner Stanley M. Chesley respectfully requests that this Court deny Respondent Angela Ford's Motion to Declare the Restraining Order Dissolved or To Dissolve Them.

Respectfully submitted,

/s/ Vincent E. Mauer _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2015, I electronically filed the document on behalf of Petitioner Stanley M. Chesley with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

/s/Vincent E. Mauer

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Mr. Stanley M. Chesley	:	Case No. 1:15-CV-83
	:	
	:	Judge Peter C. Economus
Petitioner	:	
	:	**REPLY IN SUPPORT OF**
v.	:	**PETITIONER'S MOTION FOR LEAVE**
	:	**TO FILE FIRST AMENDED VERIFIED**
Angela M. Ford, Esq., et al.	:	**PETITION FOR DECLARATORY**
	:	**JUDGMENT AND INJUNCTIVE**
	:	**RELIEF**
Respondents.	:	

Petitioner Stanley M. Chesley ("Chesley") hereby replies to the March 27, 2015 Response in Opposition of (sic) Plaintiff Stanley M. Chesley's Motion For Leave to File First Amended Verified Petition For Declaratory Judgment and Injunctive Relief (the "Opposition"). The Opposition is a baseless plea for the Court to exercise its discretion and deny Chesley's Motion for Leave to File First Amended Verified Petition For Declaratory Judgment And Injunctive Relief (the "Motion").

The Motion seeks permission to file the "Amended Petition" which would clarify this litigation by: (i) identifying by name several of Respondent Angela Ford's ("Ford") clients who she has described as Chesley's judgment creditors and who reside in Ohio;[1] and (ii) describing some of Ford's past conduct in Ohio arising from her representation of Ohioans. Both of these facts were plainly known to Ford when she removed this case on the basis of a diversity jurisdiction, an assertion she knew to be factually false and legally without merit.

[1] The remainder of Ford's clients who she has described as Chesley's judgment creditors would continue, at least for now, to be identified as the "Unknown Respondents."

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UNDISPUTED RELEVANT FACTS

The Opposition does not dispute the relevant FACTS concerning the Motion:

(i) six previously sued but not specifically identified "Unknown Respondents"[2] are Ohioans;

(ii) through extraordinary effort, Chesley updated a portion of Ford's decade old information concerning some of Ford's clients and determined that at least six of his judgment creditors are current Ohio residents;

(iii) Ford has always known that she represents Ohio residents; and

(iv) Ford has multiple contacts with Ohio for years arising directly from her activity with her Ohio clients that is relevant to the issues described in the Petition.

GROSS MISSTATEMENTS IN THE OPPOSITION

Ignoring the facts that matter, the Opposition makes several untrue assertions:

1. The Opposition asserts that Chesley's sole reason for seeking to file the Amended Petition is to destroy subject matter jurisdiction. That is wrong. The existence of the Ohioans proves diversity never existed and so cannot be destroyed. Moreover, the new assertions in the Amended Petition and the existence of Ford's Ohio clients are directly relevant to Ford's false assertion that she does not have minimum contacts with Ohio.[3] The Opposition does not contest that Ford contracted with Ohio residents, that Ohio residents are among the judgment creditors that Ford represents, and that she has communicated with, and sent money to, those Ohio residents;

2. The Opposition uses over 110 pages of exhibits to supposedly show that Chesley always knew his judgment creditors included Ohioans. The Opposition ignores the facts that (a) Ford's "settlement grid" is over 13 years old, (b) the grid was prepared by counsel other than

[2] Capitalized terms not defined herein have the definition provided in the Petition.
[3] Ford makes this claim again in an April 2, 2015 filing, Doc. 27.

Ford prior to her filing the Abbott case, and (c) most importantly, the residence of the Unknown Respondents in January 2015 is the relevant question because that is when the Petition was filed.

More than just ignoring important facts, the exhibits that were filed by Ford and the manner in which they were presented appear to be another attempt to mislead the Court. For example, in Exhibit A, the May 1, 2001 settlement letter does not reflect that any of the "grids" were attached to it because they were not attached. Chesley was listed as a "cc" on the letter, but it did not include the "grids." By including the grids and the letter in Exhibit A, Ford misleads the Court by suggesting that the letter and the grids were part of a single document. That is false. Paragraph 5 of the Supplemental Affidavit of Frank V. Benton, IV (the "Supplemental Affidavit") explicitly states "Mr. Chesley did not receive a copy of the settlement grid that identified the individual claimants" in 2001 when that grid was prepared (emphasis original).

Likewise, nothing in Ford's Exhibits B, C or D includes the names and addresses of the judgment creditors Ford represents. Exhibit C, for example, contains only the first initial of the Unknown Respondents' surnames, not the entire surname. See Supplemental Affidavit paragraph 6. The absence of that information permeates virtually all of the documents in this dispute including, for example, the Fourth Amended Complaint,[4] a copy of which are attached to the Supplemental Affidavit.

Finally, see the initial affidavit of Frank V. Benton filed herein as Doc. 11 on February 16, 2015. That affidavit describes yet another instance when Ford filed an incomplete list of her

[4] On pages 13 and 14 of her Fourth Amended Complaint, Ford brags about the many cities (including several in Ohio) in which her clients reside; but, she does not identify which clients reside where, thus preventing Chesley from having the then current (December 2006) residence of the Unknown Respondents. The same is true for Ford's Eighth Amended Complaint (August 2007). Ford studiously avoided updating the name and address information shown on the 2001 grid. See Supplemental Affidavit paragraph 8. Ford's efforts to hide that information continue – but those efforts must fail in the face of Ohio's applicable procedural requirements for the domestication and enforcement of foreign judgments.

client's names and addresses and the significant efforts Mr. Benton made just to find the six Unknown Respondents who we all now know currently reside in Ohio.

3. The Opposition repeats Ford's inaccurate assertion that Chesley seeks a stay pending appeal. That allegation was debunked in Chesley's Combined (1) Verified Motion and (2) Supporting Memorandum Seeking Amplification of Restraining Order filed in the Ohio court on January 7, 2015. Those arguments are incorporated herein.

What is new is Ford's subpoena to the accountants for Waite Schneider Bayless & Chesley, an Ohio entity, which she apparently intends to serve through the Kentucky courts. See Supplemental Affidavit paragraph 9. Contrary to Ford's baseless assertions, the Ohio Common Pleas Judge did not grant a stay pending appeal and did not overstep his authority to control only what happens in Ohio.[5]

To the extent that Ford's many motions in this matter are an implicit attack on the Ohio court, that attack is misplaced because Ford has not been prevented from acting against an Ohio entity in a manner that does not violate Ohio law.

4. In an effort to convince the Court that there is already a substantial federal investment in this matter, the Opposition ignores (i) the Ohio court's investment in this matter and (ii) the fact that Ohio law applies to nearly all the legal issues relevant to the merits of this case. The Court in Ohio held two hearings and shaped an injunction that preserves the status quo and details several specific issues to be considered. As shown above, that injunction does not overreach and prevent Ford from taking action;

[5] Ford's ability to continue her work outside Ohio demonstrates that the Ohio court did not overreach and that Ford is not significantly harmed by the existing injunction. Any restrictions in the existing injunction that Ford does feel can be obviated by Ford simply identifying her clients, their addresses and how much is owed to each as required by Ohio law.

5. The Opposition repeats the assertion that Ford's clients were Chesley's clients. In fact, Chesley never met or spoke with any of these individuals. Regardless, the Opposition is filled only with 13 year old facts that do not show Chesley's knowledge of Ford's clients' residence in 2015 -- except for the Ohioans that Chesley's counsel searched for and found.

Indeed, if identifying the names and addresses of the judgment creditors and the amounts owed to each judgment creditor is simple, why does Ford refuse to supply what she calls "easily obtainable" information and thus avoid any restrictions imposed by the existing injunction? Doing so might have allowed the parties to avoid this lawsuit. Why is Ford continuing to manipulate the court systems in a continuing effort to avoid producing information she should possess concerning her own current clients.

Ford's suggestion that Chesley has somehow always known which of the 463 names she has listed are the 381 or 382 who hold judgments against him is a sham.

The Amended Petition would specifically identify the Ohioans as named parties despite the fact that Chesley does not know if they perhaps transferred their claim against Chesley in a bankruptcy or otherwise. As discussed in Mr. Benton's initial affidavit, the six Ohioans were identified, in part, using Ford's Eighth Amended Complaint, a document Ford filed in 2007. Chesley and his counsel are taking a calculated risk that those six persons retain their claims against him now, seven years later and so are current judgment creditors. Chesley cannot be asked to guess on the current claimants and current residence of the 381 or 382 judgment creditors a/k/a the Unknown Respondents;[6] and

6. The Opposition states that the Amended Petition fails to state a claim against Ford or the Ohio judgment creditors – this is untrue and not currently before this Court.

[6] The Rule 11 risk to Chesley's counsel is real. Chesley's counsel cannot identify 381 or 382 specifically named respondents using a 13 year old list when the universe of possible Unknown Respondents (463) is more than 80 names greater than Ford's stated number of Chesley's judgment creditors, 381 or 382.

The Petition and the Amended Petition both assert that Ford is named because she is (a) counsel for the judgment creditors, (b) the person who would probably act on their behalf to domesticate and enforce the Chesley Judgment in Ohio, and (c) the person with the information Chesley is entitled to receive.

Ohio's procedural laws must be followed to insure Ford's proper behavior when she acts against (i) her announced non-party Ohio resident targets and (ii) property in Ohio. Ford disputes this assertion on behalf of her clients by denying that Chesley is entitled to know who his current judgment creditors are and how much is owed to each of them, information that Ohio law requires be provided before the Chesley Judgment is enforced in Ohio. Chesley asserts (and Ford denies) that so long as this information is withheld, Chesley is denied certain rights supported by Ohio law and that Ford and her clients[7] cannot act in Ohio to collect the judgment.

Chesley has asserted a claim on which relief can be granted.

CONCLUSION

The baseless and misleading Opposition amounts to nothing more than begging the Court to exercise its discretion and deny the Motion, thereby keeping this case in federal court and enhancing the chance that Ford will be found not to have minimum contacts with Ohio.

For this litigation to have any meaning, it must be true that the parties now identified as Unknown Respondents are bound by Chesley's efforts to insure compliance with applicable Ohio law. Once Chesley receives the information to which he is entitled, the specific identification of other Unknown Respondents as parties to this litigation can be addressed by the Ohio court.

[7] Any relief awarded to Chesley must bind Ford's clients and not just Ford. Otherwise, those persons could simply retain a different lawyer and proceed to violate Ohio law as Ford now asserts she is free to do.

The Ohio residents deserve to be specifically identified as they will be impacted by the outcome of this case and their existence weighs heavily on two important issues: diversity jurisdiction and Ford's minimum contacts with Ohio.

Respectfully submitted,

/s/ Vincent E. Mauer

Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
Suite 3300 Great American Tower
301 E. Fourth Street
Cincinnati, Ohio 45202
513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2015, I electronically filed the document on behalf of Petitioner Stanley M. Chesley with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

/s/ Vincent E. Mauer

4815-7300-5602v1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	Case No. 1:15-cv-83
Petitioner	:	Judge Economous
v.	:	
Angela M. Ford, Esq.	:	
And	:	
Unknown Judgment Creditors	:	
Respondents.	:	

NOTICE OF FILING THE SUPPLEMENTAL AFFIDAVIT OF FRANK V. BENTON, IV REFERENCED IN REPLY IN SUPPORT OF PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED VERIFIED PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Attached hereto is the Supplemental Affidavit of Frank V. Benton IV, Esq.

Respectfully submitted,

/s/ Vincent E. Mauer
Vincent E. Mauer (0038997)
FROST BROWN TODD LLC
Suite 3300 Great American Tower
301 E. Fourth Street
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513-651-6785
Fax 513-651-6981
vmauer@fbtlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2015, I electronically filed the document on behalf of Petitioner Stanley M. Chesley with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

/s/ Vincent E. Mauer

0118087.0619701 4825-2295-8882v2

EXHIBIT
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exhibitsticker.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Stanley M. Chesley,	:	**Case No. 1:15-cv-83**
Petitioner	:	**Judge Peter C. Economus**
v.	:	
Angela M. Ford, Esq.	:	
And	:	
Unknown Judgment Creditors	:	
Respondents.	:	

SUPPLEMENTAL AFFIDAVIT OF FRANK V. BENTON, IV

Affiant, Frank V. Benton, IV, states under oath as follows:

1. That he is an attorney licensed to practice law in the Commonwealth of Kentucky and has been engaged in the practice of law for 36 years. Affiant is an attorney of record in the *Mildred Abbott, et al. v. Stanley M. Chesley, et al.*, Case No.05-CI-436 (the "Abbott case") which is pending in the Boone Circuit Court. Affiant has represented Stanley M. Chesley, petitioner herein, since the inception of the *Abbott* case in 2005.

2. The genesis of the *Abbott* case results from a mass tort case against A.H. Robbins Company, Dr. Rex Duff and Bariatrics, Inc. over injury caused by the use of the diet drug known as Fen-Phen; *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* Boone Circuit Case No. 98-CI-00795. A.H. Robbins Company was the manufacturer and Dr. Duff and Bariatrics, Inc. were distributors of the diet drug. The *Jonetta M. Moore, et al. v. A. H. Robbins Company, et al.* case (also known as *Guard, et al. v. A. H. Robbins Company, et al.)* was based on personal injury due to ingestion of the diet drug combination Fen Phen leading to heart valve damage of varying degrees.

3. The purpose of this Affidavit is to clarify the role of Stanley M. Chesley in the *Moore/Guard* case. In the spring of 2000, Stanley M. Chesley entered into a contract with the attorneys representing the plaintiffs in the *Moore/Guard* case. Pursuant to this contract Mr. Chesley agreed to attempt to negotiate a settlement in the *Moore/Guard* case. The contract called for Mr. Chesley to receive a percentage of the gross attorney's fees obtained if the case was successfully negotiated. If there was no settlement, Mr.

Chesley was not to get a fee. Additionally, if the case was tried and a verdict obtained, Mr. Chesley's fee was reduced significantly. The reason for this fee reduction was because Mr. Chesley was not going to play a role in the trial of the case and his role was strictly limited to negotiating a settlement.

4. On April 30, 2001 and May 1, 2001 the *Guard* case was mediated and eventually settled for $200 million. At that point, Mr. Chesley's role and involvement in the *Moore/Guard* case was complete. Subsequent to this mediation and settlement, Mr. Chesley played absolutely no role in the distribution or accounting of the settlement proceeds. In fact, Mr. Chesley never had any contact with any of the plaintiffs in the *Moore/Guard* case. In the settlement documents generated, the settling attorneys are the attorneys who represented the plaintiffs in the *Moore/Guard* case. Each of these attorneys signed off on the settlement documents as a "settling attorney." Mr. Chesley's signature does not appear in those documents. This is so because Mr. Chesley's sole role was as the negotiator.

5. I have reviewed the Response in Opposition of Plaintiff Chesley's Motion for Leave to File First Amended Verified Petition (Doc #26) filed by Attorney Ford. At the bottom of page 2 and top of page 3, Attorney Ford refers to the settlement grid as being part of the Settlement Agreement. This is referred to as Exhibit A in Attorney Ford's response. Contrary to the assertion contained therein, Mr. Chesley did <u>not</u> receive a copy of the settlement grid that identified the individual claimants. The Settlement Agreement, which was <u>not</u> signed by Mr. Chesley, indicates that he did receive a copy of the Settlement Agreement. However, paragraph 5 (B) of the Settlement Agreement indicates that <u>subsequent</u> to the signing of the Settlement Agreement, the allocation of settlement amounts (settlement grid) for each settling claimant <u>will</u> be prepared on or before the first batch of Releases was to be submitted to American Home Products. These Releases were to be supplied by September 1, 2001. The settlement grid was prepared by the settling attorneys (Gallion, Mills and Cunningham) subsequent to the signing of the Settlement Agreement. As previously indicated, Mr. Chesley did not participate in any fashion in the allocation of the settlement funds. The way that Exhibit A has been filed by Attorney Ford makes it appear as though the settlement grid was part and parcel to the Settlement Agreement prior to the side letter of May 29, 2001 (which follows the settlement grid in Exhibit A). This may have been intentional or inadvertent. Regardless, it is misleading in the sense that this settlement grid document was prepared by Gallion, Mills and Cunningham after the May 29, 2001 side letter. Mr. Chesley did <u>not</u> receive a copy of this settlement grid in 2001.

6. Mr. Chesley did not know the identities of the plaintiffs (some of whom are now judgment creditors), nor did he have reason to know the identities of the plaintiffs in the *Moore/Guard* case. Mr. Chesley's employment contract was with the attorneys Gallion, Mills and Cunningham. He did not have

any employment/fee contracts with any of the plaintiffs. Several of the plaintiffs were deposed in the proceedings relative to the Kentucky Bar Association. This was born out by the depositions in that none of them knew that Mr. Chesley had been involved in their case. The settlement grid that was utilized by the plaintiffs' attorneys in the *Moore/Guard* case was not generated by Mr. Chesley nor did he contribute to its genesis. This settlement grid was prepared in 2001 and is now fourteen (14) years old. It does not contain the current judgment creditors nor their current addresses. There have been no documents generated by Attorney Ford in over seven (7) years that identify the judgment creditors or their addresses in the *Abbott* case. Plaintiffs' Response in Opposition of Plaintiff's Chesley Motion for Leave to File First Amended Verified Petition, Exhibit C, purports to identify the plaintiff/judgment creditors. However, this document only contains a last initial rather than last name of the individuals listed thereon. Attorney Ford may be able to identify those individuals but with only a last initial to work with, this proves quite futile for anyone else. Even this document was generated approximately five (5) years ago and does not contain any addresses.

7. Affiant has reviewed the Fourth Amended Complaint (attached) served by Attorney Ford in the *Mildred Abbott, et al. vs. Stanley M. Chesley, et al.* case. In that Fourth Amended Complaint, at page 14, Attorney Ford states that in addition to Kentucky residents, there are plaintiffs residing in Cincinnati, Ohio; Dayton, Ohio; Fairborn, Ohio; Ironton, Ohio; Miamisburg, Ohio; and West Union, Ohio. Attorney Ford did not identify which plaintiffs reside in which cities. There are no street addresses contained therein either. This Amended Complaint was served on December 1, 2006. The Motion to File the Fourth Amended Complaint (attached) indicates that there are 456 plaintiffs.

8. In the *Abbott* case, Affiant and co-counsel, on behalf of Mr. Chesley, made multiple efforts to obtain both an accounting of the funds collected and distributed, and the identities of the plaintiffs (now judgment creditors). Motions were filed in the *Abbott* case, before the Kentucky Supreme Court as part of the Kentucky disciplinary process and the Federal District Court for the Eastern District of Kentucky in the criminal proceedings against attorneys Gallion, Mills and Cunningham. All efforts were opposed by Attorney Ford. All efforts to obtain this information were denied. Recently, additional requests have been made to Attorney Ford to identify the judgment creditors. These requests have gone unanswered.

9. In the last several days, Affiant has received a copy of a Subpoena *Duces Tecum* issued by Angela Ford dated March 26, 2015. This Subpoena is directed to Clark Schaefer Hackett. This Subpoena directs Clark Schaefer Hackett to produce records, work papers, including federal and state income tax returns and financial statements related to Stanley M. Chesley and the firm of Waite, Schneider, Bayless and Chesley from the years of 2005 to present. This Subpoena is issued in the *Abbott, et al. vs. Stanley*

M. Chesley, et al. case. This Subpoena is issued as part of Ford's collection efforts in the Commonwealth of Kentucky against Mr. Chesley. Therefore, the Ohio injunction is not impeding Attorney Ford's discovery efforts in the *Abbott* action.

FURTHER, AFFIANT SAYETH NAUGHT.

Frank V. Benton, IV

Commonwealth of Kentucky
County of Campbell

Subscribed and sworn to before me, a Notary Public, by Frank V. Benton, IV on this 2 day of April, 2015.

NOTARY -KY Notary No: 433277
My Commission Expires: 01/13/2019

C

12 1 06

BOONE CIRCUIT COURT
54th JUDICIAL DISTRICT
Case No. 05-CI- 436

MILDRED ABBOTT et al. **PLAINTIFFS**

v.

PLAINTIFFS' MOTION TO FILE FOURTH AMENDED COMPLAINT

STANLEY M. CHESLEY, et al. **DEFENDANTS**

* * * * * *

Plaintiffs, through counsel, request leave of the Court to file a Fourth Amended Complaint pursuant to CR 15.01. The Amended Complaint names an additional 19 Plaintiffs bringing the total number to 456 Plaintiffs, including the 44 Plaintiffs who were represented by J. Brent Austin. The proposed Fourth Amended Complaint is attached hereto.

Respectfully submitted,

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Nashville, TN 37219
(615) 244-1713

COUNSEL FOR PLAINTIFFS

NOTICE

The parties will hereby take notice that the foregoing Motion shall be heard on December 11, 2006 at 9:30 a.m. or at a time scheduled by the Court.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served on December 1, 2006 by U. S. mail to:

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Calvin R. Fulkerson, Esq.
Lynn, Fulkerson, Nichols & Kinkel
267 West Short Street
Lexington, KY 40507

Alex C. Rose, Esq.
400 West Market Street
Louisville, KY 40202

ATTORNEY FOR PLAINTIFFS

BOONE CIRCUIT COURT
54TH JUDICIAL DISTRICT

Case No. 05-CI-436

PLAINTIFFS

12/4/06

MILDRED ABBOTT, ELIZABETH ABNEY, LISA ABRAHAM, JUANITA ALTON, JOANN ALVEY, CINDY ARMSTRONG, LINDA BACK, JODY BALDRIDGE, CARLA BALDWIN, LEE BARTLEY, JR., PATRICIA BELCHER, LEISA BELDING, ELEANOR BERRY, MARGIE BERRY, EASTER BISHOP, CAROL BOGGS, ANGIE BOWMAN, JAMES BRANHAM, KATHY BRANHAM, VICKI BREWER, NORMA BREWER, KAREN BROWN, DEBORAH BROWNING, NATHANIEL BRUMFIELD, ON BEHALF OF THE ESTATE OF WATHALEE BRUMFIELD, PATRICIA BRYANT, CHRISTINA BUCHER, LESLIE BULLOCK, TONY CHILDRESS, WILLIAM CLARK, ROSEMARY CLICK, CAROLYN CONLEY, SANDRA COTTON GILLEY, BARBARA CRAIN, PAMELA CROWE, JUDY DILE, TERESA DUFF, LINDA DUNAWAY, SUSAN EZELL, RHONDA FRANKLIN, TIMOTHY FRANKLIN, MARY FRAZIER, FREDA FRIZZELL, BEULAH FUGATE, PATRICIA GAUNCE, KEN GAYHEART, TARA GIFFORD, DEBRA GOODE, RHONDA HANCOCK, BARBARA HELLMUELLER, REVA HELTON, VIKKI HENLEY, LORA HOOVER, LORENE HUTCHERSON, KATHERINE HUTCHISON, BETTY DAVIDSON, ON BEHALF OF THE ESTATE OF EVELYN JACKSON, GARNET JOHNSON, APRIL SLATTEN JONES, GERRY JONES, LINDA JONES, BETTY JORDON, KATHERINE KING, JUNE MCPHEARSON, JONIN MCCLANAHAN, MARY MARTIN, THELMA MERIDA, LINDA MILLER, LINDA L. MILLER, NELLIE MILLER, ORENE MILLER, LESLIE MINTON, WILMA NOE, RAYMOND PARKER, JESSIE PARSONS, LISA PEEK, SUZANNE PRICE, SHARON RAINWATER, MICHELLE SHARPE ROBERTS, DEBBIE VOGT SCHNEIDER, BARBARA SMITH, PEGGY SPEARS, JOE ANN PERKINS SPENCER, CORA STAPLETON, DEBBIE STATON, SHIRLEY SUDDUTH ON BEHALF OF THE ESTATE OF MARJORIE SUDDUTH, MILDRED SWANSON, ELLA TAYLOR, LINDA TAYLOR, BETTY WARD, ON BEHALF OF THE ESTATE OF MARTIN WARD, BETTY WIDNER, CONNIE WOLFE, BILL WOMBLES, BARBARA ABEL, PAMELA ABRAMS, ELIZABETH ADAMS,

12/06

KATHY ADAMS, PHYLLIS ADAMS, RUBY ADAMS, RUBY ADAMSON, SUSAN ADKINS, CLANTHA AKERS, EFFIE ALSIP, PHYLLIS APPLEGATE, SUSAN ARVIN, CLARA ATKINSON, KAREN AUSTIN, JAMIE BAILEY, MARY ANN BAILEY, VICKIE BAILEY, CHARLOTTE BAKER AND DAVID WALKER, ON BEHALF OF THE ESTATE OF LANE WALKER, CAROL BARNES, ON BEHALF OF THE ESTATE OF DANNY ABNEY, MARILYN BARNES, TERESA BAUMGARDENER, MELISSA FAYE BEAMON, LINDA BEGGS, MARGARET BINGHAM, EMMA BLACK, JANICE BLAIR, SHARON BLAIR, LORI BOONE, JOIE BOTKINS, KATHY BOWLING, VIRGINIA BRADEN, LADONNA BRAME, RUBY BRANHAM, BRENDA BRAY, ALMA BROCK, PEGGY BROUGHTON, BARBARA BROWN, JOYCE BROWN, SHARON BROWN, KIMBERLY BRUMMETT, SARAH BALENOVICH ON BEHALF OF THE ESTATE OF EDITH BROWNING, BILLIE BRUMLEY, LINDA BRUMLEY, TERESA BRUNER, JUDY BUNDY, WARREN BURGESS, JANICE BURTON, TINA BUSH, SHERRIE BUTLER, DONNA CAMPBELL, LORETTA CANADA, BUEL CANTRELL, LINDA CARR, TONYA CARTER, WALLACE CARTER, CHARLOTTE CASON, LISA CAUDILL, CONNIE SUE CENTERS, GLORIA CLARK, PAMELA CLIFT, DANIELLE CLORE, ALLEN COKER, JUDY COLEMAN, SHIRLEY COLEMAN, TARA COLEMAN, DEBRA COLLIER, MARGARET COLLIER, LINDA VARNARSDALL-COLLINS, OPAL COLLINS, LINDA COLVIN, PHYLLIS COMBS, JAMES COOK, RONNIE COOK, GEORGIA COOTS, DONNA MUDDIMAN-CORNISH, MARK CORNN, NADINE COUCH, JO ANN COX, DORIS CREECH, DELORIS CRISWELL, TRACY CURTIS, DORIS DABNEY, DARBY DANIELS, MARY DAUGHTERY, ELIZABETH DAVIS, SANDRA DAVIS, KATHY LOVAN-DAY, KAREN DEAN, BOBBIE DEATON, JAN DELANEY, REGINA DESPAIN, GERRY DIXON, BELVA DOTSON, YNETTA ECKERT, MARTHA ELLIOT, TAMI EDWARDS-ENGLE, SAUNDRA ERP, CHARLOTTE ESTEPP, SARAH ESTES, ELIZABETH FANNIN, JANET FENTRESS, HAYWOOD FERGUSON ON BEHALF OF THE ESTATE OF ALMA FERGUSON, WILLIAM FITCH, ON BEHALF OF THE ESTATE OF SHEILA FITCH, VICKIE FLANNERY, PAUL FLOYD, BERNITA FLYNN, BERENDA FORD, ESSIE FREDRICK, CLARA FULKS, BARBARA GAY,

MELISSA GAYHART, CRYSTAL SEALS-GIBSON, GINGER DAVIDSON-GIBSON, JAMES GIBSON, ON BEHALF OF THE ESTATE OF JESSIE GIBSON, JONI GIBSON, GLADYS GILBERT, STEPHANIE GIST, RUBY GODBEY, EDDIE GOLDEN, JOYCE GORDON, PATRICK GRAHAM, TAMMIE GRANT, AMY GRAY, DONNA GREEN, SHERRY GREEN, JANET COONS-GREENE, PEGGY GRIGSBY, ALLIE HALL, NORMA HALL, RENEE HALL, SHANNON HALL, BARBARA HAMPTON, LEONA GAIL HANDLEY, JOYCE HANLEY, REBECCA HARRIS, DEBRA HARRISON, DIANE HARRISON, JOY HASSLER, YOLANDA HAYDEN, BARBARA HEIZER, WANDA HELTON, BONNIE HENDERSON, GARY HENDRICKSON, VICKIE HENRY, MARCUS HIGHLEY, KAREN HILLARD, JANICE HILTON, LINDA HINKLE, JACQUELINE HOCKER, GWEN HOLT, TAMI HOLT, MYRA HOOD, VICKY HOOD, EVELYN HOPKINS, CHARLENE HORN, MARY HORNING, CLOYD HOSKINS, LINDA HOSKINS, MARY HOWARD, MARILYN HOWARD, TOLORIA HOWARD, DONNA HOWSER, CHARLOTTE HUGHES, MARCIA HUGHES, SHEILA HUMPREYS, MARGARET HUNT, WANDA HUNTER, BRENDA HUTCHCRAFT, JAMES INGRAM, EMMA ISON, DELLA JACKSON, KATINA JACKSON, MARY JACKSON, LINDA JAMES, LYNN JEFCOAT, DEBBIE JEFFREY, ERNESTINE LESLIE JOHNSTONE, FRANKLIN JONES, JUDY JONES, KATHY JONES, MARLENE JONES ON BEHALF OF THE ESTATE OF LORETTA EMOND STIDHAM, TROY JONES, BETTY KELLY, GERALD KING, PATTIE KITTS, BETTY KLUCK, LUCILLE KREY, BILL LADY, ON BEHALF OF THE ESTATE OF MARY LADY, LINDA LARKINS, EMILY LEWIS, BEVERLY LITTLE, SANDRA DEE LITTLETON, LOIS LOCKARD, ON BEHALF OF THE ESTATE OF LLOYD LOCKARD, LINDA LONG, SHERRY LONG, NONA LUCAS, CHARLOTTE LUSH, PAULA MANN, PAMELA MARLOWE, ARLENE MARSHALL, BOBBIE MARTIN, LINDA MARTIN, CONNIE MASON, KAREN THOMPSON MCCLAIN, LAVONNA MCDANIEL, CONNIE MCGIRR, LINDA MALONE MCGOWAN, ROBERTA MCGUIRE, TAMMY MCGUIRE, JACQUELYN MCMURTRY, SHEILA LYNN MEECE, ANDREA MESSAMORE, WANDA METZGER, DELORIS MILLER, BELINDA MILLION, WILLIAM MIRACLE ON BEHALF OF THE ESTATE OF KATHY MIRACLE, BEVERLY MITCHELL,

EUDORA MONTGOMERY, ELLA MOORE, ON BEHALF OF THE ESTATE OF JONETTA MOORE, MARGARET MOORE, RHONDA MOORE, APRIL MORRIS, LOUISA MOSS, ANGELA LEWIS-MULLINNIX, AILEEN MULLINS, MARY NAPIER, WANDA FAYE NEACE, ELIZABETH NEAL, LINDA NEVELS, DIANA NEWLIN, RITA PROFITT-NORMAN, APRIL KELTNER NUXOLL, RHONDA FLYNN OSBURN, GLENORA PACE, BERTHA PACK, LOUVERNA PARKS, MYRTLE PARRIS, ANGELA PEACE, JUDITH PECK WAGEMAN, RECIE PENNINGTON, HELEN PERKINS, JEFF PERKINS, STACY PERKINS, JOY PERRY, ON BEHALF OF THE ESTATE OF MILTON LEWIS, DORIS PHELPS, NORMA PICKETT, SONJA PICKETT, DEBRA BAYS-PLYBON, KATHY POLLITTE, BRIAN POWELL, GLENNA BROCK-POWELL, MARY P'POOL, TRENA PRESTON, LYNNE PURSEL, BILLIE REESE, BRENDA RENTAS, ON BEHALF OF THE ESTATE OF ANTHONY RENTAS, ARLIE RHODES, EVELYN RHODES, RAYMOND RILEY, LEVETTA RIVERA, ODENA ROADEN, BILLIE JUNE ROBERTS, DYAN ROBERTS, PATRICIA ROBERTS, RENEE ROBERTS, PATRICIA ROBINSON, FETINA ROBISON, CAROL ROGERS, CATHY ROSE, VINA ROSE, LARRY ROSEBERRY, JR. ON BEHALF OF THE ESTATE OF LARRY ROSEBERRY, SR., BOBBY SALLEE, MARY SAMS, KATHY SANDS, JUSTUS SCHAROLD, MAXINE SEALS, MONICA SEXTON, TERRY SHANKS, MARGARET SHARON, CLAUDIA SEBASTIAN-SHEPARD, DEBRA SHEPHERD, JANET SHORT, LINDA CAUDILL, ON BEHALF OF THE ESTATE OF LAUREDA SHORT, MONICA SHUFFETT, LORETTA SIDWELL, ADA SIZEMORE, CAROLE SLONE, ELAINE SMITH, FREDA SMITH, WESLEY SMITH ON BEHALF OF THE ESTATE OF SHARON SMITH, PAUL STAUFFER, CONNIE STEPHENS, NANCY STEPHENS, KATHY DANIELS-STEPHENSON, IVA STEVENS, SHARON STEVENSON, MARLENE STEWART JONES, BETTY STONE, DONNA STROMOWSKY, CONNIE STURGILL, PAM SULLIVAN AND SHARON STEPHENS, ON BEHALF OF THE ESTATE OF REBECCA LOVELL, ELLA TACKETT, PATTY TACKETT, PRISCILLA TAFOLLA, CHARLES TAPLEY, JEANNE THOMAS, NANCY THOMPSON, LISA GRANT THURMAN, STEVE TOLER ON BEHALF OF THE ESTATE OF LINDA TOLER, ROY TOLER, ELIZABETH TRENT,

JENNY TRIMBLE, JOETTA TUCKER, DEBORAH TURNER, DRUCILLA TURNER, MARIE TURNER, PATRICIA TURNER, VALORIE TURNER, LINDA VANCE, BOBBIE WALKER, LORAINE WALLEN, CINDY WALTERS, ELIZABETH THOMPSON-WASHBURN, WANDA WATKINS, CHERYL WATSON, IRENE WELLS, JOYCE GOFF WELLS, JUDY WHITAKER, KIM WHITE, MARY WHITE, PATRICIA WHITE, CATHERINE WHITLOCK, JOYCE WHITT, PETER WILDS, CAROL QUISENBERRY WILLIAMS, TODD WILLIAMS ON BEHALF OF THE ESTATE OF GLORIA WILLIAMS, BETHANY WILLINGER, GENEVA WILSON, ROBERT WILSON, MELODY WINER, AMANDA EDWARDS WOOD, ARTIE WOODS, FERN WOOTEN, DEBORA WRIGHT, EDWINA WRIGHT, ROGER WRIGHT, SANDRA WRIGHT, TAMMY WRIGHT, DOYLE YANCY, SHEILA YATES, AND SANDRA ZEMAN

VS. **FOURTH AMENDED COMPLAINT**

STANLEY M. CHESLEY,
SHIRLEY A. CUNNINGHAM, JR. ,
WILLIAM J. GALLION,
MELBOURNE MILLS, JR.
and
THE KENTUCKY FUND FOR HEALTHY LIVING, INC. **DEFENDANTS**

* * * * * * * * *

Plaintiffs, through counsel, on behalf of themselves and all others similarly situated, for their Fourth Amended Complaint against the Defendants Stanley M. Chesley, Shirley A. Cunningham Jr., William J. Gallion, Melbourne Mills, Jr. and The Kentucky Fund for Healthy Living, Inc., state as follows:

NATURE OF ACTION

1. This is an action brought on behalf of plaintiffs who were prescribed the diet drug Fen-Phen in Kentucky and were participants in an action filed in Boone County, Kentucky styled

Johnetta Moore, et. al, v. A. H. Robins, et. al., 98-CI-795. All cases in that action were settled pursuant to an agreement in May 2001.

2. Plaintiffs brought this lawsuit based on Defendants' failure to discuss or disclose all information related to the settlement funds they received in settlement of Plaintiffs' cases to the Plaintiffs herein. Specifically, Defendants failed to inform their clients about the material terms of the settlement, the extent to which other plaintiffs participated in the settlement, the amount of funds deducted from settlement proceeds for attorneys' fees and expenses, the amount of funds that were not distributed to Plaintiffs, the fact that they established a corporation with settlement funds and the amount of settlement funds transferred to that corporation.

PARTIES

3. Plaintiff Mildred Abbott is a resident of Cawood, Kentucky and was a plaintiff in the *Moore* action.

4. Plaintiff Elizabeth Abney is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

5. Plaintiff Juanita Alton is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

6. Plaintiff JoAnn Alvey is a resident of Louisville, Kentucky and was a plaintiff in the *Moore* action.

7. Plaintiff Cindy Armstrong is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

8. Plaintiff Jody Baldridge is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

9. Plaintiff Lee Bartley, Jr. is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

10. Plaintiff Eleanor Berry is a resident of Ashland, Kentucky and was a plaintiff in the *Moore* action.

11. Plaintiff Margie Berry is a resident of McKee, Kentucky and was a plaintiff in the *Moore* action.

12. Plaintiff Easter Bishop is a resident of London, Kentucky and was a plaintiff in the *Moore* action.

13. Plaintiff Carol Boggs is a resident of Ironton, Kentucky and was a plaintiff in the *Moore* action.

14. Plaintiff Angie Bowman is a resident of Williamstown, Kentucky and was a plaintiff in the *Moore* action.

15. Plaintiff James Branham is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

16. Plaintiff Kathy Branham is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

17. Plaintiff Vicki Brewer is a resident of Kenvir, Kentucky and was a plaintiff in the *Moore* action.

18. Plaintiff Karen Brown is a resident of Lawrenceburg, Kentucky and was a plaintiff in the *Moore* action.

19. Plaintiff Deborah Browning is a resident of Barbourville, Kentucky and was a plaintiff in the *Moore* action.

20. Plaintiff Christina Bucher is a resident of Richmond, Kentucky and was a plaintiff in the *Moore* action.

21. Plaintiff Leslie Bullock is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

22. Plaintiff Judy Dile is a resident of Campbellsville, Kentucky and was a plaintiff in the *Moore* action.

23. Plaintiff Teresa Duff is a resident of Hazard, Kentucky was a plaintiff in the *Moore* action.

24. Plaintiff Susan Ezell is a resident of Carlisle, Kentucky and was a plaintiff in the *Moore* action.

25. Plaintiff Rhonda Franklin is a resident of Ashland, Kentucky and was a plaintiff in the *Moore* action.

26. Plaintiff Mary Frazier is a resident of Summer Shade, Kentucky and was a plaintiff in the *Moore* action.

27. Plaintiff Freda Frizzell a resident of Salt Lick, Kentucky and was a plaintiff in the *Moore* action.

28. Plaintiff Rhonda Hancock is a resident of Cadiz, Kentucky and was a plaintiff in the *Moore* action.

29. Plaintiff Barbara Hellmueller is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

30. Plaintiff Reva Helton is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

31. Plaintiff Lora Hoover is a resident of Williamstown, Kentucky and was a plaintiff in the *Moore* action.

32. Plaintiff Lorene Hutcherson is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

33. Plaintiff Gerry Jones is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

34. Plaintiff Betty Jordan is a resident of Lexington, Kentucky and was a plaintiff in the *Moore* action.

35. Plaintiff Katherine King is a resident of Richmond, Kentucky and was a plaintiff in the *Moore* action.

36. Plaintiff June McPhearson is a resident of Winchester, Kentucky and was a plaintiff in the *Moore* action.

37. Plaintiff Thelma Merida is a resident of Bimble, Kentucky and was a plaintiff in the *Moore* action.

38. Plaintiff Linda Miller is a resident of Maysville, Kentucky and was a plaintiff in the *Moore* action.

39. Plaintiff Nellie Miller is a resident of Paducah, Kentucky and was a plaintiff in the *Moore* action.

40. Plaintiff Leslie Minton is a resident of Cromwell, Kentucky and was a plaintiff in the *Moore* action.

41. Plaintiff Raymond Parker is a resident of Flatwoods, Kentucky and was a plaintiff in the *Moore* action.

42. Plaintiff Jessie Parsons is a resident of London, Kentucky and was a plaintiff in the *Moore* action.

43. Plaintiff Peggy Spears is a resident of Somerset, Kentucky and was a plaintiff in the *Moore* action.

44. Plaintiff Marjorie Sudduth is a resident of Frankfort, Kentucky and was a plaintiff in the *Moore* action.

45. Plaintiff Mildred Swanson is a resident of Cawood, Kentucky and was a plaintiff in the *Moore* action.

46. Plaintiffs Barbara Abel, Lisa Abraham, Pamela Abrams, Elizabeth Adams, Kathy Adams, Phyllis Adams, Ruby Adams, Ruby Adamson, Susan Adkins, Clantha Akers, Effie Alsip, Phyllis Applegate, Susan Arvin, Clara Atkinson, Karen Austin, Linda Back, Carla Baldwin, Jamie Bailey, Mary Ann Bailey, Vickie Bailey, Charlotte Baker and David Walker on behalf of The Estate of Lane Walker, Carol Barnes, on behalf of the Estate of Danny Abney Marilyn Barnes, Teresa Baumgardener, Melissa Faye Beamon, Linda Beggs, Patricia Belcher, Leisa Belding, Margaret Bingham, Emma Black, Janice Blair, Sharon Blair, Lori Boone, Kathy Bowling, Joie Botkins, Virginia Braden, LaDonna Brame, Ruby Branham, Brenda Bray, Norma Brewer, Alma Brock, Peggy Broughton, Barbara Brown, Joyce Brown, Sharon Brown, Sarah Balenovich on behalf of The Estate of Edith Browning, Billie Brumley, Nathaniel Brumfield, on behalf of the Estate of Wathalee Brumfield, Linda Brumley, Kimberly Brummett, Teresa Bruner, Patricia Bryant, Judy Bundy, Warren Burgess, Janice Burton, Tina Bush, Sherrie Butler, Donna Campbell, Loretta Canada, Buel Cantrell, Linda Carr, Tonya Carter, Wallace Carter, Charlotte Cason, Lisa Caudill, Connie Sue Centers, Tony Childress, Gloria Clark, William Clark, Rosemary Click, Pamela Clift, Danielle Clore, Allen Coker, Judy Coleman, Shirley Coleman, Tara Coleman, Debra Collier, Margaret Collier, Linda Collins, Opal Collins, Linda Colvin, Phyllis Combs, Carolyn Conley, James Cook, Ronnie Cook, Georgia Coots, Donna Muddiman-Cornish, Mark Cornn, Sandra Cotton, Nadine Couch, Joseph Cowley, Jo Ann Cox, Barbara Crain, Doris Creech, Deloris Criswell, Pamela Crowe, Tracy Curtis, Doris Dabney, Darby Daniels, Mary Daughterty, Elizabeth Davis, Sandra Davis, Kathy Lovan-Day, Karen Dean, Bobbie Deaton, Jan Delaney, Regina DeSpain, Gerry Dixon, Al Doser, Belva Dotson, Linda Dunaway, Ynetta Eckert, Martha Elliot, Tami Edwards-Engle, Saundra Erp, Charlotte Estepp, Sarah Estes, Elizabeth Fannin, Janet Fentress, Haywood Ferguson on behalf of The Estate of Alma Ferguson, William Fitch, on behalf of the Estate of Sheila Fitch, Vickie Flannery, Paul Floyd, Bernita Flynn, Berenda Ford, Timothy Franklin, Essie Fredrick, Beulah Fugate, Clara Fulks, Patricia

Gaunce, Barbara Gay, Melissa Gayheart, Ken Gayheart, Crystal Seals-Gibson, Ginger Davidson-Gibson, James Gibson, on behalf of the Estate of Jessie Gibson, Joni Gibson, Tara Gifford, Gladys Gilbert, Stephanie Gist, Ruby Godbey, Eddie Golden, Debra Goode, Joyce Gordon, Patrick Graham, Tammie Grant, Amy Gray, Donna Green, Sherry Green, Janet Coons-Greene, Peggy Grigsby, Allie Hall, Norma Hall, Renee Hall, Shannon Hall, Barbara Hampton, Leona Gail Handley, Joyce Hanley, Rebecca Harris, Debra Harrison, Diane Harrison, Joy Hassler, Yolanda Hayden, Vikki Henley, Barbara Heizer, Wanda Helton, Bonnie Henderson, Gary Hendrickson, Vickie Henry, Marcus Highley, Charlene Hill, Karen Hillard, Janice Hilton, Linda Hinkle, Jacqueline Hocker, Gwen Holt, Tami Holt, Myra Hood, Vicky Hood, Evelyn Hopkins, Charlene Horn, Mary Horning, Cloyd Hoskins, Linda Hoskins, Mary Howard, Marilyn Howard, Toloria Howard, Donna Howser, Charlotte Hughes, Marcia Hughes, Margie Hulse, Sheila Humpreys, Margaret Hunt, Wanda Hunter, Brenda Hutchcraft, Katherine Hutchison, James Ingram, Emma Ison, Della Jackson, Betty Davidson, on behalf of the Estate of Evelyn Jackson, Katina Jackson, Mary Jackson, Linda James, Lynn Jefcoat, Debbie Jeffrey, Garnet Johnson, Ernestine Johnstone, April Slatten Jones, Franklin Jones, Judy Jones, Kathy Jones, Linda Jones, Marlene Jones on behalf of the Estate of Loretta Emond-Stidham, Troy Jones, Betty Kelly, Gerald King, Pattie Kitts, Betty Kluck, Lucille Krey, Bill Lady, on behalf of the Estate of Mary Lady, Linda Larkins, Emily Lewis, Beverly Little, Sandra Dee Littleton, Lois Lockard, on behalf of the Estate of Lloyd Lockard, Linda Long, Sherry Long, Nona Lucas, Charlotte Lush, Paula Mann, Pamela Marlowe, Arlene Marshall, Bobbie Martin, Linda Martin, Mary Martin, Connie Mason, Joni McClanahan, Karen Thompson McClain, Lavonna McDaniel, Connie McGirr, Linda Malone McGowan, Roberta McGuire, Tammy McGuire, Jacquelyn McMurty, Sheila Lynn Meece, Andrea Messamore, Wanda Metzger, Deloris Miller, Linda L. Miller, Orene Miller, Belinda Million, William Miracle on behalf of The Estate of Kathy Miracle, Beverly Mitchell, Eudora Montgomery, Ella Moore, on behalf of the Estate of Jonetta Moore, Margaret Moore, Rhonda

Moore, April Morris, Louisa Moss, Angela Lewis Mullinix, Aileen Mullins, Mary Napier, Wanda Faye Neace, Elizabeth Neal, Linda Nevels, Diana Newlin, Wilma Noe, Kathy Nolan, Sheila Nolan, Rita Profitt Norman, April Keltner Nuxoll, Rhonda Osburn, Glenora Pace, Bertha Pack, Louverna Parks, Myrtle Parris, Angela Peace, Judith Peck Wageman, Lisa Peek, Recie Pennington, Helen Perkins, Jeff Perkins, Stacy Perkins, Joy Perry, on behalf of the Estate of Milton Lewis, Doris Phelps, Norma Pickett, Sonja Pickett, Debra Bays-Plybon, Kathy Pollitte, Brian Powell, Glenna Brock-Powell, Mary P'Pool, Trena Preston, Suzanne Price, Lynne Pursel, Sharon Rainwater, Billie Reese, Brenda Rentas, on behalf of the Estate of Anthony Rentas, Arlie Rhodes, Evelyn Rhodes, Raymond Riley, Levetta Rivera, Odena Roaden, Billie June Roberts, Dyan Roberts, Michelle Sharpe Roberts, Patricia Roberts, Renee Roberts, Patricia Robinson, Fetina Robison, Carol Rogers, Cathy Rose, Vina Rose, Larry Roseberry, Jr. on behalf of the Estate of Larry Roseberry, Sr., Bobby Sallee, Mary Sams, Kathy Sands, Justus Scharold, Debbie Vogt Schneider, Maxine Seals, Monica Sexton, Terry Shanks, Margaret Sharon, Claudia Sebastian-Shepard, Debra Shepherd, Janet Short, Linda Caudill, on behalf of the Estate of Laureda Short, Monica Shuffett, Loretta Sidwell, Rosemary Godby-Simmons, Ada Sizemore, Carole Slone, Barbara Smith, Elaine Smith, Freda Smith, Wesley Smith on behalf of The Estate of Sharon Smith, Joe Ann Perkins Spencer, Cora Stapleton, Debbie Staton, Paul Stauffer, Corina Stearns, Connie Stephens, Nancy Stephens, Kathy Daniels-Stephenson, Iva Stevens, Sharon Stevenson, Marlene Stewart, Betty Stone, Lesta Irene Stout, Donna Stromowsky, Connie Sturgill, Shirley Sudduth, on behalf of the Estate of Marjorie Sudduth, Pam Sullivan and Sharon Stephens, on behalf of the Estate of Rebecca Lovell, Lisa Swiger, Ella Tackett, Patty Tackett, Priscilla Tafolla, Charles Tapley, Ella Taylor, Linda Taylor, Mary Taylor, Jeanne Thomas, Nancy Thompson, Lisa Thurman, Steve Toler on behalf of The Estate of Linda Toler, Roy Toler, Elizabeth Trent, Jenny Trimble, Joetta Tucker, Deborah Turner, Drucilla Turner, Marie Turner, Patricia Turner, Valorie Turner, Linda Vance, Bobbie Walker, Loraine Wallen, Cindy

Walters, Berry Ward, on behalf of the Estate of Martin Ward, Elizabeth Thompson-Washburn, Wanda Watkins, Cheryl Watson, Irene Wells, Joyce Goff Wells, Judy Whitaker, Kim White, Mary White, Patricia White, Catherine Whitlock, Joyce Whitt, Betty Widener, Peter Wilds, Carol Quisenberry-Williams, Todd Williams on behalf of The Estate of Gloria Williams, Bethany Willinger, Geneva Wilson, Robert Wilson, Melody Winer, Connie Wolfe, Bill Wombles, Amanda Edwards Wood, Artie Woods, Fern Wooten, Debora Wright, Edwina Wright, Roger Wright, Sandra Wright, Tammy Wright, Doyle Yancy, Sheila Yates and Sandra Zeman were Plaintiffs in the *Moore* action and are from the following cities in Kentucky: Argillite, Ary, Asher, Ashland, Bagdad, Beatyville, Beaver Dam, Berea, Big Stone Gap, Bledsoe, Bonnyman, Brooksville, Bulan, Burlington, Burnside, Busy, Butler, Campbellsville, Cave City, Caywood, Central City, Clay City, Coldiron, Columbia, Corbin, Corinth, Crab Orchard, Cumberland, Cynthiana, Danville, Eubank, Edyville, Elkhorn City, Emmalena, Eubank, Evarts, Ewing, Feds Creek, Flat Lick, Flatwoods, Flemingsburg, Florence, Fort Mitchell, Fort Wright, Frankfort, Fredonia, Garrett, Georgetown, Grand Rivers, Greenup, Hanson, Harlan, Harold, Harrodsburg, Hazard, Heidrick, Hopkinsville, Hudson, Hyden, Independence, Irvine, Jamestown, Jeffersonville, Jenkins, Kings Mountain, Kuttawa, LaGrange, Lancaster, Lawrenceburg, Lebanon, Lexington, Lily, Littcarr, London, Lost Creek, Louisa, Louisville, Lynch, Manchester, Mayfield, Maysville, Midway, Monticello, Morehead, Mount Edna, Mount Sterling, Mount Vernon, Mt. Washington, Mousie, Nancy, New Haven, Nicholasville, Nortonville, Olive Hill, Owensboro, Owingsville, Paducah, Paint Lick, Paris, Partridge, Pennington Gap, Pikeville, Pineville, Prestonsburg, Princeton, Quincy, Raceland, Richmond, Rush, Russell Springs, Salyersville, Science Hill, Smith, South Williamson, Somerset, Stamping Ground, Stanford, Stanton, Thealka, Thornton, Tompkinsville, Versailles, Virgie, Wallingford, Wallins Creek, West Liberty, White Plains, Whitesburg, Whitley City, Williamstown, Winchester, Wingo, Woodbine and Wooten. In addition to the Kentucky residents, there are Plaintiffs residing in Fayetteville, Arizona,

Fort Meyers, Florida, Largo, Florida, Ocala, Florida, Palm Bay, Florida, Zephyrhills, Florida, Douglasville, Georgia, Centralia, Illinois, Chicago, Illinois, Effingham, Illinois, Macedonia, Illinois, Olney, Illinois, Maple Grove, Minnesota, Las Vegas, Nevada, Kernersville, North Carolina, Cincinnati, Ohio, Dayton, Ohio, Fairborn, Ohio, Ironton, Ohio, Miamisburg, Ohio, West Union, Ohio, Maine, Miami, Oklahoma, Leesville, South Carolina, Collierville, Tennessee, New Tazewell, Tennessee, Red Boil Springs, Tennessee, St. Charles, Virginia, Pound, Virginia, Rose Hill, Virginia, New Haven, West Virginia and Pineville, West Virginia.

47. Defendant Stanley M. Chesley ("Defendant Chesley") is an attorney licensed in the Commonwealth of Kentucky with his principal place of business located at 1513 Fourth & Vine Tower, One West Fourth Street, Cincinnati, Ohio, 45202.

48. Defendant Shirley A. Cunningham, Jr. ("Defendant Cunningham") is an attorney licensed in the Commonwealth of Kentucky, with his principal place of business located at the Law Offices of Shirley Allen Cunningham, Jr., 3101 Richmond Road, Lexington, Kentucky 40509.

49. Defendant William J. Gallion ("Defendant Gallion") is an attorney licensed in the Commonwealth of Kentucky, with his principal place of business located at Barrister Hall, Gallion & Associates, 163 Main Street, Lexington, Kentucky 40507.

50. Defendant Melbourne Mills, Jr. ("Defendant Mills") is an attorney licensed in the Commonwealth of Kentucky, with his principal place of business located at Barrister Hall, 163 East Main Street, Lexington, Kentucky 40507.

51. Defendant The Kentucky Fund for Healthy Living, Inc., is a Kentucky corporation, whose officers and directors include Defendants Cunningham, Gallion and Mills, with its principal place of business located at 130 Dudley Road, Edgewood, Kentucky 41017. Its

agent for service of process at is J. Whitney Wallingford, 3141 Beaumont Centre Circle, Suite 302, Lexington, Kentucky 40513.

JURISDICTION AND VENUE

52. Defendants Gallion and Mills reside in Fayette County, Kentucky. During the relevant time period, Defendants Cunningham, Gallion, and Mills all practiced law through professional business entities located in Fayette County, Kentucky. Defendant Chesley was co-counsel in the *Moore* action and represented plaintiffs, many of whom resided or still reside in Fayette County, Kentucky. The Kentucky Fund for Healthy Living, Inc.'s principal place of business was in Fayette County, Kentucky.

53. The damages that are the subject matter of this Complaint exceed the jurisdictional minimum of this Court.

THE BOONE COUNTY ACTION

54. American Home Products Corporation, through two of its divisions, Wyeth-Ayerst Laboratories and A.H. Robins Company, manufactured and distributed the diet drug combination popularly known as Fen-Phen.

55. Fen-Phen was prescribed by physicians and distributed to thousands of Kentuckians during the mid-1990's until the product was discovered to cause heart damage and was removed from the market by the Food and Drug Administration in September 1997.

56. All of the plaintiffs were prescribed Fen-Phen, and upon information and belief, were required to undergo medical testing to prove physical injury.

57. The heart damage sustained by plaintiffs as a direct result of ingesting the prescription drug Fen-Phen varies and includes heart valve disease with aortic, tricuspid and mitral insufficiency, atrial enlargement, ventricular hypertrophy, pulmonic insufficiency, cardiomyopathy, diastolic dysfunction and death.

58. In July 1998, Defendants Cunningham, Gallion and Mills filed a class action on behalf of five individuals against American Home Products Corporation for past and future medical expenses, physical injuries, pain and suffering and economic loss and punitive damage sustained as a result of illness from ingesting the diet drug Fen-Phen. Defendants' class action complaint asserted claims for medical monitoring, bodily injury, strict products liability, negligence, breach of express warranty by the distributing Defendants Duff & Bariatrics, breach of implied warranty by the distributing Defendants Duff & Bariatrics, fraud, active concealment and non-disclosure, violation of the Kentucky Consumer Protection Act and medical malpractice by Bariatrics, Inc. of Kentucky and Dr. Rex Duff.

59. Upon information and belief, the action was certified as a class on May 5, 1999.

60. Upon information and belief another similar action filed in Boone County by Defendant Chesley on July 30, 1999, styled Courtney, et al. v. American Home Products Corporation, et al., Civil Action No. 99-CI-84 and was consolidated with the *Moore* action on December 8, 1999 upon Motion by Defendant Chesley.

61. Upon information and belief, lawsuits filed in federal courts from around the country were transferred to an MDL court in the Eastern District of Pennsylvania and, on or about November 18, 1999 a National Class Action Settlement Agreement was entered into and approved by the presiding judge, on or about August 28, 2000.

62. According to court records, Defendants Chesley, Cunningham, Gallion, and Mills (hereinafter referred to collectively as "the Attorney Defendants") continued to represent individuals who remained members of the national class action while also representing the plaintiffs in the *Moore* action who opted out of the national class action.

THE SETTLEMENT, DISMISSAL AND DECERTIFICATION

63. The Boone County action was mediated on April 30 and May 1, 2001and the mediation resulted in an agreed-upon settlement for 440 plaintiffs.

64. By Order entered May 16, 2001, a copy of which is attached as Exhibit A to this Complaint, the Court dismissed the *Moore* Action and also decertified the class.

65. Upon information and belief, settlement funds were distributed to the plaintiffs over the course of several months following the mediation date.

SETTLEMENT FUNDS MISAPPROPRIATED

66. Nearly a year later, in a June 6, 2002 Order, a copy of which is attached as Exhibit B to this Complaint, the Court states that it retained jurisdiction over the action to "oversee the handling and distribution of settlement funds" and ordered the Clerk of the Court to seal all further orders and to provide copies only to an amended service list of five attorneys that included the Attorney Defendants.

67. In another Order entered June 6, 2002 (signed February 15, 2002), a copy of which is attached as Exhibit C to this Complaint, the Court stated that the Final Settlement and Dismissal authorized the Attorney Defendants to allocate funds to individuals and to retain funds for any "anticipated and unanticipated contingencies and liabilities," approved an accounting of settlement proceeds, including attorneys' fees and expenses; Ordered that 50% of the remaining funds be distributed to Plaintiffs on a pro rata basis and 50% be retained by the Attorney Defendants for "indemnification or contingent liabilities."

68. No statement or accounting of settlement funds or attorneys' fees and expenses, pursuant to the Court's June 6, 2002 Order, appears in the record and no "indemnification or

contingent liabilities" have ever been identified by the defendants.

69. On or about March 2002, plaintiffs received a second settlement check.

70. In an Order dated July 31, 2002, a copy of which is attached as Exhibit D to this Complaint, the Court stated that it had again received an accounting of funds and was **"advised of the consent of the individual plaintiffs who received settlements for use of the remaining funds for charitable purposes"** (emphasis added) and Ordered that "Ten percent (10%) of the remaining funds shall be set aside to pay all outstanding litigation and administrative expenses" and defendants are to be reimbursed for "claims or suits" brought within the time frame referred to in the Final Settlement and Dismissal and "side letter."

71. The record of the *Moore* Action does not contain a statement or accounting of the outstanding expenses as of July 31, 2002 or a statement or accounting of any claims or suits paid by defendants pursuant to the terms of the Final Settlement and Dismissal and "side letter." The "side letter" does not appear in the public record.

THE TRUST/NON PROFIT CORPORATION

72. In its July 31, 2002 Order, the Court further ordered that all remaining settlement funds be placed in a trust and further stated that 5% of the assets may be used for the expense of establishing the trust and up to **"30% of the assets available for distribution on an annual basis shall be used to pay fees and expenses incurred by the trustees."** (emphasis added).

73. On or about January 13, 2003, the Court entered an Amended Order, a copy of which is attached as Exhibit E to this Complaint, that authorized the transfer of remaining settlement funds to a trust or nonprofit corporation and listed all of the appointed members of the Board of Directors: Defendants Cunningham, Gallion, and Mills and another individual, Mark Modlin.

74. Upon information and belief, Mr. Modlin is a trial consultant retained by the Attorney Defendants and a personal friend of the presiding Judge in the *Moore* Action.

75. On or about January 23, 2003 a non profit corporation, The Kentucky Fund for Healthy Living, Inc. was registered with the Secretary of State by the Defendants as a 501(c)(3) corporation.

76. On or about December 19, 2003, Defendants Cunningham, Gallion, and Mills filed a Motion requesting that the Court relinquish its jurisdiction over the non profit corporation, The Kentucky Fund for Healthy Living, Inc.. By Order entered on December 30, 2003, a copy of which is attached as Exhibit F to this Complaint, the Court granted the Motion.

77. The record of the *Moore* Action does not contain a statement of the amount of funds transferred to The Kentucky Fund for Healthy Living, Inc., or a statement or accounting of the use of funds, and none was provided to the Plaintiffs.

78. Upon information and belief, approximately **$20 million remained** in The Kentucky Fund for Healthy Living at the time the initial Complaint was filed in this case.

GENERAL FACTUAL ALLEGATIONS

79. The Attorney Defendants negotiated an aggregate-lump sum Settlement Agreement with American Home Products on behalf of Plaintiffs and then, in accordance with the terms of the settlement agreement, allocated the aggregate Settlement Amount among Plaintiffs in fixed dollar amounts as reflected in Exhibit 3 to the Settlement Agreement.

80. Without informing Plaintiffs of the terms of the Settlement Agreement, their allocation of the aggregate Settlement Amount, the allocation to any of the other Plaintiffs, or the manner in which Plaintiffs' individual "settlement offers" were calculated, and, in many cases after

affirmatively misrepresenting the terms of the Settlement Agreement, e.g., by informing Plaintiffs that a given amount, which was only a fraction of the actual allocated amount, was the best result that they could obtain, The Attorney Defendants "negotiated" settlements with Plaintiffs that were substantially smaller than the previous allocations.

81. Upon information and belief, the Attorney Defendants, personally or through their agents, made additional affirmative misrepresentations by informing many Plaintiffs that they could go to jail, or could be fined and forced to return their settlement funds, if they discussed the fact or terms of their settlement with anyone, including spouses and adult children.

82. Plaintiffs received $71,165,015.13 of the total Settlement Proceeds.

83. The record of the Boone County Action does not contain an accounting of the attorneys' fees and expenses, and the Attorney Defendants failed to provide individual Plaintiffs with such an accounting.

84. Each of the Attorney Defendants personally received and/or exercised dominion and control over Settlement Proceeds in amounts in excess of his contracted-for fee.

85. Plaintiffs did not give informed consent to the creation of a non-profit corporation with settlement funds and were never advised of the amount of funds transferred to The Kentucky Fund for Healthy Living which was created, managed and controlled by the Attorney Defendants.

CLASS ACTION ALLEGATIONS

86. This action is brought pursuant to CR 23 on behalf of all individuals who were members of the settlement class action styled Johnetta Moore, et. al, v. A. H. Robins, et. al., 98-CI-795. Plaintiffs seek, among other things, disclosure of all settlement terms, disclosure of all settlement funds received by the Defendants and the uses of those funds, for themselves and on

behalf of all individuals who were members of that class action.

87. The named Plaintiffs, including those who would serve as representative Plaintiffs, are members of the settlement class they seek to represent. The members of the class are so numerous that joinder is impractical as it would involve over 440 individual litigants.

88. The class should be certified pursuant to CR 23 of the Kentucky Rules of Civil Procedure because the claims herein are common to all members of the class in this action and because individual complaints may result in inconsistent or varying adjudications. The named Plaintiffs, including those who would serve as representative Plaintiffs, have been subject to the same or similar settlement and post- settlement practices that affect each class member. The claims of the named Plaintiffs are typical of those of the class which they seek to represent. The class representatives who are designated will fairly and adequately represent the class and will be dedicated to recovering, for all Plaintiffs, any settlement funds that were utilized for any unauthorized purpose. Those Plaintiffs will vigorously prosecute the claims of all class members and pursue the interests of the class members as a whole.

89. There are questions of fact and law common to the class which predominate over any questions affecting only individual members. These predominating questions include, but are not limited to:

> Whether or not the settlement information provided to all plaintiffs was accurate and complete.
>
> Whether the Defendants breached their ethical, fiduciary and professional duties to the Plaintiffs.
>
> Whether the Plaintiffs are entitled to a complete accounting of all settlement funds, including fees and expenses paid to the Defendants and copies of all settlement documents.
>
> Whether the Plaintiffs are entitled to recover settlement funds diverted for improper or unauthorized purposes.
>
> Whether the formation of The Kentucky Fund for Healthy Living and the handling of

funds placed with the corporation was appropriate or in the best interest of the Defendants former clients.

Whether the plaintiffs are entitled to an accounting of the settlement funds transferred to the non profit corporation, The Kentucky Fund for Healthy Living, owned and operated by the defendants.

90. The claims of the named Plaintiffs, including those who would serve as representative Plaintiffs, are typical of the claims of the class members in that all of the members of the class are entitled to an accounting of the settlement funds, information related to the settlement process and negotiations and recovery of all funds improperly and unlawfully diverted for unauthorized purposes.

91. A class action is a superior and an appropriate method for the fair and efficient adjudication of the claims asserted in this Complaint. Upon certification and designation of class representatives, named Plaintiffs who are not class representatives would participate in the action only as members of the class certified rather than with any individual rights or responsibilities.

SPECIFIC ALLEGATIONS

92. Plaintiff Mildred Abbott was not informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. Ms. Abbott was informed that there may be "some money left, not enough to go around" and that those funds were "going to be put in charity." Ms. Abbott received two settlement checks although she was never told to expect a second check. Ms. Abbott was not asked to consent to funds being donated to charity and was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Abbott was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Abbott was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Abbott was warned that

she could not discuss the fact that she had settled her case or the amount of her settlement. She was not advised that any expenses were deducted from her settlement funds.

93. Plaintiff Elizabeth Abney never met or talked with an attorney. After responding to an advertisement and becoming a plaintiff in the *Moore* Action, she did not hear anything from her attorney's office for two years unless she initiated a phone call. She was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. Ms. Abney was not asked to consent to funds being set aside for charitable or any other purpose. She was never informed that a nonprofit corporation was established by the defendants with settlement funds. Ms. Abney was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Abney was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Abney was warned that she could not discuss the fact that she had settled her case or the amount of her settlement. In September 2004, Ms. Abney requested a copy of her settlement agreement and she was told that it was a confidential document and that it could not be released and that she could lose her settlement funds if it was disclosed to anyone. Ms. Abney received one settlement check. She was not advised that any expenses were deducted from her settlement funds.

94. Plaintiff Juanita Alton never met with or talked to an attorney. She was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. Ms. Alton was told by an assistant

from her attorney's office at the time she was presented with settlement papers that the settlement was confidential and that she "could not talk about it or tell anyone she got a settlement." She was told the settlement was confidential "because it would ruin the company's name and they did not want anyone to know they had been sued." She was not told that there would be a second distribution of settlement funds but received a call and was told to come to Lexington and that it would be "well worth a trip." At that time, she was presented with a second settlement check and was told "this is the end of the settlement money" and that the attorneys had a "little bit" of money left over that would be donated to a charity of their choice since it was too small an amount to distribute. She was not asked to consent to any settlement funds being donated to charity. She was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Alton was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Alton was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Alton received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

95. Plaintiff JoAnn Alvey never met with an attorney. She was never told to expect a second check after receiving her first settlement check but received a phone call and was asked to come to an office in downtown Lexington. She was told that the attorneys were "going through their books again and found some more money." She was never informed of the manner in which her settlement amount was decided upon and was never informed that she had

a right to opt out of the settlement. She was very surprised at the small amount of her settlement since it barely covered her accumulated medical expenses at the time. The person she was meeting with told her he had a full time job and was working for the attorneys on the side. Ms. Alvey was told by that person that there were funds remaining that amounted to a "pittance" that would be given to a "charity of their choice." She was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Alvey was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Alvey was not given a copy of her settlement agreement. She was told "never to discuss what she received" and that "this is our secret." Ms. Alvey received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

96. Plaintiff Cindy Armstrong was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. She was told that there may be a "very little" amount of settlement funds left over and she agreed to donate the funds, assuming it was "less than $100.00." She was never informed that a nonprofit corporation was established by the Defendants with settlement funds and would not have agreed to a larger donation to charity. She was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Armstrong was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Armstrong received one settlement check. She was not advised that any expenses were deducted from her funds.

97. Plaintiff Jody Baldridge was never informed of the manner in which his settlement amount was decided upon and was never informed that he had a right to opt out of the settlement. His settlement meeting lasted five minutes and he recalls being surprised that they did not even check his identification before giving him a check. He does not recall anything being mentioned about additional funds or any settlement funds being donated to charity or used for any other purpose. He was never informed that a nonprofit corporation was established by the Defendants with settlement funds. He was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Mr. Baldridge was not given a copy of his settlement agreement and the terms were not reviewed with him. Mr. Baldridge received one settlement check. He was not advised that any expenses were deducted from his settlement funds.

98. Plaintiff Lee Bartley never met or talked with an attorney. The only Correspondence he received was for a release of his medical records and a request for him to get a physicians' evaluation. He was never informed of the manner in which his settlement amount was decided upon and was never informed that he had a right to opt out of the settlement. At the time he picked up a second check he was told that there was a small amount of money left over and that the attorneys were "asking that you contribute what was left over to charity". He was led to believe that the amount was very small. Afterward, Mr. Bartley thought it strange that an attorney would ask a client to donate funds to charity and that he was never told how much money was involved or to which charity it would be donated. He was never informed that

a nonprofit corporation was established by the defendants with settlement funds. He was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Mr. Bartley was not given a copy of his settlement agreement and the terms were not reviewed with him. Mr. Bartley received two settlement checks. He was not advised that and expenses were deducted from his settlement funds.

99. Plaintiff Margie Berry was too afraid to comment on her settlement experience saying she had been "scared to death". Later, she wanted to talk to an attorney because her "fear had weighed on her" for too long and because she believes her attorneys' conduct "harmed her health" by threatening her with going to jail. At the time she settled her case she was told she could not say anything about her settlement, even to her family. She was told that she could go to jail and would be fined if she told anyone. Ms. Berry developed serious heart problems from taking the diet drug and did not believe she was well compensated and felt her attorneys were "blackmailing her" when she settled her case. Nothing was mentioned to her about funds being donated to charity. She was never informed that a nonprofit corporation was established by the defendants with settlement funds. She was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. She was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Berry received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

100. Plaintiff Eleanor Berry was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. She was informed that there may be a "small amount of money left over", maybe

"$25.00", that may be donated to charity. Ms. Berry was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Berry was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Berry was not given a copy of her settlement agreement and the terms were not reviewed with her, except that she was "warned not to tell anyone" and if she did she was told she "may have to forfeit" what she got. She received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

101. Plaintiff Easter Bishop was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. She was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Bishop was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Bishop was not given a copy of her settlement agreement and the terms were not reviewed with her. She received one settlement check. She was not advised that any expenses were deducted from her settlement funds.

102. Plaintiff Carol Boggs was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. There was "no discussion of how much the overall settlement was and how it was divided". She was told that she got "less than others because of her age, since she would have less time to enjoy it". Ms. Boggs was told that things were "under a gag order" and that she could "be fined and would have to give the money back if she talked about the settlement". She

was told that the drug companies required it because "if they ever sold their company they did not want the bad publicity". She was told that if she discussed the settlement, she could be 'fined and forced to repay the settlement or go to jail". She was never informed that a nonprofit corporation was established by the Defendants with settlement funds. Ms. Boggs was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Boggs was not given a copy of her settlement agreement and the terms were not reviewed with her. She received two settlement checks. She was not expecting a second check but received a call asking her to meet her at a mall in Ashland by the Information Center. The caller would not tell her the reason for the meeting but said it "wasn't anything bad but that it could not be discussed on the phone because of the gag order. Ms. Boggs was not advised that any expenses were deducted from her settlement funds.

103. Plaintiff Angie Lynn Bowman was never told to expect a second check after receiving her first settlement check but received a phone call and was asked to come to an office in downtown Lexington. Her sister was also a plaintiff and was told, when they came together, that she could not accompany her when she signed her settlement agreement. She specifically asked what amount of money the pharmaceutical companies had agreed to pay in the overall case and how many people were involved in the case and was told she was not entitled to know that information because it was confidential. She recalls being told money would be set aside for future claims but does not recall the reason and was told that, if any was left, it would be distributed. She was not told that any funds would be donated to charity. She was never

informed that a nonprofit corporation was established by the defendants with settlement funds. Ms. Bowman was not given a copy of her settlement agreement. She was not advised that any expenses were deducted from her settlement funds.

104. Plaintiff James Branham was not informed of the manner in which his settlement amount was decided upon and was not informed that he had a right to opt out of the settlement. He was not given a copy of his settlement agreement and the terms were not reviewed with him although he was warned not to discuss the settlement. He has a vague recollection that he was told that there may be some settlement funds left over that may be given to charity but he was not asked to approve any donation. In April 2004, he was contacted by an investigator for the Kentucky Bar Association about the case. He was never informed that a nonprofit corporation was established by the defendants with settlement funds and was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Mr. Branham received two settlement checks. He was not advised that any expenses were deducted from his settlement funds.

105. Plaintiff Kathy Branham was never informed of the manner in which her settlement amount was decided upon and was never informed that she had a right to opt out of the settlement. She was not given a copy of her settlement agreement and the terms were not reviewed with her. She was never informed that a nonprofit corporation was established by the defendants with settlement funds and was never informed of the amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action. Ms. Branham received two

settlement checks. She was not advised that any expenses were deducted from her settlement funds.

106. Plaintiff Christina Bucher was not informed of the manner in which her settlement amount was decided upon and was not provided with a copy of her settlement agreement. Ms. Bucher does not recall anything being said about a donation to charity and did not approve any. She was not provided with a copy of her settlement agreement and was not advised that any expenses were deducted from her settlement funds. She received one settlement check.

107. Plaintiff Leslie Bullock was not informed of the manner in which her settlement amount was decided upon and was not provided with a copy of her settlement agreement. Ms. Bullock was not asked to approve any donation to charity does not recall anything being said about a donation to charity. She was not provided with a copy of her settlement agreement and was not advised that any expenses were deducted from her settlement funds. She received two settlement checks.

108. Plaintiff Judy Dile was not informed of the manner in which her settlement amount was decided upon and was not provided with a copy of her settlement agreement. The terms of her settlement agreement were not reviewed with her except she was warned not to discuss the terms of her settlement agreement. Nothing about money being donated to charity was mentioned to her. Ms. Dile was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Dile received two settlement checks. She was not informed that any expenses

were deducted from her settlement funds.

109. Plaintiff Susan Ezell never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon and was not informed that she had a right to reject the settlement offer and proceed to trial. When she signed her settlement agreement, she asked for a copy but her request was denied. She was told there could be "no paper trail" and no one could know about the settlement. She wanted her son in the room with her to review her settlement agreement and her request was refused. A donation to charity was never discussed with her and she would "absolutely not" have agreed to that suggestion. She received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

110. Plaintiff Rhoda Franklin was not informed of the manner in which her settlement amount was decided upon and was not informed that she had a right to reject the settlement offer and proceed to trial. A donation to charity was mentioned but Ms. Franklin indicated that a donation would be acceptable only if it was a small amount. The terms of her settlement agreement were not reviewed with her except she was warned not to discuss the settlement. She was not given a copy of her settlement agreement. Ms. Franklin was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Franklin received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

111. Plaintiff Mary Frazier never met with an attorney. She was not informed of the

manner in which her settlement amount was decided upon and was not informed that she had a right to reject the settlement offer and proceed to trial. A donation to charity was never discussed with her. The terms of her settlement agreement were not reviewed with her. Ms. Frazier was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Frazier received one settlement check. She was not informed that any expenses were deducted from her settlement funds.

112. Plaintiff Freda Frizzell never met with an attorney. When her case was settled she asked to have her son with her because she is 72 years old and on medication. She was told he could not be with her unless he had a power of attorney. When she said she would give him a power of attorney right then, he was allowed in the room with her. She was not informed of the manner in which her settlement amount was decided upon. She was not asked to approve a donation to charity but vaguely recalls being told that if "a few hundred dollars" was left over it would be given to charity. The terms of her settlement agreement were not reviewed with her, other than being warned not to discuss the settlement and she was not given a copy of the agreement. Ms. Frizzell was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Frizzell received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

113. Plaintiff Rhonda Hancock never met with an attorney. She was not informed of

the manner in which her settlement amount was decided upon. She was informed that "there may be additional money and that they may want to donate it to charity". She asked how much they were talking about and informed them she "would want to know if it was over $100.00." She was told she would be called but never was. The terms of her settlement agreement were not reviewed with her and she was not given a copy. Ms. Hancock was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Hancock received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

114. Plaintiff Barbara Hellmueller never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not asked and did not consent to any funds being donated to charity but recalls being told that some funds were being donated to charity. Ms. Hellmueller was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Hellmueller received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

115. Plaintiff Reva Helton never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement

agreement. She was not asked and did not consent to any funds being donated to charity. Ms. Helton was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Helton received one settlement check. She was not informed that any expenses were deducted from her settlement funds.

116. Plaintiff Lora Hoover was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not asked and did not consent to any funds being donated to charity. Ms. Hoover was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Hoover received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

117. Plaintiff Lorene Hutcherson was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not asked and did not consent to any funds being used for charitable purposes although she was told that if there were any funds remaining they may be donated to charity. Ms. Hutcherson was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Hutcherson received two settlement checks. She was not informed that any expenses were deducted from her settlement

funds.

118. Plaintiff Gerry Jones never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her, other than being warned that she could be fined for disclosing the fact that she got a settlement or the amount. She was told "not to even answer if they called by saying anything but yes or no" because "the phones might be bugged". When she later received a phone call to come to a meeting, she was told they could not tell her the reason for the meeting over the phone but that she "would be happy". When she arrived at the meeting, she was given a second check. She was not given a copy of her settlement agreement. Ms. Jones was not asked and did not consent to any funds being donated to charity although she recalls something being said about that possibility. Ms. Jones was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Jones received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

119. Plaintiff Betty Jordon was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was told that if funds were left over they may be donated to charity. Ms. Jordon refused to consent to a donation saying she "would not consent to any funds going to anyone" but herself. She called many times over the course of a year asking if there were additional funds to distribute and was told nothing was

known. Ms. Jordon was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Jordon received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

120. Plaintiff Katherine King was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not informed of any settlement funds being donated for charity. Ms. King was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. King received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

121. Plaintiff June McPhearson turned down the settlement amount initially offered to him. When a paralegal mentioned the possibility of settlement funds being donated to charity he responded "I have my own charities" and refused for any of his funds to be donated by counsel. Mr. McPhearson was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. McPhearson received two settlement checks. He was not informed that any expenses were deducted from his settlement funds. Mr. McPhearson was contacted by an investigator for the Kentucky Bar Association about the case months ago.

122. Plaintiff Linda Miller was not informed of the manner in which her settlement

amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She did not authorize any donation to charity but recalls being told that if the attorneys decided to do that they would "send something in the mail". She was never contacted. Ms. Miller was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Miller received two settlement checks. She was not informed that any expenses deducted from her settlement funds.

123. Plaintiff Jessie Parsons was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. She was not told of any donation to charity. Ms. Parsons was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Parsons received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

124. Plaintiff Peggy Spears was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her, except for the need to keep everything confidential. She was not given a copy of her settlement agreement. She was told that there may be a small amount of funds left over and she consented to a donation if it was "under $10.00 to $15.00". Ms. Spears was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Spears received two settlement checks. She

was not informed that any expenses were deducted from her settlement funds.

125. Plaintiff Marjorie Sudduth was not informed of the manner in which her settlement amount was decided upon. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. When she received a call to come to a meeting after receiving the first check, the caller would not tell her the reason for the meeting. She was not asked to consent to a donation to charity but was told that if there were any additional funds it would be "a very small amount and would be donated to charity. Ms Sudduth was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Sudduth received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

126. Plaintiff Thelma Merida never met with an attorney. She was not informed of the manner in which her settlement amount was decided upon and rejected the first settlement offer. The terms of her settlement agreement were not reviewed with her and she was not given a copy of her settlement agreement. Nothing about settlement funds being donated to charity was discussed with her. Ms. Merida was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Merida received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

127. Mildred Swanson was not informed of the manner in which her settlement amount

was decided upon. The terms of her settlement agreement were not reviewed with her and when she asked for a copy, her request was denied. She was not asked to donate funds to charity but was told that the judge approved a donation. She was not informed of the total amount of the settlement with the pharmaceutical companies and was not informed of the creation of a trust or nonprofit corporation. Ms. Swanson received one settlement check. She was not informed that any expenses were deducted from her settlement funds.

128. Plaintiff Vickie Brewer was never asked to assist with, approve or comment on any issues related to the *Moore* Action and was never informed of any responsibilities as a class representative. Ms. Brewer was told she could not discuss her settlement with anyone and was not provided with a copy of her settlement records. Ms. Brewer was never informed that any settlement funds would be donated to charity and never approved the establishment of a trust or nonprofit corporation for charitable or other purposes. Ms. Brewer was never informed of the total amount of settlement funds paid by the pharmaceutical companies in the *Moore* Action, was never involved in the negotiations related to her settlement or informed of the manner in which her settlement amount was decided upon and was never informed of her right to reject the settlement offer. Ms. Brewer did not have an adequate opportunity to review her settlement agreement and the terms were not reviewed with her by counsel. Ms. Brewer received one settlement check. She was not advised of any expenses deducted from her settlement funds.

129. Plaintiff Karen Brown never met with an attorney, was never informed of the manner in which her settlement amount was decided upon and was never informed that she had

a right to opt out of the settlement. Ms. Brown was informed that there may be some "additional funds" amounting to "a couple of dollars" that may be donated to charity. Ms. Brown was not asked to consent to funds being donated to charity and was never informed that a nonprofit corporation was established by the defendants with settlement funds. Ms. Brown was never informed of the amount of settlement funds paid by the pharmaceutical companies in the Moore Action. Ms. Brown was not given a copy of her settlement agreement and the terms were not reviewed with her. Ms. Brown was warned that she could not discuss the fact that she had settled her case or the amount of her settlement. Ms. Brown received two settlement checks. She was not advised that any expenses were deducted from her settlement funds.

130. Plaintiff Deborah Browning was not informed of the manner in which her settlement amount was decided upon and was not provided with a copy of her settlement agreement. Ms. Browning refused the settlement offer initially presented to her. The day she received her second settlement check, Ms. Browning was told that the attorneys involved in the case may want to donate settlement funds to charity. Ms. Browning informed the representative she met with that she preferred to donate funds to her own charities. Ms. Browning was not advised that any expenses were deducted from her settlement funds.

131. Plaintiff Teresa Duff was not informed of the manner in which her settlement amount was decided upon and was not informed that she had a right to reject the settlement offer and proceed to trial. She was warned not to discuss her settlement and was told she could go to jail if she did. Ms. Duff did not consent to any settlement funds being donated to charity.

Ms. Duff was never informed of the total amount of the settlement with the pharmaceutical companies and was never informed of the creation of a trust or nonprofit corporation. Ms. Duff received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

132. Plaintiff Leslie Minton was never informed of the manner in which her settlement amount was decided upon and flatly rejected the initial offer she was presented with and refused to sign the settlement agreement presented to her. Ms. Minton was never informed she could opt out of the settlement and proceed to trial. She was told that "left over" funds may be donated to charity but her approval was not requested. Ms. Minton received two settlement checks. She was not informed that any expenses were deducted from her settlement funds.

133. Plaintiff Raymond Parker was not informed of the manner in which his settlement amount was decided upon and refused to accept the settlement amount initially offered. He received a second settlement check after being told that "additional funds had become available". Mr. Parker requested a better explanation of how those funds were acquired but was none was provided. Mr. Parker requested a copy of his settlement agreement but his request was denied on the ground that the document was confidential. Mr. Parker was informed that there may be a minor amount of settlement funds left over and that the attorneys may want to donate those funds to charity. Mr. Parker was not asked to approve any donation to charity. Mr. Parker was never informed that a trust or nonprofit corporation was created by the defendants. Mr. Parker was not informed of the amount of the overall settlement, the manner in which his

settlement amount was decided upon or the amount of settlement funds transferred to the nonprofit corporation. He was not advised that any expenses were deducted from his settlement funds.

134. The Plaintiffs in Paragraph 46 had settlement experiences that are similar to those of the specific Plaintiffs named above. Approximately one-hundred and three (103) of these Plaintiffs were told that they could go to jail or prison if they discussed their settlement with anyone and the others were told that they could be sued, fined and/or required to pay their settlement money back. Many of these Plaintiffs have felt threatened and distraught because they were warned not to disclose the amount of their settlement to their spouses or children. Some were told not to deposit their settlement check in the bank where they regularly do business and others were directed to specific financial brokerage firms to deposit their check. All of these Plaintiffs were told, if anything, that their attorney may donate funds to charity if there were any left over but that the amount would be small, or "odd cents", "1.00", $10,00, "no more than $25.00", an amount "not worth the postage" to send, or "not worth the drive" to pick up, or "an amount so small that it would cost more to distribute".

COUNT I

(Breach of Fiduciary Duty)

135. Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1-134 as if fully set forth herein.

136. An attorney-client fiduciary relationship existed between each of the Plaintiffs and each of the Attorney Defendants as Attorney Defendants knowingly and willingly placed themselves

in a unique position of trust and confidence with respect to the Plaintiffs and the Plaintiffs placed their complete trust and confidence in the Attorney Defendants and in their ability to faithfully and honestly perform their duties.

137. The Attorney Defendants were at all times obligated to act faithfully and honestly and to refrain from misrepresenting or failing to disclose material information concerning the settlement and the handling, distribution and administration of the settlement funds.

138. As detailed previously, the Attorney Defendants breached their fiduciary duties to Plaintiffs, e.g., by failing to provide Plaintiffs with necessary and legally-required information regarding the Settlement Agreement's terms and by misappropriating for their own use and/or otherwise exercising dominion and control over Settlement Proceeds that belonged to the Plaintiffs, and/or aided and abetted each others' breaches of fiduciary duty to Plaintiffs by failing to call attention to the other Attorney Defendants' actions.

139. As a result of the Attorney Defendants' breaches of their fiduciary duties, Plaintiffs were damaged in an amount in excess of the jurisdictional limits of the Court and Plaintiffs are entitled to remedies including but not limited to a compensatory damages award, disgorgement or forfeiture of all attorneys' fees – contracted-for and otherwise – taken by the Attorney Defendants from the Settlement Proceeds.

140. The Attorney Defendants' breaches of fiduciary duties were committed in bad faith and with malice, oppression and with reckless indifference to the rights of the Plaintiffs for which Plaintiffs are entitled to recover punitive damages in addition to compensatory damages.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STANLEY M. CHESLEY,	
Plaintiff,	**Case No. 1:15-cv-83**
v.	**Judge Peter C. Economus**
ANGELA M. FORD,	**OPINION AND ORDER**
Defendant.	

Plaintiff Stanley M. Chesley, an Ohio citizen, filed this case on January 6, 2015 in the Court of Common Pleas for Hamilton County, Ohio against Defendant Angela M. Ford, Esq., a Kentucky citizen, and Defendant Unknown Respondents. On February 5, 2015, Ford removed the case to this Court on the basis of diversity jurisdiction. While it is undisputed that some of the Defendant Unknown Respondents are Ohio citizens, and therefore not diverse with Plaintiff Chesley, Ford relied on 28 U.S.C. § 1441(b)(1), which states that "the citizenship of defendants sued under fictitious names shall be disregarded" for the purpose of determining diversity jurisdiction." (Doc. 1.) On March 6, 2015, Chesley filed a motion for leave to file an amended verified petition, stating that "it provides evidence that (i) several previously sued but not specifically identified 'Unknown Respondents' are Ohioans, and (ii) Ford has had multiple contacts with Ohio for several years arising directly from her activity described in the Petition." (Doc. 19 at 1.) This matter is before the Court on Chesley's motions for leave to amend his petition (doc. 19) and to remand this matter to state court (doc. 10). For the following reasons, the Court **GRANTS** both motions.

Pursuant to 28 U.S.C. § 1447(e), "[i]f after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court." The Court "possess[es] discretion in determining whether to deny joinder under § 1447(e)," and considers the following factors:

(1) the defendant's interest in selecting a federal forum;

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(2) the extent to which the purpose of the amendment is to defeat jurisdiction;

(3) whether the plaintiff was dilatory in seeking the amendment;

(4) whether the plaintiff will be injured significantly if the amendment is not allowed;

(5) any other factors bearing on the equities.

Shaffer v. DaVita Sw. Ohio Dialysis, No. 3:13-cv-232, 2013 WL 5366090, at *2 (S.D. Ohio Sept. 24, 2013) (citing *Kunkel v. CUNA Mut. Ins. Soc'y*, No. 2:11-cv-492, 2011 WL 4948205, *1–2 (S.D. Ohio Oct.18, 2011)); *see also Curry v. U.S. Bulk Transport, Inc.*, 462 F.3d 536, 541 (6th Cir. 2006).

1. Defendant's Interest in Federal Forum

Ford correctly argues that her interest in retaining the federal forum weighs against granting Chesley's motion, and the Court gives this factor due consideration.

2. Purpose of Defeating Jurisdiction

Ford argues that "Chesley's primary purpose in amending his Complaint is to destroy diversity." (Doc. 26 at 6.) Chesley argues that "[t]he purpose of [his] request to amend the Complaint is not to defeat federal jurisdiction," but "to clarify that federal diversity jurisdiction never existed." (Doc. 19 at 7.)

As stated above, it is undisputed that some of the Unknown Respondents are Ohio citizens. Chesley states that the Unknown Respondents were not identified by name in his original complaint because he does not know all of their names, and his "inability to identify his current judgment creditors (the Unknown Respondents) is something he hopes to remedy through a state court order." (Doc. 19 at 6–7.)

Defendant Ford argues that Chesley has known the names and addresses of the Unknown Respondents for years, pointing to information provided to Chesley in 2001, 2007, and 2010. (Doc. 26 at 1, 3.) However, according to Chesley, when Ford is asked to identify her clients, she "continues to point to a twelve-year-old settlement grid" which contains 414 names. However,

Ford has listed 463 names in her various filing over the years, and she has stated there are 381 or 382 current judgment creditors. (Doc. 19 at 7 n.5.)

The Court finds that Chesley's primary purpose in amending his complaint is to destroy the Court's apparent diversity jurisdiction over the original complaint. However, due to the challenges facing Chesley in naming each judgment creditor, and the fact that Ford obviously knew prior to removing this case that some of the Unknown Respondents are Ohio citizens, the Court finds that this factor does not weigh heavily against the motion to amend.

3. Dilatory in Seeking Amendment

Ford argues that this factor weighs against Chesley's motion because the motion was filed after the case was removed.[1] However, that circumstance is what triggers the analysis under 28 U.S.C. § 1447(e); it is not a fact weighing against amendment.

This case, including the filing of the motion to amend, has moved quickly. Chesley filed his complaint on January 6, 2015, Ford removed the case on February 5, 2015, and Chesley filed his motion for leave to amend on March 6, 2015. Considering this timeline, the Court finds that this factor weighs in Chesley's favor.

4. Injury to Plaintiff

Chesley argues, and this Court agrees, that he "would be significantly injured if he is not allowed to include as respondents his current judgment creditors (including the Ohio Respondents)." Without the judgment creditors as defendants in this case, "Chesley cannot be granted the relief to which he is entitled; Chesley's judgment creditors can simply get new counsel and not be bound by the relief granted to Chesley against Ford." (Doc. 19 at 8.)

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[1] Ford cites an unpublished case from the Eastern District of Kentucky, *Cooper v. Thames Healthcare Grp., LLC*, No. CIV. 13-14-GFVT, 2014 WL 941925, at *5 (E.D. Ky. Mar. 11, 2014). In *Cooper*, the court found that this factor was "somewhat neutral" where the plaintiff knew of the additional parties at the time of the original complaint, and filed the motion to amend when the case was still "in its infancy," before the filing of a scheduling order and prior to discovery. Ford's cited case is unhelpful to her.

Ford responds that Chesley will not be significantly injured by the denial of his motion because his amended complaint is "futile" and does not assert a valid cause of action against either Ford or the judgment creditors. (Doc. 26 at 10–11.) While Ford states that "Chesley's claims against any of his judgment creditors are . . . subject to dismissal," she also states that "Chesley will likely need to engage in multiple lawsuits" against individual judgment creditors. (Doc. 26 at 10–11.) However, the issue of whether Chesley has asserted a valid cause of action against each defendant is a matter to be decided on a different motion, and by a Court with jurisdiction over this matter. The Court finds that this factor weighs in favor of granting the motion.

Considering the above factors, this Court concludes that its discretion under 28 U.S.C. § 1447(e) is better exercised in granting Plaintiff's motion for leave to amend. Because the Court grants leave for Plaintiff to amend his complaint to identify a non-diverse defendant, complete diversity is destroyed and the case must be remanded. *See Curry*, 462 F.3d at 541. Therefore, the Court **GRANTS** Plaintiff's motions to amend (doc. 19) and to remand (doc. 10). The Court hereby **ORDERS** that this case be **REMANDED** to the Court of Common Pleas for Hamilton County, Ohio.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

FILED
BOONE CIRCUIT/DISTRICT COURT
SEP 16 2015
DIANNE MURRAY, CLERK
BY: ____ D.C.

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT, DIVISION III
CASE NO. 05-CI-436

MILDRED ABBOTT, et al. PLAINTIFFS

v.

STANLEY M. CHESLEY, et al. DEFENDANTS

DEFENDANT CHESLEY'S OPPOSITION TO PLAINTIFF'S MOTION TO EXECUTE

Plaintiff's Motion To Execute (the "Motion") filed by counsel Angela M. Ford ("Ford") is a request that the Court declare that certain possible income streams of Waite Schneider Bayless & Chesley Co., LPA ("WSBC") may be hijacked by Ford to satisfy the judgment against Defendant Stanley M. Chesley ("Chesley").[1] Specifically, the Motion concerns two contingent income sources of WSBC: the Castano Distribution (tobacco) Trust; and litigation in Colorado commonly known as "Rocky Flats."

The Motion's premise is that Chesley so controlled WSBC that the separate existence of the two legal entities should be ignored.

The Motion must be denied.

UNDISPUTED FACTS

1. WSBC is a legal entity formed and existing in Ohio.

2. Under Ohio law, Chesley cannot now own WSBC. WSBC is wholly owned by an Ohio resident lawyer, Thomas Rehme, trustee ("Rehme"). That ownership predates the Court's judgment against Chesley by over a year.

3. WSBC and Chesley maintain separate bank accounts.

[1] See Ford's proposed Order that was presented to Chesley's counsel on September 14, 2015. Pursuant to the Court's September 9, 2015 Order, this opposition filing was due on September 16, 2015.

EXHIBIT
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exhibitsticker.com

4. WSBC has several creditors including current employees, a landlord, the Internal Revenue Service, past employees, and an underfunded pension plan.

5. Chesley injected millions of dollars of loans and capital contributions into WSBC at a time when WSBC's revenues were insufficient to pay its expenses. The vast majority of Chesley's support for WSBC was provided while Chesley owned WSBC.

6. WSBC may receive income for legal work previously performed by its employees. Chesley's right to receive any portion of those funds depends on several contingencies, including some contingencies related to WSBC's financial condition.

7. Ford presented to the Court as Exhibit 5 in support of the Motion a few selected loan documents related to a transaction in which WSBC and Chesley were co-borrowers from Fifth Third Bank.[2] At least four of these documents are executed by Rehme on behalf of WSBC.[3]

8. Exhibit 6 presented by Ford includes some e-mails she says show Chesley's involvement in the affairs of WSBC. The e-mail was written using Chesley's name on the e-mail address; but, the text indicates the e-mail was written by "Melissa," one of WSBC's employees.

ADDITIONAL FACTS

1. Attached to her Supplemental Memo in Support of the Motion, Ford presented to the Court copies of 64 checks drawn on WSBC's Fifth Third Bank account and asserted that Chesley signed all 64 on behalf of WSBC; that assertion is wrong. Chesley's signature appears on only 9 checks. Chesley signed only about 14 % of the checks. At least one of the 64 checks was signed by Rehme. The majority of the checks were signed by Mr. Steven C. Horner ("Horner").

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[2] Ford argues that because Chesley was involved in an email communication to the person who was distributing a WSBC fee, he was dictating how WSBC fees were being used. Ford is wrong. Because Chesley was a co-borrower with WSBC on the Fifth Third Bank loan being paid, it is not surprising that Chesley made certain the loan was paid. Chesley was merely ensuring that his own personal liability was satisfied.

[3] The last document in Exhibit 5 is the Fourth Amendment To Loan Documents. Ford did not attach the signature page for that document. In fact, Rehme executed this document for WSBC and the attachment thereto, see attached.

Horner is a Certified Public Accountant who works for WSBC. The signatures "Stan Chesley" and "Steven C. Horner" are easily confused on small copies of checks because both start with the letters "St" and have a capital "C".[4]

2. WSBC has (a) two part-time employees, (b) business partners (e.g. landlord, document storage facilities and legal malpractice insurer), (c) an underfunded pension trust, (d) government claimants (e.g. the Internal Revenue Service and State of Ohio employment regulation bureaus), (e) a secured lender and (f) other obligees. Each of those entities' claim on WSBC's income and assets have priority over any right Chesley (or his creditors) may have to the income and assets of WSBC.

3. Certain former employees of WSBC wrote checks to WSBC to fund those persons' health insurance under COBRA arrangements. Ford's exhibit included copies of those checks. WSBC is obligated to forward those amounts and any other pass-through monies to the proper party and cannot pay that money to Chesley nor permit those funds to be paid to Ford.

4. WSBC moved its account to North Side Bank in August or September of 2014.[5] A WSBC corporate resolution executed by Rehme made Rehme and Horner the only signatories of checks drawn on that account.

5. Exhibit 7 presented to the Court by Ford includes 27 pages of North Side Bank statements. In all those pages, there is <u>one</u> reference to a transfer "per Stanley Chesley."

6. Exhibit 9 presented to the Court by Ford is a January 12, 2012 letter signed by Chesley on behalf of WSBC. This is <u>before</u> the Wind-Up Agreement and so it was natural that Chesley signed for WSBC.

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[4] Ford's exhibit includes checks drawn on Chesley's personal account that are signed by Chesley. Comparing Chesley's signatures on those checks with the checks drawn on WSBC's account will permit the Court to confirm that Chesley actually signed a very small percentage of WSBC's checks.

[5] All of the check copies presented by Ford predate that change and thus do not reflect the current situation at WSBC.

7. Chesley, Fifth Third Bank and Clark Schaeffer Hackett & Co. (WSBC's accountants) have produced to Plaintiffs thousands of pages of information concerning WSBC's financial condition. WSBC required millions of dollars from Chesley in 2009, 2010, 2011, 2012 and 2013 to meet WSBC's financial obligations in those years.

8. It is not uncommon for closely held businesses and their owner to be joint borrowers on a commercial loan.

9. No additional legal fees will be received by WSBC or Chesley from the Fannie Mae litigation discussed in the Motion. The Fannie Mae litigation was settled before judgment was entered against Chesley and fees received before Ford's discovery was propounded, so it was not a failure to disclose a source of future fees as Ford suggests.

PLAINTIFFS ASKED FOR DEPOSITIONS BUT NOW IGNORE THEM

As the moving party, Plaintiffs have the burden of presenting real evidence in support of the Motion.[6] Instead of evidence, the Motion's exhibits are a collection of unverified and unexplained documents. The Motion is not supported by any evidence and instead relies on arguments of counsel presented as "facts" that are just wrong. Ironically, many of these errors can be corrected and real evidence generated if Ford completes the work she has started. Six examples:

(i) many of the Motion's errors relate to Fifth Third Bank and documents signed by a bank employee, Mr. Chris Ramos. Ford sought and received from this Court a commission[7] to take Mr. Ramos' deposition. If Ford takes that

[6] As claimants in a tort case, Plaintiffs have the ultimate burden of proof and that does not change. *Bennett v. Mack's Supermarket, Inc.*, 602 S.W.2d 142 (1979). The general rule is that a movant has the burden of going forward with evidence on the issue presented and nothing in the Motion asserts that rule is altered herein. *Simpson v. Graves*, 451 S.W.2d 399 (Ky. Ct. App. 1970).

[7] All the commissions discussed herein were granted by this Court on August 25, 2015.

deposition, the errors in her understanding of the Fifth Third documents will be corrected[8];

(ii) other errors in the Motion relate to the Castano Distribution Trust and documents signed by the trustee, Mr. Chris Guidroz. Ford sought and received from this Court a commission to take Mr. Guidroz's deposition. If Ford takes that deposition, the errors in her understanding of the Castano Trust documents will become clear;

(iii) the Motion has many errors concerning WSBC and documents signed by its trustee, Rehme. Ford sought and received from this Court a commission to take Rehme's deposition. If Ford takes that deposition, the errors in her understanding of WSBC will be clear;

(iv) the Motion refers to certain litigation previously handled by WSBC and then wrongly describes fees that litigation might generate. The Motion asserts that former WSBC attorneys / employees now at the law firm of Markovits, Stock & Demarco ("MSD") are involved in that litigation. Ford sought and received from this Court a commission to take depositions related to MSD. If Ford takes that deposition, her errors will be corrected;

(v) the Motion refers to certain litigation in Colorado and then wrongly describes the probable future course of that litigation. Louise Roselle, Esq. is the former WSBC lawyer who principally handled the litigation for WSBC. Ford sought and received from this Court a commission to take Ms. Roselle's deposition. If Ford takes that deposition, the errors in her understanding of the Colorado litigation will be corrected; and

(vi) despite bringing motions to this Court concerning the deposition of Chesley, Ford has never deposed Chesley. Agreed deposition dates were unilaterally cancelled by Ford. 8 months have passed since those cancelled deposition dates and Ford has done nothing to obtain Chesley's testimony. Chesley might also provide real evidence on factual issues raised by the Motion.

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[8] Fifth Third Bank produced to Ford a document containing an analysis prepared by Fifth Third Bank showing that WSBC lost over $30,000,000 between 2009 and 2012. These losses were funded by Chesley.

Ford obviously does not want real facts presented by knowledgeable persons for consideration by the Court.

PLAINTIFFS HAVE ALREADY ATTACKED WSBC'S ASSETS DISCUSSED IN FORD' PROPOSED ORDER GRANTING THE MOTION

The Motion is a request for equitable relief – a declaration that Chesley controls WSBC and that he must transfer to Ford assets of a separate legal entity, WSBC, to satisfy debts not owed by WSBC. As such, it cannot be pursued if Plaintiffs have an adequate remedy at law. Plaintiffs' actions prove that such relief exists: Plaintiffs have made filings using the Uniform Enforcement of Foreign Judgments Act ("UEFJA") in an effort to collect the Castano tobacco trust distributions and the Rocky Flats legal fees, if any.

Plaintiffs made UEFJA filings in Louisiana, Nevada and Colorado.[9] After those filings, Plaintiffs issued a garnishment writ to the Castano trust in Nevada.[10] There can be no doubt that Plaintiffs have a legal remedy to reach the assets discussed in the Motion if Plaintiffs are entitled to reach those assets.

The Rocky Flats litigation is pending in Colorado where Plaintiffs have made a UEFJA filing. Plaintiffs may have the right to execute in Colorado against any monies that may be payable.

WSBC HAS A RIGHT TO BE HEARD

WSBC is not a party to this litigation and the Court does not have jurisdiction over WSBC.[11] That fact alone prevents granting of the Motion. The Motion seeks to make WSBC's

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[9] Chesley disputes the adequacy of Plaintiffs' filings in those three states and believes the judgments in those states are void.

[10] Plaintiffs' garnishment writ was addressed to the Castano trust and the trust's response specifically addressed whether the trust funds are payable to WSBC or Chesley. Any issues raised by the Motion can be addressed where a result can be entered by a court with jurisdiction over the Castano trust.

[11] The statute of limitations on any claim against WSBC by Plaintiffs has long since expired.

potential future income subject to the debts of Chesley to the detriment of WSBC and WSBC's creditors named above.

It is axiomatic that a legally formed and existing entity [WSBC] whose assets might be diverted to pay the liabilities of a separate legal entity [Chesley] has a due process right to be a party to the litigation that might yield that result. See *Mannucci v. Sister of the Sacred Heart of Jesus*, 94 A.D.3d 471 (N.Y. Supreme Court Appellate Division 2012) and *Intelligent Product Solutions v. Morstan General Agency*, 45 Misc.3d 1225 (N.Y. Sup. Ct., Suffolk County, 2014) for specific cases holding that an entity whose separate legal existence might be compromised by an alter ego claim has due process rights that must be protected.

For a Kentucky case that states a similar standard on when entities have a due process right to be parties to litigation see *Liquor Outlet, LLC v. Alcoholic Beverage Control Board*, 141 S.W. 3d 178 (Ky. Ct. App. 2004) wherein the court discusses when a nonparty is necessary before litigation can proceed.

The issues addressed in the Motion are already at play in Nevada. Using the domesticated judgment against Chesley, Plaintiffs sought to seize the July 2015 Castano trust distribution payable to WSBC. WSBC is acting in the Nevada action between Plaintiffs and Chesley to assert its right to receive the Castano trust distributions. Accordingly, the Nevada proceeding initiated by Plaintiffs UEFJA and garnishment filings will address whether Plaintiffs can seize the Castano trust distributions; any issue raised by the Motion can be heard in Nevada where all the required parties are already engaged. Because they were previously joined elsewhere, as a matter of law, the issues in the Motion cannot be heard in this Court. *Akers v. Stephenson*, 469 S.W.2d 704 (Ky. Ct. App. 1970) ("It is a well settled rule that where the parties and the subject matter are the same, once a court of concurrent jurisdiction has begun the

exercise of that jurisdiction over a case, its authority to deal with the action is exclusive and no other court of concurrent jurisdiction may interfere with the pending proceedings").[12]

LIMITS ON THIS COURT'S JURISDICTION

The Motion seeks what is essentially a new judgment, this time against WSBC. That is why new litigation in a proper forum is the appropriate place for Plaintiffs to seek the relief sought in the Motion. Moreover, Plaintiffs already have two other ready forums for that litigation to occur – Nevada or Ohio – where Plaintiffs, Chesley and WSBC are parties.

If, however, the Court chooses to consider the relief sought by the Motion in this litigation, Kentucky law limits the Court's power to amend the existing final judgment against Chesley by adding WSBC as a judgment debtor and subjecting the assets of WSBC to Plaintiffs' judgment against Chesley. CR 52.02 requires that the Motion seeking that amendment had to be filed within 10 days of the entry of the judgment. That deadline is past.

As the Court knows, the judgment against Chesley is on appeal to the Kentucky Court of Appeals. As a result, this Court is without jurisdiction to alter that judgment by adding WSBC as a judgment debtor and subjecting the assets of WSBC to Plaintiffs' judgment against Chesley. *Penrod v. Penrod*, 489 S.W.2d 524 (1972) ("However, we can see no reason at this time for changing those rules which provide that after an appeal has been perfected the trial court may not change or modify the judgment forming the basis of the appeal.")

The Court does not have the authority to amend or alter the current judgment against Chesley.

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[12] Alternatively, any legal and factual issues raised by the Motion are pending in the Ohio action where Plaintiffs, Chesley and WSBC are already parties. The separateness of Chesley and WSBC has already been a factual issue in Ohio that was decided by the Ohio court in connection with WSBC's motion to intervene and obtain other relief. The record in Ohio (including Ms. Ford's multiple filings) reveal that any factual or legal issues raised by the Motion were pending in Ohio before the Motion was filed.

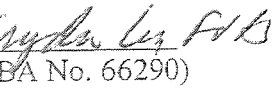
CONCLUSION

1. The Motion must be denied because WSBC is not a party to this litigation and the Court does not have jurisdiction over that Ohio entity. WSBC has legal rights that cannot be determined in this litigation.

2. The Motion cannot be granted because the Court has no jurisdiction to amend, alter or change the judgment against Chesley and the Motion seeks just that relief – amend the judgment to attack the assets of a separate legal entity, WSBC.

3. The Court should not entertain any legal or factual issues raised by the Motion because two better forums exist. WSBC, Chesley and Plaintiffs are already parties and the issues presented by the Motion are ripe for decision in both forums. In fact, this Court cannot entertain legal or factual issues that are already at issue in either of those forums.

4. In the alternative, the Motion should be passed until Plaintiffs can present evidence from competent witnesses – specifically, at least, the six witnesses whose depositions Ford has already represented are needed in this matter.



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Counsel for Defendant Stanley M. Chesley

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served via First Class U.S. Mail, postage prepaid, (unless otherwise indicated) this 16 day of September, 2015 on:

Via electronic and U.S Mail
amford@windstream.net
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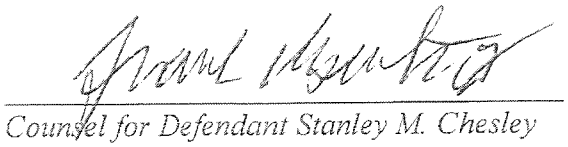

Counsel for Defendant Stanley M. Chesley

Execution Version

FOURTH AMENDMENT TO LOAN DOCUMENTS

THIS FOURTH AMENDMENT TO LOAN DOCUMENTS (this "Amendment"), is dated to be effective as of July 15, 2014 (the "Effective Date"), by and among **WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A.**, an Ohio professional corporation (the "Firm"), **STANLEY M. CHESLEY**, an individual residing in the state of Ohio (the "Individual Borrower" and together with the Firm, each a "Borrower" and, collectively, the "Borrowers"), and **FIFTH THIRD BANK**, an Ohio banking corporation ("Lender"), and is as follows:

Preliminary Statements

A. The Borrowers and Lender are parties to a Credit Agreement dated as of July 30, 2008 (as amended by that certain First Amendment to Credit Agreement, dated to be effective as of July 15, 2009, as amended by that certain Second Amendment to Credit Agreement, dated to be effective as of July 16, 2010, as amended by that certain Third Amendment to Credit Agreement, dated to be effective as of March 31, 2011, as amended by that certain Amendment to Loan Documents dated as of December 1, 2011, as amended by that certain Second Amendment to Loan Documents dated as of January 12, 2012, as amended by that certain Third Amendment to Loan Documents dated as of January 15, 2014, as amended hereby, and as the same may be otherwise amended, restated or modified, the "Credit Agreement"). Capitalized terms which are used, but not defined, in this Amendment will have the meanings given to them in the Credit Agreement.

B. Lender and Borrowers have agreed to amend the Credit Agreement and other Loan Documents to (i) extend the maturity date of the credit facility; and (ii) make certain other amendments to the Credit Agreement and certain of the other Loan Documents. Lender and the Borrowers agree to amend the Credit Agreement and the other Loan Documents to reflect such modifications, all on the terms, and subject to the conditions, of this Amendment.

Statement of Agreement

In consideration of the mutual covenants and agreements set forth in this Amendment, and for other good and valuable consideration, Lender and each Borrower hereby agree as follows:

1. Amendments to Loan Documents. As of the Effective Date, the Credit Agreement and, as applicable, the other Loan Documents, are hereby amended as follows:

1.1 The following definition in Section 1.1 of the Credit Agreement is hereby amended and restated as follows:

"Termination Date" means the earlier of (a) November 15, 2014 and (b) the date on which the entire outstanding balance under the Note shall become

due pursuant to the provisions hereof (whether as a result of acceleration by Lender or otherwise).

1.2 Section 4.3(e) of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

"(e) [Reserved;]" [illegible]

1.3 Section 4.16 of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

"4.16 Prepayments. In addition to making the regularly-scheduled payments required under the Note and any other payments required under the Loan Documents, Borrowers shall, immediately upon their receipt thereof, pay to the Lender the first $3,500,000.00 of Fannie Mae Expense Reimbursements received by either Borrower, to be applied by the Lender to the payment of the Obligations in such order as determined by the Lender in its sole discretion. The Lender understands that the subsequent $2,183,546.26 of Fannie Mae Expense Reimbursements received by either Borrower may be used by the Borrowers in their business discretion. Any payments, income, fees, reimbursement of expenses, or any other amounts received by either Borrower in connection with the Fannie Mae Litigation other than those described in the first two sentences of this Section 4.16, including, without limitation, any and all of the Fannie Mae Attorneys' Fees received by either Borrower, shall be immediately (but in any event within three (3) Business Days of receipt by such Borrower thereof), directly and entirely paid and delivered to the Lender, in whatever form received, and duly endorsed by such Borrower payable to the order of the Lender, if applicable, and applied against the Obligations in such order as determined by the Lender in its sole discretion until such time as the Obligations have been paid in full."

1.4 The last paragraph of Section 6.2 of the Credit Agreement is hereby deleted in its entirety and replaced with the following: All bankruptcy defaults

"The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 6.1(d), 6.1(e) or 6.1(k), in addition to the remedies set forth above, without any notice to Borrowers or any other Person or any act by the Lender, the Note shall automatically terminate and the Obligations then outstanding, together with all accrued and unpaid interest thereon and all fees and all other amounts due under this Agreement and the other Loan Documents, shall automatically and immediately become due and payable in full, without presentment, demand, protest, or notice of any kind, all of which are expressly waived by Borrowers. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, upon the occurrence of an Event of Default occurring solely as a result of the application of Section 6.1(p), the Lender may not exercise any of its rights and remedies with respect to any Loan

death of SC

Collateral for a period of sixty (60) days from the occurrence of such Event of Default (except with respect to the Loan Collateral provided under the Assignment of Life Insurance Agreements, against which the Lender may exercise any and all of its rights and remedies immediately upon any Event of Default); provided that, for the avoidance of doubt, the foregoing provision shall not preclude the Lender from exercising, or limit the ability of the Lender to exercise, any of its rights and remedies upon any other Event of Default (i.e. other than an Event of Default pursuant to Section 6.1(p)) under any Loan Document that occurs during such sixty (60) day period; provided further, for the avoidance of doubt, that following the end of such sixty (60) day period, the Lender may exercise any of its rights and remedies with respect to any Loan Collateral whether or not the Lender has received any payments under the Assignment of Life Insurance Agreements."

1.5 In the Interest paragraph of the Term Loan Note, the text "6.00%" is hereby deleted and replaced with the text "7.75%".

2. **Existing Defaults; Forbearance Period; Amendments to Third Amendment to Loan Documents**. On January 15, 2014, the Borrowers and Lender entered into that certain Third Amendment to Loan Documents (the "Third Amendment to Loan Documents") pursuant to which, among other things, Lender agreed to forbear from the exercise of rights or remedies provided in the Loan Documents against any Borrower solely with respect to the Existing Defaults (as defined in the Third Amendment to Loan Documents). As of the Effective Date, Section 2.1 of the Third Amendment to Loan Documents is hereby deleted and shall be replaced by the following:

2.1 **Forbearance Terms.**

2.1.1 *Existing Defaults.* As described in (a) certain letters dated September 20, 2012, October 9, 2012 and June 3, 2014 from Buchanan Ingersoll & Rooney PC, as counsel for PNC Equipment Finance, LLC, delivered to the Individual Borrower in connection with the "Loan" or the "Note", as applicable, referenced therein (the "Airplane Indebtedness"), and (b) Individual Borrower's Compliance Certificate dated November 20, 2013, certain "EVENTS OF DEFAULT" have occurred with respect to the Airplane Indebtedness, which "EVENTS OF DEFAULT" constitute a default under the terms of Indebtedness of the Individual Borrower in excess of $1,000,000, which default gives the creditor thereof the right to accelerate the maturity of such Indebtedness. Each such "EVENT OF DEFAULT" constitutes an Event of Default under Section 6.1(f) of the Credit Agreement, which Events of Default continue to exist under the Credit Agreement and the other Loan Documents as of the Effective Date. The foregoing Events of Default are referred to herein as the "Existing Defaults".

2.1.2 *Forbearance Period.* Subject to the satisfaction of the conditions precedent set forth in this Amendment, Lender agrees that until the expiration of the Forbearance Period (as defined below), Lender will forbear from the exercise of any of its rights and remedies provided in the Loan Documents and pursuant to applicable law (collectively, the "Rights and Remedies") against any Borrower solely with respect to the Existing Defaults; *provided,*

however, the Borrowers shall comply during the Forbearance Period with all limitations, restrictions or prohibitions that would otherwise be effective or applicable under the Loan Documents (including this Amendment) during the continuance of any Event of Default. As used herein, "Forbearance Period" means the period beginning on the Effective Date and ending on the earliest to occur of (the occurrence of clause (A), (B) or (C), a "Termination Event"): (A) November 15, 2014; (B) the occurrence of any Event of Default (other than the Existing Defaults) under any Loan Document, including this Amendment; or (C) the commencement of any enforcement action or acceleration of the Airplane Indebtedness by PNC Equipment Finance, LLC, or any subsequent holder of the note(s) evidencing the Airplane Indebtedness.

2.1.3 *Additionally Reserved Rights.* Without limiting the generality of any of the other terms of this Amendment or any other Loan Document, each Borrower specifically acknowledges and agrees that: (a) this Amendment does not prohibit Lender from exercising any or all of the Rights and Remedies at any time on or after the occurrence of a Termination Event, and (b) notwithstanding anything else to the contrary in any Loan Document, to the extent an Event of Default shall have occurred and be continuing at such time, Lender shall be entitled to exercise any or all of the Rights and Remedies at the end of the Forbearance Period.

3. Reaffirmation of Security. Each of the Borrowers and Lender hereby expressly intend that this Amendment shall not in any manner (a) constitute the refinancing, refunding, payment or extinguishment of the Obligations evidenced by the existing Loan Documents; (b) be deemed to evidence a novation of the outstanding balance of the Obligations; or (c) affect, replace, impair, or extinguish the creation, attachment, perfection or priority of the Liens on the Loan Collateral granted pursuant to any Security Document evidencing, governing or creating a Lien on the Loan Collateral. Each Borrower ratifies and reaffirms any and all grants of Liens to Lender on the Loan Collateral as security for the Obligations, and acknowledges and confirms that the grants of the Liens to Lender on the Loan Collateral: (i) represent continuing Liens on all of the Loan Collateral, (ii) secure all of the Obligations, and (iii) represent valid, first and best Liens on all of the Loan Collateral.

4. Acknowledgment Regarding Other Documents. With the signing of this Amendment, and as a condition of this Amendment, Borrowers will deliver to Lender: (a) a Certificate of President, with all attachments thereto, in form and substance acceptable to Lender; and (b) all other documents, instruments and agreements deemed necessary or desirable by Lender to effect the amendments to Borrowers' credit facilities with Lender contemplated by this Amendment.

5. Representations. To induce Lender to accept this Amendment, each Borrower hereby represents and warrants to Lender as follows:

5.1 Each Borrower has full power and authority to enter into, and to perform its obligations under, this Amendment, and, in the case of the Firm, the execution and delivery of, and the performance of its obligations under and arising out of this Amendment have been duly authorized by all necessary corporate action.

5.2 This Amendment constitutes the legal, valid and binding obligations of Borrowers, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally.

5.3 Borrowers' representations and warranties contained in the Loan Documents are complete and correct as of the date of this Amendment with the same effect as though such representations and warranties had been made again on and as of the Effective Date.

5.4 As of the Effective Date, no Event of Default has occurred and is continuing under the Credit Agreement other than the Existing Defaults.

5.5 All information in the Schedules and Exhibits to the Credit Agreement and other Loan Documents remains true and correct as of the Effective Date.

6. Conditions Precedent. This Amendment and the agreements of Lender described herein will not be effective unless and until Borrowers shall have received from Borrower such additional information, materials and Loan Documents as Lender may reasonably request, including those on the closing checklist prepared by Lender's counsel.

7. Amendment Fee; Note Fee; Costs and Expenses. As a condition of this Amendment, (i) Borrowers will pay to Lender an amendment fee equal to $25,000 (the "Amendment Fee"), payable in full and fully-earned on October 31, 2014, provided that if the Obligations are indefeasibly paid in full in cash prior to October 31, 2014, then the Amendment Fee shall be waived by Lender, (ii) Borrowers will pay to Lender a note fee in the amount of $400.00, payable in full and fully-earned on the Effective Date, and (iii) Borrowers will pay and reimburse Lender, promptly upon Lender's request, for all of the costs and expenses incurred by Lender in connection with this Amendment, including, without limitation, reasonable attorneys' fees and expenses. Lender agrees that it will provide Borrowers (a) an estimate of its legal fees in connection with this Amendment, and (b) a copy of the bill with respect to such legal fees, including hours and rates with respect to the legal services performed, in each case, prior to the payment by Borrowers of such fees.

8. Entire Agreement. This Amendment, together with the other Loan Documents, sets forth the entire agreement of the parties with respect to the subject matter of this Amendment and supersedes all previous understandings, written or oral, in respect of this Amendment.

9. Release. Each Borrower hereby releases Lender from any and all liabilities, damages and claims arising from or in any way related to the Obligations or the Loan Documents which may have arisen or come into existence prior to the Effective Date.

10. Default; Loan Document. Borrowers agree that (a) any default by a Borrower in the payment or performance when due (subject to any applicable cure period, if any) of any of such Borrower's covenants, obligations and agreements under this Amendment or under any Loan Document shall constitute an Event of Default under the Credit Agreement, and (b) this

Amendment and any other amendment to the Credit Agreement shall constitute a Loan Document for purposes of the Credit Agreement and other Loan Documents.

11. **Continuing Effect of Loan Documents**. Except as expressly amended hereby, all of the provisions of the Loan Documents are ratified and confirmed and remain in full force and effect.

12. **One Agreement; References; Fax Signature**. Each of the Loan Documents, as amended by this Amendment, will be construed as one agreement. All references in any of the Loan Documents to any Loan Document modified hereby will be deemed to be references to such Loan Document as amended by this Amendment. This Amendment may be signed by facsimile signatures or other electronic delivery of an image file reflecting the execution hereof or thereof, and, if so signed: (a) may be relied on by each party as if the document were a manually signed original and (b) will be binding on each party for all purposes.

13. **Captions**. The headings to the Sections of this Amendment have been inserted for convenience of reference only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions.

14. **Counterparts**. This Amendment may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

15. **Governing Law**. This Amendment shall be governed by and construed in accordance with the internal laws of the State of Ohio (without regard to Ohio conflicts of law principles).

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Borrowers and Lender have duly executed this Amendment, in the case of the Firm and Lender, by their duly authorized officers, as of the Effective Date.

WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A.

By: Thomas F Rehme
Name: Thomas F. Rehme
Title: President

STANLEY M. CHESLEY

By: Stanley M. Chesley
Stanley M. Chesley, an individual

FIFTH THIRD BANK

By:
Name: Christopher R. Ramos
Title: Vice President

FIFTH THIRD BANK SETTLEMENT STATEMENT

FIFTH THIRD BANK

Borrower # 1	Waite, Schneider, Bayless, and Chesley Co., LPA et al		
DISBURSEMENT SUMMARY		Amount	Code
Disbursement Entity #1	Fifth Third Bank	$400.00	A
Total Disbursements		$400.00	
GROSS PROCEEDS		Amount	
1. Note	0905805212-26	Full Amount: $8,224,215.70	
2. Amount Received from Borrower / Up Front Fees ("Good Faith Estimate")			$400.00
3. Amount Due from Borrower			
	Check enclosed		
	Debit Account #		
	Draw on Loan		
X	Bill Customer via AFS		
4. Total Gross Proceeds			$400.00

EXPENSES AND DISBURSEMENTS		Amount	Code
		$400.00	A
5. Note Processing Fee			
6. Renewal Fee			
7. Upfront Commitment Fee Paid			
8. Covenant Violation Waiver Fee			
9. Forbearance Fee			
10. Derivative Fee			
11. SBA - Guarantee Fee			
12. SBA - Loan Packaging Fee			
13. Flood Certification Fee			
14. UCC Search Fee			
15. UCC Filing Fee			
16. Vehicle Title Fees			
17. Certificate of Good Standing & Articles of Incorporation			
18. Attorney Fee payable to:			
19. Survey Fee payable to:			
20. Appraisal/Valuation Fee payable to:			
21. Appraisal/Valuation Review Fee			
22. Environmental Fee payable to:			
23. Environmental Review Fee		$0.00	
24. Recording Fees			
MTG.			
AORL			
UCC			
DEED			
MISC.			
		Amount	Code
25. Title Insurance Fees (Commitment) payable to:			
26. Closing Fee - Title Company payable to:			
27. Title Search Fee payable to:			
28. CLAS Recording Service Fee payable to:			
29. Non CLAS Recording Service Fee payable to:			
30. Intangible Recording Tax (Georgia Only) payable to:			
31. Intangible Tax (Florida Only) payable to:			
32. Documentary Stamp Tax (Florida Only) payable to:			
33. Indebtedness Tax (Tennessee Only) payable to:			
34. Internal Payoff or Reductions to Other Obligations	$0.00		
35. Other Disbursements Authorized by Borrower (incl. external payoffs)	$0.00		
36. Total Expenses and Disbursements			$400.00

NET PROCEEDS		Amount
37. Total Gross Proceeds Shown - Item # 4		$400.00
38. Less Total Expenses and Disbursements - Item # 36		-$400.00
39. Funds FROM/TO	"OBLIGOR/OBLIGATION - BORROWER NAME"	$0.00
40. Total Net Proceeds		$0.00
41. Amount To Be Deposited Into Borrower's Account #:		$0.00
42. Amount To Be Wired Into Borrower's Account #:		$0.00
43. Amount To Be Disbursed to Borrower By Check #:		$0.00
44. Total Net Proceeds (Note: Should be equal to zero)		$0.00

Borrower(s) hereby authorizes Fifth Third Bank to make for and on behalf of Borrower(s) the expenditures and disbursements listed above and approve same for payment.

ACCEPTED:

FIFTH THIRD BANK

Lender CC.#	Lender Name	Lender Title	Signature and Date:
4113	Chris Ramos	Vice President	

BORROWER SIGNATURE(S)

Borrower Name	Signer Name	Signer Title	Signature and Date:
Waite, Schneider, Bayless, and Chesley Co., LPA et al	Thomas F. Rehme	President	Thomas F Rehme 8/5/2014

Respectfully submitted,

/s/ Marion H. Little, Jr.
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Attorneys for Proposed Intervenor
Stanley M. Chesley

CERTIFICATE OF SERVICE

The undersigned certifies that on this 5th day of October, 2015, a true and correct copy of the foregoing was served via U.S. Mail, first class postage prepaid, and electronic mail pursuant to Civil Rule 5(B)(2)(c) and (f) on:

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the Honorable Robert P. Ruehlman

/s/ Marion H. Little, Jr.
Marion H. Little, Jr. (0042679)