

LOFARO & REISER, L.L.P.
55 Hudson Street
Hackensack, New Jersey 07601
(201) 498-0400
Attorneys for Defendant, Transnational Communications International

L&K DENTAL P.A., and DONG HYUN
LEE,

Plaintiffs,

vs.

RECEIVABLE MANAGEMENT SERVICE
a/k/a GLOBAL COLLECTION
COMPANY; TRANSNATIONAL
COMMUNICATIONS INTERNATIONAL;
and RDS SOLUTIONS,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO: BER-L-9555-09

CIVIL ACTION

CERTIFICATION OF SERVICES

Trial Date: February 7, 2011

GLENN R. REISER, being of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a member of the firm LoFaro & Reiser, L.L.P., counsel for defendant, Transnational Communications International (“TNCI”).
2. I submit this Certification pursuant to R. 4:42-9 and R. 1:4-8, and in support of TNCI’s motion requesting reimbursement of attorneys’ fees and costs from the plaintiffs and their counsel. I have factual knowledge of all statements set forth herein.
3. As more fully detailed infra, TNCI seeks reimbursement of \$20,402.50 in legal fees plus \$1,030.52 in expenses, for a total of \$21,433.02. This does not include the additional hours that I have expended in drafting the within motion pleadings and letter brief. TNCI reserves the right to supplement this motion record to include all time and expenses incurred in my firm preparing and filing this motion.

PROCEDURAL HISTORY

4. Plaintiffs, a dentist (“Dr. Lee”) and his medical practice (“L&K Dental”) filed their Complaint on October 30, 2009 alleging that the defendants, including TNCI, violated the Fair Deb Collection Practices Act (“FDCPA”), the New Jersey Consumer Fraud Act (“NJCFA”), and committed the tort of intentional infliction of emotional distress. A true copy of the Complaint is annexed hereto as **Exhibit A**. The claims arose from a straightforward contract between TNCI and L&K Dental for the installation of a high speed Internet connection and telephone service at L&K Dental’s office.

5. In lieu of answering, defendants TNCI and Receivable Management Services (“RMS”) each filed a motion to dismiss the Complaint for failure to state a claim pursuant to R. 4:6-2(e).

6. Pursuant to an Order entered on March 19, 2010, Count One of the Complaint was dismissed as to TNCI, Count Two of the Complaint was dismissed as to RMS, and Count Three was dismissed as to both RMS and TNCI. A true copy of this Order is annexed hereto as **Exhibit B**.

7. On March 26, 2010, I served plaintiffs’ counsel with written notice that the Complaint asserting a NJCFA claim against TNCI constituted a frivolous pleading in violation of N.J.S.A. 2A:15-59.1 and R. 1:4-8. In this letter, I specifically informed my adversary that an application for sanctions would be filed unless the sole remaining count of the Complaint (Count Two asserting a claim under the NJCFA) was withdrawn within 28 days. A true copy of my March 26, 2010 correspondence is attached hereto as **Exhibit C**. (Plaintiffs’ counsel never withdrew the Complaint, however. Instead, as noted below, he expanded the case by filing an Amended Complaint asserting two (2) additional and frivolous causes of action against TNCI.)

8. By Order entered on August 13, 2010, the Court granted plaintiffs' motion to amend their Complaint to add a new party and to clarify their claims.

9. On or about August 20, 2010, plaintiffs filed their Amended Complaint naming RDS Solutions as an additional defendant, and adding two (2) new causes of action against TNCI; namely, breach of contract, and breach of fiduciary duty. A true copy of the Amended Complaint is annexed hereto as **Exhibit D**.

10. On September 30, 2010, TNCI filed its Answer to the Amended Complaint, including a Counterclaim for damages resulting from plaintiffs' breach of contract. A true copy of TNCI's Answer and Counterclaim is annexed hereto as **Exhibit E**.

11. On or about December 3, 2010, the Court granted RMS' motion for summary judgment by dismissing plaintiffs' sole remaining cause of action against RMS under the FDCPA. Thus, RMS is out of the case.

12. By Order entered on January 25, 2011, the Court granted TNCI's summary motion by dismissing the entirety of the Amended Complaint "with prejudice." A true copy of the Court's January 25, 2011 Order and 8-page Rider is annexed hereto as **Exhibit F**.

RELEVANT FACTS AS PER R. 4:42-9

13. I was admitted to the New Jersey bar in 1990, and regularly practice in the areas of commercial litigation in state & federal courts, bankruptcy & creditors' rights, foreclosure & asset recovery.

14. For the benefit of the Court, I served on the Bergen County District IIB Ethics Committee, having chaired the Committee in 2003-2004.

15. In addition, for the past five (5) years I have participated as a barrister in the Morris J. Pashman Inn of Court.

16. Pursuant to the terms of a written retainer agreement with my client, my firm is charging TNCI at the following hourly rates: \$325/hr for partners, and \$285/hr for associates.

17. In addition, per the terms of our retainer agreement my firm is invoicing TNCI for out of pocket disbursements, including photocopying, postage, overnight mail, and court filing fees.

18. Both myself and my associate Melanie Costantino spent time working on this case. Until recently, Ms. Costantino performed the majority of the work on this file. She left on maternity leave in mid October 2010, and since then I have handled the workload for this case.

19. Ms. Costantino, a graduate of Fordham Law School, was admitted to the New Jersey bar in 2008. She previously clerked for Renee Jones Weeks, J.S.C.

20. I respectfully submit that our hourly rates of \$325/hr for partners and \$285/hr for associates are reasonable and commensurate with the rates being charged by other attorneys and firms in Northern New Jersey having similar experience.

21. For the period of March 26, 2010 through January 6, 2011, my firm billed TNCI a total of \$20,402.50 in fees, and \$967.38 in disbursements. True copies of my firm's invoices to TNCI for this billing period are attached hereto as **Exhibit G**. To reduce the harsh impact that this case has had on my client, I voluntarily discounted the January 7, 2011 invoice by \$1000 as is reflected on page 2 thereof. For the convenience of the Court, a chronological listing of every time entry running from 1/28/10 through and including 1/27/11 is attached hereto as **Exhibit H**. (This includes an additional 1.85 hours @ \$325/hr = \$601.25.)

22. The amount of time that my firm spent on this matter was exacerbated by the unreasonable conduct of my adversary Mr. Kimm. In fact, in a reported decision

issued by the New Jersey Supreme Court in In re Michael Kimm, 191 N.J. 552 (2007), Mr. Kimm was censured for engaging in frivolous litigation. See Exhibit I annexed hereto.


23. Some of the more time consuming tasks which my firm performed in this case included:

- a). Preparing an Answer and Counterclaim in response to the initial Complaint, and the Amended Complaint.
- b). Preparing for, and attending the deposition of Dr. Lee.
- c). Drafting written discovery demands.
- d). Legal research on various issues pertaining to the Amended Complaint including elements to sustain a cause of action under NJCFA, breach of contract, and breach of fiduciary duties, and application of the economic loss doctrine as a defense to a breach of fiduciary duty claim.
- e). Preparation of pleadings and brief in support of a motion for summary judgment to dismiss the Amended Complaint, review and respond to opposition pleadings filed by plaintiffs.
- f). Review and preparation for oral argument on summary judgment motion to dismiss plaintiffs' Amended Complaint, and attendance at the hearing.

24. Some of the expenses that my firm incurred on behalf of TNCI include \$125.00 in court filing fees, and \$379.92 in photocopying charges, and \$391.00 for the transcript of Dr. Lee's deposition.

25. The amount of work that my firm performed on this case prevented us from working on other client hourly matters.

I hereby certify that the foregoing statements made by me are true. I am fully aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Glenn R. Reiser

Dated: January 28, 2011

EXHIBIT A

KIMM LAW FIRM
41-W BANCER STREET
ENGLEWOOD, NJ 07631
TEL: 201-569-2880
FAX: 201-569-2881
Attorneys for plaintiffs

SUPERIOR COURT BERGEN COUNTY
FILED

OCT 30 2009


DEPUTY CLERK

L&K DENTAL, PA, and
DONG HYUN LEE,

Plaintiff,

v.

RECEIVABLE MANAGEMENT
SERVICES a/k/a GLOBAL COLLECTION
COMPANY and TRANS NATIONAL
COMMUNICATIONS INT.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Civil Action

L-9555-09

Complaint with jury demand

Plaintiffs L&K Dental, PA, and Dong Hyun Lee, for their complaint against the
above-named defendants, state:

PARTIES

1. Plaintiff L&K Dental PA is a dental practice entity of New Jersey having its address
at 460 Sylvan Avenue, Englewood Cliffs, NJ.

2. Plaintiff Dong Hyun Lee is an individual with an address at 460 Sylvan Avenue,
Englewood Cliffs, NJ.

3. Defendant Receivable Management Service a/k/a Global Collection Company
(RMS) is a collection company with its address at 4836 Bracksville Road, P.O. box 498,

Richfield, OH 44286. At all relevant times, defendant RMS committed acts in a representative capacity, on behalf of defendant Trans National Communications International and for its own behalf, as more fully stated below. At all relevant times, RMS committed acts and omissions within the State of New Jersey.

4. Defendant Trans National Communications International is an entity located at 2 Charlesgate West, Boston, MA 02215, and is believed to be in the business of selling telecommunications systems and/or services in the New Jersey area.

COMMON ALLEGATIONS

5. In December 2000, defendant Transnational solicited a discount telephone service to plaintiff L&K and stated, claimed, and represented that it would be able to provide similar service to plaintiff's current provider, at a cost of 25 percent of L&K's then-current monthly telephone bills.

6. Plaintiff L&K took the proverbial "bait" and proceeded to sign up in December 2008. During the course of proceeding to enroll in defendant Transnational's "service," plaintiff came to learn the "switch" that was being inserted by defendant Transnational: Although plaintiff was initially advised that no equipment was required, L&K was later advised that it was required to purchase certain "equipment" and incur "equipment charges." Those charges were substantial and plaintiff L&K perceived no need to incur such charges.

7. Plaintiff L&K advised that it would not purchase equipment and requested

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defendant Transnational to proceed to provide service using plaintiff's existing equipment, which was perfectly good quality equipment. Defendant claimed that this could not be honored and claimed that plaintiff L&K had "breached" its contract with defendant.

8. On August 7, 2009, plaintiff L&K's counsel wrote a letter requesting that the disputed charges be terminated. Thereafter, plaintiff L&K advised on numerous phone conversations, by plaintiff Dong Lee and by others at L&K, to cease communicating with plaintiff by phone or otherwise as to the improper "debt" being claimed. Despite these requests, defendants have failed to cease their harassing and unlawful and improper debt collection practice using an invalid claim.

Count One: Fair Debt Collection Practice Act Violation

9. Paragraphs 1 through 8 are incorporated by reference.

10. On one or more occasions, including October 14, 2009, defendants claimed that plaintiff L&K owed a "debt" of \$12,309.40. Exhibit 1. The notice was deceptive in that it claimed or tended to claim that the debt has been liquidated and had somehow been determined to be valid.

11. On one or more occasions, including October 15, 2009, defendants claimed that "Dong Lee" individually was somehow liable for the disputed "debt," Exhibit 2, and that his credit would be adversely affected if the "debt" were not discharged with payment.

12. By their actions, defendants committed one or more violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 and particularly sub-parts c, d, e and f.

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Count Two: Consumer Fraud Act Violation

13. Paragraphs 1 through 12 are incorporated by reference.

14. By reason of those acts, defendants and each of them engaged in unconscionable business practices and otherwise violated the NJ Consumer Fraud Act.

NJ CPA

Count Three: Intentional Infliction of Emotional Distress

15. Paragraphs 1 through 12 are incorporated by reference.

16. Defendants engaged in a wide pattern of harassment against plaintiffs by calling countless times and dunning them to pay the disputed claim and treated such claim as somehow already determined, due and owing, and engaged in outrageous statements in their telephone communications. Such acts were intended and calculated to cause severe emotional distress and plaintiff Dong Lee in fact suffered such distress.

OE?

WHEREFORE, plaintiffs request judgment against defendants jointly and severally:

A. Compensatory damages;

B. Punitive damages;

C. Statutory damages;

D. Counsel fees and costs;

E. Any other relief the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

JOINDER CERTIFICATION

Plaintiffs certify that the matter in controversy is not the subject of any other arbitration or lawsuit pending or contemplated, and that all required parties have been joined.

TRIAL COUNSEL CERTIFICATION

Plaintiffs designate Michael S. Kimm as their trial counsel.

Dated: October 29, 2009

Michael S. Kimm
Attorney for plaintiffs

EXHIBIT B

LOFARO & REISER, L.L.P.
55 Hudson Street
Hackensack, New Jersey 07601
(210) 498-0400
Attorneys for Defendant, Transnational Communications International

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FILED
MAR 19 2010
ESTELA M. DE LA CRUZ
J.S.C.
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3/20

L&K DENTAL P.A. and DONG HYUN LEE,

Plaintiffs,

vs.

RECEIVABLE MANAGEMENT SERVICE
a/k/a GLOBAL COLLECTION COMPANY,
and TRANSNATIONAL COMMUNICATIONS
INTERNATIONAL,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO: BER-L-9555-09

CIVIL ACTION

ORDER

DISPOSING OF BOTH/ALL
DEFENDANTS' MOTIONS
TO DISMISS PER R. 4:6-2(e)

THIS MATTER having been opened to the Court by the motion of defendant, Transnational Communications International, to dismiss plaintiffs' Complaint for failure to state a claim, and the cross-motion of the defendant, Receivable Management Service a/k/a Global Collection Company, to dismiss plaintiffs' Complaint for failure to state a claim; and the Court having considered all papers filed in support of, or in opposition to the motion and cross-motion; and the Court having conducted oral argument on March 19, 2010; and for the reasons set forth on the record;

IT IS, on this 19th day of March, 2010

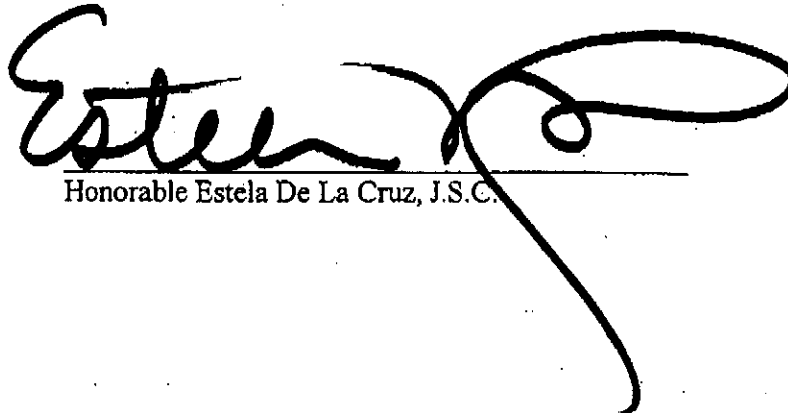
ORDERED that Count One of the Complaint alleging a cause of action under the Fair Debt Collection Practices Act shall be, and hereby is, voluntarily dismissed only as to defendant, Transnational Communications International; and it is further

ORDERED that Count Two of the Complaint alleging a cause of action under the New Jersey Consumer Fraud Act shall be, and hereby is, voluntarily dismissed only as to defendant, Receivable Management Service a/k/a Global Collection Company; and it is further

ORDERED that Count Three of the Complaint alleging a cause of action for intentional infliction of emotion distress shall be, and hereby is, voluntarily dismissed without prejudice as to all defendants; and it is further

ORDERED that the other Counts remain and, to that extent, defendants' Motions to Dismiss, pursuant to R. 4:6-2(e) are denied; and it is further

ORDERED that a true copy of this Order be served upon all counsel/parties within seven (7) days of the date hereof.



Honorable Estela De La Cruz, J.S.C.

The motion and cross-motion were:

opposed
 unopposed

EXHIBIT C

Please reply to Hackensack

Carmine LoFaro*
Glenn R. Reiser**

William C. La Tourette* (Of Counsel)
Michael Kalmus (Of Counsel)**
Sarah K. Resch*

*Admitted in New Jersey

**Admitted in New Jersey & New York

March 26, 2010

VIA FACSIMILE @ (201) 569-2881 and REGULAR MAIL

Michael Kimm, Esq.
Kimm Law Firm
41 West Bencker Street
Englewood, New Jersey 07631

Re: L&K Dental, P.A. et al. vs. Receivable Management Service, et al.
Docket No.: BER-L-9555-09

Dear Mr. Kimm:

As you are aware, this law firm represents the defendant, Transnational Communications International ("TNCI") in the above referenced matter.

Please be advised that Count II of the Complaint, seeking unspecified and unascertainable damages for purported violations of the New Jersey Consumer Fraud Act is frivolous and clearly interposed in bad faith in violation of N.J.S.A. 2A:15-59.1. TNCI also asserts that this Complaint in an effort to help plaintiffs avoid paying TNCI \$1,931.78 for the telecommunications services and equipment properly delivered to and accepted by L&K Dental, P.A.

Pursuant to Rule 1:4-8(b), you are hereby served with written notice that the Complaint violates both N.J.S.A. 2A:15-59.1 and Rule 1:4-8 because the Complaint was presented for an improper purpose, such as to harass, cause unnecessary delay, and/or cause a needless increase in the cost of litigation.

Based on the foregoing, TNCI demands that Count II of the Complaint be dismissed as it pertains to TNCI with prejudice. You are hereby given notice that an application for sanctions will be made if Count II of the Complaint is not dismissed with prejudice within 28 days of service of this written demand against your firm and clients.

If Count II of the Complaint is dismissed as it pertains to TNCI with prejudice, then TNCI will not pursue any further action for the \$1,931.78 due and owing and the parties can exchange mutual releases without the necessity of TNCI filing for sanctions.

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greiser@new-jerseylawyers.com
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sresch@new-jerseylawyers.com
mkalumus@new-jerseylawyers.com

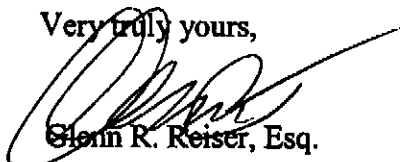
Montclair Office
180 Glenridge Avenue
Montclair, NJ 07042

New York Office
100 Wall St., 20th Floor
New York, NY 10005

Since this firm was instructed by TNCI to file an Answer and Counterclaim and zealously pursue sanctions if plaintiffs do not agree to this proposal, it is requested that you enter into a stipulation allowing TNCI additional time to file its responsive pleading while your clients weigh their options.

Please be guided accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Glenn R. Reiser", is written over the typed name below.

Glenn R. Reiser, Esq.

Enclosure

cc: Phil Josephson, Esq. (via e-mail)
Glenn R. Reiser, Esq. (via e-mail)



EXHIBIT D

KIMM LAW FIRM
41-W BANCKER STREET
ENGLEWOOD, NJ 07631
TEL: 201-569-2880
Attorneys for Plaintiffs

DONG HYUN LEE and,	:	SUPERIOR COURT OF NEW JERSEY
L&K DENTAL, PA,	:	Law Division: Bergen County
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	BER-L-9555-09
	:	
RECEIVABLE MGMT SERVICES a/k/a	:	
GLOBAL COLLECTION COMPANY;	:	
TRANS-NATIONAL COMMUNICATIONS	:	
INTERNATIONAL; and RDS SOLUTIONS,	:	First amended complaint with jury
	:	demand
Defendants.	:	

Plaintiffs L&K Dental, PA, and Dong Hyun Lee, for their complaint against the above-named defendants, state:

THE PARTIES

1. Plaintiff Dong Hyun Lee is an individual with an address at 460 Sylvan Avenue, Englewood Cliffs, NJ.

2. Plaintiff L&K Dental PA is a dental practice entity of New Jersey having its address at 460 Sylvan Avenue, Englewood Cliffs, NJ. Plaintiff Dong Hyun Lee a principal and owner of L&K Dental PA and at all relevant times, engaged in the business events relevant to this action in his individual capacity and on behalf of L&K Dental, PA.

3. Defendant RDS Solutions, LLC (RDS) is a business entity having its business address at 99 Grayrock Road, Suite 206, Clinton, NJ 08809, and is engaged in the business

of providing consulting and management services in connection with telecommunications equipment/services; voice/data; and enhanced management services.

4. Defendant Trans National Communications International (TNCI) is an entity located at Charlesgate West, Boston, MA 02215, and is believed to be in the business of selling telecommunications systems and/or services in the New Jersey area.

5. Defendant Receivable Management Service a/k/a Global Collection Company (RMS) is a collection company with its address at 4836 Bracksville Road, P.O. box 498, Richfield, OH 44286. At all relevant times, defendant RMS committed acts in a representative capacity, on behalf of defendant Trans National Communications International and for its own behalf, as more fully stated below. At all relevant times, RMS committed acts and omissions within the State of New Jersey.

COMMON ALLEGATIONS

6. In approximately September 2008, defendant RDS approached plaintiff Dong Hyun Lee, and solicited its business of providing "lower cost telecommunications solution" for plaintiffs' needs, for telephone, Internet, other data using telecommunications facilities known as a "T-1" line system.

7. Shortly thereafter, RDS disclosed that it would act as an "agent" for plaintiffs; and locate and develop a "telecommunications" service provider who was capable of handling plaintiffs' needs. Plaintiffs agreed to hire defendant RDS as their "agent" and proceeded in accordance with the advice provided by RDS. In fact, RDS was also an agent for defendant TNCI and these two entities engaged in a conspiracy and attendant acts of "bait and switch"

consumer sales practices relating to telecommunications services.

8. In approximately early 2009, defendant RDS referred plaintiff to defendant Trans-National Communications International (TCNI) and TCNI advised plaintiffs, through RDS, that it would also act as an “agent” for plaintiffs and it would, in conjunction with RDS, develop a discount telecommunications service to plaintiffs. In fact, neither TCNI nor RDS ever acted in the best interests of plaintiffs; as they acted exclusively or primarily to their own self-interest.

9. Defendants RDS and TCNI stated, stated, claimed, and represented that they would be able to arrange for plaintiffs to receive similar telecommunications service as plaintiffs were then receiving, at a cost of 25 percent of the then-current monthly bills, or 75% reduction in monthly costs. At that time, plaintiffs were paying approximately \$800.00 per month to XO Communications for six telephone lines plus Internet/data service through high-speed T-1 line facilities; defendants estimated that plaintiffs would be paying \$200 to \$300 for a “total package replacement.”

10. Plaintiffs took the proverbial bait and proceeded to sign up on the basis of defendants RDS and TCNI’s advice. During the course of proceeding to enroll in such “service,” plaintiff came to learn the “switch” that was being inserted by defendant Transnational: Plaintiff was required to purchase certain “equipment” and incur “equipment charges.” Those charges were substantial and plaintiff L&K perceived no need to incur such charges. In addition, the monthly usage fee, for six lines and Internet/data usage, was not the promised level of 25% of plaintiffs’ former service fees.

11. Plaintiff L&K was previously being provided with telephone and data service by an entity known as XO Communications, and the router that was situated at plaintiffs' location, 460 Sylvan Avenue, Englewood Cliffs, NJ; was a proprietary equipment belonging to XO Communications.

12. Some time before falsely inducing that plaintiffs' monthly bills will be reduced by 75%, defendants RDS and TCNI, jointly and severally, advised plaintiffs that plaintiffs did not have to purchase any new equipment because they would either provide any necessary equipment. At that time, they, or each of them, undertook a physical site inspection and survey of plaintiffs' offices and determined that plaintiffs' equipment were more than sufficient and that "no new equipment was necessary."

13. On the basis of such advice, and specifically in reliance upon the advice that plaintiffs need not purchase any new equipment, plaintiffs requested defendants RDS and TCNI to proceed with the switching of telecommunications service using plaintiff's existing equipment telephone system, computer system, and so forth. Plaintiffs did not own their T-1 router, which was owned by XO Communications, and defendants advised that, in order for them to change the system, the phone system would have to be "turned off" for a week to ten days. This was a potential self-destruction of plaintiffs' dental practice, which uses nearly all six of its phone lines, to say nothing of the Internet/data facilities, to operate patient management and other aspects of the dental office. Defendants' advice that plaintiffs' operations would have to be suspended for such a period was a material fact, but this fact was not disclosed to plaintiffs until after they allegedly "signed" certain documents.

14. On February 27, 2009, RDS Solutions, acting for itself and for TNCI, sent an email stating, "I was under the impression that you owned the router you have with XO and that your telephone vendor could work with TNCI." Exhibit 1.

15. On March 7, 2009, plaintiffs received a bill for "services rendered" for two separate service providers in the sums of \$362 for TNCI and \$180 for an unknown company stated as MetTel, which was well over \$500 together, and plaintiffs complained. In a responsive email dated March 9, 2009, RDS Solutions wrote and suggested that plaintiff would save money once the TNCI line had replaced the XO Communications service. Exhibit 2. In fact, the TNCI service was nowhere near the 25% promised at the outset.

16. On March 12, 2009, in response to plaintiffs' complaints, RDS Solutions stated that plaintiffs "will continue to be billed for this service whether or not you use it or not because you are under contract with them [TNCI]. . . ." Exhibit 3. Thus plaintiffs were somehow locked into a binding "contract" even before the terms were disclosed; and well before the service was properly analyzed and installed.

17. On March 13, 2009, an email from RDS Solutions, Exhibit 4, reveals that RDS and TNCI did not even know the extent of the equipment issues that existed in plaintiffs' facilities: "I am looking into TNCI providing the equipment we need."

18. On March 17, 2009, for the first time, RDS Solutions claimed that "We were able to get the proper equipment fo you through TNCI" and that "They will come and install the equipment" and proceeded to reveal various costs to be incurred by plaintiffs for the first time (Exhibit 5) but defendants still failed to disclose that the installation required the

suspension of XO Communication's telephone service for a week to ten days.

19. On March 17, 2009, RDS Solutions for itself and TNCI further advised plaintiffs that they would incur extra charges and plaintiffs will incur monthly recurring fees of "\$496.67" plus time-based local and long-distance fees. Exhibit 6. These amounts were contrary to the amounts stated by defendants when they induced plaintiffs to use their services.

20. On March 20, 2009, after plaintiffs complaints about the expensive nature of defendants' charges, RDS Solutions advised that plaintiffs were being "released . . . from all obligations to us and from working with us." Exhibit 7.

22. Defendants RDS and TCNI appeared to claim that because the router did not belong to plaintiffs, plaintiffs would have to purchase a router in order to transition into the new service to be provided by defendants RDS and TCNI; and that plaintiffs would have to pay other charges. The router charge was \$250 and it would have been nominal but for the fact that the undisclosed charges, by comparison to the 75% cost savings, were so high as to be outrageous.

23. In a June 11, 2009, letter TCNI wrote plaintiff's network/computer technician, Felix Kim, an email describing the kinds of charges that plaintiffs would incur. Exhibit 8. Those charges were materially different from the charges that were estimated and used as inducements to cause plaintiffs to do business with defendants.

24. Plaintiffs insisted upon defendants' representations and inducements being honored, and insisted that defendants provide all equipment other than plaintiffs' own

equipment without additional cost. Defendants claimed that they could not do so; and ultimately claimed that plaintiff L&K had "breached" its contract with defendant.

25. On June 25, 2009, plaintiffs' own network/computer advisor, Felix Kim, who had been involved in the general development of the foregoing facts, wrote the following letter to RDS and TNCI:

The customer has a TA612 at his site and being used for XO circuit - current carrier. He does not want to pay for another router because he needs it only one at a time. I do not think we can use that router since the customer does not want any down time for telephone lines for his business hours.

I think we should cancel this order otherwise you provide alternative solution.

Dong Lee, the customer, points out following issues;

1. He signed the original contract because the cost on the contract should cover the services he ordered.

- He was not informed any additional charges or equipments requirements.

2. Vicki Simpkins who quoted the contract is TNCI's agent and did not quote properly. - Ms. Simpkins should put on the contract all the costs and equipments requirements.

3. He has been billed even the installation has not been completed, and for services he never use."

Obviously, the customer does not want to pay more than what he signed.

Please cancel the order unless you have any other suggestions.

Best regards,
Felix Kim
201-944-7773

Exhibit 9.

26. On August 7, 2009, plaintiff L&K's counsel wrote a letter requesting that the disputed charges be terminated.

27. In July and August 2009, plaintiffs made numerous demands for defendant Receivable Management Services to cease and desist from dunning activities, telephone harassment, and other collection efforts for this matter, but this defendant failed and refused to comply.

28. Thereafter, plaintiff L&K advised on numerous phone conversations, by plaintiff Dong Lee and by others at L&K, to cease communicating with plaintiff by phone or otherwise as to the improper "debt" being claimed. Despite these requests, defendants failed to cease their harassing and unlawful and improper debt collection practice using an invalid claim.

Count One: Fair Debt Collection Practice Act Violation

29. Paragraphs 1 through 28 are incorporated by reference.

30. On one or more occasions, including October 14, 2009, defendants claimed that plaintiff L&K owed a "debt" of \$12,309.40. Exhibit 10. The notice was deceptive in that it claimed or tended to claim that the debt has been liquidated and had somehow been determined to be valid.

31. On one or more occasions, including October 15, 2009, defendants claimed that "Dong Lee" individually was somehow liable for the disputed "debt," Exhibit 11, and that his credit would be adversely affected if the "debt" were not discharged with payment.

32. By its actions, defendant Receivable Management Services committed one or

more violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 and particularly sub-parts d, e and f.

Count Two: Consumer Fraud Act Violation

33. Paragraphs 1 through 28 are incorporated by reference.

34. By reason of those acts, defendants RDS and TNCI and each of them engaged in unconscionable business practices and otherwise violated the NJ Consumer Fraud Act. The unconscionable practices include

A. defendants' failure to disclose material terms;

B. undisclosed fees and charges to be incurred by plaintiffs; and

C. their failure to provide a three-day cancellation period for the contracts

under the applicable law.

Count Three: Breach of Agreement

35. Paragraphs 1 through 28 are incorporated by reference.

36. Defendants RDS and TNCI breached the covenant of good faith and fair dealing which is implied in every agreement; they each breached the express terms of the agreement(s) pertaining to each defendant's role; and thereby committed breach of agreement.

Count Four: Breach of Fiduciary Duty

37. Paragraphs 1 through 28 are incorporated by reference.

38. Defendants RDS and TNCI breached their fiduciary duty to plaintiffs.

WHEREFORE, plaintiffs request judgment against defendants jointly and severally:

- A. Compensatory damages;
- B. Punitive damages;
- C. Statutory treble damages;
- D. Counsel fees and costs;
- E. Any other relief the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.


JOINDER CERTIFICATION

Plaintiffs certify that the matter in controversy is not the subject of any other arbitration or lawsuit pending or contemplated, and that all required parties have been joined.

TRIAL COUNSEL CERTIFICATION

Plaintiffs designate Michael S. Kimm as their trial counsel.

Dated: August 20, 2010


Michael S. Kimm
Attorney for plaintiffs

EXHIBITS INTENTIONALLY OMITTED

EXHIBIT E

LOFARO & REISER, LLP
55 Hudson Street
Hackensack, New Jersey 07601
(201) 498-0400

Attorneys for Defendant, Transnational Communications International

L&K DENTAL P.A., and DONG HYUN LEE, Plaintiffs, vs. RECEIVABLE MANAGEMENT SERVICE a/k/a GLOBAL COLLECTION COMPANY; TRANSNATIONAL COMMUNICATIONS INTERNATIONAL; RDS SOLUTIONS, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO: BER-L-9555-09 CIVIL ACTION ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, COUNTERCLAIM, CROSSCLAIM, AND DESIGNATION OF TRIAL COUNSEL
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Defendant, Transnational Communications International ("TNCI") by and through its attorneys, LoFaro & Reiser, LLP, by way of Answer to the Complaint of plaintiffs, L&K Dental, P.A. ("L&K Dental") and Dong Hyun Lee (collectively "Plaintiffs"), hereby says as follows:

1. TNCI lacks sufficient knowledge to admit or deny the allegations in paragraph 1 of Plaintiffs' First Amended Complaint, and leaves Plaintiffs to their proofs.
2. TNCI lacks sufficient knowledge to admit or deny the allegations in paragraph 2 of Plaintiffs' First Amended Complaint, and leaves Plaintiffs to their proofs.
3. TNCI lacks sufficient knowledge to admit or deny the allegations in paragraph 3 of Plaintiffs' First Amended Complaint, and leaves Plaintiffs to their proofs.
4. TNCI admits the allegations in paragraph 4 of Plaintiffs' First Amended Complaint.
5. TNCI admits the allegations in paragraph 5 insofar as defendant, Receivable Management Service a/k/a Global Collection Company was hired by TNCI to collect a debt from

L&K Dental. TNCI lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 5 of Plaintiffs' First Amended Complaint, and leaves Plaintiffs to their proofs.

6. TNCI neither admits nor denies the allegations set forth in paragraph 6 of Plaintiffs' First Amended Complaint, as such allegations are not directed toward it.

7. TNCI admits the allegations of paragraph 7 of Plaintiffs' First Amended Complaint insofar as the fact that RDS Solutions ("RDS") is an agent of TNCI. TNCI denies the allegations in paragraph 7 of Plaintiffs' First Amended Complaint that TNCI "engaged in a conspiracy and attendant acts of 'bait and switch' consumer sales practices relating to telecommunications services."

8. TNCI admits that it had a business relationship with RDS and L&K Dental. TNCI denies the remaining allegations in paragraph 8 of Plaintiffs' First Amended Complaint.

9. TNCI denies the allegations of paragraph 9 of Plaintiffs' First Amended Complaint.

10. TNCI denies the allegation of paragraph 10 of Plaintiffs' First Amended Complaint that it engaged in a "bait and switch" tactic. TNCI admits the allegation in paragraph 10 of Plaintiffs' First Amended Complaint to the extent that Plaintiffs needed to incur equipment charges so they had equipment that was compatible with their increased service demands. TNCI lacks sufficient knowledge to admit or deny the allegations in paragraph 10 of Plaintiffs' First Amended Complaint, and leaves Plaintiffs to their proofs

11. TNCI lacks sufficient knowledge to admit or deny the allegations in paragraph 11 of Plaintiffs' Complaint, and leaves Plaintiffs to their proofs.

12. TNCI neither admits nor denies the allegations set forth in paragraph 12 of Plaintiffs' First Amended Complaint, as such allegations are not directed toward it.

13. TNCI admits Plaintiffs asked TNCI to "proceed with [the] switching of telecommunications service using [Plaintiffs'] existing equipment telephone system, computer system, and so forth." TNCI lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 13 of Plaintiffs' First Amended Complaint, and leaves Plaintiffs to their proofs.

14. TNCI admits the allegation in paragraph 14 of Plaintiffs' First Amended Complaint that RDS Solutions sent an email to Plaintiffs on February 27, 2009.

15. TNCI admits the allegations in paragraph 15 of Plaintiffs' First Amended Complaint that it sent a bill to Plaintiffs. TNCI neither admits nor denies the remaining allegations set forth in paragraph 15 of Plaintiffs' First Amended Complaint, as such allegations are not directed toward it.

16. TNCI neither admits nor denies the allegations set forth in paragraph 16 of Plaintiffs' First Amended Complaint, as such allegations are not directed toward it.

17. TNCI denies the allegations set forth in paragraph 17 of Plaintiffs' First Amended Complaint.

18. TNCI neither admits nor denies the allegations set forth in paragraph 18 of Plaintiffs' First Amended Complaint, as such allegations are not directed toward it.

19. TNCI admits that greater monthly fees were incurred because Plaintiffs needed to rent conforming equipment for their upgraded telecommunications and internet service demands. TNCI lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 19 of Plaintiffs' First Amended Complaint, and leaves Plaintiffs to their proofs.

20. TNCI neither admits nor denies the allegations set forth in paragraph 20 of Plaintiffs' First Amended Complaint, as such allegations are not directed toward it.

21. (erroneously marked as paragraph 22) TNCI denies the allegations in paragraph 21 of Plaintiffs' First Amended Complaint whereby TNCI told Plaintiffs they would have to purchase a TNCI router. TNCI lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 21 of Plaintiffs' First Amended Complaint.

22. (erroneously marked as paragraph 23) TNCI admits the allegation in paragraph 22 of Plaintiffs' First Amended Complaint that it received an email to Felix Kim on June 11, 2009. TNCI denies any and all remaining allegations in paragraph 22 of Plaintiffs' First Amended Complaint.

23. (erroneously marked as paragraph 24) TNCI admits the allegation in paragraph 23 of Plaintiffs' First Amended Complaint that Plaintiffs breached their contract with it.

24. (erroneously marked as paragraph 25) TNCI admits the allegation in paragraph 24 of Plaintiffs' First Amended Complaint that it received an email from Felix Kim on June 25, 2009.

25. (erroneously marked as paragraph 26) TNCI lacks sufficient knowledge to admit or deny the allegations in paragraph 25 of Plaintiffs' First Amended Complaint, and leaves Plaintiffs to their proofs.

26. (erroneously marked as paragraph 27) TNCI neither admits nor denies the allegations in paragraph 26 of Plaintiffs' First Amended Complaint as such allegations do not apply to it.

27. (erroneously marked as paragraph 28) TNCI neither admits nor denies the allegations in paragraph 27 of Plaintiffs' First Amended Complaint as such allegations do not apply to it.

COUNT ONE: FAIR DEBT COLLECTION PRACTICE ACT VIOLATION

The Court dismissed this Count as against TNCI pursuant to a Court Order entered in this matter on March 19, 2010.

COUNT TWO: CONSUMER FRAUD ACT VIOLATION

32. (erroneously marked as paragraph 33) TNCI repeats and reasserts its responses to paragraphs 1 through 31 of Plaintiffs' First Amended Complaint as though fully set forth herein.

33. (erroneously marked as paragraph 34) TNCI denies the allegations in paragraph 33 of Plaintiffs' First Amended Complaint.

WHEREFORE, TNCI respectfully requests that this Court enter judgment:

- (a) Dismissing Count Two of Plaintiffs' First Amended Complaint with prejudice;
- (b) For sanctions;
- (c) For attorneys' fees and costs of suit;
- (d) For such additional relief as the Court deems equitable and just.

COUNT THREE: BREACH OF AGREEMENT

34. (erroneously marked as paragraph 35) TNCI repeats and reasserts its responses to paragraphs 1 through 33 of Plaintiffs' First Amended Complaint as though fully set forth herein.

35. (erroneously marked as paragraph 36) TNCI denies the allegations in paragraph 35 of Plaintiffs' First Amended Complaint.

WHEREFORE, TNCI respectfully requests that this Court enter judgment:

- (a) Dismissing Count Three of Plaintiffs' First Amended Complaint with prejudice;
- (b) For sanctions;
- (c) For attorneys' fees and costs of suit; and

(d) For such additional relief as the Court deems equitable and just.

COUNT FOUR: BREACH OF FIDUCIARY DUTY

36. (erroneously marked as paragraph 37) TNCI repeats and reasserts its responses to paragraphs 1 through 35 of Plaintiffs' First Amended Complaint as though fully set forth herein.

37. (erroneously marked as paragraph 38) TNCI denies the allegations in paragraph 37 of Plaintiffs' First Amended Complaint.

WHEREFORE, TNCI respectfully requests that this Court enter judgment:

- (a) Dismissing Count Three of Plaintiffs' First Amended Complaint with prejudice;
- (b) For sanctions;
- (c) For attorneys' fees and costs of suit; and
- (d) For such additional relief as the Court deems equitable and just.

AFFIRMATIVE DEFENSES

- 1. Plaintiffs fail to state a claim upon which relief may be granted against TNCI.
- 2. Plaintiffs caused their own damages, failed to take remedial actions, and/or failed to mitigate their damages, if any, and therefore their claims are barred.
- 3. Plaintiffs fail to plead a prima facie claim against TNCI under the Consumer Fraud Act.
- 4. Plaintiffs' Consumer Fraud Act claim fails because they cannot prove any ascertainable losses.
- 5. Plaintiffs are not entitled to punitive damages.
- 6. Plaintiffs' damages, if any, were caused by the acts or omissions by other third parties over whom TNCI had no control.

7. Plaintiffs' damages, if any, are subject to set-off with respect to the monies which TNCI claims is due and owing from the defendant, L&K Dental.
8. Plaintiffs are barred in whole or in part by their own breach of contract and/or fraud.
9. Plaintiffs' breach of fiduciary duty claim is barred because TNCI did not owe them such a duty.
10. Plaintiffs' claims are barred by the equitable doctrine of unjust enrichment.
11. TNCI is not guilty of any act of omission or commission that was the proximate cause of the damages that Plaintiffs allege.
12. Plaintiffs' claims are barred, in whole, or in part, by the doctrine of equitable estoppel.
13. Plaintiffs' claims are barred, in whole or in part, by the doctrine of promissory estoppel.
14. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.
15. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.
16. Plaintiffs' claims are barred, in whole or in part, by the express terms of any agreements between the parties.
17. Plaintiffs breached the covenant of good faith and fair dealing.
18. Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of laches.
19. Plaintiffs' damages, if any, are unrelated to any alleged wrongful conduct on the part of TNCI.

20. Plaintiffs' damages, if any, are offset by the damages incurred, and will continue to be incurred by TNCI, by virtue of Plaintiffs' breach of contract and/or other wrongful conduct.

21. Plaintiffs' First Amended Complaint constitutes a frivolous pleading in violation of R. 1:4-8 and N.J.S.A. 2A:15-59.1 et seq.

22. There is no privity of contract between individual Plaintiff Dong Hyun Lee and Defendant TNCI.

23. Plaintiffs' claims are barred by the doctrine of setoff.

24. Plaintiffs' claims against TNCI are barred by lack of consideration.

25. The damages alleged in the First Amended Complaint are barred by the Plaintiffs' failure to mitigate same.

26. Plaintiffs' claims against TNCI are barred, in part, by this Court's March 19, 2010 Order dismissing certain counts of Plaintiffs' original Complaint against TNCI.

COUNTERCLAIM

Defendant/counterclaimant TNCI, by and through its attorneys, LoFaro & Reiser, LLP, by way of a Counterclaim against Plaintiff, L&K Dental, hereby says as follows:

1. TNCI is an entity located at 2 Charlesgate West, Boston, Massachusetts 02215.
2. TNCI is in the business of selling telecommunications systems in New Jersey and throughout the United States.
3. On or about December 31, 2008, L&K Dental entered into a three-year contract ("Contract") with TNCI for local and long distance phone service, and Internet service, at the rate of \$480.00/month (not inclusive of taxes, surcharges, long distance charges, etc).
4. The Long Distance Terms & Conditions incorporated into the Contract by reference provides, in relevant part, as follows:

Customer [L&K Dental] agrees, at its sole expense, to provide the proper environment and electrical and telecommunications connections for [TNCI's] Equipment. Customer is solely responsible for correcting any hazardous conditions that may adversely affect [TNCI's] Equipment. If Customer is unable or unwilling to schedule or accept delivery or installation on the date [TNCI] tenders delivery or installation, [TNCI] shall have the right to initiate billing for the amounts due hereunder as of the date delivery was tendered. . . . Customer shall remain obligated to pay the Equipment Use Charge for the remainder of the applicable Equipment Rental Term notwithstanding the early termination of the Equipment Rental Schedule or the Agreement.

5. At the time of entering into the Contract with TNCI, L&K Dental expressly declined to either lease or purchase new equipment from TNCI because it represented to be in possession of comparable equipment supplied by XO Communications ("XO"), its previous telecommunications and Internet service provider.

6. However, on the day that TNCI arrived at L&K Dental's offices to install the new phone and Internet service, TNCI discovered that L&K Dental did not possess any of the necessary equipment, including the router required to utilize TNCI's telecommunications and Internet services.

7. It was then that TNCI learned, for the first time, that L&K Dental had leased its equipment from XO, and that it had returned the router and other related equipment to XO when it cancelled XO's services.

8. This was in direct contravention of L&K Dental's representation to TNCI that L&K Dental possessed the necessary equipment.

9. Additionally, at or around the same time TNCI installed the telecommunications and Internet services at L&K Dental's premises, L&K Dental requested an upgrade to 10 mpbs Internet service, rather than the much slower 1024 kbps it originally agreed to pursuant to the Contract and Order Form.

10. TNCI informed L&K Dental that if it wanted this enhanced faster service, L&K Dental would need to obtain and install compatible equipment.

11. TNCI offered L&K Dental an opportunity to lease the necessary equipment required so that L&K Dental could get full functionality of the enhanced Internet service; this required a one-time \$250.00 fee for installation, plus an additional \$37.18/month fee for the use of the equipment over the three-year service term.

12. The \$250.00 fee was also disclosed to L&K Dental in the Long Distance Terms & Conditions.

13. Notwithstanding its clear obligation to do so, L&K Dental refused to pay the additional cost to TNCI and ultimately terminated its relationship with TNCI in June 2009.

14. TNCI's Long Distance Terms & Conditions set forth several specific provisions requiring payments because of a client's cancellation of its service before the end of the service Contract.

15. TNCI's cancellation charges can range anywhere from \$150.00 to \$500.00 per connection circuit, in addition to a \$300.00 cancellation fee.

16. TNCI's Long Distance Terms & Conditions provide for the following:

In the event Customer and TNCI have executed a valid term-agreement, which the Customer wishes to discontinue before the end of the term, a Term Liability Assessment ("TLA") shall be calculated, based on the average billing of the customer's usage for the previous six (6) month period . . . multiplied by the number of months remaining in the valid term-agreement. The TLA shall be immediately billed to Customer following the date upon which Customer causes the discontinuation of the term-agreement service relationship.

17. Based on the foregoing, L&K Dental canceled its contract with 32 months remaining on the three year/36-month contract.

18. Pursuant to the contract with TNCI, L&K Dental owes TNCI the sum of \$17,778.64.

19. To date, L&K is indebted to TNCI for \$17,778.64 exclusive of interest, late fees, attorneys' fees and other applicable charges as per the Contract.

COUNT ONE

20. TNCI repeats and realleges its responses to paragraphs 1 through 19 of the Counterclaim as if set forth fully herein.

21. TNCI provided goods and/or services to L&K Dental upon the promise that it would pay for TNCI for said goods and/or services.

22. TNCI has demanded payment, but L&K Dental has refused to pay.

WHEREFORE, Defendant, TNCI demands judgment against Plaintiff, L&K Dental, for the sum of \$17,778.64, plus reasonable attorneys' fees, pre and post-judgment interest, late fees, costs of suit, and such additional relief as the Court deems equitable and just.

COUNT TWO

23. TNCI repeats and realleges its responses to paragraphs 1 through 22 of the Counterclaim as if set forth fully herein.

24. TNCI is suing L&K Dental for goods sold and delivered and/or services rendered by TNCI, upon the promise by L&K Dental to pay the agreed amount, as set forth in the Contract.

25. Payment has been demanded by TNCI and has not been made.

26. The aforesaid actions by L&K Dental constitute a breach of contract.

WHEREFORE, Defendant, TNCI demands judgment against Plaintiff, L&K Dental, for the sum of \$17,778.64, plus reasonable attorneys' fees, pre and post-judgment interest, late fees, costs of suit, and such additional relief as the Court deems equitable and just.

COUNT THREE

27. TNCI repeats and realleges its responses to paragraphs 1 through 26 of the Counterclaim as if set forth fully herein.

28. TNCI sues L&K Dental for the reasonable value of goods sold and delivered, and/or services rendered by TNCI to L&K Dental.

29. Payment has been demanded and has not been made.

WHEREFORE, Defendant, TNCI demands judgment against Plaintiff, L&K Dental, for the sum of \$17,778.64, plus reasonable attorneys' fees, pre and post-judgment interest, late fees, costs of suit, and such additional relief as the Court deems equitable and just.

FOURTH COUNT

30. TNCI repeats and realleges its responses to paragraphs 1 through 29 of the Counterclaim as if set forth fully herein.

31. L&K Dental, being indebted to TNCI in the sum of \$17,778.64 upon an account stated between them, did promise to pay TNCI said sum upon demand.

32. Payment has been demanded and has not been made.

WHEREFORE, Defendant, TNCI demands judgment against Plaintiff, L&K Dental, for the sum of \$17,778.64, plus reasonable attorneys' fees, pre and post-judgment interest, late fees, costs of suit, and such additional relief as the Court deems equitable and just.

FIFTH COUNT

33. TNCI repeats and realleges its responses to paragraphs 1 through 32 of the Counterclaim as if set forth fully herein.

34. The aforesaid acts and omissions by L&K Dental constitute breach of the parties' Contract.

35. As a direct and proximate result of this defendant's breach of the Contract, TNCI has sustained damages.

WHEREFORE, Defendant, TNCI demands judgment against Plaintiff, L&K Dental, for the sum of \$17,778.64, plus reasonable attorneys' fees, pre and post-judgment interest, late fees, costs of suit, and such additional relief as the Court deems equitable and just.

CROSSCLAIM

Defendant, TNCI, by way of a Crossclaim against co-defendants Receivable Management Service a/k/a Global Collection Company ("RMS") and RDS Solutions ("RDS"), hereby states as follows:

FIRST COUNT

1. While denying liability for the damages alleged by L&K Dental, if judgment is recovered by L&K Dental against this defendant, TNCI is entitled to contribution from the co-defendants under the Joint Tortfeasor's Contribution Act, N.J.S.A. 2A:53A and under the Comparative Negligence Act, N.J.S.A. 2A:15-5.1.

WHEREFORE, defendant, TNCI, demands entry of a judgment against co-defendants RMS and RDS for contribution in accordance with the provisions of the New Jersey Joint Tortfeasor Contribution Law, N.J.S.A. 2A:53-A, and under the Comparative Negligence Act, N.J.S.A. 2A:15-5.1.

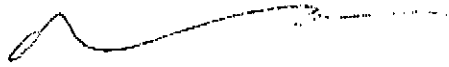
SECOND COUNT

2. While denying liability for the damages alleged by plaintiff, defendant, TNCI, is entitled to indemnification from co-defendants RMS and RDS if judgment is recovered by plaintiff.

WHEREFORE, defendant, TNCI, demands indemnification from these defendant, RMS.

LOFARO & REISER, LLP
Attorneys for Defendant/Counterclaimant,
Transnational Communications International

Dated: September 30, 2010



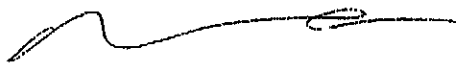
Melanie R. Costantino, Esq.

DESIGNATION OF TRIAL COUNSEL

TNCI hereby designates Glenn R. Reiser, Esq. as trial counsel pursuant to R. 4:25-4.

LOFARO & REISER, LLP
Attorneys for Defendant/Counterclaimant,
Transnational Communications International

Dated: September 30, 2010



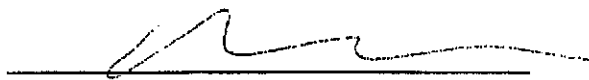
Melanie R. Costantino, Esq.

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no such action or arbitration proceeding is contemplated. I know of no additional parties who should be joined in this action.

LOFARO & REISER, LLP
Attorneys for Defendant/Counterclaimant,
Transnational Communications International

Dated: September 30, 2010




Melanie R. Costantino, Esq.

CERTIFICATION PURSUANT TO RULE 4:6-1

I hereby certify that this Answer and Counterclaim is being filed within the time prescribed by R. 4:6-1, as extended by consent of counsel.

LOFARO & REISER, LLP
Attorneys for Defendant/Counterclaimant,
Transnational Communications International

Dated: September 30, 2010



Melanie R. Costantino, Esq.

EXHIBIT F

LOFARO & REISER, L.L.P.
 55 Hudson Street
 Hackensack, New Jersey 07601
 (210) 498-0400
 Attorneys for Defendant, Transnational Communications International

FILED**JAN 25 2011**

ESTELA M. DE LA CRUZ
 J.S.C.

L&K DENTAL P.A. and DONG HYUN LEE,

Plaintiffs,

vs.

RECEIVABLE MANAGEMENT SERVICE
 a/k/a GLOBAL COLLECTION COMPANY,
 and TRANSNATIONAL COMMUNICATIONS
 INTERNATIONAL,

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: BERGEN COUNTY

DOCKET NO: BER-L-9555-09

CIVIL ACTION

ORDER

THIS MATTER having been opened to the Court by the motion of defendant, Transnational Communications International, for entry of an order granting summary judgment dismissing plaintiffs' Amended Complaint in its entirety; and the Court having considered all

papers filed in support of, or in opposition to the motion; and the Court having conducted oral argument *on January 21, 2011,* and for the reasons set forth on the record;

IT IS, on this *25th* day of *January, 2011*

ORDERED that the motion shall be, and hereby is, granted; and it is further

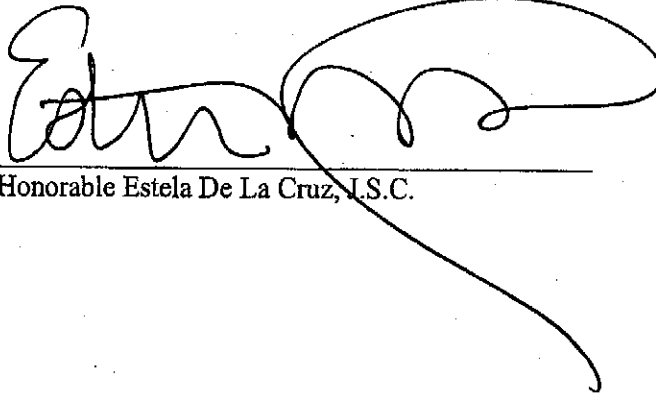
ORDERED that Count Two of the Amended Complaint alleging a cause of action under the New Jersey Consumer Fraud Act shall be, and hereby is, dismissed in its entirety as to against defendant, Transnational Communications International; and it is further

ORDERED that Count Three of the Amended Complaint alleging a cause of action under for breach of contract shall be, and hereby is, dismissed in its entirety as to defendant, Transnational Communications International; and it is further

ORDERED that Count Four of the Complaint alleging a cause of action for breach of fiduciary duty shall be, and hereby is, dismissed in its entirety as to defendant, Transnational Communications International; and it is further

ORDERED that this matter shall proceed to trial as to the Counterclaim of the defendant, Transnational Communications, International; and it is further

ORDERED that a true copy of this Order be served upon all counsel/parties within seven (7) days of the date hereof.



Honorable Estela De La Cruz, J.S.C.

The motion was:

opposed

~~unopposed~~

* For reasons set forth in attached 8 Page Rider of even date -

L&K Dental and Dong Lee v. Receivable Management Services, et al.
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FILED

JAN 25 2011

ESTELA M. DE LA CRUZ
J.S.C.RIDER TO ORDER**Procedural History and Factual Background**

This matter arises out of a three (3) year contract between Defendant Trans National Communications Int. ("TNCI") and Plaintiff L&K Dental, PA, ("L&K") for local and long distance phone service and internet service, entered into on December 31, 2008. The contract was signed by Plaintiff Dong Hyun Lee in his professional capacity as president of L&K. TNCI's telephone and internet services were installed and active at L&K's office for approximately four months from March 2009 until June 2009. L&K had previously used a company called XO for its telephone and internet services. The amount due and owing to TNCI from L&K was \$1,931.78, which included service charges and taxes. TNCI hired Defendant Receivable Management Services ("RMS") to collect the outstanding debt. The debt to this date has not been paid by Plaintiffs.

Plaintiffs sued alleging that Defendants TNCI and RMS violated the Fair Debt Collection Practices Act (FDCPA), in addition to violating the New Jersey Consumer Fraud Act and causing Plaintiff Lee intentional infliction of emotional distress. On March 19, 2010, Plaintiffs' claims alleging

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intentional infliction of emotional distress were dismissed pursuant to motions filed by TNCI and RMS. Also on March 19, 2010, this Court dismissed Plaintiffs' FDCPA claims against Defendant TCNI. On December 3, 2010, this Court found that the debt owed by L&K is a business debt, rather than a personal debt, and dismissed Plaintiffs' FDCPA claims against Defendant RMS. On August 20, 2010, Plaintiffs filed an Amended Complaint where they added two (2) new causes of action against TNCI, namely breach of contract and breach of fiduciary duty.

On December 10, 2010, Defendant TNCI filed this motion for summary judgment to dismiss those Counts of Plaintiff's Complaint alleging breach of contract, violation of the CFA and breach of fiduciary duty on the part of TNCI. Oral argument was heard on January 21, 2011. This is the decision pursuant to R. 1:7-4(a).

Discussion

After considering oral argument and the papers submitted, this Court finds that Defendant TNCI's motion for summary judgment is granted in its entirety.

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The motion before the Court is made pursuant to R. 4:46. The New Jersey Supreme Court has held that summary judgment should be granted when "the pleadings, depositions, answers to interrogatories and admission on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged." Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 529 (1995). Moreover, the summary judgment standard "[R]equires the Motion Judge to consider whether the competent, evidential materials presented, when viewed in a light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 540.

In support of its motion for summary judgment, Defendant TNCI first contends that the Court should dismiss Plaintiffs' breach of contract claim against TNCI because Dr. Lee lacks standing to assert individual claims, and Plaintiffs have failed to prove any damages flowing from the alleged breach. Specifically, Defendant points to the fact that Dr. Lee signed the Contract in his capacity as President of L&K Dental, a point he conceded at his

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deposition. Thus TNCI owed no contractual duty or otherwise to Dr. Lee, and consequently Dr. Lee cannot maintain a breach of contract claim against TNCI in his individual capacity. Defendant then points out that while TNCI did provide four months of internet service to L&K, from March 2009 until June 2009, L&K has not paid anything whatsoever in return.

Next, TNCI contends that the Court should dismiss Plaintiffs' claim for violation of the Consumer Fraud Act because Plaintiffs do not qualify as a consumer under the CFA, and because Plaintiffs cannot demonstrate any ascertainable loss as required by the CFA. Finally, TNCI also contends that the Court should dismiss Plaintiffs' breach of fiduciary duty claim because there is no fiduciary relationship between a telecommunications company and its customer. Specifically, Defendant argues that the relationship between TNCI and L&K was solely on a contractual basis, and that courts have frequently denied a litigant's breach of fiduciary duty claim based on the economic loss doctrine, which generally "prohibits plaintiffs from recovering in tort economic losses to which their entitlement flows only from a contract." Duquesne

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Light Co. v. Westinghouse Elec. Co., 66 F.3d 604, 618 (3rd Cir. 1995).

In opposition, Plaintiffs concede that Dr. Lee does lack standing to assert any individual breach of contract claims against TNCI. However, Plaintiffs do contend that they suffered an ascertainable loss with respect to their breach of contract and CFA claims because they did not receive the specific type of high speed internet service that they requested, and they could have instead received comparable service at a cheaper rate from XO, their prior internet and telephone service provider. In addition,

Plaintiffs contend that there was a special agency relationship between L&K and TNCI arising out of the contract because it was titled, "Letter of Agency," and that therefore TNCI did owe a fiduciary duty to L&K arising out of that agency relationship.

Here, there exist no genuine issues of material fact, and this Court's findings are made as a matter of law. With respect to Plaintiffs' breach of contract claim, this Court finds that Dr. Lee has no standing to bring an individual claim for breach of contract because he signed the contract only in his professional capacity as President

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of L&K Dental. This Court also finds that L&K itself has no basis for a breach of contract claim against TNCI. It is undisputed that TNCI did provide four months of internet and telephone service to L&K, and it is further undisputed that L&K has not paid anything whatsoever in return. It is therefore immaterial that Plaintiffs claim that they did not receive the level of service that they requested. The fact remains that they did receive service, and that they did not, and still have not, paid for the service that they did receive. This presents Plaintiff's own failure to comply with the terms of the parties' contract as required to present a basis against another for breach of contract. Plaintiff L&K Dental has not presented a *prima facie* case for breach of contract.

With respect to Plaintiffs' claim for violation of the CFA, this Court finds that Plaintiffs' claim is without merit. This Court does not address the issue of whether or not L&K qualifies as a consumer under the CFA, simply because another essential element of the CFA is non-existent: Plaintiffs are unable to demonstrate any ascertainable loss. Plaintiffs received telephone and internet service from TNCI for four months, but have not

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Docket No.: BER-L-9555-09

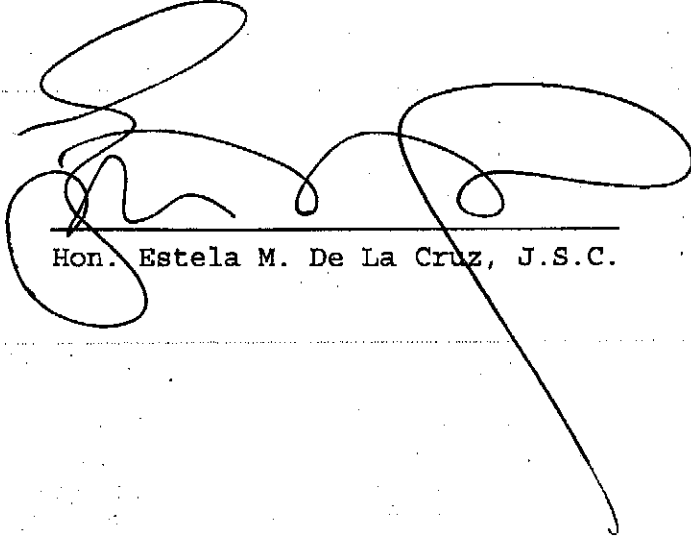
paid anything whatsoever in return. Had Plaintiffs paid for the service, and then demonstrated that they did not receive the service that they paid for, they may have been able to demonstrate an ascertainable loss. However, Plaintiffs have not paid for anything, and therefore they have not lost any money whatsoever. There is no loss claimed that is, in fact, ascertainable, and as such there is a fatal deficiency in Plaintiff L&K's CFA claim.

Finally, with respect to Plaintiffs' breach of fiduciary duty claim, this Court finds that Defendant TNCI did not owe a fiduciary duty to Plaintiffs. Despite the document bearing the title "Letter of Agency," the relationship between TNCI and L&K was a clear contractual relationship in which TNCI promised to provide internet and telephone services in return for payment by L&K. TNCI was not L&K's agent, and there was no special agency relationship between the two parties. Moreover, the facts in this case support the application of the economic loss doctrine, which "prohibits plaintiffs from recovering in tort economic losses to which their entitlement flows only from a contract." Duquesne Light Co. v. Westinghouse Elec. Co., 66 F.3d 604, 618 (3rd Cir. 1995). In New Jersey, the

L&K Dental and Dong Lee v. Receivable Management Services, et al.
Docket No.: BER-L-9555-09

economic loss doctrine was first recognized by the New Jersey Supreme Court in Spring Motors Distribs. Inc. v. Ford Motor Co., 98 N.J. 555 (1985), and has since been affirmed in Alloway v. General Marine Indus. L.P., 149 N.J. 620, 627 (1997). Here, L&K Dental's claimed losses are based on the parties' contract and Plaintiff is prohibited then from recovering from economic losses.

Based on all of the foregoing reasons, Defendant TNCI's motion for summary judgment is hereby GRANTED in its entirety, and Plaintiffs' respective claims for breach of contract, violation of the consumer fraud act and breach of fiduciary duty are hereby dismissed with prejudice. An order of even date has been entered by this Court to this effect.



Hon. Estela M. De La Cruz, J.S.C.

EXHIBIT G

LoFARO & REISER, L.L.P.
55 HUDSON STREET
(201) 498-0400 Fax (201) 498-0016
HACKENSACK, NJ 07601

Invoice submitted to:
Transnational Communications International
2 Charlesgate West
Boston, MA 02215

October 01, 2010

In Reference To: L&K Dental, P.A. and Dong Hyun Lee v. Receivable Management
ServiceQ a/k/a Global Collection Company and Transnational
Comm. Int.
Docket No. BER-L-9686-09

Invoice #16693

Professional Services

	<u>Hours</u>	<u>Amount</u>
3/17/2010 Telephone conference with court; correspondence to counsel confirming date and time.	0.30	85.50
3/18/2010 Review file in preparation to argue motion hearing.	0.50	162.50
3/19/2010 Attendance at Court hearing, and waiting for plaintiffs' counsel to appear; draft proposed order and circulate by e-mail; e-mail to P. Josephson re: outcome of court hearing.	1.80	585.00
3/24/2010 Review order entered by Court; circulate copy to counsel.	0.10	32.50
3/25/2010 E-mail to counsel and mediator.	0.20	57.00
3/26/2010 Email to mediator and counsel; conference with GRR; drafted R. 1:4-8 sanctions letter.	0.90	256.50
3/29/2010 Telephone conference with counsel and mediator; inter-office conference with GRR.	0.50	142.50
3/30/2010 inter-office conference with GRR; review email from adversary.	0.20	57.00
4/1/2010 E-mail to client; conference with GRR; telephone conference with attorney for co-defendant; prepared stipulation extending time to answer; e-mails with plaintiff's attorney re: stipulation; began drafting answer and counterclaim.	2.80	798.00
4/5/2010 Draft cover letter and stipulation extending time to answer; email to client; reviewed discovery from co-defendant.	0.30	85.50

	<u>Hours</u>	<u>Amount</u>
4/9/2010 E-mail to plaintiff's attorney.	0.10	28.50
4/14/2010 Call to co-defendant's attorney	0.10	28.50
4/19/2010 E-mail to adversary re: stipulation extending time to answer.	0.10	28.50
4/21/2010 Inter-office conference with GRR; e-mail to client.	0.20	57.00
4/22/2010 Inter-office conference with GRR; final review of TNCI Answer/Counterclaim.	0.30	85.50
4/23/2010 Inter-office conference with GRR; revise answer and counterclaim.	0.70	199.50
	<hr/>	<hr/>
For professional services rendered	9.10	\$2,689.50
Additional Charges :		
\$Fax		12.00
\$Postage		0.88
Total costs		<hr/> \$12.88
		<hr/>
Total amount of this bill		\$2,702.38
Previous balance		\$3,345.98
5/10/2010 Payment - Thank You		<hr/> (\$3,345.98)
Total payments and adjustments		(\$3,345.98)
		<hr/>
Balance due		<hr/> <hr/> \$2,702.38

PAYMENT DUE UPON RECEIPT. PLEASE MAKE CHECK PAYABLE TO "LoFARO & REISER, L.L.P."

WE ACCEPT VISA, MASTERCARD, AMERICAN EXPRESS AND DISCOVER. PLEASE CALL US AT (201) 498-0400 SHOULD YOU WISH TO PAY THIS INVOICE BY CREDIT CARD.

LoFARO & REISER, L.L.P.
55 HUDSON STREET
(201) 498-0400 Fax (201) 498-0016
HACKENSACK, NJ 07601

Invoice submitted to:
Transnational Communications International
2 Charlesgate West
Boston, MA 02215

October 01, 2010

In Reference To: L&K Dental, P.A. and Dong Hyun Lee v. Receivable Management
ServiceQ a/k/a Global Collection Company and Transnational
Comm. Int.
Docket No. BER-L-9686-09

Invoice #16695

Professional Services

	<u>Hours</u>	<u>Amount</u>
4/26/2010 Finalized Answer and Counterclaim; prepared cover letter; e-mail to client.	0.90	256.50
4/27/2010 Conference with counsel for co-defendant; telephone conference with client.	0.20	57.00
4/28/2010 Call with client; conference with GRR.	0.20	57.00
6/4/2010 Review letter from co-defendant re: new deposition date; e-mail to client re: new deposition date.	0.30	85.50
6/23/2010 E-mails to/from client.	0.20	57.00
6/24/2010 E-mails to co-defendant; e-mail to client re: depositions.	0.30	85.50
7/6/2010 Calls to/from to adverse counsel re: adjourned dep; conference with client re: same; email to attorneys re: scheduling deposition; conference with GRR.	0.40	114.00
7/9/2010 E-mail to client re: deposition date.	0.10	28.50
7/15/2010 Confirmed deposition with co-defendant's counsel's office; email to client; conference with GRR; began preparing for deposition.	0.10	28.50
7/16/2010 Review of documents and file; prepared exhibits; Appearance at deposition for RMS; conducted deposition for TNCl; conference with counsel.	4.20	1,197.00
7/19/2010 Conference with GRR re: deposition and new motion; conference with client re: same; began drafting interrogatories, document demands and admissions to propound upon plaintiffs' counsel; email to client.	3.70	1,054.50

	<u>Hours</u>	<u>Amount</u>
7/20/2010 Review/revise/proof read discovery demands; conference with GRR; email to client re: discovery demands.	1.80	513.00
7/22/2010 E-mails to/from client	0.10	28.50
7/26/2010 Finalized discovery demands; email to client	0.70	199.50
8/2/2010 E-mail to client re: offer of judgment.	0.20	57.00
8/9/2010 Inter-office conference with GRR.	0.10	28.50
8/11/2010 E-mails to/from client; conference with GRR.	0.10	28.50
8/12/2010 Drafted outline for SJ Motion; inter-office conference with GRR; began drafting statement of material facts.	0.70	199.50
8/16/2010 Prepared offer of judgment and cover letter for court; conference with GRR; email to opposing counsel re: motion for leave to amend complaint; continued working on outline for motion for summary judgment.	2.30	655.50
8/17/2010 Call to client re: offer of judgment and possible cross-claim; Conference with GRR.	0.70	199.50
Inter-office conference with MC re. consumer fraud issues and amendment of plaintiff's complaint.	0.30	97.50
8/23/2010 E-mail to client; inter-office conference with GRR; reviewed first amended complaint; began drafting answer to first amended complaint.	2.80	798.00
8/24/2010 Telephone conference with adversary re: admissions; emails to/from adversary re: same; email to counsel re: offer of judgment.	0.40	114.00
8/25/2010 Continued drafting Answer; conference with WLT re: form of answer and exhibits.	1.70	484.50
8/26/2010 E-mails to/from client; conference with GRR; review of motion.	0.30	85.50
8/27/2010 Continued reviewing and revising answer to amended complaint and counterclaim; review of contract documents; conference with GRR; email to client regarding questions about plaintiffs' amended complaint.	2.30	655.50
8/31/2010 E-mail to client re: answers to admissions and discovery demands.	0.10	28.50
9/2/2010 Review answer from co-defendant, RMS; continued drafting amended answer and counterclaim of plaintiffs' complaint; email to client; conference with GRR.	1.30	370.50
9/7/2010 Further review/revise/proof-read answer and counterclaim; conference with GRR; reviewed email from client; email to adversary's attorney re: entering into stipulation to extend time to answer; call to adversary's attorney re: same.	1.40	399.00
9/8/2010 Prepared stipulation to extend time to answer and/or otherwise plead; emails to/from plaintiffs' attorney; conference with GRR.	0.40	114.00

	<u>Hours</u>	<u>Amount</u>
9/14/2010 Telephone conference with client; further revisions to amended answer and counterclaim; conference with GRR.	0.40	114.00
9/15/2010 Telephone conferences with client; continued working on motion for summary judgment.	1.50	427.50
9/17/2010 Telephone conference with client.	0.10	28.50
9/29/2010 Conference with GRR; further revise amended answer to incorporate cross-claim; prepared stipulation to extend time; emails to/from adversary.	0.60	171.00
Review and edit draft of amended answer and counterclaim.	0.40	130.00
For professional services rendered	<u>31.30</u>	<u>\$8,948.50</u>
Additional Charges :		
\$Copying		31.75
\$Filing Fees		65.00
\$Postage		4.54
\$Transcripts		<u>391.00</u>
Total costs		\$492.29
Total amount of this bill		<u>\$9,440.79</u>
Previous balance		\$2,702.38
Balance due		<u><u>\$12,143.17</u></u>

PAYMENT DUE UPON RECEIPT. PLEASE MAKE CHECK PAYABLE TO "LoFARO & REISER, L.L.P."

WE ACCEPT VISA, MASTERCARD, AMERICAN EXPRESS AND DISCOVER. PLEASE CALL US AT (201) 498-0400 SHOULD YOU WISH TO PAY THIS INVOICE BY CREDIT CARD.

LoFARO & REISER, L.L.P.
55 HUDSON STREET
(201) 498-0400 Fax (201) 498-0016
HACKENSACK, NJ 07601

Invoice submitted to:
Transnational Communications International
2 Charlesgate West
Boston, MA 02215

December 06, 2010

In Reference To: L&K Dental, P.A. and Dong Hyun Lee v. Receivable Management
ServiceQ a/k/a Global Collection Company and Transnational
Comm. Int.
Docket No. BER-L-9686-09

Invoice #16731

Professional Services

	<u>Hours</u>	<u>Amount</u>
12/3/2010 Attendance at court hearing re: summary judgment motion filed by RMS; waiting for case to be called	1.20	390.00
12/5/2010 E-mail to P. Josephson re: outcome of summary judgment motion by RMS	0.10	32.50
For professional services rendered	<u>1.30</u>	<u>\$422.50</u>
Previous balance		\$12,257.31
Balance due		<u><u>\$12,679.81</u></u>

PAYMENT DUE UPON RECEIPT. PLEASE MAKE CHECK PAYABLE TO "LoFARO & REISER, L.L.P."

WE ACCEPT VISA, MASTERCARD, AMERICAN EXPRESS AND DISCOVER. PLEASE CALL US AT (201)
498-0400 SHOULD YOU WISH TO PAY THIS INVOICE BY CREDIT CARD.

<u>Current</u>	<u>30 Days</u>	<u>60 Days</u>	<u>90 Days</u>	<u>120 Days</u>
422.50	114.14	12,143.17	0.00	0.00

LoFARO & REISER, L.L.P.
55 HUDSON STREET
(201) 498-0400 Fax (201) 498-0016
HACKENSACK, NJ 07601

Invoice submitted to:
Transnational Communications International
2 Charlesgate West
Boston, MA 02215

January 07, 2011

In Reference To: L&K Dental, P.A. and Dong Hyun Lee v. Receivable Management
ServiceQ a/k/a Global Collection Company and Transnational
Comm. Int.
Docket No. BER-L-9686-09

Invoice #16755

Professional Services

	<u>Hours</u>	<u>Amount</u>
12/7/2010 Telephone conference with P. Josephson.	0.20	65.00
12/8/2010 Legal research on issues of equitable estoppel, breach of fiduciary duty and NJ Consumer Fraud Act in furtherance of Summary Judgment Motion; review deposition testimony of Dr. Lee and plaintiff's discovery responses to RM's discovery demands; begin drafting client Certification and brief in support of summary judgment motion.	5.75	1,868.75
Continue with legal research on issues of equitable estoppel, judicial estoppel, breach of fiduciary duty; continue drafting and editing brief and client Certification; draft certification of G. Reiser.	7.50	2,437.50
12/9/2010 Proof-read and edit client Certification; continue editing and revising Brief; legal research on issue of economic loss doctrine barring pursuit of breach of fiduciary duty claim; draft proposed form of Order; revise Notice of Motion; revise Certification of G. Reiser to incorporate ethics opinion against M. Kimm; e-mails to/from P. Josephson.	3.80	1,235.00
12/10/2010 Proofread and final edits to Brief; telephone conferences with P. Josephson and Shaunya Thomas; e-mails to/from P. Josephson; coordinate exhibits to Certification of G. Reiser; further revisions to Notice of Motion and Brief to incorporate change in client Certification from Saunya Thomas to Stella Gnepp; draft correspondence to Court; telephone with attorney for RDS:	4.50	1,462.50
12/14/2010 Review file and provide P. Josephson with copy of prior sanctions letter issued to plaintiff's counsel; e-mail to P. Josephson.	0.10	32.50

	<u>Hours</u>	<u>Amount</u>
12/20/2010 Review Appellate Court case involving Michael S. Kimm - Plaintiff's lawyer; email to P. Josephson.	0.20	65.00
12/28/2010 E-mail to/from adversary; email to P. Josephson re: adjournment of summary judgment motion.	0.10	32.50
1/5/2011 Review opposition to summary judgment motion filed by L&K Dental; email to/from P. Josephson; telephone conference with Colleen McCarhy, attorney for new defendant; email to/from plaintiff's counsel.	1.10	357.50
Legal research; review cases cited in plaintiff's opposing brief; begin drafting Reply Brief; revise and edit Reply Brief; e-mail final draft to Phil Josephson.	4.75	1,543.75
1/6/2011 Review email from P. Josephson re: edits to summary judgment Reply Brief; final proofread and edits to summary judgment Reply Brief.	0.75	243.75
Telephone conference with Judge De La Cruz's Chambers as to status of motion hearing re: oral argument; draft correspondence to County Clerk; draft correspondence to Judge De La Cruz; email and correspondence to adversary re: serving Reply Brief; telephone conference with Judge De La Cruz's law clerk re: adjournment of summary judgment motion; email to adversaries re: adjournment.	0.50	162.50
Draft correspondence to client advising as to status of case, trial date, and settlement conference.	0.40	130.00
For professional services rendered	<u>29.65</u>	<u>\$9,636.25</u>
Additional Charges :		
\$COURT FEES		30.00
\$Copying		334.17
\$Filing Fees		30.00
\$Overnight Del.		50.00
\$Postage		18.04
Total costs		<u>\$462.21</u>
Total amount of this bill		<u>\$10,098.46</u>
Previous balance		\$12,679.81
1/3/2011 Payment - Thank You		(\$11,412.00)
1/7/2011 Credit - Voluntary Discount as per agreement to pay by year end		(\$1,267.81)
Total payments and adjustments		<u>(\$12,679.81)</u>
Balance due		<u><u>\$10,098.46</u></u>

PAYMENT DUE UPON RECEIPT. PLEASE MAKE CHECK PAYABLE TO "LoFARO & REISER, L.L.P."

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EXHIBIT H

Selection Criteria

Clie.Selection Include: TRANSNATIONAL.00

Rate Info - identifies rate source and level

Slip ID			User	Units	Rate	Slip Value
Dates and Time			Activity	DNB Time	Rate Info	
Posting Status			Client	Est. Time	Bill Status	
Description			Reference	Variance		
66266	EXP		Costantino, M.	4	1.50	6.00
1/28/2010			\$Fax			
Billed	G:16585	4/23/2010	TRANSNATIONAL.00			
Fax						
66270	EXP		Costantino, M.	10	0.25	2.50
1/28/2010			\$Copying			
Billed	G:16585	4/23/2010	TRANSNATIONAL.00			
Copying						
66271	EXP		Costantino, M.	2	0.44	0.88
1/28/2010			\$Postage			
Billed	G:16585	4/23/2010	TRANSNATIONAL.00			
Postage						
66278	TIME		Costantino, M.	2.20	285.00	627.00
1/27/2010			Telephone	0.00	T	
Billed	G:16585	4/23/2010	TRANSNATIONAL.00	0.00		
Telephone conference with client re: retainer agreement; call to adversary re: extending stipulation to answer and/or otherwise plead; began drafting motion to dismiss for failure to state a claim; conference with GRR; legal research on Fair Debt Collection Act; consumer fraud act, and claims for intentional infliction of emotional distress.				0.00		
66298	TIME		Costantino, M.	0.50	285.00	142.50
1/28/2010			Telephone	0.00	T	
Billed	G:16585	4/23/2010	TRANSNATIONAL.00	0.00		
Telephone conference with plaintiffs attorney re: extending time to answer; prepared stipulation extending time to answer and cover letter.				0.00		
66392	TIME		Costantino, M.	2.20	285.00	627.00
2/1/2010			Legal Research	0.00	T	
Billed	G:16585	4/23/2010	TRANSNATIONAL.00	0.00		
Legal research on consumer fraud pleading requirements; continued drafting brief in support of Notice of Motion to dismiss plaintiffs' complaint for failure to state a claim; began drafting; call to client; email to client.				0.00		

1/27/2011
5:01 PM

LoFARO & REISER, L.L.P.
Slip Listing

Page 2

Slip ID		User	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
66451	TIME	Costantino, M.	3.40	285.00	969.00
12/2/2009		Review	0.00	T	
Billed	G:16585	4/23/2010 TRANSNATIONAL.00	0.00		
Reviewed documents from TNCl's website; reviewed email from client; replied to email from client; continued drafting motion, brief and supporting certification.			0.00		
66463	TIME	Costantino, M.	3.10	285.00	883.50
12/3/2009		Draft	0.00	T	
Billed	G:16585	4/23/2010 TRANSNATIONAL.00	0.00		
Continued drafting, reviewing and revising motion to dismiss brief and certification; conference with GRR			0.00		
66480	TIME	LoFaro, C.	1.00	325.00	325.00
2/4/2010		Revised	0.00	C@1	
Billed	G:16585	4/23/2010 TRANSNATIONAL.00	0.00		
Revised Notice of Motion, Certification and proposed Order.			0.00		
66493	EXP	Costantino, M.	58	1.50	87.00
2/5/2010		\$Fax			
Billed	G:16585	4/23/2010 TRANSNATIONAL.00			
Fax					
66502	EXP	Costantino, M.	346	0.25	86.50
2/5/2010		\$Copying			
Billed	G:16585	4/23/2010 TRANSNATIONAL.00			
Copying					
66513	EXP	Costantino, M.	1	5.10	5.10
2/5/2010		\$Postage			
Billed	G:16585	4/23/2010 TRANSNATIONAL.00			
Postage					
66518	EXP	Costantino, M.	1	135.00	135.00
2/5/2010		\$Filing Fees			
Billed	G:16585	4/23/2010 TRANSNATIONAL.00			
Filing fee					
66523	TIME	Costantino, M.	5.40	285.00	1539.00
2/4/2010		Revise	0.00	T	
Billed	G:16585	4/23/2010 TRANSNATIONAL.00	0.00		
Continued revisions to brief and certification; conference with CL; reviewed and prepared exhibits.			0.00		

Slip ID	User	Units	Rate	Slip Value	
Dates and Time	Activity	DNB Time	Rate Info		
Posting Status	Client	Est. Time	Bill Status		
Description	Reference	Variance			
66529	TIME	Costantino, M.	1.10	285.00	313.50
2/5/2010	Revised	0.00	T		
Billed	G:16585 4/23/2010	TRANSNATIONAL.00	0.00		
Completed CIS; revised brief; conference with CL; prepared cover letter for motion to dismiss for court; calls and emails to client; final revisions to motion papers; filed motion papers.					
66910	TIME	Costantino, M.	0.70	285.00	199.50
2/25/2010	Review	0.00	T		
Billed	G:16585 4/23/2010	TRANSNATIONAL.00	0.00		
Review of opposition pleadings; conference with client.					
66915	TIME	Costantino, M.	1.10	285.00	313.50
2/26/2010	Commence	0.00	T		
Billed	G:16585 4/23/2010	TRANSNATIONAL.00	0.00		
Commenced drafting reply brief; legal research on FDCPA.					
66917	TIME	Costantino, M.	2.50	285.00	712.50
2/26/2010	Draft	0.00	T		
Billed	G:16585 4/23/2010	TRANSNATIONAL.00	0.00		
Continued drafting reply brief; legal research on FDCPA; revised and proof-read brief.					
66962	TIME	Costantino, M.	2.50	285.00	712.50
3/1/2010	Draft	0.00	T		
Billed	G:16585 4/23/2010	TRANSNATIONAL.00	0.00		
Continued drafting/revising reply brief; conference with GRR; finalized and filed brief; email to client.					
67006	TIME	Costantino, M.	0.30	285.00	85.50
3/2/2010	Telephone	0.00	T		
Billed	G:16585 4/23/2010	TRANSNATIONAL.00	0.00		
Call with court; letter to court re: adjournment					
67036	TIME	Costantino, M.	0.30	285.00	85.50
3/2/2010	Telephone	0.00	T		
Billed	G:16585 4/23/2010	TRANSNATIONAL.00	0.00		
Telephone conference with Court; correspondence to Court re: adjournment.					
67040	TIME	Reiser, G.	1.50	325.00	487.50
3/1/2010	Review	0.00	T		
Billed	G:16585 4/23/2010	TRANSNATIONAL.00	0.00		
Review adversary's opposing brief; proofread, edit and revise reply brief prepared by MRC.					

1/27/2011
5:01 PM

LoFARO & REISER, L.L.P.
Slip Listing

Page 4

Slip ID	User	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Reference	Variance		
67433	Costantino, M.	0.30	285.00	85.50
3/17/2010	Telephone	0.00	T	
Billed	G:16693 10/1/2010	0.00		
TRANSNATIONAL.00				
Telephone conference with court; correspondence to counsel confirming date and time.				
67443	Reiser, G.	0.50	325.00	162.50
3/18/2010	Review	0.00	T	
Billed	G:16693 10/1/2010	0.00		
TRANSNATIONAL.00				
Review file in preparation to argue motion hearing.				
67447	Reiser, G.	1.80	325.00	585.00
3/19/2010	Attendance	0.00	T	
Billed	G:16693 10/1/2010	0.00		
TRANSNATIONAL.00				
Attendance at Court hearing, and waiting for plaintiffs' counsel to appear; draft proposed order and circulate by e-mail; e-mail to P. Josephson re: outcome of court hearing.				
67579	Costantino, M.	0.20	285.00	57.00
3/25/2010	E-mail	0.00	T	
Billed	G:16693 10/1/2010	0.00		
TRANSNATIONAL.00				
E-mail to counsel and mediator.				
67600	Reiser, G.	0.10	325.00	32.50
3/24/2010	Review	0.00	T	
Billed	G:16693 10/1/2010	0.00		
TRANSNATIONAL.00				
Review order entered by Court; circulate copy to counsel.				
67616	Costantino, M.	0.90	285.00	256.50
3/26/2010	E-mail	0.00	T	
Billed	G:16693 10/1/2010	0.00		
TRANSNATIONAL.00				
Email to mediator and counsel; conference with GRR; drafted R. 1:4-8 sanctions letter.				
67620	Costantino, M.	2	1.50	3.00
3/26/2010	\$Fax			
Billed	G:16693 10/1/2010			
TRANSNATIONAL.00				
Fax				
67649	Costantino, M.	1	0.44	0.44
3/26/2010	\$Postage			
Billed	G:16693 10/1/2010			
TRANSNATIONAL.00				
Postage				
67711	Costantino, M.	0.50	285.00	142.50
3/29/2010	Telephone	0.00	T	
Billed	G:16693 10/1/2010	0.00		
TRANSNATIONAL.00				

Slip ID		User	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
			0.00		
	Telephone conference with counsel and mediator; inter-office conference with GRR.				
67741	TIME	Costantino, M.	0.20	285.00	57.00
3/30/2010		Inter-office	0.00	T	
Billed	G:16693	10/1/2010	0.00	TRANSNATIONAL.00	
	inter-office conference with GRR; review email from adversary.				
			0.00		
67815	TIME	Costantino, M.	2.80	285.00	798.00
4/1/2010		E-mail	0.00	T	
Billed	G:16693	10/1/2010	0.00	TRANSNATIONAL.00	
	E-mail to client; conference with GRR; telephone conference with attorney for co-defendant; prepared stipulation extending time to answer; e-mails with plaintiff's attorney re: stipulation; began drafting answer and counterclaim.				
			0.00		
67858	TIME	Costantino, M.	0.30	285.00	85.50
4/5/2010		Correspondence	0.00	T	
Billed	G:16693	10/1/2010	0.00	TRANSNATIONAL.00	
	Draft cover letter and stipulation extending time to answer; email to client; reviewed discovery from co-defendant.				
			0.00		
68012	TIME	Costantino, M.	0.10	285.00	28.50
4/9/2010		E-mail	0.00	T	
Billed	G:16693	10/1/2010	0.00	TRANSNATIONAL.00	
	E-mail to plaintiff's attorney.				
			0.00		
68084	TIME	Costantino, M.	0.10	285.00	28.50
4/14/2010		Telephone	0.00	T	
Billed	G:16693	10/1/2010	0.00	TRANSNATIONAL.00	
	Call to co-defendant's attorney				
			0.00		
68143	TIME	Costantino, M.	0.10	285.00	28.50
4/19/2010		E-mail	0.00	T	
Billed	G:16693	10/1/2010	0.00	TRANSNATIONAL.00	
	E-mail to adversary re: stipulation extending time to answer.				
			0.00		
68169	EXP	Costantino, M.	6	1.50	9.00
4/14/2010		\$Fax			
Billed	G:16693	10/1/2010		TRANSNATIONAL.00	
	Fax				

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Slip ID		User	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
68194	EXP	Costantino, M.	1	0.44	0.44
4/14/2010		\$Postage			
Billed	G:16693	10/1/2010			
Postage		TRANSNATIONAL.00			
68232	TIME	Costantino, M.	0.20	285.00	57.00
4/21/2010		Inter-office	0.00	T	
Billed	G:16693	10/1/2010	0.00		
Inter-office conference with GRR; e-mail to client.		TRANSNATIONAL.00	0.00		
68263	TIME	Costantino, M.	0.30	285.00	85.50
4/22/2010		Inter-office	0.00	T	
Billed	G:16693	10/1/2010	0.00		
Inter-office conference with GRR; final review of TNCI Answer/Counterclaim.		TRANSNATIONAL.00	0.00		
68338	TIME	Costantino, M.	0.70	285.00	199.50
4/23/2010		Inter-office	0.00	T	
Billed	G:16693	10/1/2010	0.00		
Inter-office conference with GRR; revise answer and counterclaim.		TRANSNATIONAL.00	0.00		
68371	TIME	Costantino, M.	0.90	285.00	256.50
4/26/2010		Finalize	0.00	C	
Billed	G:16695	10/1/2010	0.00		
Finalized Answer and Counterclaim; prepared cover letter; e-mail to client.		TRANSNATIONAL.00	0.00		
68405	TIME	Costantino, M.	0.20	285.00	57.00
4/27/2010		Telephone	0.00	C	
Billed	G:16695	10/1/2010	0.00		
Conference with counsel for co-defendant; telephone conference with client.		TRANSNATIONAL.00	0.00		
68448	TIME	Costantino, M.	0.20	285.00	57.00
4/28/2010		Telephone	0.00	C	
Billed	G:16695	10/1/2010	0.00		
Call with client; conference with GRR.		TRANSNATIONAL.00	0.00		
68485	EXP	Costantino, M.	70	0.25	17.50
4/26/2010		\$Copying			
Billed	G:16695	10/1/2010			
Copying		TRANSNATIONAL.00			
68494	EXP	Costantino, M.	3	0.78	2.34
4/26/2010		\$Postage			
Billed	G:16695	10/1/2010			
Postage		TRANSNATIONAL.00			

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Slip ID		User	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
68505	EXP	Costantino, M.	1	65.00	65.00
4/26/2010		\$Filing Fees			
Billed	G:16695	10/1/2010			
filing fee		TRANSNATIONAL.00			
69242	TIME	Costantino, M.	0.30	285.00	85.50
6/4/2010		Review	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Review letter from co-defendant re: new deposition date; e-mail to client re: new deposition date.		TRANSNATIONAL.00	0.00		
69684	TIME	Costantino, M.	0.20	285.00	57.00
6/23/2010		E-mail	0.00	T	
Billed	G:16695	10/1/2010	0.00		
E-mails to/from client.		TRANSNATIONAL.00	0.00		
69735	TIME	Costantino, M.	0.30	285.00	85.50
6/24/2010		E-mail	0.00	T	
Billed	G:16695	10/1/2010	0.00		
E-mails to co-defendant; e-mail to client re: depositions.		TRANSNATIONAL.00	0.00		
70026	TIME	Costantino, M.	0.40	285.00	114.00
7/6/2010		Telephone	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Calls to/from to adverse counsel re: adjourned dep; conference with client re: same; email to attorneys re: scheduling deposition; conference with GRR.		TRANSNATIONAL.00	0.00		
70142	TIME	Costantino, M.	0.10	285.00	28.50
7/9/2010		E-mail	0.00	T	
Billed	G:16695	10/1/2010	0.00		
E-mail to client re: deposition date.		TRANSNATIONAL.00	0.00		
70295	TIME	Costantino, M.	0.10	285.00	28.50
7/15/2010		Prepared	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Confirmed deposition with co-defendant's counsel's office; email to client; conference with GRR; began preparing for deposition.		TRANSNATIONAL.00	0.00		
70311	TIME	Costantino, M.	4.20	285.00	1197.00
7/16/2010		Review	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Review of documents and file; prepared exhibits; Appearance at deposition for RMS; conducted deposition for TNCl; conference with counsel.		TRANSNATIONAL.00	0.00		

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Slip ID		User	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
70338	TIME	Costantino, M.	3.70	285.00	1054.50
7/19/2010		Conference	0.00	T	
Billed	G:16695	10/1/2010	0.00		
TRANSNATIONAL.00					
Conference with GRR re: deposition and new motion; conference with client re: same; began drafting interrogatories, document demands and admissions to propound upon plaintiffs' counsel; email to client.					
			0.00		
70346	TIME	Costantino, M.	1.80	285.00	513.00
7/20/2010		Review	0.00	T	
Billed	G:16695	10/1/2010	0.00		
TRANSNATIONAL.00					
Review/revise/proof read discovery demands; conference with GRR; email to client re: discovery demands.					
			0.00		
70397	TIME	Costantino, M.	0.10	285.00	28.50
7/22/2010		E-mail	0.00	T	
Billed	G:16695	10/1/2010	0.00		
TRANSNATIONAL.00					
E-mails to/from client					
			0.00		
70518	TIME	Costantino, M.	0.70	285.00	199.50
7/26/2010		Finalize	0.00	T	
Billed	G:16695	10/1/2010	0.00		
TRANSNATIONAL.00					
Finalized discovery demands; email to client					
			0.00		
70528	EXP	Costantino, M.	35	0.25	8.75
7/26/2010		\$Copying			
Billed	G:16695	10/1/2010			
TRANSNATIONAL.00					
Copying					
70691	TIME	Costantino, M.	0.20	285.00	57.00
8/2/2010		E-mail	0.00	T	
Billed	G:16695	10/1/2010	0.00		
TRANSNATIONAL.00					
E-mail to client re: offer of judgment.					
			0.00		
70893	TIME	Costantino, M.	0.10	285.00	28.50
8/9/2010		Inter-office	0.00	T	
Billed	G:16695	10/1/2010	0.00		
TRANSNATIONAL.00					
Inter-office conference with GRR.					
			0.00		
70951	TIME	Costantino, M.	0.10	285.00	28.50
8/11/2010		E-mail	0.00	T	
Billed	G:16695	10/1/2010	0.00		
TRANSNATIONAL.00					
E-mails to/from client; conference with GRR.					
			0.00		
70996	TIME	Costantino, M.	0.70	285.00	199.50
8/12/2010		Drafted	0.00	T	
Billed	G:16695	10/1/2010	0.00		
TRANSNATIONAL.00					

Slip ID		User	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
71274	TIME	Costantino, M.	0.30	285.00	85.50
8/26/2010		E-mail	0.00	T	
Billed	G:16695	10/1/2010	0.00		
E-mails to/from client; conference with GRR; review of motion.			0.00		
71290	TIME	Costantino, M.	2.30	285.00	655.50
8/27/2010		Review	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Continued reviewing and revising answer to amended complaint and counterclaim; review of contract documents; conference with GRR; email to client regarding questions about plaintiffs' amended complaint.			0.00		
71299	TIME	La Tourette, W.	0.30	325.00	97.50
8/17/2010		Inter-office	0.00	C@1	
Billed	G:16695	10/1/2010	0.00		
Inter-office conference with MC re. consumer fraud issues and amendment of plaintiffs complaint.			0.00		
71427	TIME	Costantino, M.	0.10	285.00	28.50
8/31/2010		E-mail	0.00	T	
Billed	G:16695	10/1/2010	0.00		
E-mail to client re: answers to admissions and discovery demands.			0.00		
71475	TIME	Costantino, M.	1.30	285.00	370.50
9/2/2010		Review	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Review answer from co-defendant, RMS; continued drafting amended answer and counterclaim of plaintiffs' complaint; email to client; conference with GRR.			0.00		
71487	EXP	Costantino, M.	1	391.00	391.00
8/4/2010		\$Transcripts			
Billed	G:16695	10/1/2010			
Veritext					
71520	TIME	Costantino, M.	1.40	285.00	399.00
9/7/2010		Review	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Further review/revise/proof-read answer and counterclaim; conference with GRR; reviewed email from client; email to adversary's attorney re: entering into stipulation to extend time to answer; call to adversary's attorney re: same.			0.00		

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Slip ID		User	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
71572	EXP	Costantino, M.	6	0.25	1.50
9/10/2010		\$Copying			
Billed	G:16695	10/1/2010			
Copying		TRANSNATIONAL.00			
71577	TIME	Costantino, M.	0.40	285.00	114.00
9/8/2010		Prepared	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Prepared stipulation to extend time to answer and/or otherwise plead; emails to/from plaintiffs' attorney; conference with GRR.		TRANSNATIONAL.00	0.00		
71600	EXP	Costantino, M.	1	0.44	0.44
9/10/2010		\$Postage			
Billed	G:16695	10/1/2010			
Postage		TRANSNATIONAL.00			
71652	TIME	Costantino, M.	0.40	285.00	114.00
9/14/2010		Telephone	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Telephone conference with client; further revisions to amended answer and counterclaim; conference with GRR.		TRANSNATIONAL.00	0.00		
71677	TIME	Costantino, M.	1.50	285.00	427.50
9/15/2010		Telephone	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Telephone conferences with client; continued working on motion for summary judgment.		TRANSNATIONAL.00	0.00		
71749	TIME	Costantino, M.	0.10	285.00	28.50
9/17/2010		Telephone	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Telephone conference with client.		TRANSNATIONAL.00	0.00		
71951	TIME	Costantino, M.	0.60	285.00	171.00
9/29/2010		Conference	0.00	T	
Billed	G:16695	10/1/2010	0.00		
Conference with GRR; further revise amended answer to incorporate cross-claim; prepared stipulation to extend time; emails to/from adversary.		TRANSNATIONAL.00	0.00		
72015	TIME	Reiser, G	0.40	325.00	130.00
9/29/2010		Review	0.00	C@1	
Billed	G:16695	10/1/2010	0.00		
Review and edit draft of amended answer and counterclaim.		TRANSNATIONAL.00	0.00		

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Slip ID	Dates and Time	Posting Status	Description	User	Activity	Client Reference	Units	DNB Time	Rate	Rate Info	Slip Value
								Est. Time		Bill Status	
								Variance			
72031	9/30/2010	EXP	Billed Fax	Costantino, M.	\$Fax	TRANSNATIONAL.00	21		1.50		31.50
			G:16713 10/26/2010								
72037	9/30/2010	EXP	Billed Copying	Costantino, M.	\$Copying	TRANSNATIONAL.00	65		0.25		16.25
			G:16713 10/26/2010								
72040	9/30/2010	EXP	Billed Postage	Costantino, M.	\$Postage	TRANSNATIONAL.00	1		0.44		0.44
			G:16713 10/26/2010								
72041	9/30/2010	EXP	Billed Postage	Costantino, M.	\$Postage	TRANSNATIONAL.00	1		0.95		0.95
			G:16713 10/26/2010								
72146	10/6/2010	TIME	Billed Telephone conference with Stella of INCI re: case status	Reiser, G	Telephone	TRANSNATIONAL.00	0.20	0.00	325.00	C@1	65.00
			G:16713 10/26/2010				0.00	0.00			
73072	12/3/2010	TIME	Billed Attendance at court hearing re: summary judgment motion filed by RMS; waiting for case to be called	Reiser, G	Attendance	TRANSNATIONAL.00	1.20	0.00	325.00	C@1	390.00
			G:16731 12/6/2010				0.00	0.00			
73073	12/5/2010	TIME	Billed E-mail to P. Josephson re: outcome of summary judgment motion by RMS	Reiser, G	E-mail	TRANSNATIONAL.00	0.10	0.00	325.00	C@1	32.50
			G:16731 12/6/2010				0.00	0.00			
73074	12/7/2010	TIME	Billed Telephone conference with P. Josephson.	Reiser, G	Telephone	TRANSNATIONAL.00	0.20	0.00	325.00	C@1	65.00
			G:16755 1/7/2011				0.00	0.00			
73103	12/8/2010	TIME	Billed Legal research on issues of equitable estoppel, breach of fiduciary duty and NJ Consumer Fraud Act in furtherance of Summary Judgment Motion;	Reiser, G	Legal Research	TRANSNATIONAL.00	5.75	0.00	325.00	C@1	1868.75
			G:16755 1/7/2011				0.00	0.00			

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Slip ID	Dates and Time	Posting Status	Description	User	Activity	Client	Reference	Units	DNB Time	Est. Time	Variance	Rate	Rate Info	Bill Status	Slip Value
			review deposition testimony of Dr. Lee and plaintiffs discovery responses to RM's discovery demands; begin drafting client Certification and brief in support of summary judgment motion.												
73104	TIME			Reiser, G				7.50				325.00			2437.50
	12/8/2010				Legal Research			0.00					C@1		
	Billed	G:16755	1/7/2011	TRANSNATIONAL.00				0.00							
			Continue with legal research on issues of equitable estoppel, judicial estoppel, breach of fiduciary duty; continue drafting and editing brief and client Certification; draft certification of G. Reiser.					0.00							
73156	TIME			Reiser, G				4.50				325.00			1462.50
	12/10/2010				Proof-Read			0.00					C@1		
	Billed	G:16755	1/7/2011	TRANSNATIONAL.00				0.00							
			Proofread and final edits to Brief; telephone conferences with P. Josephson and Shaunya Thomas; e-mails to/from P. Josephson; coordinate exhibits to Certification of G. Reiser; further revisions to Notice of Motion and Brief to incorporate change in client Certification from Saunya Thomas to Stella Gnepp; draft correspondence to Court; telephone with attorney for RDS:					0.00							
73218	TIME			Reiser, G				0.10				325.00			32.50
	12/14/2010				Review			0.00					C@1		
	Billed	G:16755	1/7/2011	TRANSNATIONAL.00				0.00							
			Review file and provide P. Josephson with copy of prior sanctions letter issued to plaintiffs counsel; e-mail to P. Josephson.					0.00							
73287	TIME			Reiser, G				3.80				325.00			1235.00
	12/9/2010				Proof-Read			0.00					C@1		
	Billed	G:16755	1/7/2011	TRANSNATIONAL.00				0.00							
			Proof-read and edit client Certification; continue editing and revising Brief; legal research on issue of economic loss doctrine barring pursuit of breach of fiduciary duty claim; draft proposed form of Order; revise Notice of Motion; revise Certification of G. Reiser to incorporate ethics opinion against M. Kimm; e-mails to/from P. Josephson.					0.00							
73311	TIME			Reiser, G				0.20				325.00			65.00
	12/20/2010				Review			0.00					C@1		
	Billed	G:16755	1/7/2011	TRANSNATIONAL.00				0.00							
			Review Appellate Court case involving Michael S. Kimm - Plaintiffs lawyer; email to P. Josephson.					0.00							

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Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
73371	TIME	Reiser, G	0.10	325.00	32.50
12/28/2010		E-mail	0.00	C@1	
Billed	G:16755	1/7/2011 TRANSNATIONAL.00	0.00		
E-mail to/from adversary; email to P. Josephson re: adjournment of summary judgment motion.					
73386	EXP	Reiser, G	2	25.00	50.00
12/10/2010		\$Overnight Del.			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Overnight Delivery Charge					
73388	EXP	Reiser, G	1	30.00	30.00
12/10/2010		\$Filing Fees			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Motion fee					
73392	EXP	Reiser, G	1	0.44	0.44
12/10/2010		\$Postage			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Postage					
73393	EXP	Reiser, G	1	5.86	5.86
12/11/2010		\$Postage			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Postage					
73412	TIME	Reiser, G	1.10	325.00	357.50
1/5/2011		Review	0.00	C@1	
Billed	G:16755	1/7/2011 TRANSNATIONAL.00	0.00		
Review opposition to summary judgment motion filed by L&K Dental; email to/from P. Josephson; telephone conference with Colleen McCarthy, attorney for new defendant; email to/from plaintiffs counsel.					
73425	TIME	Reiser, G	4.75	325.00	1543.75
1/5/2011		Legal Research	0.00	C@1	
Billed	G:16755	1/7/2011 TRANSNATIONAL.00	0.00		
Legal research; review cases cited in plaintiffs opposing brief; begin drafting Reply Brief, revise and edit Reply Brief, e-mail final draft to Phil Josephson.					
73436	TIME	Reiser, G	0.75	325.00	243.75
1/6/2011		Review	0.00	C@1	
Billed	G:16755	1/7/2011 TRANSNATIONAL.00	0.00		
Review email from P. Josephson re: edits to summary judgment Reply Brief, final proofread and edits to summary judgment Reply Brief.					

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Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
73437	TIME	Reiser, G	0.50	325.00	162.50
1/6/2011		Telephone	0.00	C@1	
Billed	G:16755	1/7/2011 TRANSNATIONAL.00	0.00		
Telephone conference with Judge De La Cruz's Chambers as to status of motion hearing re: oral argument; draft correspondence to County Clerk; draft correspondence to Judge De La Cruz; email and correspondence to adversary re: serving Reply Brief; telephone conference with Judge De La Cruz's law clerk re: adjournment of summary judgment motion; email to adversaries re: adjournment.					
73438	TIME	Reiser, G	0.40	325.00	130.00
1/6/2011		Correspondence	0.00	C@1	
Billed	G:16755	1/7/2011 TRANSNATIONAL.00	0.00		
Draft correspondence to client advising as to status of case, trial date, and settlement conference.					
73445	EXP	Reiser, G	1	30.00	30.00
12/8/2010		\$COURT FEES			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Motion fee					
73446	EXP	Reiser, G	1	138.17	138.17
12/8/2010		\$Copying			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Copying charge to outside vendor to photocopy and bind multiple copies of client Certification					
73447	EXP	Reiser, G	784	0.25	196.00
12/8/2010		\$Copying			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Copying balance of motion pleadings					
73448	EXP	Reiser, G	2	5.65	11.30
12/8/2010		\$Postage			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Postage					
73449	EXP	Reiser, G	1	0.44	0.44
12/8/2010		\$Postage			
Billed	G:16755	1/7/2011 TRANSNATIONAL.00			
Postage					
73652	TIME	Reiser, G	0.30	325.00	97.50
1/19/2011		Telephone	0.00	C@1	
WIP		TRANSNATIONAL.00	0.00		
Telephone conference with Judge De La Cruz's law clerk Chris; draft correspondence to Judge De La					

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Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
Cruz re: oral argument time on summary judgment motion; email and fax to adversaries; email to client re: same.					
73773	TIME	Reiser, G	0.10	325.00	32.50
1/26/2011		E-mail	0.00	C@1	
WIP		TRANSNATIONAL.00	0.00		
E-mail to/from and telephone conference with P. Josephson re: position for settlement conference.					
73774	TIME	Reiser, G	0.10	325.00	32.50
1/26/2011		Review	0.00	C@1	
WIP		TRANSNATIONAL.00	0.00		
Review written decision issued by Judge De La Cruz; email to P. Josephson.					
73775	TIME	Reiser, G	0.10	325.00	32.50
1/25/2011		E-mail	0.00	C@1	
WIP		TRANSNATIONAL.00	0.00		
E-mail to P. Josephson re: settlement conference.					
73776	TIME	Reiser, G	1.25	325.00	406.25
1/21/2011		Attendance	0.00	C@1	
WIP		TRANSNATIONAL.00	0.00		
Attendance at oral argument.					
Grand Total					
		Billable	101.20		31725.50
		Unbillable	0.00		0.00
		Total	101.20		31725.50

EXHIBIT I

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-333
District Docket No. XI-2005-0019E

IN THE MATTER OF :
MICHAEL KIMM :
AN ATTORNEY AT LAW :
:

Decision

Argued: February 15, 2007

Decided: April 26, 2007

Paul Kreisinger appeared on behalf of the District XI Ethics Committee.

Gerald Miller appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This is a case that tests the limits of zealous advocacy, limits we conclude were exceeded here.

The case came before us on a recommendation for discipline (reprimand) filed by the District XI Ethics Committee ("DEC"). The two-count complaint charged respondent with violating RPC 3.1 (bringing a proceeding knowing or reasonably believing that it is

frivolous and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine that a censure is the appropriate discipline.

Respondent was admitted to the New Jersey bar in 1991. He maintains a law practice in Hackensack, New Jersey. He has no history of discipline.

Grievant Grace Meyer, Esq., had known Howard Zidlick since the early 1980s, as a family friend and client. They were parishioners at the same church. Meyer drafted wills for Zidlick and his brother, was named the executrix in their respective wills, and held powers of attorney ("POA") in their behalf. She was not a beneficiary under Zidlick's will. Zidlick had no children and never married. He resided at the Ingleside Nursing Home from about December 1999 until his death, at the age of 91, on April 14, 2002.

Elaine Ruel was also Zidlick's friend and fellow parishioner. Before Zidlick took residence at the nursing home, he had retained Ruel as a home health aide.

At some point, Ruel approached Meyer to request that she replace Meyer as the agent under the POA because Meyer was too busy to handle his business affairs. Meyer acquiesced. She drafted a July 27, 1998 POA for Zidlick, naming Ruel as the attorney-in-fact in charge of Zidlick's business affairs. Meyer continued handling his legal affairs.

Meyer did not discuss the changes with Zidlick until he was about to execute the document. At that time, however, she verified that the changes met with his approval. The POA provided that Ruel was to

conduct any and all of my affairs without exception; including the sale, refinance, mortgage, transfer, collection and disbursement of funds relative to my real estate . . .

Endors[e] instruments for payment from and/or deposit of money to all of my banking and investment institutions as provided in NJSA 46:28-10, 11 et seq. [sic];

Mak[e] decisions regarding my medical treatment and case management in my best interest, based upon what is known of my wishes.

[Ex.P1.]

Also at Ruel's request, Meyer drafted a new will for Zidlick, keeping herself as the executrix, and leaving monetary bequests to Ruel (\$100,000), her husband Michael (\$50,000), daughter Kelly (\$50,000), and the balance in percentage specific bequests to various individuals and charities. Meyer did not confirm Zidlick's "testamentary intent" or discuss the changes with Zidlick until April 20, 2000, the date he executed the new will. Meyer was satisfied that the changes comported with Zidlick's wishes. Six days earlier, on April 14, 2000, Zidlick had signed a one-page memorandum stating that he and his brother had agreed to pay Ruel's federal and state income taxes, as well as her social security taxes.

According to Meyer, Zidlick paid Ruel \$12 an hour for home health aide services, which included, among others, shopping, dusting, or bringing meals to him. When Zidlick gave Ruel his POA, he increased this amount to \$15 an hour.

At some later point, Ruel began paying herself \$55 per hour, even after Zidlick had moved to the nursing home, where he received twenty-four hour care. During the last year of his life, he was bedridden.

Shortly after Zidlick's death, Meyer was qualified as executrix and began the administration of the estate. Thereafter, Ruel billed Meyer \$810.71 for services rendered to Zidlick as his agent/"personal care manager" from April 14 to April 26, 2002. Those services included calling the funeral home, talking to nurses, sorting through Zidlick's clothing, cleaning out his room, washing fifteen loads of laundry, and looking for his cemetery deed. Ruel charged \$10 for a load of laundry, even though the nursing home provided personal laundry services at sixty-nine cents per day; other laundry charges, such as for sheets, were included in the nursing home's monthly fee of \$7,000 to \$9,000.

Ruel submitted an additional bill for \$415 as a "geriatric care manager" for "going through" and organizing Zidlick's papers, "continued correspondence," going to the post office, calling Zidlick's relatives, copying bills, and delivering Zidlick's papers to Meyer's office.

Meyer was shocked by Ruel's bills. Upon inquiring further into Ruel's activities as Zidlick's attorney-in-fact, she discovered that, while Zidlick was in the nursing home, Ruel regularly made withdrawals from his checking account for: (1) weekly payments to herself, ranging from \$691 to \$1,000; (2) payments to different pharmacies and stores, without noting the purpose of the payments; and (3) payments to her daughter for visiting Zidlick and for providing him services that the nursing home staff already supplied. From January 2001 to April 14, 2002, Ruel wrote checks to herself totaling approximately \$132,000.

At the time that Meyer drafted Zidlick's will naming Ruel and her husband and daughter as beneficiaries, she thought this was a "sweet" gesture and, accordingly, that Zidlick was "blessing" Ruel for taking care of him. Meyer was not aware at this time that Ruel was charging Zidlick \$55 an hour for her various services and withdrawing substantial funds from Zidlick's account to pay herself and her daughter, and for the other purposes described above.

After Meyer became aware of these extraordinary charges, she contacted attorney Russell Teschon for advice. Teschon suggested that she refer the matter to the prosecutor's office. Meyer rejected this advice and opted instead to commence civil litigation against Ruel to recover funds that she felt had been "misapplied."

Teschon concluded that Ruel had taken advantage of Zidlick, whom he believed to be incompetent, by paying herself sums to which she was not entitled.¹ Ruel also held herself out to be a geriatric care manager, but was not so certified by the State. Teschon testified that Ruel's rates were in excess even of those rates charged by certified professionals.

On or about September 5, 2002, Teschon filed suit a five-count verified complaint on Meyer's behalf in Bergen County Chancery Division, Probate Part, charging Ruel with breach of fiduciary duty and self-dealing, improper and undue influence on the decedent in connection with the modified will and POA, and fraud. The complaint sought, among other things, to have the bequests to the Ruels and the POA declared null and void, an accounting from Ruel, compensatory and punitive damages, attorneys' fees, and costs.

It was at this point that respondent entered the picture. Ruel retained him to represent her in the Chancery litigation.

The parties initially engaged in discovery through the early part of 2003. According to Meyer, respondent filed a motion to dismiss the complaint, which the court denied. Later, on respondent's subsequent motion, the court dismissed the undue

¹ Teschon did not believe that Zidlick had ever been declared "legally incapacitated" and speculated that action may have been deemed unnecessary because the POA obviated the need for the appointment of a guardian. He also believed that the nursing home had conducted meetings to discuss Zidlick's mental status.

influence claim. The record is silent as to the basis for this dismissal. The claim relating to overbilling remained.

Teschon attempted to engage respondent in settlement negotiations, demanding the return of approximately \$66,000 of Ruel's purported fees. By letter dated April 28, 2003, respondent rejected Teschon's settlement offer without making a counter-offer. The next day, believing that a settlement was unattainable, Teschon notified respondent that he intended to retain an expert in the field of geriatric care and to begin preparing for trial.

On May 1, 2003, respondent faxed to Teschon a notice stating that Meyer had no support for the "remaining theory," relating to overbilling Zidlick, making it "frivolous" under R. 1:4-8. He reiterated his demand, apparently first made on January 6, 2003, that Meyer discontinue her Chancery action against Ruel.

At the same time, respondent also faxed to Teschon a copy of a separate complaint he had filed the previous day against Meyer in the Law Division, Bergen County. The complaint charged state and federal "RICO" (Racketeering Influenced and Corrupt Organizations) violations, consumer fraud (N.J.S.A. 56:8-2) violations, and breach of fiduciary duty. As respondent's counsel acknowledged at oral argument, the RICO charges were based on the theory that Meyer had "committed repeated acts of mail and wire fraud" by having placed in the mails the Chancery complaint and related court papers making

assertedly "false" charges against Ruel. Specifically, the Law Division Complaint charged that Meyer

planned and executed an improper scheme of attempting to disinherit all plaintiffs by asserting that the will had been borne of 'undue influence' and other improprieties by plaintiff Elaine Ruel.

. . . .

10. Defendant has caused repeated documentary mailings containing materially false statements to be sent through the interstate mail facilities of the United States Postal System [sic] and through the interstate wire facilities of the telephone system. The false statements include (A) assertions that plaintiff Elaine Ruel engaged in acts of undue influence which wrongfully induced the will, and (B) assertions that plaintiff Elaine Ruel failed to perform her functions.

11. As a result, defendant has committed repeated acts of mail and wire fraud, in violation of 18 U.S.C 1331, 1332 and analogous state law. Defendant acted with intent to cause all plaintiffs, not merely Elaine Ruel, to suffer property damage in the form of loss or forfeiture of their vested bequests, and undue incurring of legal expenses.

12. These and other related acts constitute 'predicate acts' within the meaning of the state and federal RICO Acts. Accordingly, defendant has violated the state and federal RICO Acts.

[Ex.P10.]

The Law Division complaint sought compensatory damages, trebled, punitive damages, attorneys' fees and costs. The complaint also set forth a jury demand.

Teschon concluded that it would be a conflict of interest for him to represent Meyer in both the prosecution of the Chancery action and the defense of the RICO and consumer fraud claims. He thereupon advised Meyer to seek separate counsel for the defense of these claims and to notify her malpractice carrier of the lawsuit. Meyer then retained Robert Hille to defend her in the Law Division case.

According to Meyer, when she learned about the RICO/consumer fraud claim, she was "in absolute shock" and "sick to her stomach." She testified that she did not want to settle her Chancery lawsuit because she believed that the Ruels had engaged in "terrible" conduct and that "the truth should come out." However, she had "two lawyers beating [her] up to settle." They convinced her that, if she did not agree to settle that case, there would be "protracted litigation, the estate [would] be dwindled down, there would be nothing left for the beneficiaries and [she should] just get this over, get on with [her] life." Meyer testified:

I felt it was unfair and I thought wow if this is our justice system this is incredible that you could . . . blackmail a person into settling a case and I was horrified

. . . .

I fought like crazy not to settle. I had two very strong lawyers bearing down on me telling me what the costs would be, how my life would be miserable for the next two years, I'm a grandmother with 18 grandchildren, do you want to bother with this or do you want to live your

life. I was pressured into settling and reason prevailed. I didn't want to have to live with this for the next two years of my life.

[1T104.]²

Meyer was aware that she could have asked the court to dismiss the RICO/consumer fraud complaint as frivolous. However, because respondent had not actually served the complaint and summons on her, she believed that the action was not ripe for dismissal.

In a May 8, 2003 telephone conversation, Teschon informed respondent that he had advised Meyer to retain other counsel in the RICO/consumer fraud action and to notify her professional liability insurance carrier of that lawsuit. According to Teschon, respondent acted "shocked" and asked, "[W]hy did you do that . . . she hasn't been personally served so she doesn't have to notify her insurance carrier." Afterwards, he told Teschon, "[M]aybe we can resolve this and how much do you have out in attorney's fees on this estate." Respondent quickly engaged Teschon in settlement discussions, inquiring, among other things, about the balance in the estate account, which was \$466,983.86.

At this juncture, Teschon believed that the settlement negotiations were becoming more fruitful. Because of his concern

² 1T denotes the transcript of the ethics hearing on August 29, 2006.

over further depletion of the estate, he told his expert to stop working on the case.

On May 15, 2003, respondent forwarded to Teschon a proposed stipulation of settlement in the Chancery action and a proposed notice of voluntary dismissal of the RICO/consumer fraud action. However, because Teschon was unable to judge "where [respondent] was coming from," he continued prosecuting the Chancery case.

By letter dated May 30, 2003, Teschon informed respondent that, in light of the RICO/consumer fraud action, he was not certain about going forward with a settlement of the Chancery action. He also served respondent with an expert's report in the Chancery action.

At a June 3, 2003 case management conference, Teschon introduced respondent to Robert Hille, the defense counsel retained by Meyer to handle the RICO/consumer fraud case. Respondent then revealed that, just prior to the conference, he had voluntarily dismissed the RICO/consumer fraud complaint. Indeed, respondent had filed a stipulation of dismissal that same day.

During the case management conference, the parties "ironed out" terms of a settlement of the Chancery action. The essential terms were:

1. . . . The Executrix withdraws all legal claims against Elaine Ruel and all possible claims against Elaine Ruel and any other beneficiary related to her, and their heirs and assigns.

2. Elaine Ruel admits that the Executrix had reasonable grounds to pursue the claims raised in this proceeding. Elaine Ruel waives all possible legal claims against the Executrix and the estate.
3. As directed by the decedent and as is required under the law, the estate will disburse the assets of the estate as follows:
 - A. First Tier. [P]ay Elaine Ruel's pending taxes, along with payment of all estate charges including funeral expenses, other estate taxes; pay the Executrix's statutory commission; pay professional fees including legal and expert fees, in connection with the litigation brought by the Executrix and defense successfully raised by Elaine Ruel;
 - B. Second Tier. Pay sum-certain bequests to Elaine Ruel, Michael Ruel and Kelly Ruel;
 - C. Third Tier. [P]ay all remaining beneficiaries based on their percentage entitlements under the will.

[Ex.P20.]

Ultimately, the Ruels obtained virtually all the relief they had requested, except that the estate paid only half of their taxes and they incurred \$10,000 in legal fees.

Teschon explained that the Chancery case was settled not because of any concern that the RICO/consumer fraud complaint had merit, but because the litigation was becoming too expensive for the estate. Meyer characterized the settlement as follows:

Well, [Ruel] got everything she wanted plus she got some of her taxes paid, not all that she wanted, I mean it was totally unbelievable. It

was against my grain, my moral fiber. It was like is this our justice system. It was very disheartening.

[1T75;1T76.]

At the DEC hearing, respondent claimed that the RICO complaint against Meyer had merit because Meyer's own lawsuit was frivolous. He contended his clients had not exerted undue influence on Zidlick and pointed out that Meyer herself had drafted the new will and POA.

Respondent conceded that the complaint failed expressly to plead that Meyer was engaged in a "RICO enterprise," but maintained that such omission was not fatal. To establish the statutory requirement of a "mailing in interstate commerce or use of the wire facilities in interstate commerce," respondent pointed to Meyer's multiple mailings (undertaken, of course, not by Meyer but by her counsel) of the Chancery Division pleadings.

Respondent also opined that it was not necessary to plead that Meyer was involved in a RICO enterprise, only that there must be a RICO enterprise, which "in this case would have been the estate and residual beneficiaries." As to specifying "racketeering activity," respondent referred again to the multiple mailings of court papers as the necessary "predicate acts."

Respondent also explained that he filed the complaint during settlement discussions because he construed Teschon's offers to be demands that his clients forfeit their bequests and that Ruel

disgorge her fees. In contrast, he characterized his own written requests for Meyer to withdraw her claims in their entirety as "settlement offers."

Respondent claimed that he had "substantial prior experience" with RICO cases. Although he billed eight hours for conducting legal research and five hours for drafting the complaint, he conceded that his highly generalized complaint was "pro forma," drafted in accordance with "notice pleading practice." Respondent explained that he never served the complaint because he had reached an understanding with Teschon that the Chancery action would shortly be settled "with essentially all the pay outs being in conformity with the wishes of Mr. Zidlick."

The DEC found, correctly we believe, that the allegations of the civil RICO/consumer fraud complaint were

frivolous, without merit, and filed with the purpose and intent to threaten and intimidate [Meyer] into relinquishing certain legitimate claims in the underlying estate litigation. Unfortunately, the Respondent's tactics were ultimately successful, to the financial detriment of the beneficiaries of the Estate of Howard E. Zidlick.

[HR13¶47.]³

Attempting to defend the thin factual allegations of the complaint and the dubious legal theory underpinning the action,

³ HR refers to the hearing panel report, dated November 13, 2006.

respondent asserted he was seeking to extend and modify the law, by "lowering the threshold for civil RICO litigation and making the cause of action easier to substantiate at trial." The DEC found that it is "inherently unacceptable for litigants and/or their attorneys to attempt to achieve victory through these sorts of strategically intimidating and overpowering litigation tactics." The DEC concluded that the respondent violated RPC 3.1 and RPC 8.4(d) and recommended a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's conclusion is supported by clear and convincing evidence.

We start with the principle that one has a constitutional right to petition government, free of being subjected to damage claims. That right includes the right of access to the courts. B&K Const. Co. v. NLRB, 536 U.S. 516, 525 (2002). The sole exception is when the litigation is a sham. However, "litigation can only be sham (thereby subject to a damage action) if it is objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits." Village Supermarket, Inc. v. Mayfair Supermarkets, 269 N.J. Super, 224, 230 (Law Div. 1993).

Nothing in the record supports a conclusion that Meyer's Chancery complaint was a sham, i.e., objectively baseless. Surely it was not unreasonable for Meyer to conclude that Ruel

was overreaching by using the POA to withdraw funds from Zidlick's checkbook to pay herself and members of her family for services that the nursing home was already providing. This is particularly so, given the substantial amount of such payments over a very short period of time, \$132,000, representing a significant percentage of the entire estate. Indeed, as the executrix of Zidlick's estate, Meyer not only had the right to sue to challenge Ruel's actions and preserve the assets of the estate, but she likely had a fiduciary duty to do so.

In any event, there is little question that Meyer's Chancery action was reasonably grounded in the facts and applicable law and that respondent's conclusion that the action was frivolous was unreasonable. Even assuming that Meyer had filed a frivolous action against respondent's client, the law of New Jersey and the rules of Court provide an appropriate remedy in the form of proceedings under the frivolous litigation statute and/or court rule. There was no basis in law or in fact upon which to launch a complaint alleging violations of federal and state RICO statutes or the consumer fraud statute (as the many deficiencies in respondent's pleading demonstrate). The inescapable conclusion is that respondent's counter lawsuit was designed simply to bludgeon Meyer into withdrawing her claims.

An action is frivolous if

the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[Kevin H. Michels, New Jersey Attorney Ethics §28:1-3 at 621 (2007); citing Kutak Commission Comment quoted in the Debevoise Committee Report, 112 N.J.L.J., July 28, 1983.]

Michels cites Ricciardi V. Weber, 350 N.J. Super 453, 472 (App. Div. 2002), for the proposition that it may be reasonable for an attorney, in the hope of promoting swift settlement negotiations, to file a claim without fully investigating the underlying allegations, when the attorney has no reason to believe that the client is lying. Respondent's stated desire to promote such swift settlement negotiations here is highly suspect. He filed the RICO/consumer fraud suit on April 30, 2005 -- seven months after the filing of the original lawsuit -- and avoided meaningful settlement negotiations until Teschon pressed forward with an expert's report and advised him that Meyer would be defending the RICO/consumer fraud charges through other counsel.

N.J.S.A 2C:41-2 of the New Jersey RICO statute sets forth the following prohibited activities:

- a. It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which he

has participated as a principal . . . to use or invest, directly or indirectly, any part of the income, or the proceeds of the income, in acquisition of any interest in, or the establishment or operation of any enterprise which is engaged in or the activities which affect trade or commerce

. . . .

- b. It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in or activities of which affect trade or commerce.
- c. It shall be unlawful for any person employed by or associated with any enterprise engaged in or activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
- d. It shall be unlawful for any person to conspire . . . to violate any of the provisions of this section.

The federal rules at 18 U.S.C.A. §1962 are virtually identical.

Here, the complaint charged that "Meyer planned and executed an improper scheme to disinherit the plaintiffs." Meyer allegedly did so by asserting in a civil action complaint "that the will had been borne of 'undue influence' and other improprieties by plaintiff Elaine Ruel." Respondent asserted that these charges were themselves false. According to respondent, by mailing the complaint and other documents leveling these allegations, Meyer committed wire and mail fraud.

We recognize that, over the years, courts have construed the federal and state RICO statutes expansively to reach a variety of activities not commonly considered to be "racketeering." But there is no precedent (and respondent has pointed to none) or logic for the charge that pursuing an assertedly abusive lawsuit constitutes "racketeering" or "trade or commerce," within the meaning of those statutes.

Equally untenable was respondent's allegation that Meyer violated the Consumer Fraud Act, N.J.S.A. 56:8-2 et seq. That Act provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

[N.J.S.A. 56:8-2.]

Just as respondent never explained how pursuing a lawsuit can be equated with "trade or commerce" for RICO purposes, he never explained how it constitutes the "sale or advertisement of merchandise or real estate" for consumer fraud purposes.

In light of the obvious legal and factual deficiencies in respondent's RICO/consumer fraud action, we can only conclude -- as did the DEC -- that respondent filed the Law Division complaint as a tactic intended solely to coerce Meyer into essentially withdrawing her Chancery action. This conclusion is further bolstered by the following additional facts and circumstances: (1) respondent filed the complaint not as a counterclaim in the existing action, but as a separate action in a different branch of the Superior Court; (2) respondent did not serve the complaint; (3) respondent faxed only an "informational" complaint to Teschon, and (4) respondent voluntarily dismissed the RICO complaint, once he learned that Meyer had retained counsel to defend it and had hired an expert to press forward with the estate litigation.

RPC 3.1 prohibits a lawyer from bringing an action unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous. For the reasons discussed above, we find that respondent could not have had such a reasonable belief here. He had no fair basis for concluding that Meyer's estate action was a sham; he filed the Law Division complaint with the sole intent of coercing Meyer to withdraw her claims against the Ruels. He, thus, violated RPC 3.1, as well as RPC 8.4(d).

Respondent claimed also that his First Amendment rights were implicated, and that it would be unconstitutional to discipline him merely because the filing of the RICO/consumer fraud lawsuit appeared to be "harassing" or "oppressive." First, under R. 1:20-15(h) constitutional challenges, raised before a trier of fact, are preserved for Supreme Court consideration. Second, it is difficult to take this contention seriously. There is no constitutional right to proceed with a frivolous action on behalf of a client, and certainly no such right for a licensed attorney to violate the RPCs that govern that attorney's professional conduct.

The remaining issue is the proper quantum of discipline. In cases involving violations of RPC 3.1, the discipline imposed has ranged from an admonition to a one-year suspension. See, e.g., In the Matter of Samuel A. Malat, DRB 05-315 (March 17, 2006) (admonition imposed on attorney who asserted frivolous state law claims (whistleblower) in one matter after having been sanctioned in another matter for asserting the same claims, which had already been deemed frivolous by the court; we found the attorney's conduct careless, rather than intentional; prior ethics history included two three-month suspensions and a reprimand); In the Matter of Alan Wasserman, DRB 94-228 (October 5, 1994) (admonition imposed on attorney with no disciplinary history who filed two frivolous lawsuits against former clients: one for fees, without having first advised the clients of their

right to fee arbitration and, after that suit was dismissed, another suit for the same fees, albeit against insurance carriers, without notice to the former clients and without naming them as parties); In re Silverman, 179 N.J. 364 (2004) (reprimand imposed on attorney who violated RPC 3.1 when, after his client had properly revoked a settlement in a "lemon law" case, he sued the client for legal fees, even though the settlement included legal fees and the client had been told that she would not be required to pay them; aggravating factors included the location of the suit (filed in Pennsylvania, even though the client lived in New Jersey and the car was purchased there) and the amount of damages sought); and In re Yacavino, 184 N.J. 389 (2005) (attorney suspended for six months for, among other things, repeatedly filing frivolous claims by asserting the same claims after the court dismissed them on the merits, failing to expedite litigation, and engaging in conduct prejudicial to the administration of justice by taxing the court's resources).

Respondent's conduct was not careless like that of the attorney in Malat (admonition). He intended to file the complaint, notwithstanding its contrived and frivolous nature, to coerce a settlement. An element of intent was similarly present in Yacavino (six-month suspension), where the attorney repeatedly filed the same actions. However, Yacavino's conduct was more serious because, in re-filing the claims, he defied court orders.

As aggravation here, we consider the ultimate effect of respondent's conduct: the erosion of a substantial portion of the estate's assets. At the same time, we note that respondent has no history of violating RPC 3.1 or any other RPC.

On balance, we do not consider respondent's conduct to merit a suspension. However, in our view, an admonition or a reprimand is insufficient to address the seriousness of his actions. We, therefore, determine to censure him.

In arriving at our conclusions, we cannot overemphasize the importance, in our system of justice, of the zealous advocate. A lawyer must be free to bring to bear, in relation to his or her client's cause, all the creativity and vigor that he or she can muster. At the same time, however, the advocate's zeal has to be - - and is - - tempered and circumscribed by the limits, generous though they be, laid down by the Rules of Professional Conduct. The line between "zealous advocacy" and frivolous pursuit of an action, claim or defense may not always be a bright one and there may be close cases as to which, generally, we would err on the side of the advocate. But we do not see this as a close case. In trying to pressure a fiduciary to withdraw her lawsuit with a wholly contrived treble damage "RICO" and "Consumer Fraud" lawsuit of his own, respondent pushed the envelope much too far.

Members Boylan and Lolla did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

By: _____
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
D-108 September Term 2006

IN THE MATTER OF
MICHAEL S. KIMM,
AN ATTORNEY AT LAW
(Attorney No. 053881991)

FILED
ORDER
JUN 21 2007

The Disciplinary Review Board having filed with the Court its decision in DRB 06-333, concluding that **MICHAEL S. KIMM** of **HACKENSACK**, who was admitted to the bar of this State in 1991, should be censured for violating RPC 3.1(bringing a proceeding knowing or reasonably believing that it is frivolous), RPC 8.4(d) (conduct prejudicial to the administration of justice), and good cause appearing;

It is ORDERED that **MICHAEL S. KIMM** is hereby censured; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs and actual expenses incurred in the prosecution of this matter, as provided in Rule 1:20-17.

WITNESS, the Honorable Virginia A. Long, Presiding Justice, at Trenton, this 19th day of June, 2007.

The foregoing is a true copy of the original on file in my office.

[Signature]
CLERK OF THE SUPREME COURT
OF NEW JERSEY

[Signature]
CLERK OF THE SUPREME COURT

FILED
JUN 22 2007
ORIGINAL
DISCIPLINARY REVIEW 06360