APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

DULBERG, PAUL
Plaintiff/Petitioner

v.

MAST, HANS ET AL
Defendant/Respondent

Reviewing Court No: 2-23-0072
Circuit Court/Agency No: 2017LA000377
Trial Judge/Hearing Officer: JOEL D BERG

E-FILED 2
Transaction ID: 2-23-0072
File Date: 4/24/2023 10:00 AM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

**CERTIFICATION OF RECORD**

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

2 Volume(s) of the Common Law Record, containing 2148 pages
1 Volume(s) of the Report of Proceedings, containing 512 pages
0 Volume(s) of the Exhibits, containing 0 pages

I hereby certify this record pursuant to Supreme Court Rule 324, this 21 DAY OF APRIL, 2023

Katherine M. Keefe

(Clerk of the Circuit Court or Administrative Agency)



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APPEAL TO THE APPELLATE COURT OF ILLINOIS
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## Charges

No charges associated with this case,

## Judgments

No judgments associated with the case.

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| 05/05/2023 | 5:00 pm | AP | APPEAL - RECORD DUE | NO JUDGE ASSIGNED |

## Related Cases

No related cases to this case.

## Parties

| | |
|---|---|
| APPELLANT | DULBERG, PAUL |
| ATTORNEY- APPELLANT | TALARICO, ALPHONSE A, LAW OFFICE OF |
| ATTORNEY FOR DEFENDANT | KARBAL COHEN ECONOMOU SILK & DUNNE |
| ATTORNEY FOR PLAINTIFF | TALARICO, ALPHONSE A, LAW OFFICE OF |
| DEFENDANT | MAST, HANS |
| DEFENDANT | POPOVICH PC, THOMAS J, LAW OFFICES OF |
| PREVIOUS ATTORNEY - DEFENDAI | CLAUSEN MILLER |
| PREVIOUS ATTORNEY - DEFENDAI | KARBAL COHEN ECONOMOU SILK & DUNNE LLC |
| PREVIOUS ATTORNEY - PLAINTIFF | CLINTON LAW FIRM |
| PREVIOUS ATTORNEY - PLAINTIFF | GOOCH FIRM |
| PLAINTIFF | DULBERG, PAUL |

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| 11/17/2021 | REPORT - PROCEEDINGS |
| 11/19/2021 | REPORT - PROCEEDINGS |
| 11/30/2021 | REPORT - PROCEEDINGS |
| 12/01/2021 | NOTICE - MOTION |
| 12/01/2021 | MOTION/PETITION - COMPEL |
| 12/06/2021 | NOTICE - FILING |
| 12/06/2021 | RESPONSE |
| 12/07/2021 | ORDER |
| 12/22/2021 | PROOF - SERVICE |
| 12/22/2021 | REPLY - PLAINTIFFS |
| 12/27/2021 | MOTION - EXTEND TIME |
| 12/27/2021 | PROOF - SERVICE |
| 12/28/2021 | NOTICE - SERVICE |
| 01/04/2022 | ORDER |
| 01/06/2022 | PROOF - SERVICE |
| 01/06/2022 | REPLY - PLAINTIFFS |
| 01/10/2022 | REPORT - PROCEEDINGS |
| 01/24/2022 | NOTICE - FILING |
| 01/24/2022 | ANSWER |
| 02/01/2022 | NOTICE - SERVICE |
| 02/03/2022 | ORDER |
| 03/03/2022 | NOTICE - SERVICE |
| 03/24/2022 | ORDER |
| 03/24/2022 | REPORT - PROCEEDINGS |
| 03/24/2022 | REPORT - PROCEEDINGS |
| 03/24/2022 | REPORT - PROCEEDINGS |
| 03/24/2022 | REPORT - PROCEEDINGS |
| 03/24/2022 | REPORT - PROCEEDINGS |
| 03/25/2022 | REPORT - PROCEEDINGS |
| 03/25/2022 | REPORT - PROCEEDINGS |
| 03/30/2022 | REPORT - PROCEEDINGS |
| 03/30/2022 | REPORT - PROCEEDINGS |
| 03/30/2022 | REPORT - PROCEEDINGS |
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| 03/30/2022 | REPORT - PROCEEDINGS |
| 03/30/2022 | REPORT - PROCEEDINGS |

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## DOCKET LISTING

| Case Number | Entitlement | Filing Date | Case Status |
|---|---|---|---|
| **2017LA000377** | DULBERG, PAUL VS MAST, HANS, ET AL | 11/28/2017<br>DCN: | CLOSED |

| | |
|---|---|
| 04/01/2022 | REPORT - PROCEEDINGS |
| 04/05/2022 | ORDER |
| 04/08/2022 | REPORT - PROCEEDINGS |
| 04/19/2022 | NOTICE - DEPOSITION |
| 04/19/2022 | PROOF - SERVICE |
| 04/20/2022 | REPORT - PROCEEDINGS |
| 05/02/2022 | ORDER |
| 05/03/2022 | ORDER |
| 05/03/2022 | REPORT - PROCEEDINGS |
| 05/18/2022 | PROOF OF SERVICE - DISCOVERY DOCUMENTS |
| 05/23/2022 | PROOF - SERVICE |
| 06/03/2022 | CHANGE - ADDRESS/NAME |
| 06/10/2022 | ORDER |
| 06/15/2022 | REPORT - PROCEEDINGS |
| 06/16/2022 | LETTER - FROM CIRCUIT CLERK |
| 07/07/2022 | NOTICE - DEPOSITION |
| 07/07/2022 | PROOF - SERVICE |
| 07/07/2022 | PROOF - SERVICE |
| 07/11/2022 | ORDER |
| 07/14/2022 | REPORT - PROCEEDINGS |
| 08/08/2022 | PROOF - SERVICE |
| 08/08/2022 | PROOF - SERVICE |
| 09/14/2022 | PROOF - SERVICE |
| 09/15/2022 | NOTICE - MOTION |
| 09/16/2022 | ORDER |
| 09/16/2022 | MOTION - SUMMARY JUDGMENT |
| 09/19/2022 | NOTICE - FILING |
| 09/19/2022 | OTHER |
| 09/27/2022 | REPORT - PROCEEDINGS |
| 09/30/2022 | NOTICE - FILING |
| 10/03/2022 | NOTICE - FILING |
| 10/03/2022 | SUBPOENA - DOCUMENTS, OBJECTS, TANGIBLE THINGS |
| 10/03/2022 | SUBPOENA - DOCUMENTS, OBJECTS, TANGIBLE THINGS |
| 10/05/2022 | PROOF - SERVICE |
| 10/06/2022 | NOTICE - MOTION |
| 10/06/2022 | MOTION/PETITION - COMPEL |
| 10/12/2022 | NOTICE - FILING |
| 10/12/2022 | MOTION |
| 10/17/2022 | ORDER |
| 10/27/2022 | REPORT - PROCEEDINGS |
| 10/28/2022 | NOTICE - MOTION |
| 10/28/2022 | MOTION/PETITION - VACATE |
| 10/28/2022 | NOTICE - FILING |
| 10/31/2022 | NOTICE - MOTION |
| 10/31/2022 | NOTICE - MOTION |
| 10/31/2022 | MOTION/PETITION - RULE TO SHOW CAUSE |
| 11/02/2022 | PROOF - SERVICE |
| 11/04/2022 | NOTICE - FILING |
| 11/09/2022 | ORDER |
| 11/09/2022 | ORDER |
| 11/17/2022 | REPORT - PROCEEDINGS |
| 11/21/2022 | NOTICE - FILING |

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## DOCKET LISTING

| Case Number | Entitlement | Filing Date | Case Status |
|---|---|---|---|
| **2017LA000377** | DULBERG, PAUL VS MAST, HANS, ET AL | 11/28/2017<br>DCN: | CLOSED |

| | |
|---|---|
| 11/21/2022 | MOTION - AMENDED |
| 11/23/2022 | NOTICE - FILING - AMENDED |
| 11/23/2022 | MOTION |
| 11/29/2022 | NOTICE - MOTION |
| 11/29/2022 | MOTION/PETITION - ENFORCE |
| 11/30/2022 | NOTICE - FILING |
| 11/30/2022 | RESPONSE |
| 12/06/2022 | ORDER |
| 12/07/2022 | REPORT - PROCEEDINGS |
| 12/19/2022 | NOTICE - FILING |
| 12/19/2022 | REPLY - PLAINTIFFS |
| 12/21/2022 | ORDER |
| 12/28/2022 | REPORT - PROCEEDINGS |
| 12/28/2022 | NOTICE - FILING |
| 12/28/2022 | RESPONSE |
| 01/19/2023 | NOTICE - FILING |
| 01/19/2023 | REPLY - DEFENDANTS |
| 02/01/2023 | ORDER - SUMMARY JUDGMENT |
| 02/08/2023 | REPORT - PROCEEDINGS |
| 02/27/2023 | REPORT - PROCEEDINGS |
| 03/03/2023 | NOTICE - APPEAL |
| 03/06/2023 | PROOF - SERVICE |
| 03/07/2023 | LETTER - FROM CIRCUIT CLERK |
| 03/13/2023 | REQUEST - PREPARATION OF RECORD ON APPEAL |

**Financial Journal Entries**

| Journal Type | Amount | Date | JrlTypeCode |
|---|---|---|---|
| JURY DEMAND-CIVIL CASE | $212.50 | 11/30/2017 | JURYC |
| SUPREME COURT E-BUSINESS FEE | $9.00 | 11/30/2017 | SCEBF |
| ACCESS TO JUSTICE FEE | $2.00 | 11/30/2017 | ATJF |
| ARBITRATION FEES | $8.00 | 11/30/2017 | ARBF |
| COUNTY-COURT SECURITY FUND | $20.00 | 11/30/2017 | CSF |
| COUNTY-COURT FUND | $5.00 | 11/30/2017 | CF |
| COUNTY-LAW LIBRARY FEE | $18.00 | 11/30/2017 | LIB |
| COURT DOCUMENT STORAGE FEE | $15.00 | 11/30/2017 | CDF |
| COURT AUTOMATION FEE | $15.00 | 11/30/2017 | CAF |
| COUNTY-CIRCUIT CLERK FEE | $160.00 | 11/30/2017 | COST |
| COUNTY-CIRCUIT CLERK FEE | $60.00 | 12/29/2017 | COST |
| COURT AUTOMATION FEE | $15.00 | 12/29/2017 | CAF |
| COURT DOCUMENT STORAGE FEE | $15.00 | 12/29/2017 | CDF |
| COUNTY-LAW LIBRARY FEE | $18.00 | 12/29/2017 | LIB |
| COUNTY-COURT SECURITY FUND | $20.00 | 12/29/2017 | CSF |
| ARBITRATION FEES | $8.00 | 12/29/2017 | ARBF |
| ACCESS TO JUSTICE FEE | $2.00 | 12/29/2017 | ATJF |
| SUPREME COURT E-BUSINESS FEE | $9.00 | 12/29/2017 | SCEBF |
| COPIES COST | $93.00 | 07/28/2020 | COPY |
| COPIES COST | $17.00 | 02/21/2023 | COPY |
| COPIES COST | $4.00 | 02/21/2023 | COPY |
| APPEAL FEE | $707.75 | 03/13/2023 | APPEAL |

**Court Events**

| Date | Location | Judge | Reporter |
|---|---|---|---|

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## DOCKET LISTING

| Case Number | Entitlement | Filing Date | Case Status |
|---|---|---|---|
| **2017LA000377** | DULBERG, PAUL VS MAST, HANS, ET AL | 11/28/2017<br>DCN: | CLOSED |

01/10/2018 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: ALLOWED

02/27/2018 201 MEYER, THOMAS A
Reason: MOTION - DISMISS
Result: SET - DATE FOR HEARING

05/10/2018 201 MEYER, THOMAS A
Reason: HEARING - MOTION DISMISS
Result: ALLOWED - IN PART

07/20/2018 201 MEYER, THOMAS A
Reason: MOTION - DISMISS
Result: SET - DATE FOR HEARING

09/12/2018 201 MEYER, THOMAS A
Reason: HEARING - MOTION STRIKE
Result: ALLOWED

10/15/2018 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: ALLOWED

10/15/2018 201 MEYER, THOMAS A
Reason: MOTION - WITHDRAW
Result: ALLOWED

11/13/2018 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: ALLOWED

11/13/2018 201 MEYER, THOMAS A
Reason: STATUS - ATTORNEY
Result: SATISFIED

02/25/2019 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - PLAINTIFFS MOTION - STATUS

02/25/2019 201 MEYER, THOMAS A
Reason: MOTION - DEFAULT
Result: CONTINUED - PLAINTIFFS MOTION - STATUS

02/25/2019 201 MEYER, THOMAS A
Reason: MOTION - SUBSTITUTION OF ATTORNEY
Result: ALLOWED

05/30/2019 201 MEYER, THOMAS A
Reason: MOTION - DEFAULT
Result: WITHDRAWN - MOTION

09/05/2019 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

11/04/2019 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

11/04/2019 201 MEYER, THOMAS A
Reason: LEAVE - FILE AFFIRMATIVE DEFENSE
Result: ALLOWED

02/03/2020 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

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## DOCKET LISTING

| Case Number | Entitlement | Filing Date | Case Status |
|---|---|---|---|
| **2017LA000377** | DULBERG, PAUL VS MAST, HANS, ET AL | 11/28/2017<br>DCN: | CLOSED |

04/03/2020 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: NOTICE - COVID19 PARTIAL SHUTDOWN

06/05/2020 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

09/10/2020 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

09/10/2020 201 MEYER, THOMAS A
Reason: MOTION - WITHDRAW
Result: ALLOWED

10/07/2020 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: CONTINUED - AGREEMENT - STATUS

10/07/2020 201 MEYER, THOMAS A
Reason: MOTION - CONTINUE
Result: ALLOWED

10/27/2020 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: CONTINUED - AGREEMENT

11/24/2020 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: SET - DATE FOR HEARING

02/10/2021 201 MEYER, THOMAS A
Reason: HEARING - MOTION COMPEL
Result: ALLOWED - IN PART

03/15/2021 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: WITHDRAWN - MOTION

03/25/2021 201 MEYER, THOMAS A
Reason: HEARING - MOTION COMPEL
Result: CONTINUED - COURTS MOTION - STATUS

04/01/2021 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

04/01/2021 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: ALLOWED

06/14/2021 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - COURTS MOTION - STATUS

07/19/2021 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: WITHDRAWN - MOTION

09/07/2021 201 MEYER, THOMAS A
Reason: MOTION
Result: ALLOWED

11/08/2021 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

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## DOCKET LISTING

| Case Number | Entitlement | Filing Date | Case Status |
|---|---|---|---|
| **2017LA000377** | DULBERG, PAUL VS MAST, HANS, ET AL | 11/28/2017<br>DCN: | CLOSED |

12/07/2021 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: SET - DATE FOR HEARING

12/07/2021 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: SET - DATE FOR HEARING

01/04/2022 201 MEYER, THOMAS A
Reason: MOTION - EXTEND TIME
Result: ALLOWED

01/04/2022 201 MEYER, THOMAS A
Reason: HEARING - MOTION COMPEL
Result: DENIED

02/03/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

03/24/2022 355 MEYER, THOMAS A
Reason: MOTION - AMEND
Result: ALLOWED

04/05/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: SET - DATE FOR HEARING

04/27/2022 201 MEYER, THOMAS A
Reason: HEARING
Result: CONTINUED - ENTRY OF ORDER

05/03/2022 201 MEYER, THOMAS A
Reason: ENTRY - ORDER
Result: CONTINUED - COURTS MOTION - STATUS

06/10/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

07/11/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

09/16/2022 201 MEYER, THOMAS A
Reason: MOTION - SUMMARY JUDGMENT
Result: CONTINUED - AGREEMENT - STATUS

10/13/2022 201 MEYER, THOMAS A
Reason: MOTION - COMPEL
Result: ALLOWED

10/13/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: SET - DATE FOR HEARING

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## DOCKET LISTING

| Case Number | Entitlement | Filing Date | Case Status |
|---|---|---|---|
| **2017LA000377** | DULBERG, PAUL VS MAST, HANS, ET AL | 11/28/2017<br>DCN: | CLOSED |

11/04/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: CONTINUED - AGREEMENT - STATUS

11/04/2022 201 MEYER, THOMAS A
Reason: MOTION - VACATE
Result: ALLOWED

11/04/2022 201 MEYER, THOMAS A
Reason: MOTION - BAR
Result: LEAVE - FILE

11/04/2022 201 MEYER, THOMAS A
Reason: PETITION - RULE
Result: WITHDRAWN - PETITION

11/09/2022 355 MEYER, THOMAS A
Reason: MOTION - VACATE
Result: ALLOWED

11/09/2022 355 MEYER, THOMAS A
Reason: PETITION - RULE
Result: DENIED

12/05/2022 201 MEYER, THOMAS A
Reason: HEARING
Result: ALLOWED

12/05/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: SET - DATE FOR HEARING

12/21/2022 201 MEYER, THOMAS A
Reason: HEARING
Result: DENIED

12/21/2022 201 MEYER, THOMAS A
Reason: STATUS - CHECK
Result: STRIKE - FROM CALL

02/01/2023 201 BERG, JOEL D
Reason: HEARING - SUMMARY JUDGMENT
Result: ENTERED - SUMMARY JUDGMENT

02/01/2023 201 BERG, JOEL D
Reason: HEARING - SUMMARY JUDGMENT
Result: ** JUDGMENT - AGAINST PLAINTIFF

04/21/2023 AP NO JUDGE ASSIGNED
Reason: APPEAL - ROP DUE
Result:

05/05/2023 AP NO JUDGE ASSIGNED
Reason: APPEAL - RECORD DUE
Result:

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

**NOTICE**

**THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.**

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.



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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the



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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III



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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
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Wauconda, IL 60084
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gooch@goochfirm.com
office@goochfirm.com



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X _____
Client

_____
Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT
ALL-STATE LEGAL®
A

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COPY FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL®

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/18, 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER
DEFAULT BEING ENTERED.

D

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

**Paul Dulberg vs. Caroline McGuire and Bill McGuire**

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

*Thomas J. Popovich*
*Hans A. Mast*
*John A. Kornak*

*Mark J. Vogg*
*James P. Tutaj*
*Robert J. Lumber*
*Theresa M. Freeman*

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

*Waukegan Office*
*210 North Martin Luther King Jr. Avenue*
*Waukegan, IL 60085*

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# GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

# Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

| Comments/Explanation | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P/S | 75,000. |
| L N L | 75,000. |

The Honorable James P. Etchingham, (Ret.)



PLAINTIFF'S EXHIBIT D

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendant. | ) | No. 17LA000377 |

**RULE 222 (b) AFFIDAVIT**

Pursuant to Illinois Supreme Court Rule 222(b), counsel for the above-named Plaintiff certifies that plaintiff seeks money damages in excess of fifty thousand dollars ($50,000.00)

Thomas W. Gooch, III
Attorney for Plaintiff

THOMAS W. GOOCH, III
THE GOOCH FIRM
209 South Main Street
Wauconda, IL 60084
847-526-0110
gooch@goochfirm.com
ARDC: 3123355



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Page 1 of 1
C 37

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG
Plaintiff

vs.

HANS MAST & LAW OFC T. POPOVICH
Defendant

Case Number 17LA000377

# CERTIFICATE OF ATTORNEY

**I hereby certify that:**

☑ There has been no previous voluntary or involuntary dismissal of the subject matter of this litigation.

☐ There has been a previous voluntary or involuntary dismissal of the subject matter of this litigation and at the time of the dismissal that case number _____ was assigned to The Honorable _____.

☐ There is no other litigation presently pending in this County involving the parties to and/or subject matter of this lawsuit.

☐ There is presently pending other litigation in this County involving the parties to or subject matter to this lawsuit and that case or cases is/are assigned case number(s) _____ which is/are assigned to The Honorable _____.

Name THOMAS W. GOOCH, III

Attorney for PLAINTIFF/PAUL DULBERG

Address 209 S. MAIN STREET

City, State Zip WAUCONDA, IL 60084

Phone 847-526-0110

Attorney for Complainant or Petitioner

CV-CRT4 (revised 12/01/06) **Pursuant to Administrative Order No. 85-7**

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG
Plaintiff

vs.

Case Number 17LA000377

HANS MAST &LAW OFC POPOVICH
Defendant

# JURY DEMAND

The undersigned demands a jury trial, by a jury of twelve (12) persons.

Signature

Date November 28 20 17

Name THOMAS W. GOOCH, III

Attorney for PLAINTIFF/PAUL DULBERG

Address 209 S. MAIN STREET

City, State Zip WAUCONDA, IL 60084

Phone 847-526-0110

CV-JRD1 (Revised 12/01/06)

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UNITED STATES OF AMERICA

COUNTY OF MCHENRY

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

STATE OF ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

# NEW CASE INFORMATION SHEET

1. **Case Type** LA - Law over $50,000.01

   **Sub Case Type** LALM - Law - Legal Malpractice - over $50,000.00 **Filing Fees $** _____

2. **Jury Demand** Yes **If yes, choose one** Six - Person Jury **Jury Fees $** _____
   (All Other Case Types - excluding Probate)

3. **Return Date/Time(if applicable)** _____ **(MM/DD/YYYY HH:MM)**

---

4. **First Named Plaintiff** (Individual) DULBERG, PAUL
   (Last Name, First Name, M.I., Suffix)

   **Address** 4606 HEYDEW COURT

   **City** MCHENRY **State** Illinois **Zip Code** 60051 **Phone** 847-526-0110

   **Pro Se** ☐

5. **Second Named Plaintiff** _____

   **Address** _____

   **City** _____ **State** _____ **Zip Code** _____ **Phone** _____

6. **Plaintiff's Attorney** GOOCH, THOMAS, W ,III **ARDC #** 3123355

   **Firm Name** THE GOOCH FIRM

   **Address** 209 SOUTH MAIN STREET

   **City** WAUCONDA **State** Illinois **Zip Code** 60084 **Phone** 847-526-0110

---

7. **First Named Defendant** (Individual) MAST, HANS
   (Last Name, First Name, M.I., Suffix)

   **Address** 3416 W. ELM STREET

   **City** MCHENRY **State** Illinois **Zip Code** 60050 **Phone** _____

   **Summons Issued ?** Y

8. **Second Named Defendant** (Company) THE LAW OFFICES OF THOMAS J POPOVICH PC

   **Address** 3416 W. ELM STREET

   **City** MCHENRY **State** Illinois **Zip Code** 60050 **Phone** _____

   **Summons Issued ?** Y

---

9. **List any additional Plaintiffs and/or Defendants on supplimental sheet, including all A.K.A.'s(Also Known as) D.B.A.'s (Doing Business As),F.K.A.'s (Formerly Known As) and N.K.A.'s (Now Known As)**

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# AFFIDAVIT OF SERVICE

| Case: 17LA000377 | Court: Circuit Court | County: McHenry, IL | Job: 1840594 |
|---|---|---|---|
| **Plaintiff / Petitioner:** Paul Dulberg | | **Defendant / Respondent:** Hans Mast | 17LA000377 |
| **Received by:** Advantage Processing | | **For:** Gooch firm | |
| **To be served upon:** Hans Mast | | | |

I, James Elenz, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

**Katherine M. Keefe**
**Clerk of the Circuit Court**
******Electronically Filed******
**Transaction ID:** 17111121393
17LA000377
12/14/2017
**McHenry County, Illinois**
**22nd Judicial Circuit**
************************

**Recipient Name / Address:** Hans Mast, Company: 3416 W. Elm St, McHenry, IL 60050

**Manner of Service:** Personal/Individual, Nov 30, 2017, 1:55 pm CST

**Documents:** Summons

**Additional Comments:**
1) Successful Attempt: Nov 30, 2017, 1:55 pm CST at Company: 3416 W. Elm St, McHenry, IL 60050 received by Hans Mast. Age: 44-47; Ethnicity: Caucasian; Gender: Male; Weight: 165; Height: 5'8"; Hair: Brown;
Attorney at stated location identified himself as Hans Mast who was then served.

Jim Elenz 12-12-17

James Elenz IL Agency #117-001775 Date

Advantage Processing
126 E. Wing St 308
Arlington Hts, IL 60004
847-917-9578

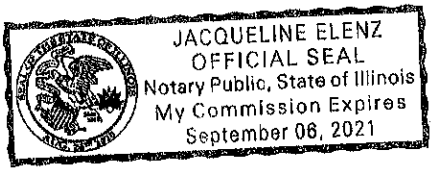
*Subscribed and sworn to before me by the affiant who is personally known to me.*

12-12-17 Jacqueline Elenz

Notary Public

12-12-17 9-6-2021

Date Commission Expires




Received 12-14-2017 10:34 AM / Circuit Clerk Accepted on 12-14-2017 01:04 PM / Transaction #17111121393 / Case #17LA000377
Purchased from re:SearchIL

# AFFIDAVIT OF SERVICE

| Case: 17LA00377 | Court: Circuit Court | County: McHenry, IL | Job: 1840605 |
|---|---|---|---|
| Plaintiff / Petitioner: Paul Dulberg | | Defendant / Respondent: Law Offices of Thomas Popovich | 17LA000377 |
| Received by: Advantage Processing | | For: Gooch Law Firm | |
| To be served upon: The Law Offices of Thomas Popovich | | | |

I, James Elenz, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111121393
17LA000377
12/14/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

**Recipient Name / Address:** Hans Mast, Company: 3416 W Elm St, McHenry, IL 60050

**Manner of Service:** Business, Nov 30, 2017, 1:50 pm CST

**Documents:** Summons

**Additional Comments:**
1) Successful Attempt: Nov 30, 2017, 1:50 pm CST at Company: 3416 W Elm St, McHenry, IL 60050 received by Hans Mast. Age: 44-47; Ethnicity: Caucasian; Gender: Male; Weight: 165; Height: 5'8"; Hair: Brown;
Attorney Hans Mast, an employee of the Law Offices of Thomas Popovich, accepted service on behalf of the firm.

James Elenz IL Agency # 117-001775 — Date: 12-12-17

Advantage Processing
126 E. Wing St 308
Arlington Hts, IL 60004
847-917-9578

*Subscribed and sworn to before me by the affiant who is personally known to me.*

Notary Public — 12-12-17 — Date

Commission Expires: 9-6-2021

JACQUELINE ELENZ
OFFICIAL SEAL
Notary Public, State of Illinois
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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111124308
17LA000377
12/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

Paul Dulberg

vs.

Case Number 17 LA 000377

The Law Offices of Thomas J. Popovich

# APPEARANCE

**I HEREBY ENTER THE APPEARANCE OF**

**Defendants, Law Offices of Thomas J. Popovich, P.C. and Hans Mast**

(Insert the name of the party for whom you are entering your appearance)

**AND MY OWN AS**

| | | | |
|---|---|---|---|
| ☑ | REGULAR COUNSEL | ☑ | TRIAL COUNSEL |
| ☐ | SPECIAL & LIMITED APPEARANCE | ☐ | SUBSTITUTE COUNSEL |
| ☐ | PRO-SE | ☐ | COUNSEL IN FORCIBLE ENTRY |
| ☐ | ADDITIONAL COUNSEL | ☐ | APPELLATE COUNSEL |
| ☐ | GUARDIAN AD LITEM | ☐ | COURT APPOINTED COUNSEL |

**AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.**

SIGNED _____
(Signature of Attorney filing appearance)

Name George K. Flynn/Clausen Miller P.C. George K. Flynn
Printed Name

ARDC Number 6239349

Attorney for Defendants

Address 10 S. LaSalle Street, 16th Floor

City, State Zip Chicago, IL 60603

Phone 312-855-1010

CC-APP1 (Revised 12/01/06)

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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111124308
17LA000377
12/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17LA000377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE PLEAD**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., move this Honorable Court for an extension of time in which to answer or otherwise plead to Plaintiff's Complaint at Law for twenty-eight days, up to and including February 7, 2018.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com

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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111124308
17LA000377
12/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17LA000377 |

## NOTICE OF MOTION

TO: Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

On **January 10, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Thomas A. Meyer**, or any Judge sitting in his stead in **Courtroom 201,** in the **McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois** and present **Defendants' Motion for Extension of Time to Answer or Otherwise Plead**, a copy of which is attached and served upon you herewith.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
312-855-1010
Attorneys for Defendants

1613324.1

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STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

**PROOF OF DELIVERY**

The undersigned states that she served a copy of the foregoing document to the attorneys of record noted above, at their respective addresses by email and U.S. Mail on December 28, 2017.

I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.





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# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

FILED
McHenry County, Illinois
JAN 10 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court
VS

Dulberg Popovich

Date: 1-10-18 Plaintiff's Attorney _____ Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard on Law Office of Thomas J. Popovich P.C.'s and Hans Mast's motion for extension of time to answer or otherwise plead, it is hereby ordered:

1) Defendants' motion is granted.

2) Defendants to answer or otherwise plead by February 7, 2018.

3) Scheduling Conference set for February 27, 2018 at 9:00 a.m.

Prepared by: George Flynn
Attorney for: Popovich & Mast
Attorney Registration No.: 6239349 Judge: Edward M. Meyers

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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111133930
17LA000377
02/07/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17LA000377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' COMBINED MOTION TO DISMISS**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-619.1, move to dismiss Plaintiff's Complaint, and state as follows:

1. The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. This legal malpractice case arises out of that underlying personal injury case.

2. In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995).

3. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1995).



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4. Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within the case" against the McGuires.

5. Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615.

6. Dulberg admits in ¶13 of his Complaint, that he agreed to a $5,000.00 settlement with the McGuires.

7. The doctrine of judicial estoppel provides that a party who assumes a particular position in a proceeding is estopped from assuming a contrary position in a subsequent proceeding. *Larson vs. O'Donnell*, 361 Ill. App. 3d 388, 398 (1st Dist. 2005), *rev'd on other grounds*. Dulberg is estopped from bringing this legal malpractice case because he expressly agreed to settle his case against the McGuires, and then continued to pursue his case against Gagnon. Dismissal is mandated under 735 ILCS 5/2-619(a)(9).

8. Dulberg has failed to file his legal malpractice complaint against Popovich and Mast within the two year statute of limitations for claims against attorneys. 735 ILCS 5/13-214.3 provides for a two year statute of limitations period which shall begin to run at "the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

9. Here, the Plaintiff did not file his Legal Malpractice Complaint against Defendants until November 28, 2017, at least seven (7) months too late.

10. His claim must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5), and 735 ILCS 5/2-



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619.1, respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
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Attorneys for Defendants
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 7th day of February, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.







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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111133930
17LA000377
02/07/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17LA000377 |

## NOTICE OF MOTION

TO: Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

On **February 27, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Thomas A. Meyer**, or any Judge sitting in his stead in **Courtroom 201,** in the **McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois** and present **Defendants' Combined Motion to Dismiss**, a copy of which is attached and served upon you herewith.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
312-855-1010
Attorneys for Defendants

1615981.1

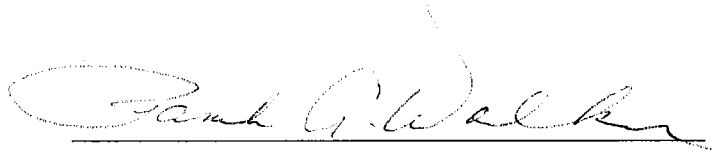
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 7th day of February, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
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gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.





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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*Katherine M. Keefe*
Clerk of the Circuit Court
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02/07/2018
McHenry County, Illinois
22nd Judicial Circuit
**********
Received Per Local Rule 1.19c

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17LA000377 |

**MEMORANDUM IN SUPPORT OF DEFENDANTS' COMBINED MOTION TO DISMISS**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-619.1, submit this Memorandum in Support of Defendants' Combined Motion to Dismiss Plaintiff's Complaint with prejudice, and state as follows:

## I. INTRODUCTION

The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. Dulberg was on the McGuires' property, assisting Gagnon trim some tree branches with a chainsaw, when Dulberg's right arm was lacerated by the chainsaw. Dulberg agreed to a settlement with



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the McGuires. Thereafter, he and Mast reached an impasse. Mast and the firm withdrew, and successor counsel continued to prosecute the case against Gagnon.

Dulberg now has a case of "buyer's remorse," admitting that he agreed to accept the McGuires' settlement offer. He has not plead the requisite elements of a legal malpractice case against Popovich and Mast, or the requisite elements of the underlying case (the "case within the case"). Moreover, his agreement to settle the case with the McGuires, approved by the court along with a good faith finding of settlement, estops him from now taking a contrary position. Finally, his legal malpractice claim is barred by the applicable two-year statute of limitations.

## II. STATEMENT OF FACTS

### A. The Following Facts Can Be Gleaned From The Complaint (Exhibit 1) and Its Exhibits

On June 28, 2011, Dulberg was assisting David Gagnon in the cutting down of a tree on the property of Carolyn and Bill McGuire. (Exhibit 1, ¶ 6). Gagnon lost control of the chainsaw and caused personal injury to Dulberg. (Exhibit 1, ¶ 7). In May of 2012, Dulberg retained Popovich. (Exhibit 1, ¶8). On May 15, 2012, Mast filed a Complaint on behalf of Dulberg against Gagnon and McGuires in the Circuit Court of McHenry County, Illinois, Case No, 12 LA 178. (Exhibit 1, ¶ 9, and Exhibit 1B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 1, ¶ 13 and Exhibit 1C). Defendants continued to represent Dulberg until March 2015. Dulberg retained successor counsel and proceeded to a binding mediation at which time he apparently executed a High-Low Agreement and received a mediation award (Exhibit 1, ¶ 16 and Exhibit 1D). After

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 1A, 1B, 1C and 1D.



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the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 1, ¶ 20).

### B. Alleged Acts of Negligence

In Exhibit 1, ¶ 21, Dulberg alleges that Defendants failed to take actions as were necessary to fix liability against the property owners of the subject property (the McGuires), alleging that they employed Gagnon and sought the assistance of Dulberg. It is alleged that they failed to thoroughly investigate liability issues against the property owners, failed to conduct necessary discovery, failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property, and improperly urged Dulberg to accept a "non-sensical" settlement from the property owners. It is also alleged that Defendants concealed necessary facts from Dulberg preventing him from making an informed decision as to the McGuires and "coercing" him in signing a Release and Settlement Agreement.

## III. DULBERG FAILS TO STATE A CLAIM FOR LEGAL MALPRACTICE UNDER 735 ILCS 5/2-615

### A. Legal Standard

It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001). To pass muster a complaint must state a cause of action in two ways: first, it must be legally sufficient -- it must set forth a legally recognized claim as its avenue of recovery, and



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second, the complaint must be factually sufficient -- it must plead facts, which bring the claim within a legally recognized cause of action as alleged. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). Dismissal of a complaint is mandatory if one fails to meet both requirements. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (5th Dist. 1994). In ruling on a Section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Mount Zion State Bank and Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995).

In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995). The injuries resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests. *Glass* at 349. Damages must be incurred and are not presumed. *Glass* at 349. It is the plaintiff's burden to establish that "but for" the attorney's negligence, the client would not have suffered the damages alleged. *Glass* at 349. "The proximate cause element of legal malpractice claim requires that the plaintiff show that but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Green v. Papa*, 2014 IL App. (5th) 1330029 (2014), quoting *Owens v. McDermott Will & Emery*, 316 Ill. App. 340 (2000), at 351. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1995).

### B. Dulberg Fails to Plead Facts in Support of His Conclusory Allegations

Dulberg's pleading and theory of recovery is confusing. Presumably, since Dulberg retained successor counsel in the underlying case, he is only complaining here about the



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McGuires' underlying liability, and nothing with respect to case against David Gagnon (when an attorney is discharged and transfers a then viable matter to a successor attorney, the first lawyer cannot be held to have proximately caused the client's lost claim, see *Mitchell v. Shain, Fursel, and Burney, Ltd.*, 332 Ill. App 3d 618 (1st. Dist. 2002), and *Cedeno v. Gumbiner*, 347 Ill. App. 3d 169 (1st Dist. 2004)).

Setting aside the Estoppel and Statute of Limitations issues which will be discussed below, Dulberg's complaint for legal malpractice is rife with unsupported conclusory allegations. Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within the case" against the McGuires. Simply put, Dulberg fails to plead any facts in support of his conclusions that there was some liability against the McGuires. In ¶ 21 of his complaint, Dulberg alleges negligence against Popovich and Mast, but fails to identify what actions should have been taken and were not. In ¶ 21 (a), Dulberg fails to identify what investigation and discovery should have been undertaken. In ¶¶ 21 (b) and (c), Dulberg fails to identify or discuss the law that "defendants failed to understand." In ¶ 21 (d), Dulberg fails to plead any facts about why the settlement with the McGuires was improper or "non-sensical."

Under Illinois fact pleading requirements, much more is needed. In a case of alleged professional liability, the plaintiff cannot simply allege in conclusory terms that the defendants were negligent, and that the Plaintiff could have proved up liability against the underlying defendants. He must allege why and how. Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615.



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## IV. DULBERG'S SETTLEMENT WITH THE MCGUIRES AND THE DOCTRINE OF JUDICIAL ESTOPPEL BAR HIS LEGAL MALPRACTICE CLAIM

Dulberg admits in ¶13 of his Complaint, that he agreed to a $5,000.00 settlement with the McGuires. Attached to this Complaint, is an unsigned copy of the Settlement Agreement, Exhibit 1C.[2] Because Dulberg agreed to the settlement with the McGuires, waived and released all claims against them and their insurance carrier, and allowed the Court to enter an Order on a Good Faith Finding of Settlement (a joint tortfeasor Gagnon remained in the case), he is now estopped from taking a contrary position that the settlement was appropriate, fair, knowing and voluntary.[3]

The doctrine of judicial estoppel provides that a party who assumes a particular position in a proceeding is estopped from assuming a contrary position in a subsequent proceeding. *Larson vs. O'Donnell*, 361 Ill. App. 3d 388, 398 (1st Dist. 2005), *rev'd on other grounds*. In *Larson*, a plaintiff became unemployed during the pendency of his divorce. At settlement, he agreed to pay a specified dollar amount for child support and specified dollar amount for maintenance, based on the income he earned prior to his having become unemployed. *Larson* at 391. The parties and their attorneys appeared before the court to present the marital settlement agreement for approval at a "prove up". *Larson* at 392. At the prove up hearing, the plaintiff gave unequivocal testimony that he understood the terms and conditions of the agreement and acknowledged the amounts he was required to pay under the agreement. *Larson* at 392. After entry of the judgment for dissolution of marriage, the plaintiff began paying support based on a

---

[2] It does not appear that Dulberg is denying the authenticity of the Settlement Agreement, despite the fact that his signature is not attached. Mast is in possession of a signed copy of the Settlement Agreement, which Dulberg executed on January 29, 2014.

[3] For the Court's convenience, attached as Exhibits 2 and 3 are the Motion for the Good Faith Finding and Court's Order granting the Good Faith Finding of Settlement. The Court may take judicial notice of its own court docket see *All Purpose Nursing Service v. Human Rights Com.*, 205 Ill. App. 3d 816, 823 (1st Dist. 1990). Notably, the McGuires also filed a counterclaim for contribution against Gagnon in the underlying case.



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percentage of his unemployment income rather than the amounts required by the judgement for dissolution. He was later held in contempt for failure to pay the amounts prescribed in the judgment of dissolution and attorney's fees were assessed against him in the divorce court. He sued his former attorneys for breach of fiduciary duty and legal malpractice. *Larson* at 393. The court held that the plaintiff in *Larson* was judicially estopped from attempting to create a question of fact regarding his "actual" understanding for purposes of summary judgment by later contradicting his previous position. *Larson* at 398.

Like Larson, Dulberg cannot now claim that he did not knowingly and voluntarily settle and release his claims against the McGuires. Moreover, Dulberg, like all adults, is "presumed to know the contents and meaning of the obligations he undertakes when he signs a written agreement." *Premier Elec. Const. Co. vs. Ragnar Benson, Inc.* 111 Ill. App. 3d 855, 865 (1st Dist. 1982). Accordingly, Dulberg is estopped from claiming that his agreement to settle the underlying case with the McGuires was not "knowing and voluntary," and he cannot claim that he was coerced. The final decision was his alone. Dulberg is estopped from now asserting a claim for legal malpractice against his former counsel. His Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(9).

## V. DULBERG'S CLAIM IS BARRED BY THE TWO YEAR STATUTE OF LIMITATIONS FOR CLAIMS AGAINST ATTORNEYS

Dulberg has failed to file his legal malpractice complaint against Popovich and Mast within the two year statute of limitations for claims against attorneys. 735 ILCS 5/13-214.3 provides for a two year statute of limitations period which shall begin to run at "the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought. *Ogle v. Hotto*, 273 Ill. App. 3d 313, 318 (5th Dist. 1995). 735 ILCS 5/13-214.3(b) reads as follows:



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> (b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing professional services must be commenced within two years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

Dulberg's Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5) because on its face, his claims are untimely.

Dulberg admits in ¶ 14 of Exhibit 1 that Popovich's and Mast's representation ceased in March of 2015. Without some exception to the rule, a claim for legal malpractice would have been required to be filed by March 2017. Here, the Plaintiff did not file his Legal Malpractice Complaint against Defendants until November 28, 2017 (Exhibit 1), at least seven (7) months too late. Apparently realizing that his claims are untimely, Dulberg attempts to rely on the "discovery rule." He alleges in ¶ 20, without any factual support, that the information regarding the McGuires' liability as a property owner, was "false and misleading." As discussed above, Dulberg fails to allege any specific facts about any false and misleading information or other specifics as to Mast and Popovich's negligent conduct. Dulberg fails to plead facts in support of the case within the case, i.e. the McGuires' liability in the underlying cause of action. Dulberg alleges that he was advised to seek an independent opinion from an attorney handling legal malpractice matters on or about December 16, 2016, but provides no other explanation about why he was unaware of a claim until December 16, 2016. What happened after he signed the agreement on January 29, 2014?

While there was nothing preventing Dulberg at the time of the McGuire settlement from seeking a second opinion concerning the propriety or "sense" in settling, Illinois law requires a plaintiff relying on the discovery rule to plead facts in support of reliance on the discovery rule.



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In other words, the plaintiff must explain why he did not discover the cause of action until December 16, 2016. The plaintiff has the burden of proving the date of discovery. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill.2d 72, 85 (1995). Moreover, under Illinois law, *actual knowledge* of the alleged malpractice is not a necessary condition to trigger the running of the statute of limitations. *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (1st Dist. 2011) ("under the discovery rule, a statute of limitations may run despite the lack of actual knowledge of negligent conduct") (emphasis in original)). A statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Bluewater Partners v. Mason*, 2012 IL App (1st 102165 at *p. 50).

Here, Dulberg fails to allege any facts to support a delay or tolling of the statute. He retained subsequent counsel after the defendants withdrew, and could have requested a legal opinion regarding the McGuires' liability then, why did he wait? His claim must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).



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## V. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5), and 735 ILCS 5/2-619.1, respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

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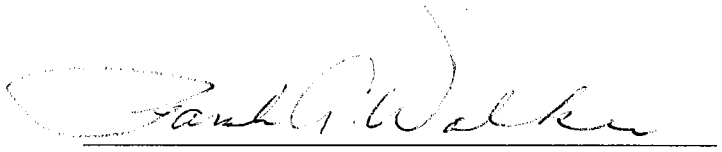
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 7th day of February, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.





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# EXHIBIT 1



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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

**NOTICE**

**THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.**

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.



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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the



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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III



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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT
A

ALI-STATE LEGAL®

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COPY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

PLAINTIFF'S EXHIBIT B
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NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 2nd ON 9/18, 2012, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____, 20__, AT ____ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogo
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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## GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

| Comments/Explanation | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| PLS | 75,000. |
| LNL | 75,000. |

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

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# EXHIBIT 2



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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,<br><br>Defendants. | ) | Case No. 12 LA 178 |

FILED
JAN 13 2014
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

**MOTION FOR GOOD FAITH FINDING AND FOR ORDER OF DISMISSAL WITH PREJUDICE BY DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE**

Defendants, BILL McGUIRE (aka William McGuire) and CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, P.C., hereby move this Court to dismiss all claims against them with prejudice and further request this Court to find that the settlement set forth in this motion was made in good faith and within the meaning and contemplation of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/1, et seq. In support of their Motion, Defendants Bill McGuire and Carolyn McGuire state as follows:

1. On or about March 15, 2012, Plaintiff Paul Dulberg filed a multiple count complaint seeking damages for personal injuries he generally attributes to a chain saw incident that occurred on or about June 28, 2011, at and upon the premises owned by Defendants Bill McGuire and Carolyn McGuire, known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

2. Plaintiff generally alleges that Defendant David Gagnon injured him with a chain



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saw while working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire. Defendant David Gagnon denies any and all liability for Plaintiff Paul Dulberg's injuries. Defendants Bill McGuire and Carolyn McGuire also deny any and all liability for Plaintiff Paul Dulberg's injuries and further deny that Defendant David Gagnon was under their control and supervision and working or acting as their employee or agent at the time of the alleged chain saw incident.

3. On February 1, 2013, Defendants Bill McGuire and Carolyn McGuire filed a cross-claim for contribution against Defendant David Gagnon. The cross-claim for contribution seeks contribution from Defendant David Gagnon for injuries claimed by Plaintiff Paul Dulberg and is based upon the terms and provisions of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/1, et seq.

4. Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire have negotiated a settlement of all claims which Plaintiff brought or could have brought against Defendants Bill McGuire and Carolyn McGuire. The settlement was negotiated at arm's length over a substantial period of time, and with the advice of counsel on the part of both parties. There is no collusion or fraud on the part of any of the parties to the negotiation.

5. Pursuant to Section 100/2(c) of the Contribution Act, an alleged tortfeasor that settles with a claimant in good faith shall be discharged from liability for contribution to any other tortfeasors.

6. Defendants Bill McGuire and Carolyn McGuire deny and continue to deny liability to Plaintiff Paul Dulberg and further contest the nature and scope of the injuries Plaintiff Paul Dulberg attributes to the subject chain saw incident.

7. The lump-sum payment of $5,000.00 to Plaintiff Paul Dulberg by or on behalf of



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Defendants Bill McGuire and Carolyn McGuire constitutes adequate consideration for purposes of a good faith settlement under Section 100/2(c) of the Contribution Act.

8. Defendants Bill McGuire and Carolyn McGuire respectfully suggest that the settlement with Plaintiff Paul Dulberg is and was made in good faith within the meaning of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/2(c).

WHEREFORE, the Defendants, BILL McGUIRE and CAROLYN McGUIRE, respectfully pray for the Court as follows:

(1) For an Order declaring that the settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire was made and entered into in good faith within the meaning of the Illinois Contribution Among Joint Tortfeasors Act, 740 ILCS 100/1, et seq.;

(2) For an Order dismissing all civil complaints, cross-claims, counterclaims and contribution claims currently pending against Defendants Bill McGuire and Carolyn McGuire, and arising out of or otherwise connected to the injuries claimed by Plaintiff Paul Dulberg, with prejudice;

(3) For an Order declaring that any potential future claims against Defendants Bill McGuire and Carolyn McGuire, including, without limitation, claims for contribution arising out of or otherwise connected to the chain saw incident and injuries claimed by Plaintiff Paul Dulberg, are barred;

(4) For an Order declaring for purposes of Illinois Supreme Court Rule 304(a) that there is no just reason to delay enforcement or appeal of the Dismissal Order; and

(5) That this Court enter an order granting such further relief as this Court deems just.

CAROLYN MCGUIRE and BILL MCGUIRE, Defendants,
by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Perry A. Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle St., Ste 2650
Chicago, IL 60601-1092

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 1/9/14.

RBS

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)



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# EXHIBIT 3



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ORD

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,<br><br>Defendants. | ) | Case No. 12 LA 178 |

FILED
McHenry County, Illinois
JAN 2 2 2014

**GOOD FAITH FINDING AND ORDER OF DISMISSAL**

THIS CAUSE coming on to be heard on the Motion for Good Faith Finding and for Order of Dismissal with Prejudice filed by Defendants Bill McGuire and Carolyn McGuire, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That settlement between Plaintiff Paul Dulberg and Defendants Bill McGuire and Carolyn McGuire (improperly named Caroline) constitutes a fair and reasonable and good faith settlement within the meaning of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 0.01 et seq.

2. That the good faith settlement shall henceforth constitute a bar to any and all claims that Plaintiff Paul Dulberg and Defendant David Gagnon and other known or unknown tortfeasors may have against Defendants Bill McGuire and Carolyn McGuire on account of or arising out of the injuries, if any, sustained by Plaintiff Paul Dulberg as a result of the alleged chain saw accident that occurred on June 28, 2011, whether by way of original action, third party claim, cross-claim, counterclaim, claim for contribution or otherwise.



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3. That Defendants Bill McGuire and Carolyn McGuire be and are hereby dismissed from the above-captioned lawsuit as party defendants and cross-claimants, with prejudice, and in bar of further suit.

4. That that there is no just reason to delay the enforcement or appeal of this good faith finding and order of dismissal.

DATED: _____

JUDGE Thomas A. Meyer

Prepared by:
Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHenry County, Illinois
FEB 27 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
✓ ORD
ORDJ
ORDDWP

Paul Dulberg
Plaintiff

vs

Popovich, et al.
Defendant

Case Number 17 LA 377

# Agreed ORDER

☐ Plaintiff(s) appear in person/by attorney _____

☑ Defendant(s) appear in person/by attorney Flynn

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☒ Defendant; ☐ By Agreement; ☐ Court; to D.S.m.s., May 10, 2018 at 10, 00 m. for hearing.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☑ **COURT FURTHER ORDERS:** Plaintiff to file Response to Motion to Dismiss in 28 days (March 27, 2018). Defendant to file Reply in 19 days (April 10, 2018). Defendant to deliver courtesy copies of all briefs by April 17, 2018

Date: 2-27-18

Judge

CV-ORD13: Revised 10/01/08

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

**Katherine M. Keefe**
**Clerk of the Circuit Court**
******Electronically Filed******
**Transaction ID:** 17111147104
17LA000377
03/27/2018
**McHenry County, Illinois**
**22nd Judicial Circuit**
*************************

| | | |
|---|---|---|
| PAUL DULBERG,<br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendants. | ) | No.: 17 LA 377 |

**NOTICE OF FILING**

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

**PLEASE TAKE NOTICE** that on **March 27, 2018** I caused to be filed with the Clerk of the Circuit Court of McHenry County, Illinois the attached *Response to Defendant's Combined Motion to Dismiss.*

Thomas W. Gooch, III, Esq.

**PROOF OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via the McHenry County I2File Efile System and via email transmission to on March 27, 2018.

THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No.: 3123355

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111147104
17LA000377
03/27/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,
Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,
Defendants.

No.: 17 LA 377

**PLAINTIFF'S RESPONSE TO DEFENDANTS' COMBINED MOTION TO DISMISS**

NOW COMES, your Plaintiff, PAUL DULBERG, (hereinafter referred to as "DULBERG") by and through his attorneys, THE GOOCH FIRM, and for his Response to Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST (hereinafter collectively referred to as "POPOVICH" or "Defendants") Combined Motion to Dismiss states to the Court the following:

INTRODUCTION

Defendants brought this Combined Motion to Dismiss DULBERG's Complaint. (See Defendants' Memorandum in Support of Defendants' Combined Motion to Dismiss attached hereto without exhibits as Exhibit A.) In their Motion, Defendants argue that DULBERG failed to state a claim for legal malpractice, that DULBERG's claims are barred by judicial estoppel, and that the claims are time barred. However, after review of the facts in the Complaint, this Honorable Court will determine that DULBERG's Complaint is sufficient to survive this Motion to Dismiss.

STANDARD OF REVIEW FOR SECTION 2-615

1. A Motion to Dismiss pursuant to section 2-615 attacks the legal sufficiency of the Complaint by alleging defects on its face. *Weisblatt v. Colky*, 265 Ill.App.3d 622, 625, 637



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N.E.2d 1198, 1200 (1st Dist. 1994). Section 2–615 motions "raise but a single issue: whether, when taken as true, the facts alleged in the Complaint set forth a good and sufficient cause of action." *Visvardis v. Ferleger* 375 Ill.App.3d 719, 723, 873 N.E.2d 436, 440 (Ill.App.1 Dist. 2007), quoting *Scott Wetzel Services v. Regard,* 271 Ill.App.3d 478, 480, 208 Ill. Dec. 98, 648 N.E.2d 1020 (1995).

2. When the legal sufficiency of a Complaint is challenged by a section 2–615 Motion to Dismiss, all well-pleaded facts in the Complaint are taken as true and a reviewing court must determine whether the allegations of the Complaint, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81, 806 N.E.2d 632, 634 (2004); *King v. First Capital Financial Services Corp.* 215 Ill.2d 1, 12, 828 N.E.2d 1155, 1161 (2005). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved that will entitled the plaintiff to recover. *Zedella v. Gibson*, 165 Ill.2d 181, 185, 650 N.E.2d 1000 (1995).

STANDARD OF REVIEW FOR SECTION 2-619

3. A section 2-619 motion should be denied unless a Plaintiff cannot prove a set of facts that would entitle him to relief sought. *Safeway Ins. Co. v. Daddono*, 334 Ill. App 3d 215, 218 (1st Dist. 2002). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved that will entitle the plaintiff to recover. *Zedella v. Gibson*, 165 Ill.2d 181, 185, 650 N.E.2d 1000 (1995).

4. The Court must view all the factual allegations in the light most favorable to the plaintiff. *Lloyd v. County of DuPage*, 303 Ill.App.3d 544, 688 707 N.E.2d 1252, 1258 (2d Dist. 1999). Also the court must construe the facts liberally in favor of the plaintiff. *Id.* In ruling on a



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2-619 motion, the court may consider pleadings, affidavits and depositions. *Weisblatt v. Colky,* 265 Ill.App.3d 622, 625, 637 N.E.2d 1198, 1200 (1st Dist. 1994). The purpose of a Motion to Dismiss under section 2–619 of the Code of Civil Procedure is to afford litigants a means to dispose of issues of law and easily proved issues of fact at the outset of a case, reserving disputed questions of fact for a jury trial. *Zedella,* at 185, 650 N.E.2d 1000.

## ARGUMENT
(under 2-615)

### I. Dulberg sufficiently states a cause of action for legal malpractice.

1. In his Complaint, DULBERG sufficiently set forth the necessary elements of legal malpractice. "To prevail on a legal malpractice claim, the plaintiff client must plead and prove that the defendant attorneys owed the client a duty of due care arising from the attorney-client relationship, that the defendants breached that duty, and that as a proximate result, the client suffered injury." *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.,* 216 Ill.2d 294, 306-307 (Ill. 2005).

2. First, when DULBERG agreed to retain POPOVICH and POPOVICH agreed to represent DULBERG, a duty of due care was established based on the attorney-client relationship between DULBERG and POPOVICH. (See Complaint attached hereto without exhibits as Exhibit B, ¶ 8-10.) Thereafter, POPOVICH owed DULBERG a duty of due care as his attorney and POPOVICH breached that duty.

3. DULBERG's malpractice action is proper because DULBERG properly established that due to POPOVICH's malpractice, the case was settled for an amount much lower than what DULBERG expected. "Attorney malpractice action should be allowed where it can be shown that the plaintiff had to settle for a lesser amount than she could reasonably expect without the malpractice." *Brooks v. Brennan*, 255 Ill.App. 3d 260, 270 (5th Dist., 1994).



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4. In his Complaint, DULBERG specifically alleges that he was essentially forced to settle his case for $5,000.00 against the McGuires and the Auto-Owners Insurance Company. (See Complaint attached hereto as Exhibit B, ¶13, 21(j).) Thereafter at the binding arbitration DULBERG's gross award of $660,000.00 was cut to only $300,000.00 due to a "high-low agreement" that was executed as part of the McGuire settlement. DULBERG further pleads that had the McGuires not been dismissed from the case, he would have recovered more. (See Complaint attached hereto as Exhibit B, ¶16, 22.)

5. DULBERG properly plead proximate cause and damages in his Complaint. (See Complaint attached hereto as Exhibit B, ¶21, 22.)

6. *Fox v. Seiden*, 382 Ill.App. 3d 288, 294 (1st Dist. 2008) is analogous to this case because the *Fox* Plaintiff similarly pled proximate cause and the Appellate Court held that this was sufficient, "the plaintiff alleged, 'But for [the law firm's] negligence and malfeasance, [Miriam] would not have had judgment entered against her for attorney's fees under the [Act].' We find the alleged facts, liberally construed, taken as true, and viewed in the light most favorable to the plaintiff, sufficiently plead the element of proximate cause." *Id.*, at 299.

7. Specifically, DULBERG properly established that "but for" the acts of the Defendants in urging DULBERG to release the McGuires, DULBERG suffered substantial damages. (See Complaint attached hereto as Exhibit B, ¶ 22.)

8. More importantly, the issues of proximate cause and damages must be determined by a jury or trier of fact after all proper evidence and testimony is presented at trial. Proximate cause is a **question of fact** to be decided by a jury. (internal citation omitted) (Emphasis added) *Hooper v. County of Cook*, 366 Ill.App.3d 1, 7 (1st Dist., 2006). "The determination of damages is a **question of fact** that is within the discretion of the jury and is



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entitled to substantial deference." (Emphasis added.) *Linhart v. Bridgeview Creek Development, Inc.*, 391 Ill.App.3d 630, 636 (1st Dist., 2009).

9. POPOVICH states in his Motion that DULBERG's pleading and theory is confusing. (See Defendants' Memorandum attached hereto as Exhibit A, pg.4). However, there is nothing confusing about the issues at hand. DULBERG clearly and sufficiently pled in his Complaint that the wrongful acts, i.e. POPOVICH urging settlement and release of the McGuires in the case caused DULBERG to lose out on over $300,000.00.

10. Defendants, in their Motion to Dismiss, are requiring of DULBERG to plead his entire case in a single Complaint.

11. "Plaintiff is not required to prove his case at this stage of the pleadings and the damages as alleged are sufficient to show he was damaged by Defendants' actions and cause of action for legal malpractice. *Fox v. Seiden*, *supra*, at 294; *Platson v. NSM America*, Inc., 322 Ill.App. 3d 138, 143 (2nd Dist., 2001) ('Cases are not to be tried at the pleadings stage, so a claimant need only show a possibility of recovery, not an absolute right to recover, to survive a 2-615 Motion.'). Here, DULBERG has shown at least a possibility of recovery based on the malpractice of POPOVICH, thus should survive Defendants' 2-615 Motion.

12. The allegations set forth by DULBERG are not conclusions and are sufficient to withstand a Section 2-615 dismissal. By looking at the Complaint, DULBERG has clearly set forth each of the elements of legal malpractice.

13. Further, because this instant case is filled with factual questions, dismissing the Complaint at this stage of the pleadings is improper and this Honorable Court should deny Defendants' Motion in order to allow the case to be fully and properly litigated.

(Under 2-619)



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## II. Dulberg's claims are not barred by judicial estoppel.

14. Next, Defendants argue that DULBERG's claim is barred by judicial estoppel. (See Defendants' Memorandum attached hereto as Exhibit A, pg. 6). This is not factually accurate.

15. Judicial estoppel is an equitable doctrine evoked only at the Courts' discretion and designed to protect the integrity of the judicial system by preventing parties from taking inconsistent positions. *Seymour v. Collins*, 39 N.E. 3d 961 (Ill., 2015). The *Seymour* Court held five elements were required for judicial estoppel to apply; there must be two positions which are factually inconsistent in separate proceedings where there is an intent that the trier of fact accept as true all the allegations and the person who the doctrine is asserted against must have received a benefit. *Id.*

16. In this case, there have not been two factually inconsistent positions because DULBERG never held the position that he understood and was informed of all the terms of the settlement. The issue of whether Defendants properly informed DULBERG has never been dealt with in a previous proceeding.

17. Defendants argue that "like all adults" DULBERG is presumed to know the contents and meaning of the settlement agreement he signed. (See Defendants' Memorandum attached hereto as Exhibit A, pg. 7). However, the Defendants had a fiduciary duty to DULBERG to explain to him the contents of the settlement agreement and to explain the meaning of said agreement. That is part of the thrust of the malpractice, which of course is a factual question.



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18. In his Complaint, DULBERG alleges that MAST told DULBERG that "he had no choice but to execute a release" and that "there was no possibility of any liability" against the McGuires or the Insurance Company. (See Complaint attached hereto as Exhibit B, ¶ 13, 15.)

19. Based on these representations, DULBERG reluctantly signed the settlement agreement, as he had no choice and was relying on the representations of his attorneys.

20. Defendants argue that because the Court in the underlying case entered a good faith finding Order, Plaintiff should be judicially estopped. (See Defendants' Memorandum attached hereto as Exhibit A pg. 6). This is not the case. Although a good faith finding was entered in the underlying case, the Order did not contemplate whether there was any malpractice by the attorneys. The Court clearly did not know what the Defendants told or failed to tell DULBERG to urge him to sign the agreement. Therefore the good faith finding Order has no bearing on DULBERG's legal malpractice suit.

21. Defendants rely on the case of *Larson v. O'Donnell*, 361 Ill.App.3d 388 (1st Dist., 2005) in support of their argument that judicial estoppel is applicable, however this instant case is factually distinguishable from the *Larson* case, which was a divorce case.

22. The Court in *Larson*, *supra*, found that judicial estoppel applied to the Plaintiff's legal malpractice claims because at the dissolution prove up hearing, record clearly states that the Plaintiff testified that he understood all of the terms of the settlement, that knew when he signed the agreement that he had an obligation to pay a specific dollar amount in child support and maintenance. The *Larson* Court found that the Plaintiff was estopped from bringing the legal malpractice Complaint that alleged that he did not know the terms of the settlement. Larson even interrupted the divorce prove up to supply additional facts and information as to his correct



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income. *Larson v. O'Donnell, supra*, generally. Further, *Larson* has been distinguished and not followed. See *Wolfe v. Wolf*, 375 Ill.App.3d 702 (1st Dist., 2007).

23. In this case, there is no record of DULBERG specifically testifying to knowing exactly what the terms of the settlement agreement. Unlike the *Larson* Plaintiff, DULBERG is not claiming that he does not understand the $5,000.00 settlement, but instead, DULBERG was never informed by his attorneys that a "high-low" agreement would limit his recovery against the remaining Defendants. DULBERG was never informed by the Defendants how the terms of the settlement would affect the future of his case. More importantly, DULBERG was trusting his attorneys when signing the settlement agreement. At no time did DULBERG interject in any proceedings to state that he understood all of the terms of the settlement or provided additional facts as the *Larson* Plaintiff.

24. Based on Defendants' fiduciary duty, the Defendants had a duty to properly inform DULBERG of all of the risks of entering the settlement agreement. "The fiduciary duty owed by an attorney to a client encompasses the obligations of fidelity, honesty, and good faith." *Metrick v. Chatz,* 266 Ill.App.3d 649, 656 (1st Dist.,1994).

25. In the case of *Wolfe v. Wolf*, 375 Ill.App.3d 702 (1st Dist., 2007) the Defendant argued that the Plaintiff was judicially estopped from bringing a claim for legal malpractice when she testified that she understood and agreed to all the terms of the marital settlement agreement and subsequently filed a legal malpractice complaint alleging that she did not understand and agree to the marital settlement agreement. However the Court held that the Plaintiff was not judicially estopped from bringing her legal malpractice action because the testimony at the dissolution proceeding was based on negligent acts and misrepresentations made



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to the Plaintiff by the Defendant, and that she did not discover those negligent acts and misrepresentations until after the settlement agreement had been entered. *Id.*, generally.

26. This instant case is more factually similar to the *Wolfe* case than the *Larson* Case because DULBERG is not alleging that he misunderstood the obligations under the settlement agreement as in *Larson*, instead he is alleging that the negligence of POPOVICH did not permit DULBERG to make an informed decision about accepting the settlement, as in *Wolfe*. POPOVICH continuously represented to DULBERG that there was no possibility of any liability against the McGuires and/or the Insurance Company.

27. Therefore by following the Court in *Wolfe v. Wolf*, 375 Ill.App.3d 702 (1st Dist., 2007) this Honorable Court must find that DULBERG is not judicially estopped from bringing his claims against POPOVICH.

**III. Dulberg's claims are not time barred.**

28. Lastly in their Motion to Dismiss, Defendants argue that DULBERG's claims are barred by the statute of limitations. (See Defendants' Memorandum attached hereto as Exhibit A, pg. 7). This is incorrect because after review of the allegation of the Complaint this Court should find that the Complaint has been timely filed based on the discovery rule.

29. The discovery rule tolls the limitations period to the time the plaintiff knew or reasonably should have known of the injury. *Snyder v. Heidelberger,* 953 N.E.2d 415, 419 (Ill. 2011).

30. The Illinois Supreme Court held that the discovery rule applies to legal malpractice claims. *Jackson Jordan, Inc. v. Leydig, Voit & Mayer,* 158 Ill.2d 240, 249 (Ill. 1994). The Supreme Court has made this issue quite clear, finding as such and further finding the



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limitations period begins to run when a plaintiff knows or reasonably should know of his injury AND that the injury was wrongfully caused. (Emphasis added) *Id.*

31. The time at which a party has or should have the requisite knowledge under the discovery rule to maintain a cause of action is ordinarily a **question of fact.** (Emphasis added) *Jackson Jordan, Inc. v. Leydig, Voit & Mayer, at 250;* see also *Knox College v. Celotex Corp.*, 88 Ill.2d 407, 416-417 (Ill, 1981).

32. Due to the attorney client relationship with the Defendants, DULBERG is presumed unable to distinguish any misapplication or negligence by the Defendants, on his own. "The relationship between an attorney and the client is one in which the attorney is charged with a duty to act skillfully and diligently on the client's behalf. Given the duty, the client is presumed unable to discern any misapplication of legal expertise." *Goodman v. Harbor Market, Ltd.,* 278 Ill.App.3d 684, 659-690 (1st Dist., 1995).

33. There would be a constant destruction of the attorney-client relationship if clients were required to determine their attorney's malpractice at the exact time of incident. "If the client must ascertain malpractice at the moment of its incidence, the client must hire a second professional to observe the work of the first, an expensive and impractical duplication, clearly destructive of the confidential relationship between the practitioner and his client. Therefore, it is the realized injury to the client, not the attorney's misapplication of the expertise, which marks the point in time for measuring compliance with a statute of limitations period." (internal citations omitted) *Goodman v. Harbor Market, Ltd.,* 278 Ill.App.3d 684, 689-690 (1st Dist., 1995).



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34. DULBERG's Complaint was filed on November 28, 2017. The Complaint clearly sets forth when DULBERG became aware of the negligence of the Defendants as argued below. (See Complaint attached hereto as Exhibit B, ¶19, 20).

35. As pled in the Complaint, it was not until December 16, 2016 that DULBERG was informed by outside counsel that he may have a claim for legal malpractice:

> "19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.
>
> 20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016."
> (See Complaint attached hereto as Exhibit B, ¶19, 20).

36. DULBERG would have had until December 16, 2018 to bring his claims, or at the earliest by December 8, 2018, two years after DULBERG received the binding mediation award. Thus, the Complaint filed on November 28, 2017 is timely filed.

37. Defendants incorrectly pled that DULBERG did not provide any other explanation about why he was unaware of a claim until December 16, 2016. (See Defendants' Memorandum attached hereto as Exhibit A, pg. 8). This is incorrect because DULBERG's Complaint specifically alleges why DULBERG for the first time realized that the information Defendants gave DULBERG was false or misleading—after the mediation on December 8, 2016. (See Complaint attached hereto as Exhibit B, ¶19-20). DULBERG did not discover that the settlement with the McGuires would limit his recovery until the mediation award was entered and had no reason to believe he could not recover the full amount of his injuries.



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38. DULBERG's Complaint is also timely filed based on Defendants' fraudulent concealment. (See Complaint attached hereto as Exhibit B, ¶15, 19, 20, 21(g)(i)(j)).

39. Fraudulent concealment stops the running of the limitations period until the cause of action is discovered. *Henderson Square Condominium Ass'n v. LAB Townhomes, L.L.C.,* 2014 IL App (1st) 130764, ¶94 (1st Dist., 2014).

40. To state a claim of fraudulent concealment, a Plaintiff must allege that "the defendant concealed a material fact when he was under a duty to disclose that fact to plaintiff." (internal citation omitted) *DeLuna v. Burciaga*, 223 Ill.2d 49, 77 (Ill, 2006).

The *DeLuna* Court discussed certain situations where there is a duty to disclose a material fact. First, if plaintiff and defendant are in a fiduciary or confidential relationship, then defendant is under a duty to disclose all material facts. Second, a duty to disclose material facts may arise out of a situation where plaintiff places trust and confidence in defendant, thereby placing defendant in a position of influence and superiority over plaintiff. (internal citations omitted) *DeLuna v. Burciaga, supra.*

41. Moreover, Defendants' silence gives rise to DULBERG's claim for fraudulent concealment, because DULBERG trusted his attorneys. "Silence by a person in a position of trust concerning the facts giving rise to a cause of action amounts to fraudulent concealment." See *Doe v. Boy Scouts of America*, 66 N.E.3d 433, 456 (1st Dist., 2016),

42. DULBERG and Defendants were clearly in a fiduciary and confidential relationship: the attorney-client relationship. Defendants were under a duty to disclose all material facts and information to DULBERG. Defendants failed to do so.

43. "Whether an injured party justifiably relied upon defendants' words or silence depends on the surrounding circumstances and is a **question of fact** that is best left to the trier of



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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

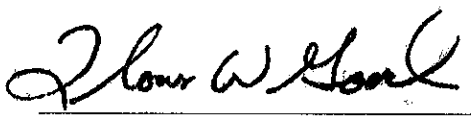
WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court



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deems equitable and just. If this Court grants Defendants' Motion to Dismiss, PAUL DULBERG prays for a reasonable amount of time to file a First Amended Complaint.

Respectfully submitted by
THE GOOCH FIRM, on behalf of
PAUL DULBERG, Plaintiff,



Thomas W. Gooch, III

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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
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02/07/2018
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22nd Judicial Circuit
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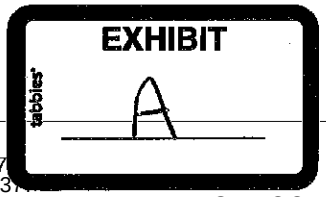
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| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17LA000377 |

**MEMORANDUM IN SUPPORT OF DEFENDANTS' COMBINED MOTION TO DISMISS**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-619.1, submit this Memorandum in Support of Defendants' Combined Motion to Dismiss Plaintiff's Complaint with prejudice, and state as follows:

## I. INTRODUCTION

The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. Dulberg was on the McGuires' property, assisting Gagnon trim some tree branches with a chainsaw, when Dulberg's right arm was lacerated by the chainsaw. Dulberg agreed to a settlement with






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the McGuires. Thereafter, he and Mast reached an impasse. Mast and the firm withdrew, and successor counsel continued to prosecute the case against Gagnon.

Dulberg now has a case of "buyer's remorse," admitting that he agreed to accept the McGuires' settlement offer. He has not plead the requisite elements of a legal malpractice case against Popovich and Mast, or the requisite elements of the underlying case (the "case within the case"). Moreover, his agreement to settle the case with the McGuires, approved by the court along with a good faith finding of settlement, estops him from now taking a contrary position. Finally, his legal malpractice claim is barred by the applicable two-year statute of limitations.

## II. STATEMENT OF FACTS

### A. The Following Facts Can Be Gleaned From The Complaint (Exhibit 1) and Its Exhibits

On June 28, 2011, Dulberg was assisting David Gagnon in the cutting down of a tree on the property of Carolyn and Bill McGuire. (Exhibit 1, ¶ 6). Gagnon lost control of the chainsaw and caused personal injury to Dulberg. (Exhibit 1, ¶ 7). In May of 2012, Dulberg retained Popovich. (Exhibit 1, ¶8). On May 15, 2012, Mast filed a Complaint on behalf of Dulberg against Gagnon and McGuires in the Circuit Court of McHenry County, Illinois, Case No, 12 LA 178. (Exhibit 1, ¶ 9, and Exhibit 1B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 1, ¶ 13 and Exhibit 1C). Defendants continued to represent Dulberg until March 2015. Dulberg retained successor counsel and proceeded to a binding mediation at which time he apparently executed a High-Low Agreement and received a mediation award (Exhibit 1, ¶ 16 and Exhibit 1D). After

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 1A, 1B, 1C and 1D.



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the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 1, ¶ 20).

### B. Alleged Acts of Negligence

In Exhibit 1, ¶ 21, Dulberg alleges that Defendants failed to take actions as were necessary to fix liability against the property owners of the subject property (the McGuires), alleging that they employed Gagnon and sought the assistance of Dulberg. It is alleged that they failed to thoroughly investigate liability issues against the property owners, failed to conduct necessary discovery, failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property, and improperly urged Dulberg to accept a "non-sensical" settlement from the property owners. It is also alleged that Defendants concealed necessary facts from Dulberg preventing him from making an informed decision as to the McGuires and "coercing" him in signing a Release and Settlement Agreement.

## III. DULBERG FAILS TO STATE A CLAIM FOR LEGAL MALPRACTICE UNDER 735 ILCS 5/2-615

### A. Legal Standard

It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001). To pass muster a complaint must state a cause of action in two ways: first, it must be legally sufficient -- it must set forth a legally recognized claim as its avenue of recovery, and



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second, the complaint must be factually sufficient -- it must plead facts, which bring the claim within a legally recognized cause of action as alleged. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). Dismissal of a complaint is mandatory if one fails to meet both requirements. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (5th Dist. 1994). In ruling on a Section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Mount Zion State Bank and Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995).

In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995). The injuries resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests. *Glass* at 349. Damages must be incurred and are not presumed. *Glass* at 349. It is the plaintiff's burden to establish that "but for" the attorney's negligence, the client would not have suffered the damages alleged. *Glass* at 349. "The proximate cause element of legal malpractice claim requires that the plaintiff show that but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Green v. Papa*, 2014 IL App. (5th) 1330029 (2014), quoting *Owens v. McDermott Will & Emery*, 316 Ill. App. 340 (2000), at 351. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1995).

**B. <u>Dulberg Fails to Plead Facts in Support of His Conclusory Allegations</u>**

Dulberg's pleading and theory of recovery is confusing. Presumably, since Dulberg retained successor counsel in the underlying case, he is only complaining here about the



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McGuires' underlying liability, and nothing with respect to case against David Gagnon (when an attorney is discharged and transfers a then viable matter to a successor attorney, the first lawyer cannot be held to have proximately caused the client's lost claim, see *Mitchell v. Shain, Fursel, and Burney, Ltd.*, 332 Ill. App 3d 618 (1st. Dist. 2002), and *Cedeno v. Gumbiner*, 347 Ill. App. 3d 169 (1st Dist. 2004)).

Setting aside the Estoppel and Statute of Limitations issues which will be discussed below, Dulberg's complaint for legal malpractice is rife with unsupported conclusory allegations. Dulberg fails to allege requisite facts in support of each and every element of the "underlying" case or "case within the case" against the McGuires. Simply put, Dulberg fails to plead any facts in support of his conclusions that there was some liability against the McGuires. In ¶ 21 of his complaint, Dulberg alleges negligence against Popovich and Mast, but fails to identify what actions should have been taken and were not. In ¶ 21 (a), Dulberg fails to identify what investigation and discovery should have been undertaken. In ¶¶ 21 (b) and (c), Dulberg fails to identify or discuss the law that "defendants failed to understand." In ¶ 21 (d), Dulberg fails to plead any facts about why the settlement with the McGuires was improper or "non-sensical."

Under Illinois fact pleading requirements, much more is needed. In a case of alleged professional liability, the plaintiff cannot simply allege in conclusory terms that the defendants were negligent, and that the Plaintiff could have proved up liability against the underlying defendants. He must allege why and how. Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615.



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## IV. DULBERG'S SETTLEMENT WITH THE MCGUIRES AND THE DOCTRINE OF JUDICIAL ESTOPPEL BAR HIS LEGAL MALPRACTICE CLAIM

Dulberg admits in ¶13 of his Complaint, that he agreed to a $5,000.00 settlement with the McGuires. Attached to this Complaint, is an unsigned copy of the Settlement Agreement, Exhibit 1C.[2] Because Dulberg agreed to the settlement with the McGuires, waived and released all claims against them and their insurance carrier, and allowed the Court to enter an Order on a Good Faith Finding of Settlement (a joint tortfeasor Gagnon remained in the case), he is now estopped from taking a contrary position that the settlement was appropriate, fair, knowing and voluntary.[3]

The doctrine of judicial estoppel provides that a party who assumes a particular position in a proceeding is estopped from assuming a contrary position in a subsequent proceeding. *Larson vs. O'Donnell*, 361 Ill. App. 3d 388, 398 (1st Dist. 2005), *rev'd on other grounds*. In *Larson*, a plaintiff became unemployed during the pendency of his divorce. At settlement, he agreed to pay a specified dollar amount for child support and specified dollar amount for maintenance, based on the income he earned prior to his having become unemployed. *Larson* at 391. The parties and their attorneys appeared before the court to present the marital settlement agreement for approval at a "prove up". *Larson* at 392. At the prove up hearing, the plaintiff gave unequivocal testimony that he understood the terms and conditions of the agreement and acknowledged the amounts he was required to pay under the agreement. *Larson* at 392. After entry of the judgment for dissolution of marriage, the plaintiff began paying support based on a

[2] It does not appear that Dulberg is denying the authenticity of the Settlement Agreement, despite the fact that his signature is not attached. Mast is in possession of a signed copy of the Settlement Agreement, which Dulberg executed on January 29, 2014.

[3] For the Court's convenience, attached as Exhibits 2 and 3 are the Motion for the Good Faith Finding and Court's Order granting the Good Faith Finding of Settlement. The Court may take judicial notice of its own court docket see *All Purpose Nursing Service v. Human Rights Com.*, 205 Ill. App. 3d 816, 823 (1st Dist. 1990). Notably, the McGuires also filed a counterclaim for contribution against Gagnon in the underlying case.



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percentage of his unemployment income rather than the amounts required by the judgement for dissolution. He was later held in contempt for failure to pay the amounts prescribed in the judgment of dissolution and attorney's fees were assessed against him in the divorce court. He sued his former attorneys for breach of fiduciary duty and legal malpractice. *Larson* at 393. The court held that the plaintiff in *Larson* was judicially estopped from attempting to create a question of fact regarding his "actual" understanding for purposes of summary judgment by later contradicting his previous position. *Larson* at 398.

Like Larson, Dulberg cannot now claim that he did not knowingly and voluntarily settle and release his claims against the McGuires. Moreover, Dulberg, like all adults, is "presumed to know the contents and meaning of the obligations he undertakes when he signs a written agreement." *Premier Elec. Const. Co. vs. Ragnar Benson, Inc.* 111 Ill. App. 3d 855, 865 (1st Dist. 1982). Accordingly, Dulberg is estopped from claiming that his agreement to settle the underlying case with the McGuires was not "knowing and voluntary," and he cannot claim that he was coerced. The final decision was his alone. Dulberg is estopped from now asserting a claim for legal malpractice against his former counsel. His Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(9).

## V. DULBERG'S CLAIM IS BARRED BY THE TWO YEAR STATUTE OF LIMITATIONS FOR CLAIMS AGAINST ATTORNEYS

Dulberg has failed to file his legal malpractice complaint against Popovich and Mast within the two year statute of limitations for claims against attorneys. 735 ILCS 5/13-214.3 provides for a two year statute of limitations period which shall begin to run at "the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought. *Ogle v. Hotto*, 273 Ill. App. 3d 313, 318 (5th Dist. 1995). 735 ILCS 5/13-214.3(b) reads as follows:



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> (b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing professional services must be commenced within two years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

Dulberg's Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5) because on its face, his claims are untimely.

Dulberg admits in ¶ 14 of Exhibit 1 that Popovich's and Mast's representation ceased in March of 2015. Without some exception to the rule, a claim for legal malpractice would have been required to be filed by March 2017. Here, the Plaintiff did not file his Legal Malpractice Complaint against Defendants until November 28, 2017 (Exhibit 1), at least seven (7) months too late. Apparently realizing that his claims are untimely, Dulberg attempts to rely on the "discovery rule." He alleges in ¶ 20, without any factual support, that the information regarding the McGuires' liability as a property owner, was "false and misleading." As discussed above, Dulberg fails to allege any specific facts about any false and misleading information or other specifics as to Mast and Popovich's negligent conduct. Dulberg fails to plead facts in support of the case within the case, i.e. the McGuires' liability in the underlying cause of action. Dulberg alleges that he was advised to seek an independent opinion from an attorney handling legal malpractice matters on or about December 16, 2016, but provides no other explanation about why he was unaware of a claim until December 16, 2016. What happened after he signed the agreement on January 29, 2014?

While there was nothing preventing Dulberg at the time of the McGuire settlement from seeking a second opinion concerning the propriety or "sense" in settling, Illinois law requires a plaintiff relying on the discovery rule to plead facts in support of reliance on the discovery rule.



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In other words, the plaintiff must explain why he did not discover the cause of action until December 16, 2016. The plaintiff has the burden of proving the date of discovery. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill.2d 72, 85 (1995). Moreover, under Illinois law, *actual knowledge* of the alleged malpractice is not a necessary condition to trigger the running of the statute of limitations. *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (1st Dist. 2011) ("under the discovery rule, a statute of limitations may run despite the lack of actual knowledge of negligent conduct") (emphasis in original)). A statute of limitations begins to run when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Bluewater Partners v. Mason*, 2012 IL App (1st 102165 at *p. 50).

Here, Dulberg fails to allege any facts to support a delay or tolling of the statute. He retained subsequent counsel after the defendants withdrew, and could have requested a legal opinion regarding the McGuires' liability then, why did he wait? His claim must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).



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## V. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5), and 735 ILCS 5/2-619.1, respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

**NOTICE**

**THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.**

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

EXHIBIT
tabbies
B



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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gaguon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.



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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D.**

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the



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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

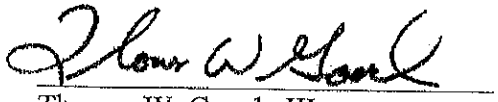
j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III



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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111150626
17LA000377
04/10/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17LA000377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' REPLY IN SUPPORT OF COMBINED MOTION TO DISMISS**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/2-619.1, submit this Reply in Support of Defendants' Motion to Dismiss Plaintiff's Complaint at Law, and state as follows:

## I. INTRODUCTION

One of the underpinnings of Dulberg's legal malpractice claim, is that a "high low agreement" he executed somehow caused him to settle his personal injury case for an amount lower than what he "expected." But Dulberg has failed to attach any such "high low agreement" to his complaint. He has also failed to identify the terms of the agreement in his complaint, and how the terms somehow affected his case. While in ¶ 3 of his Response he argues that the "high low agreement" was executed as part of the McGuire settlement, in view of Illinois Supreme Court Rule 137, he has not and cannot allege *in his complaint* that a "high low agreement" was executed as part of the McGuire settlement, or that Popovich or Mast had anything to do with it. In any case, the execution of a "high low agreement" by Dulberg in connection with the McGuire settlement makes little sense at the time, in view of Dulberg's later mediation and



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settlement with the co-defendant, David Gagnon. Dulberg's mention of the "high low" coupled with his failure to explain its terms or significance, renders it a legal world equivalent of a "MacGuffin."

Dulberg cannot allege that he was "forced" to settle his case with the McGuires for $5,000. He had every right to reject a settlement, or to retain new counsel. In fact, he alleges that Popovich withdrew over 21 months before the case was concluded (he retained successor counsel to handle the case). Moreover, he willingly agreed to a settlement with the McGuires while continuing to prosecute his case against Gagnon. He also fails to allege how he would have fared any better against the McGuires, "but for" Popovich's alleged malpractice, and fails to explain why he waited over 2 years after Popovich withdrew in order to sue the firm. For these reasons, Dulberg's complaint must be dismissed with prejudice.

## II. DULBERG FAILS TO PLEAD FACTS IN SUPPORT OF EACH REQUISITE ELEMENT OF A LEGAL MALPRACTICE CLAIM

Dulberg fails to support any of his conclusions that Popovich and Mast committed legal malpractice with factual support. It is not sufficient under Illinois law that the elements of a cause of action simply be regurgitated. In a legal malpractice action, not only must the elements of the legal malpractice claim be supported with facts, so must the allegations of the underlying case. However, Dulberg only makes conclusory statements in ¶ 21 of his Complaint, that additional actions should have been taken in the underlying case. But Dulberg fails to identify what those actions should have been.

Dulberg alleges that he was forced to settle his case against the McGuires for $5,000.00. He does not allege in his Complaint whether the McGuires made a settlement offer, or whether Dulberg made a settlement demand. Did Mast forward a written settlement offer to Dulberg? Did he accept it and mail back an executed release? How was he pressured to settle? Dulberg



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also fails to explain the effect of a "high low agreement" that he allegedly executed. Dulberg attaches a page from a binding mediation award he allegedly received against David Gagnon, but he fails to attach the unexplained high low agreement. 735 ILCS 5/2-606, states in pertinent part:

> If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her.

Dulberg fails to attach the high low agreement, or otherwise explain the terms of the agreement and its significance. He also fails to explain why he would enter a high low agreement with the McGuires 21 months prior to a mediation with Gagnon.

Because Dulberg fails to plead facts in support of each and every element of his legal malpractice claim and his underlying claim and how he would have prevailed "but for" the negligence of Popovich and Mast, his case must be dismissed pursuant to 735 ILCS 5/2-615.

## III. DULBERG IS ESTOPPED FROM REPUDIATING HIS SETTLEMENT AGREEMENT

Dulberg asserts that he is not estopped from taking a position in this case that he did not understand the terms of his $5,000.00 settlement agreement with the McGuires. His attempt to distinguish *Larson v. O'Donnell*, 375 Ill. App. 3d 702 (1st Dist. 2007) fails. Dulberg argues that unlike *Larson*, here there is no record of Dulberg testifying to knowing exactly what the terms of the settlement agreement[sic][were]. (Response, p. 8). However, here there is no dispute that Dulberg knowingly executed the settlement release in favor of the McGuires. Moreover, in a case cited by Dulberg, *Seymour v. Collins*, 2015 IL 118432 the Illinois Supreme Court wrote that "a statement under oath was not among the requirements for judicial estoppel." *Seymour* at *P38.



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Dulberg also continues to argue in pages 8 and 9 of his Response that he was unable to make an informed decision about accepting settlement because he was never informed "by his attorneys that a "high low" agreement would limit his recovery against the remaining defendants." (Response, ¶¶ 23 and 26). As discussed above, Dulberg has not and cannot allege in his complaint that Popovich or Mast had any involvement with any such "high low" agreement. Accordingly, his argument that they failed to inform him of the effects of the agreement, and how it could limit his recovery against the remaining defendants, is not well plead and amounts to a "red herring". In fact, in ¶ 20 of his complaint, Dulberg sets forth the time frame of the execution of the "high low" agreement: "Following the execution of the mediation agreement with the "high low agreement" contained therein, and the final mediation award, Dulberg realized for the first time that the information MAST and POPOVICH had given Dulberg was false and misleading..." Which is it? Is he claiming that the "high low" was executed in 2015 prior to Popovich's and Mast's withdrawal, or at mediation (almost 2 years later in 2017)? Obviously Popovich and Mast could not have counseled Dulberg regarding a "high low" agreement he apparently executed 21 months after their attorney-client relationship ended. The allegations concerning the "high low" agreement are not well plead and are dispositive of Dulberg's claims under section 2-615 and 735 ILCS 5/2-619 (a)(9).

## IV. DULBERG'S RELIANCE ON THE DISCOVERY RULE TO DELAY THE COMMENCEMENT OF THE STATUTE OF LIMITATIONS IS UNAVAILING

Dulberg confirms in his Response that he is attempting to rely on the discovery rule in order to toll the statute of limitations. He also relies on language from the case of *Goodman v. Harbor Market, Ltd.*, 278 Ill. App. 3d (1st Dist. 1995) for the proposition that he is "presumed unable to distinguish any misapplication or negligence by the Defendants, on his own [sic]." He also alleges that he was provided with a legal opinion after the December 16, 2016 mediation



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[with Gagnon] at which time he learned for the first time "that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake." (Response, p. 11). How was the information misleading?

Again, Dulberg fails to describe how the settlement and dismissal of the McGuires was a mistake. But more importantly, he does not allege what happened in the 21 months after defendants were discharged as his counsel. Under Illinois law, he cannot simply bury his head in the sand. There was nothing preventing Dulberg from inquiring about the McGuires' liability from his successor counsel, also a personal injury attorney. If he felt pressured into settling with the McGuires, why did he not seek a second opinion at the time of the settlement?

Dulberg has the burden of proving the date of discovery, and here he has failed to even allege sufficient facts to support a tolling of the limitations period. For that reason, his complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-619(a)(5).

## V. CONCLUSION

WHEREFORE, for the reasons stated in their Motion to Dismiss and Memorandum in Support, and as stated herein, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5), and 735 ILCS



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5/2-619.1, respectfully request this Honorable Court dismiss Plaintiff's Complaint at Law with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
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Attorneys for Defendants
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 10th day of April, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.



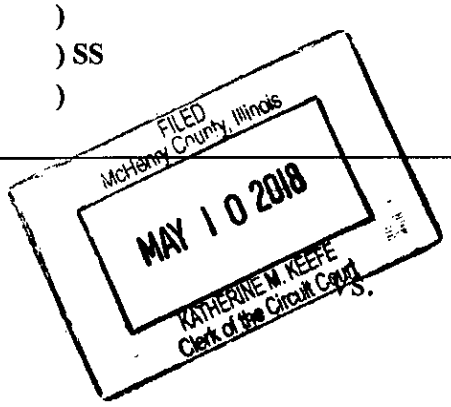


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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT Ln. 6 ORD

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury




Dulberg vs. Mast, et al

Date: 5-10-18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G Flynn

**ORDER**

This matter before the Court on hearing on Defendants' combined Motion to Dismiss, both parties present by counsel, the Court fully advised in the premises

It IS ORDERED:

1. Defendants' 2-615 motion to Dismiss is granted, and the 2-619 Motion is denied

2. Plaintiff granted 28 days (6/7/18) to file a First Amended Complaint

3. Defendants granted 28 days (7/5/18) thereafter to Answer or otherwise plead

4. Matter is set for status of pleadings on July 20, 2018 at 9:00 am in 201.

Prepared by: S. Walczyk / Gooch Firm
Attorney for: Dulberg
Attorney Registration No.: 6315819 Judge:

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendant. | ) | No. 17 LA 377 |

**FIRST AMENDED COMPLAINT AT LAW**
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A.**

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)



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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.)**

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only



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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.)**

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.



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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;



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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;



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n) Failed to retain a liability expert to prove DULBERG's damages;

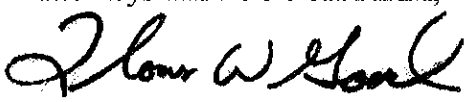
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

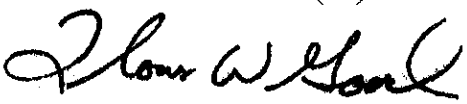
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
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A

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COPY
MAY 16 2012
KATHERINE M. KELLER
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

No.: 12LA178

# COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

## Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/25 20 22, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
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B

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

**Paul Dulberg vs. Caroline McGuire and Bill McGuire**

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

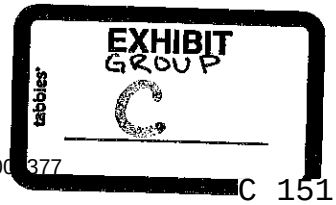
---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.




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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
tabbies
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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# GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2016 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

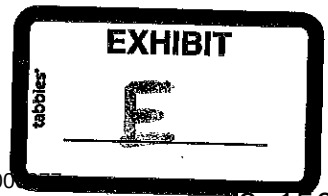
---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI




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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

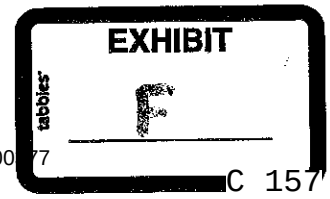
The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.




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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (If applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

EXHIBIT tabbies 6



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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

**Katherine M. Keefe**
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG,<br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No.: 17 LA 377 |

**NOTICE OF FILING**

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

**PLEASE TAKE NOTICE** that on **June 7, 2018** I caused to be filed with the Clerk of the Circuit Court of McHenry County, Illinois the attached *Plaintiff's First Amended Complaint at Law.*

Thomas W. Gooch, III

**PROOF OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via the McHenry County I2File Efile System and via email transmission to on June 7, 2018.

THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No.: 3123355

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Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111173529
17LA000377
07/05/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

27 9517 00 7

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17LA000377 |

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, submit this Memorandum in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint at Law with prejudice, and state as follows:

## I. INTRODUCTION

The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. Dulberg was on the McGuires' property, assisting Gagnon trim some tree branches with a chainsaw, when Dulberg's right arm was lacerated by the chainsaw. Dulberg agreed to a settlement with the McGuires. Thereafter, he and Mast reached an impasse. Mast and the firm withdrew, and successor counsel continued to prosecute the case against Gagnon.



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Dulberg now has a case of "buyer's remorse," admitting that he reluctantly agreed to accept the McGuires' settlement offer. He has attempted to state a claim against Popovich and Mast for legal malpractice. However, he has not plead the requisite elements of a legal malpractice case against Popovich and Mast, or the requisite elements of the underlying case (the "case within the case").

## II. PROCEDURAL HISTORY

On November 28, 2017, Plaintiff filed his single count Complaint at Law for legal malpractice. Defendants moved to dismiss. On May 10, 2018, the Court granted Defendants' Motion to Dismiss pursuant to 735 ILCS 5/615 (see Order attached as Exhibit 1). During the hearing on Defendants' Motion to Dismiss, Judge Meyer ordered that the Plaintiff plead with more particularity and specificity regarding any allegations that he was misled. The Court also ordered the Plaintiff to provide more specificity and particularity with respect to any claims that information provided by Defendants to the Plaintiff was false and misleading. Plaintiff filed its First Amended Complaint at Law on June 7, 2018.

## III. STATEMENT OF FACTS

### A. The Following Facts Can Be Gleaned From The First Amended Complaint (Exhibit 2) and Its Exhibits

On June 28, 2011, Dulberg was assisting David Gagnon in the cutting down of a tree on the property of Carolyn and Bill McGuire. (Exhibit 2, ¶ 6). Gagnon lost control of the chainsaw and caused personal injury to Dulberg. (Exhibit 2, ¶ 7). In May of 2012, Dulberg retained Popovich. (Exhibit 2, ¶8). On May 15, 2012, Mast filed a Complaint on behalf of Dulberg against Gagnon and the McGuires in the Circuit Court of McHenry County, Illinois, Case No, 12



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LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

**B. Alleged Acts of Negligence**

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.



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c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails, into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that [sic] had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;



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n) Failed to retain a liability expert to prove DULBERG's damages;

o) Were otherwise negligent in their representation of DULBERG.

## IV. DULBERG FAILS TO STATE A CLAIM FOR LEGAL MALPRACTICE UNDER 735 ILCS 5/2-615

### A. Legal Standard

It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001). To pass muster a complaint must state a cause of action in two ways: first, it must be legally sufficient -- it must set forth a legally recognized claim as its avenue of recovery, and second, the complaint must be factually sufficient -- it must plead facts, which bring the claim within a legally recognized cause of action as alleged. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). Dismissal of a complaint is mandatory if one fails to meet both requirements. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (5th Dist. 1994). In ruling on a Section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Mount Zion State Bank and Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995).

In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995). The injuries



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resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests. *Glass* at 349. Damages must be incurred and are not presumed. *Glass* at 349. It is the plaintiff's burden to establish that "but for" the attorney's negligence, the client would not have suffered the damages alleged. *Glass* at 349. "The proximate cause element of legal malpractice claim requires that the plaintiff show that but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Green v. Papa*, 2014 IL App. (5th) 1330029 (2014), quoting *Owens v. McDermott Will & Emery*, 316 Ill. App. 340 (1st Dist. 2000), at 351. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1st Dist.1995).

**B. Dulberg Fails to Plead Facts in Support of His Conclusory Allegations**

Dulberg's second attempt at stating a claim fairs no better than his first. He still fails to plead with specificity and particularity as to how he was misled, or how any information provided to him was false and misleading. His allegations are pled in conclusory fashion throughout. He also fails to plead any facts concerning the McGuires' liability in the underlying case. His allegations concern the viability of a tort claim against property owners. Accordingly, he must plead facts in support of the property owners' [the McGuires] liability in the underlying case. Instead, Dulberg pleads only conclusions. More is necessary under Illinois law.

Dulberg has failed to follow the court's direction from the hearing on Defendant's Motion to Dismiss. The allegations of negligence contained in ¶ 31 fail to allege any facts in support of the conclusions. For example, what necessary discovery was not conducted? (¶ 31 (c)) What is the law pertaining to a property owner's duties and responsibilities? (¶ 31 (f)). How did defendants falsely advise Dulberg that the actions taken regarding the McGuires was proper? (¶ 31 (i)). What was concealed from Dulberg? (¶ 31 (k)). The bottom line is that Dulberg has yet to explain how the McGuires would have been found liable. The only thing that can be gleaned



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from the facts alleged in the Complaint and First Amended Complaint, is that Dulberg was injured on their property. He fails to explain how the McGuire's breached any duty to him, and how they would have been liable.

Additionally, Dulberg's allegations of coercion are not supported by his own pleadings. It is reasonably inferred from the pleadings that Dulberg had ample time to retain another attorney (in fact later he did). Exhibit E to his First Amended Complaint establishes that he deliberated over the decision to settle, and mailed a signed release back to Mast. So how was he coerced, when he alleges that he met with Mast, and then later mailed the executed release?

Moreover, his allegations regarding the failure to retain an expert are unsupported. He also fails to explain why his successor counsel did not retain an expert at the appropriate time if necessary. Lastly, Dulberg can never properly allege proximately caused damages regarding the allegation in ¶ 31 (e), that Gagnon's insurance coverage was $300,000 and not $100,000. In fact, Dulberg admits in ¶ 24 that he recovered $300,000 in available coverage from Gagnon. If Mast incorrectly reported the available coverage, it did not cause any damage, as Dulberg's successor counsel was apparently able to recover the full amount of available coverage against the individual who injured Dulberg with a chainsaw.

Under Illinois fact pleading requirements, much more is needed. In a case of alleged professional liability, the plaintiff cannot simply allege in conclusory terms that the defendants were negligent, and that the Plaintiff could have proved up liability against the underlying defendants. He must allege why and how. Dulberg has failed twice. His First Amended Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-615.



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## V. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

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CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com



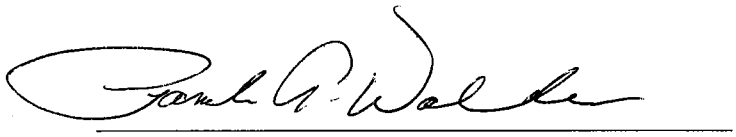
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email and/or U.S. Mail by depositing same in the U.S. Mail at 10 S. LaSalle Street, Chicago, IL 60603, and properly addressed, with first class postage prepaid, on the 5th day of July, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.





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# EXHIBIT 1

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Ln. 6

# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

FILED
McHenry County, Illinois
MAY 10 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

Dulberg vs. Mast, et al

Date: 5-10-18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G Flynn

## ORDER

This matter before the Court on hearing on Defendants' combined Motion to Dismiss, both parties present by counsel, the Court fully advised in the premises

IT IS ORDERED:

1. Defendants' 2-615 motion to Dismiss is granted, and the 2-619 Motion is denied
2. Plaintiff granted 28 days (6/7/18) to file a First Amended Complaint
3. Defendants granted 28 days (7/5/18) thereafter to Answer or otherwise plead
4. Matter is set for status of pleadings on July 20, 2018 at 9:00 am in 201.

Prepared by: S. Walczyk / Cook Firm
Attorney for: Dulberg
Attorney Registration No.: 6315819 Judge:

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# EXHIBIT 2

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

**Katherine M. Keefe**
**Clerk of the Circuit Court**
****Electronically Filed****
**Transaction ID:** 17111166062
17LA000377
06/07/2018
**McHenry County, Illinois**
**22nd Judicial Circuit**
**********

| | | |
|---|---|---|
| PAUL DULBERG,<br>Plaintiff, | ) | |
| | ) | No.: 17 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendants. | ) | |

**NOTICE OF FILING**

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

**PLEASE TAKE NOTICE** that on **June 7, 2018** I caused to be filed with the Clerk of the Circuit Court of McHenry County, Illinois the attached *Plaintiff's First Amended Complaint at Law.*

Thomas W. Gooch, III

**PROOF OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via the McHenry County I2File Efile System and via email transmission to on June 7, 2018.

THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No.: 3123355

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111166062
17LA000377
06/07/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendant. | ) | No. 17 LA 377 |

**FIRST AMENDED COMPLAINT AT LAW**
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)



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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only



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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.)**

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G.**

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.



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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;



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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;



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n) Failed to retain a liability expert to prove DULBERG's damages;

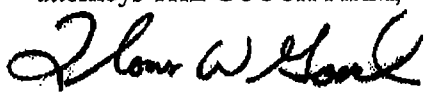
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

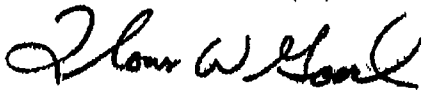
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

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office@goochfirm.com



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

LAW OFFICES OF THOMAS J. POPOVICH

Client

By: _____

Date: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

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COPY
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ___ ON 12/18, 20 12, AT 9 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ___ ON ___ 20___ AT ___ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

EXHIBIT
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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and know that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.




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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
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Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
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Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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## GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2016 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: McGuire settlement**

Ok, It's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI

EXHIBIT
E

Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA00

Received 07-05-2018 03:38 PM / Circuit Clerk Accepted on 07-05-2018 04:08 PM / Transaction #17111173529 / Case #17LA000377
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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

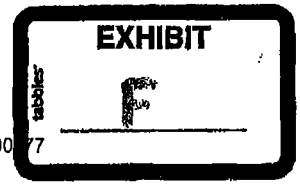
The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my IPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.




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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| PLS | 75,000. |
| LNL | 75,000. |

The Honorable James P. Etchingham, (Ret.)



EXHIBIT
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Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000
Page 19 of 19
Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377
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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111173529
17LA000377
07/05/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17LA000377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' MOTION TO DISMISS**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, move to dismiss Plaintiff's First Amended Complaint at Law, and state as follows:

1. The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. This legal malpractice case arises out of that underlying personal injury case.

2. It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001).



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3. In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995).

4. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1st Dist. 1995).

5. Dulberg fails to allege requisite facts in support of a legal malpractice claim, including each and every element of the "underlying" case or "case within the case" against the McGuires.

6. Dulberg's complaint must be dismissed pursuant to 735 ILCS 5/2-615.

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615, respectfully request this Honorable Court dismiss Plaintiff's First Amended Complaint at Law with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com



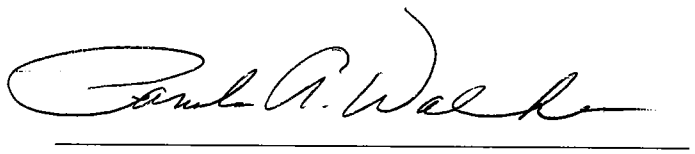
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served by Email on the 5th day of July, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.





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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*Katherine M. Keefe*
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111173529
17LA000377
07/05/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, | ) | |
| vs. | ) | No. 17LA000377 |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants. | ) | |

## NOTICE OF MOTION

TO: Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

On **July 20, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the **Honorable Judge Thomas A. Meyer**, or any Judge sitting in his stead in **Courtroom 201,** in the **McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois** and present **Defendants' Motion to Dismiss and Memorandum in Support of Defendants' Motion to Dismiss First Amended Complaint at Law**, copies of which is attached and served upon you herewith.

/s/ George K. Flynn

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
312-855-1010
Attorneys for Defendants



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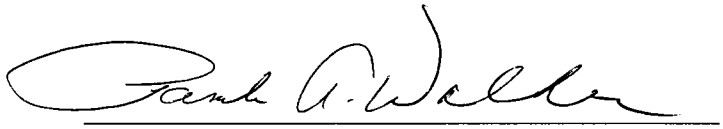
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209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.





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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Dulberg
Plaintiff

vs

Law Offices of Thomas Popovich etal
Defendant

Circuit Clerk Use Only
✓ ORD
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ORDDWP

Case Number 17 LA 377

# ORDER

FILED
McHenry County, Illinois
JUL 20 2018
20
KATHERINE M. KEEFE
Clerk of the Circuit Court

☒ Plaintiff(s) appear in person/by attorney S. Walczyk

☒ Defendant(s) appear in person/by attorney G Flynn

☐ Summons not served; alias summons to issue; return date _____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☒ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to September 12, 2018 at 10:00, a m. for hearing on Motion to Dismiss First Amended Complaint.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:**

- Plaintiff granted 28 days (8/17/18) to Respond.
- Defendants granted 14 days (8/31/18) to Reply.

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

**Katherine M. Keefe**
**Clerk of the Circuit Court**
******Electronically Filed******
**Transaction ID:** 17111184427
17LA000377
08/17/2018
**McHenry County, Illinois**
**22nd Judicial Circuit**
************************

| | | |
|---|---|---|
| PAUL DULBERG,<br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendants. | ) | No.: 17 LA 377 |

**NOTICE OF FILING**

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

**PLEASE TAKE NOTICE** that on **August 17, 2018** I caused to be filed with the Clerk of the Circuit Court of McHenry County, Illinois the attached, *Plaintiff's Response to Defendant's Motion to Dismiss First Amended Complaint at Law*.

Thomas W. Gooch, III, Esq.

**PROOF OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via the McHenry County I2File Efile System and via email on August 17, 2018.

THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No.: 3123355

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111184427
17LA000377
08/17/2018
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| PAUL DULBERG,<br>Plaintiff, | ) | |
| | ) | No.: 17 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendants. | ) | |

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW**

NOW COMES, your Plaintiff, PAUL DULBERG, (hereinafter referred to as "DULBERG") by and through his attorneys, THE GOOCH FIRM, and for his Response to Defendants' THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST (hereinafter collectively referred to as "Defendants") Motion to Dismiss states to the Court the following:

INTRODUCTION

Defendants brought their Motion to Dismiss First Amended Complaint at Law, pursuant to Section 2-615. (See Defendants' Memorandum in Support of Defendants' Motion to Dismiss attached hereto without exhibits as **Exhibit A**.) In their Motion, Defendants argue that DULBERG failed to state a claim for legal malpractice. However, after review of the facts in the Complaint, this Honorable Court will determine that DULBERG's First Amended Complaint is sufficient to survive this Motion to Dismiss.

STANDARD OF REVIEW FOR SECTION 2-615

1. A Motion to Dismiss pursuant to section 2-615 attacks the legal sufficiency of the Complaint by alleging defects on its face. *Weisblatt v. Colky*, 265 Ill.App.3d 622, 625 (1st Dist. 1994). Section 2–615 motions "raise but a single issue: whether, when taken as true, the facts



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alleged in the Complaint set forth a good and sufficient cause of action." *Visvardis v. Ferleger* 375 Ill.App.3d 719, 723 (1st Dist. 2007), quoting *Scott Wetzel Services v. Regard,* 271 Ill.App.3d 478, 480, 208 Ill. Dec. 98, 648 N.E.2d 1020 (1995).

2. When the legal sufficiency of a Complaint is challenged by a section 2–615 Motion to Dismiss, all well-pleaded facts in the Complaint are taken as true and a reviewing court must determine whether the allegations of the Complaint, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004); *King v. First Capital Financial Services Corp*. 215 Ill.2d 1, 12 (2005). A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved that will entitled the plaintiff to recover. *Zedella v. Gibson*, 165 Ill.2d 181, 185 (1995).

## ARGUMENT
(under 2-615)

### I. Dulberg sufficiently states a cause of action for legal malpractice against the Defendants.

1. In his First Amended Complaint, DULBERG sufficiently set forth the necessary elements of legal malpractice. "To prevail on a legal malpractice claim, the plaintiff client must plead and prove that the defendant attorneys owed the client a duty of due care arising from the attorney-client relationship, that the defendants breached that duty, and that as a proximate result, the client suffered injury." *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.,* 216 Ill.2d 294, 306-307 (Ill., 2005).

2. In the Motion to Dismiss, Defendants allege that DULBERG has not pled necessary facts. For example, Defendants argue that DULBERG did not plead enough facts as to what necessary discovery was not conducted under paragraph 31(c) of the First Amended Complaint (See Motion to Dismiss attached as **Exhibit A**, pg. 6) This is not true.



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3. In that same paragraph, DULBERG gives an example of what type of discovery was necessary, i.e. hiring a liability expert. (See First Amended Complaint, **Exhibit B**, ¶31(c).)

4. Had Defendants conducted expert discovery in DULBERG's case, the expert would have opined as to the liability of both Gagnon and the McGuires. DULBERG's allegations that an expert should have been hired by MAST is proper because had MAST hired an expert prior to releasing the McGuires, the expert could have opined as to their liability which would have resulted in the McGuires staying in the case and DULBERG being able to obtain a much higher mediation award. Further, this opinion should have been made prior to settling with the McGuires in order to determine whether $5,000.00 was a reasonable amount.

5. In their Motion, Defendants question why DULBERG's subsequent counsel did not retain an expert. (See Motion to Dismiss attached as **Exhibit A**, pg. 7) In fact, DULBERG and his subsequent counsel *did* retain an expert for the mediation and were successful in the mediation due to the expert's opinion as to liability. (See First Amended Complaint, **Exhibit B**, ¶24, 29.) Thus this issue in Defendants' Motion is moot.

6. DULBERG also discussed necessary discovery regarding insurance policies of Gagnon and McGuires. MAST failed to conduct discovery to obtain these insurance policies. This is evidenced in the First Amended Complaint where DULBERG pled that MAST advised him that Gagnon's insurance policy limit was only $100,000.00, when in reality it was later discovered that the limit was $300,000.00. (See First Amended Complaint, **Exhibit B**, ¶13, 22.) This shows that MAST did not have the sufficient discovery as to Gagnon's insurance policy.

7. Defendants' next issue with the First Amended Complaint is that DULBERG did not specify the law pertaining to a property owner's duties and responsibilities that MAST



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should have been familiar with while representing DULBERG. (See Motion to Dismiss attached as **Exhibit A**, pg. 6.)

8. The law that MAST should have understood under paragraph 31(f) of the First Amended Complaint is premises liability and the liabilities of the parties involved in the underlying case. "Under the Premises Liability Act, the duty owed by a premises owner or occupier to an invitee or a licensee is that of 'reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them.'" (internal citation omitted) *Rhodes v. Illinois Cent. Gulf R.R.,* 172 Ill.2d 213, 228 (Ill., 1996).

9. In this case, DULBERG was an invitee of the McGuires. "An invitee is defined as one who enters the premises of another with the owner's or occupier's express or implied consent for the mutual benefit of himself and the owner, or for a purpose connected with the business in which the owner is engaged." *Rhodes v. Illinois Cent. Gulf R.R., supra*. The McGuires had a duty of reasonable care to DULBERG as an invitee because DULBERG was on their property for their benefit, to cut down a tree. (See First Amended Complaint, **Exhibit B**, ¶6.)

10. MAST's failure to become familiar with this law or chainsaw ownership liability, resulted in him coercing and pressuring DULBERG to accept a paltry settlement of $5,000.00 with the McGuries, when in fact their liability was much more, as presented by the expert during the mediation. Based on this law, MAST would have seen that McGuires as homeowners did in fact owe a duty to DULBERG.

11. Also, had MAST reviewed the law on premises liability, he could have considered the law as to ultrahazardous circumstances and the strict liability of the homeowners. "Illinois has recognized strict liability principally in two instances:" * * * "(2) when a defendant engages



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in ultrahazardous or abnormally dangerous activity as determined by the courts, giving particular consideration, *inter alia,* to the appropriateness of the activity to the place where it is maintained, in light of the character of the place and its surroundings." (internal citations omitted) *Miller v. Civil Constructors, Inc.,* 272 Ill.App.3d 263, 266 (2nd Dist., 1995). MAST should have considered strict liability as to the McGuires prior to advising DULBERG to settle.

12. Throughout the First Amended Complaint, DULBERG lists different ways (via email and in person communication) that Defendants falsely advised DULBERG that releasing the McGuires from liability was the proper course to take. (See First Amended Complaint, **Exhibit B**, ¶15-21.)

13. Also, MAST emailed and verbally told DULBERG that if he did not agree to the $5,000.00 settlement with the McGuires, he would get nothing. (See First Amended Complaint, **Exhibit B**, ¶15-21.)

14. Overall, DULBERG has pled with enough specificity what MAST and/or the Defendants did improperly to breach the standard of care.

15. As to the specific allegations relating to Defendants' concealment of facts to DULBERG, paragraph 31(k) of the First Amended Complaint, DULBERG stated what was concealed from him by the Defendants. Defendants concealed from DULBERG the actual policy limits from the McGuires and Gagnon, concealed facts relating to the explanation of liability law and what type of duty the McGuires owed to DULBERG, concealed that retaining an expert witness prior to accepting settlement would have been beneficial to DULBERG's case, and concealed the fact that Defendants were handling everything properly when this was not the truth.



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16. The facts pled regarding concealment are sufficiently pled in DULBERG's First Amended Complaint and must be taken as true in a Section 2-615 Motion.

17. Next, Defendants argue without any authority that DULBERG was not coerced because he had time to deliberate over the decision to settle. (See Motion to Dismiss attached as **Exhibit A**, pg. 7.) This is not true.

18. DULBERG's exhibits to the First Amended Complaint as well as the pleading itself demonstrate how MAST coerced DULBERG into the settlement with the McGuires.

19. DULBERG pled that MAST essentially gave him two options: to take the $5,000.00 settlement or get nothing. DULBERG was coerced into this decision because he was unaware of any other option and forced to take the only available option.

20. On multiple occasions, MAST told DULBERG, via email, to accept the settlement otherwise the McGuires will get out of the case for free. (See First Amended Complaint, **Exhibit B**, ¶15, 16.)

21. DULBERG also pled that MAST verbally told him that he had no choice but to execute a release of the McGuires and accept the $5,000.00. (See First Amended Complaint, **Exhibit B**, ¶17.)

22. Defendants also argue that Exhibit E to the First Amended Complaint shows that DULBERG had time to deliberate over the decision and thus could not have been coerced. (See Motion to Dismiss attached as **Exhibit A**, pg. 7.) This is not true.

23. Exhibit E to the First Amended Complaint is an email from DULBERG to MAST stating that the release was signed and put in the mail. Exhibit E further shows DULBERG's continued hesitation over the $5,000.00 settlement however, based on the information that



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MAST had told him, DULBERG said that he "trusted his judgment". See Exhibit E to the First Amended Complaint.

24. "Coercion" and "duress" have essentially the same meaning: overpowering another's free will by imposition, oppression, or undue influence. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 341 Ill.App.3d 438, 446 (4th Dist., 2003). MAST continuous verbal and written threats to accept the settlement or get nothing resulted in DULBERG thinking (based on what his attorney was telling him) that he had no other choice but to accept this small settlement.

25. More importantly, whether DULBERG was coerced or acted willingly is a question of fact. *Schwartz v. Schwartz*, 29 Ill.App. 516, 527 (4th Dist., 1889).

26. The pleading and exhibit show that DULBERG made the decision to settle after meeting with MAST in person, and MAST telling him that he had no choice but to accept the settlement. DULBERG acted quickly to accept the settlement based on the information that MAST told him that if he would not accept it, the offer would be withdrawn and the McGuires would be successful on a summary judgment motion.

27. Simply because Exhibit E states that the release was mailed weeks later, does not mean that DULBERG was not coerced into accepting the settlement based on the information that he was given by his attorney whom he trusted.

28. In any event, the issue of coercion must be left to the trier of fact to decide after all evidence is obtained and at this point, determining a factual question on a Motion to Dismiss would be inappropriate.

29. Last Defendants raise the issue of proximate cause as to MAST's improper determination of Gagnon's insurance coverage limit being $300,000.00 and not $100,000.00.



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(See Motion to Dismiss attached as **Exhibit A**, pg. 7.) As argued above, this allegation supports DULBERG's argument that MAST did not conduct the proper discovery, as evidenced by the incorrect policy limit. Had MAST not breached the standard of care and had he conducted proper discovery, DULBERG would have had the correct policy amount for Gagnon, and would have the insurance policy for the McGuires in order to make an informed decision as to settlement.

30. In DULBERG's case, he was forced to settle for an amount less than he would have reasonably received. After mediation, DULBERG was allowed only to recover to the extent of Gagnon's policy limits. (See First Amended Complaint, **Exhibit B**, ¶24, 27, 29.) Had MAST not allowed the release of the McGuires, DULBERG could have reasonably been able to collect the remainder of the mediation award against the McGuires. "Attorney malpractice action should be allowed where it can be shown that the plaintiff had to settle for a lesser amount than she could reasonably expect without the malpractice." *Brooks v. Brennan*, 255 Ill.App. 3d 260, 270 (5th Dist., 1994). Thus, DULBERG properly brought a malpractice against the Defendants.

31. The allegations set forth as to the legal malpractice by DULBERG in his First Amended Complaint are not conclusions and when taken as true, are sufficient to withstand a Section 2-615 dismissal.

32. DULBERG has proven that the actions and inactions of the Defendants have caused DULBERG damages. (See First Amended Complaint, **Exhibit B**, ¶31, 32.) Any dispute as to the proximate cause and damages must be left to the jury as it is a factual question. The issues of proximate cause and damages must be determined by a jury or trier of fact after all proper evidence and testimony is presented at trial. Proximate cause is a **question of fact** to be decided by a jury. (internal citation omitted) (Emphasis added) *Hooper v. County of Cook*, 366 Ill.App.3d 1, 7 (1st Dist., 2006). "The determination of damages is a **question of fact** that is



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within the discretion of the jury and is entitled to substantial deference." (Emphasis added.) *Linhart v. Bridgeview Creek Development, Inc.*, 391 Ill.App.3d 630, 636 (1st Dist., 2009).

33. Defendants in their Motion to Dismiss are requiring of DULBERG to plead his entire case in a single Complaint. "Plaintiff is not required to prove his case at this stage of the pleadings and the damages as alleged are sufficient to show he was damaged by Defendants' actions and cause of action for legal malpractice. *Fox v. Seiden*, *supra*, at 294; *Platson v. NSM America*, Inc., 322 Ill.App. 3d 138, 143 (2nd Dist., 2001) ('Cases are not to be tried at the pleadings stage, so a claimant need only show a possibility of recovery, not an absolute right to recover, to survive a 2-615 Motion.'). Here, DULBERG has shown at least a possibility of recovery based on the malpractice of Defendants, thus should survive Defendants' 2-615 Motion.

34. Accordingly, this Honorable Court should deny Defendants' Motion in order to allow the case to be fully and properly litigated.

## CONCLUSION

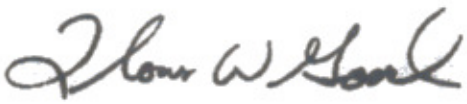
After review of the allegations in the First Amended Complaint and taking the allegations as true, this Honorable Court must find that DULBERG has properly stated and pled a claim for legal malpractice. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a Second Amended Complaint to include any other facts this Court deems appropriate.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies Defendants' Motion to Dismiss and for all other relief this Honorable Court deems equitable and just. If this Court grants Defendants' Motion to Dismiss, PAUL DULBERG prays for a reasonable amount of time to file a Second Amended Complaint.



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Respectfully submitted by
THE GOOCH FIRM, on behalf of
PAUL DULBERG, Plaintiff,



Thomas W. Gooch, III

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Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
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McHenry County, Illinois
22nd Judicial Circuit
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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17LA000377 |

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT AT LAW**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, submit this Memorandum in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint at Law with prejudice, and state as follows:

## I. INTRODUCTION

The Plaintiff Paul Dulberg ("Dulberg") retained defendants The Law Offices of Thomas J. Popovich P.C. ("Popovich") to prosecute a personal injury claim on his behalf against his next door neighbors, Carolyn and Bill McGuire and their adult son (Dulberg's lifelong friend), David Gagnon ("Gagnon")). Hans Mast ("Mast") handled the case for the firm. Dulberg was on the McGuires' property, assisting Gagnon trim some tree branches with a chainsaw, when Dulberg's right arm was lacerated by the chainsaw. Dulberg agreed to a settlement with the McGuires. Thereafter, he and Mast reached an impasse. Mast and the firm withdrew, and successor counsel continued to prosecute the case against Gagnon.






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Dulberg now has a case of "buyer's remorse," admitting that he reluctantly agreed to accept the McGuires' settlement offer. He has attempted to state a claim against Popovich and Mast for legal malpractice. However, he has not plead the requisite elements of a legal malpractice case against Popovich and Mast, or the requisite elements of the underlying case (the "case within the case").

## II. PROCEDURAL HISTORY

On November 28, 2017, Plaintiff filed his single count Complaint at Law for legal malpractice. Defendants moved to dismiss. On May 10, 2018, the Court granted Defendants' Motion to Dismiss pursuant to 735 ILCS 5/615 (see Order attached as Exhibit 1). During the hearing on Defendants' Motion to Dismiss, Judge Meyer ordered that the Plaintiff plead with more particularity and specificity regarding any allegations that he was misled. The Court also ordered the Plaintiff to provide more specificity and particularity with respect to any claims that information provided by Defendants to the Plaintiff was false and misleading. Plaintiff filed its First Amended Complaint at Law on June 7, 2018.

## III. STATEMENT OF FACTS

### A. The Following Facts Can Be Gleaned From The First Amended Complaint (Exhibit 2) and Its Exhibits

On June 28, 2011, Dulberg was assisting David Gagnon in the cutting down of a tree on the property of Carolyn and Bill McGuire. (Exhibit 2, ¶ 6). Gagnon lost control of the chainsaw and caused personal injury to Dulberg. (Exhibit 2, ¶ 7). In May of 2012, Dulberg retained Popovich. (Exhibit 2, ¶8). On May 15, 2012, Mast filed a Complaint on behalf of Dulberg against Gagnon and the McGuires in the Circuit Court of McHenry County, Illinois, Case No, 12



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LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

**B. Alleged Acts of Negligence**

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.



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c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;

f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails, into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that [sic] had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;



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n) Failed to retain a liability expert to prove DULBERG's damages;

o) Were otherwise negligent in their representation of DULBERG.

## IV. DULBERG FAILS TO STATE A CLAIM FOR LEGAL MALPRACTICE UNDER 735 ILCS 5/2-615

### A. Legal Standard

It is clearly established that Illinois is a fact pleading jurisdiction, requiring the plaintiff to present a legally and factually sufficient complaint. *Winfrey v. Chicago Park Dist.*, 274 Ill. App. 3d 939, 942 (1st Dist. 1995). A plaintiff must allege facts sufficient to bring his or her claim within the cause of action asserted. *Jackson vs. South Holland Dodge,* 197 Ill. 2d 39 (2001). To pass muster a complaint must state a cause of action in two ways: first, it must be legally sufficient -- it must set forth a legally recognized claim as its avenue of recovery, and second, the complaint must be factually sufficient -- it must plead facts, which bring the claim within a legally recognized cause of action as alleged. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). Dismissal of a complaint is mandatory if one fails to meet both requirements. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (5th Dist. 1994). In ruling on a Section 2-615 motion, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Mount Zion State Bank and Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995).

In Illinois, to establish a legal malpractice claim, a plaintiff must plead and prove the existence of an attorney client relationship; a duty arising from that relationship; a breach of that duty, the proximate causal relationship between the breach of duty and the damage sustained; and actual damages. *Glass v. Pitler*, 276 Ill. App. 3d 344, 349 (1st Dist. 1995). The injuries



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resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interests. *Glass* at 349. Damages must be incurred and are not presumed. *Glass* at 349. It is the plaintiff's burden to establish that "but for" the attorney's negligence, the client would not have suffered the damages alleged. *Glass* at 349. "The proximate cause element of legal malpractice claim requires that the plaintiff show that but for the attorney's malpractice, the client would have been successful in the undertaking the attorney was retained to perform. *Green v. Papa*, 2014 IL App. (5th) 1330029 (2014), quoting *Owens v. McDermott Will & Emery*, 316 Ill. App. 340 (1st Dist. 2000), at 351. The plaintiff in a legal malpractice claim must plead a case within the case. *Ignarski v. Norbut*, 271 Ill. App. 3d 522 (1st Dist.1995).

**B. Dulberg Fails to Plead Facts in Support of His Conclusory Allegations**

Dulberg's second attempt at stating a claim fairs no better than his first. He still fails to plead with specificity and particularity as to how he was misled, or how any information provided to him was false and misleading. His allegations are pled in conclusory fashion throughout. He also fails to plead any facts concerning the McGuires' liability in the underlying case. His allegations concern the viability of a tort claim against property owners. Accordingly, he must plead facts in support of the property owners' [the McGuires] liability in the underlying case. Instead, Dulberg pleads only conclusions. More is necessary under Illinois law.

Dulberg has failed to follow the court's direction from the hearing on Defendant's Motion to Dismiss. The allegations of negligence contained in ¶ 31 fail to allege any facts in support of the conclusions. For example, what necessary discovery was not conducted? (¶ 31 (c)) What is the law pertaining to a property owner's duties and responsibilities? (¶ 31 (f)). How did defendants falsely advise Dulberg that the actions taken regarding the McGuires was proper? (¶ 31 (i)). What was concealed from Dulberg? (¶ 31 (k)). The bottom line is that Dulberg has yet to explain how the McGuires would have been found liable. The only thing that can be gleaned



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from the facts alleged in the Complaint and First Amended Complaint, is that Dulberg was injured on their property. He fails to explain how the McGuire's breached any duty to him, and how they would have been liable.

Additionally, Dulberg's allegations of coercion are not supported by his own pleadings. It is reasonably inferred from the pleadings that Dulberg had ample time to retain another attorney (in fact later he did). Exhibit E to his First Amended Complaint establishes that he deliberated over the decision to settle, and mailed a signed release back to Mast. So how was he coerced, when he alleges that he met with Mast, and then later mailed the executed release?

Moreover, his allegations regarding the failure to retain an expert are unsupported. He also fails to explain why his successor counsel did not retain an expert at the appropriate time if necessary. Lastly, Dulberg can never properly allege proximately caused damages regarding the allegation in ¶ 31 (e), that Gagnon's insurance coverage was $300,000 and not $100,000. In fact, Dulberg admits in ¶ 24 that he recovered $300,000 in available coverage from Gagnon. If Mast incorrectly reported the available coverage, it did not cause any damage, as Dulberg's successor counsel was apparently able to recover the full amount of available coverage against the individual who injured Dulberg with a chainsaw.

Under Illinois fact pleading requirements, much more is needed. In a case of alleged professional liability, the plaintiff cannot simply allege in conclusory terms that the defendants were negligent, and that the Plaintiff could have proved up liability against the underlying defendants. He must allege why and how. Dulberg has failed twice. His First Amended Complaint must be dismissed with prejudice pursuant to 735 ILCS 5/2-615.



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## V. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 respectfully request this Honorable Court dismiss Plaintiff's Complaint with prejudice, and for any further relief this Court deems fair and proper.

/s/ George K. Flynn

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendant. | ) | |

**FIRST AMENDED COMPLAINT AT LAW**
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his First Amended Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.






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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the same area.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike and cut DULBERG's arm. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants properly filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. Also MAST incorrectly informed DULBERG that the insurance policy limit for the Gagnon was only $100,000.00, when in reality the policy was $300,000.00.

14. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST began urging DULBERG to settle the matter against William McGuire and Caroline McGuire for $5,000.00.

15. On November 18, 2013, MAST wrote two emails to DULBERG urging DULBERG to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)



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16. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

17. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

18. DULBERG, having no choice in the matter, reluctantly agreed with MAST to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit D**.

19. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled

20. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.)**

21. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

22. On February 22, 2015, as to any chance of settling the remainder of his case against Gagnon MAST wrote to DULBERG that, "There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only



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alternative is to take the case to trial and I am not interested in doing that." (See Email attached as **Exhibit F.**)

23. MAST and POPOVICH represented DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship due to a claimed failure of communication. MAST and POPOVICH withdrew from the representation of DULBERG.

24. Thereafter, DULBERG retained other attorneys and proceeded to a Court ordered binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. However, due to the settlement with the McGuires, DULBERG was only able to collect $300,000.00 based upon the insurance policy available. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit G**.

25. The McGuires were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuires were well able to pay all, or a portion of the binding mediation award had they still remained parties.

26. DULBERG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

27. Until the time of the mediation award, DULBERG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuires would only complicate the case.



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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;



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f) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged DULBERG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised DULBERG throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that DULBERG had no choice but to accept the settlement;

j) Coerced DULBERG, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else "the McGuires will get out for FREE on a motion".

k) Concealed from DULBERG the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to DULBERG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured DULBERG that the course of action as to the property owners was proper and appropriate;



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n) Failed to retain a liability expert to prove DULBERG's damages;

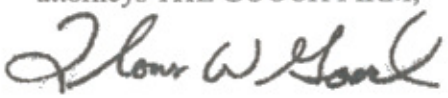
o) Were otherwise negligent in their representation of DULBERG.

32. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBERG to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

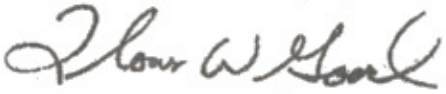
Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,



Thomas W. Gooch, III

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.



Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~40~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
tabbies
A

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COPY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. No.: 17LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually;

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11/8 20 22, AT 2:00 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ____ ON
20__ AT ____ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

EXHIBIT
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B

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 13 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

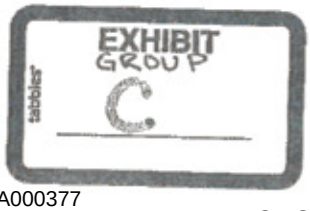
---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.




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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

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McHenry, Illinois 60050
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Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kokiak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
tabbies
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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# GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2016 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
> > ----- Original Message -----
> > From: Paul Dulberg <pdulberg@comcast.net>
> > To: Hans Mast <hansmast@comcast.net>
> > Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
> > Subject: McGuire settlement
> > Here is a copy of the first page.
> > It has check boxes and one of the check boxes says;
> > I am not eligible to receive SSI or SSDI.
> > Another says;
> > I am not receiving SSI or SSDI.
> > As you know, I have applied for SSDI and SSI




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Purchased from re:SearchIL

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case,..

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.

EXHIBIT
tabbies
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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P/S | 75,000. |
| L/N/L | 75,000. |

The Honorable James P. Etchingham, (Ret.)



EXHIBIT tabbies C

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** FILED ** Env: 2042006
McHenry County, Illinois
17LA000377
Date: 8/30/2018 4:14 PM
Katherine M. Keefe
Clerk of the Circuit Court

27 9517 00 7

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17LA000377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT AT LAW**

Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and CLAUSEN MILLER P.C., pursuant to 735 ILCS 5/2-615, submit this Reply in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint at Law with prejudice, and state as follows:

## I. INTRODUCTION

Dulberg's Response misses the point, and adds facts and theories that are not contained in his pleading. He now asserts that Mast failed to become familiar with the law of "chainsaw ownership liability" (Res. p. 4, ¶10), and that Mast "could have considered" the law as to ultrahazardous circumstances and the strict liability of the homeowners. But these facts and theories are not plead, and cannot be inferred from his First Amended Complaint. Moreover, what potential theories of recovery "could have been considered" [by a lawyer being sued for malpractice] is not the standard. Dulberg must ultimately demonstrate that he would have prevailed against the landowners in the case within the case. Instead, Dulberg fails to plead, or



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now argue, facts and law that would have imposed liability upon a homeowner for an accident which occurred when their adult son and his buddy were trimming a tree in the backyard. There is no allegation that the McGuire's were supervising the work, or that they owed some duty to supervise. Dulberg does not allege what they did wrong, only that they were liable.

## II. DULBERG FAILS TO ADDRESS PROXIMATE CAUSE-THAT HE WOULD HAVE PREVAILED BUT FOR MALPRACTICE

A fundamental omission from Dulberg's pleading and his argument, is that he has not plead (and will be unable to establish), that he would have prevailed in the underlying case against the landowners. The cases upon which he relies do not support his contentions.

### A. Negligence

Dulberg's pleading still relies only on conclusions about the potential liability of the landowners, and not facts or law. The case upon which he relies for the proposition that the landowners would have been liable to him (had he not settled with them) is unavailing, and simply sets out elements of premises liability law in Illinois. Dulberg cites *Rhodes v. Illinois Cent. Gulf R.R.* 172 Ill. 2d, 213, 228 (1996) to inform the court that the "duty owed by a premises owner or occupier to an invitee or a licensee is that of "reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them." But he fails to plead facts here about how the McGuire's breached any duty to him, or how they did not use reasonable care under the circumstances when Dulberg volunteered to assist their adult son in trimming a tree. What did they do wrong?

Notably, Rhodes involved an alleged wrongful death of an intoxicated trespasser on the property of the defendant railroad. A Chicago police officer found the deceased laying on a bench on the defendant's property. The police took him to the hospital where he eventually died. The plaintiff's estate was awarded a significant verdict at trial by the jury. The Illinois Supreme



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Court reversed and remanded, ordering a new trial with instructions consistent with its holdings (and instructing the jury to determine whether the decedent was a trespasser or invitee). The case is simply not on point.

**B. Strict Liability**

For the first time, Dulberg raises in his Response (p. 4, ¶11) an allegation that "had MAST reviewed the law on premises liability, he could have considered the law as to ultrahazardous circumstances and the strict liability of the homeowners." He then cites to a case, apparently to reference one element of strict liability analysis (vis a vis landowners). But *Miller v. Civil Constructors, Inc.* 272 Ill. App. 3d 263, 266 (2nd Dist. 1995) is not helpful to him. In *Miller*, the plaintiff appealed the dismissal of his strict liability claim against a construction company and a city, after he was hit by a stray bullet which ricocheted during the course of firearm target practice at a nearby gravel pit. The appellate court affirmed the dismissal. "Under the circumstances presented, we hold as a matter of law that the discharge of firearms is not an ultrahazardous activity which would support plaintiff's strict liability claims." *(Miller* at *265). Dulberg fails to analyze Miller and explain how it is applicable here, which it is not.

One attorney may handle a case differently from another attorney, but these differences do not amount to a breach of the standard of care. In a legal malpractice case in Illinois, more is needed than a suggestion that an attorney "could have considered" a particular theory, and did not. A legal malpractice plaintiff must plead and prove that he would have been successful in the undertaking. Here, Dulberg must plead that he would have been successful in prosecuting a strict liability case. The fact is, he cannot support the factual or legal assertion that backyard chainsaw tree-trimming is a strict liability proposition. Moreover, his bare allegations that a liability expert should have been retained, as a red herring. There is no factual allegation as to why such an expert mattered.



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## III. DULBERG FALLS SHORT IN ALLEGING THAT HE WAS MISLED

Dulberg fails to specify how he was misled. Even if Mast made a mistake about the McGuire's insurance coverage, it made no difference, and there is no damage. Dulberg cannot explain why $300,000 versus $100,000 in coverage made any difference, when he settled for $5000. Had the he settled for $99,999.99, his argument for damages may be colorable. In any event, he alleges no facts in support of the allegation that facts were "concealed." His other allegations that Mast concealed facts, include a quantum leap, now arguing in the Response at p. 5, ¶15, that Mast concealed facts relating to the explanation of liability law and what type of duty the McGuires's owed. This is absurd, given that Dulberg still has not alleged what the duty was, how it was breached, or in laymen's terms—what the McGuire's did wrong.

## IV. CONCLUSION

WHEREFORE, Defendants, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, pursuant to 735 ILCS 5/2-615 respectfully request this Honorable Court dismiss Plaintiff's Complaint First Amended Complaint at Law with prejudice, and for any further relief this Court deems fair and proper.

*/s/ George K. Flynn*

GEORGE K. FLYNN
CLAUSEN MILLER P.C.

GEORGE K. FLYNN
CLAUSEN MILLER P.C.
ARDC No. 6239349
10 South LaSalle Street
Chicago, Illinois 60603-1098
(312) 855-1010
Attorneys for Defendants
gflynn@clausen.com



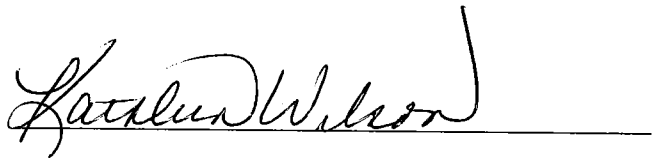
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was caused to be served through the McHenry County I2File Efile System and by email on the 31st day of August, 2018, addressed to counsel of record as follows:

Mr. Thomas W. Gooch, III
The Gooch Firm
209 S. Main Street
Wauconda, IL 60084
gooch@goochfirm.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.





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# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17 LA 377
☑ Jury ☐ Non-Jury

Dulberg

vs.

Popovich + Most

FILED
McHenry County, Illinois
SEP 12 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 9-12-18 Plaintiff's Attorney Sabina Walczyk Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, it is hereby ordered:

1) Defendants' motion is granted as more fully described on the record and below.

2) Paragraphs ~~31~~ 31(b), (c), (f), (g), (h), (i), (k), (l), (m), (n), and (o) are stricken as conclusions or being redundant.

3) Plaintiff is granted leave to replead by October 10, 2018. Defendants' to file a responsive pleading by November 7, 2018.

4) Status hearing on November 13, 2018 at 9:00 a.m.

Prepared by: George Flynn
Attorney for: Defendants
Attorney Registration No.: 6239349 Judge:

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McHenry County, Illinois
17LA000377
Date: 10/9/2018 3:14 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendant. | ) | |

**MOTION TO WITHDRAW**

NOW COMES Thomas W. Gooch, III and THE GOOCH FIRM as and for their Motion to Withdraw their Appearance on behalf of Plaintiff, PAUL DULBERG, and in support of the Motion as aforesaid, state to the Court the following:

1) That serious and substantial differences in the handling of this case have arisen between the client and the undersigned.

2) That there has been a complete and irretrievable breakdown in the attorney-client relationship, communications and the handling of this matter, making further representation of the Plaintiff impossible under these circumstances.

3) That Plaintiff should be given 21 days or longer to retain new counsel or to file a *pro se* appearance, and until such time as he has retained new counsel or filed his *pro se* appearance, all notices should be sent to:

Mr. Paul Dulberg
4606 Heydew Ct.
McHenry, IL 60051



Received 10-10-2018 08:41 AM / Circuit Clerk Accepted on 10-10-2018 03:12 PM / Transaction #2483569 / Case #17LA000377
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WHEREFORE your movant prays this Honorable Court grant THE GOOCH FIRM and Thomas W. Gooch, III leave to withdraw their appearance on behalf of Plaintiff, PAUL DULBERG, *instanter*, and for any other relief deemed equitable and just.

Respectfully submitted by, by
THE GOOCH FIRM,

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com



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** FILED ** Env: 2464567
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17LA000377
Date: 10/9/2018 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

**THE UNITED STATES OF AMERICA**
**IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| Plaintiff, | ) | Case No.: 2017 LA 377 |
| v. | ) | |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

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## NOTICE OF FILING

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

PLEASE TAKE NOTICE that on **October 8 2018** we filed with the Clerk of the Circuit Court of McHenry County, Illinois, the attached: *Proof of Service of Discovery Documents to Defendants.*

Thomas W. Gooch, III
Thomas W. Gooch, III

## PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via McHenry County E-file system and email from Wauconda, Illinois on October 8, 2018.

Thomas W. Gooch, III
Thomas W. Gooch, III

THE GOOCH FIRM
209 S, Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No. 3123355

Received 10-10-2018 08:12 AM / Circuit Clerk Accepted on 10-10-2018 03:08 PM / Transaction #2464567 / Case #17LA000377

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McHenry County, Illinois
17LA000377
Date: 10/9/2018 3:14 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>Plaintiff, | ) | |
| | ) | No.: 17 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendants. | ) | |

## NOTICE OF MOTION

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

Please take notice that on **October 15, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before **The Honorable Judge Meyer** in **Room 201**, or any judge sitting in his stead, in the courtroom usually occupied by him in the McHenry County Courthouse, Woodstock, Illinois, and then and there present**, Motion to Withdraw.**

/s/Thomas W. Gooch, III
Thomas W. Gooch, III

## PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that he served a copy of the foregoing to whom it is addressed via email and Odyssey E-filing system from Wauconda, Illinois on October 9, 2018, before 5:00 p.m.

/s/Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847-526-0110
ARDC No. 3123355
gooch@goochfirm.com
office@goochfirm.com

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** FILED ** Env: 2464522
McHenry County, Illinois
17LA000377
Date: 10/9/2018 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

**THE UNITED STATES OF AMERICA**
**IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, | ) | Case No.: 2017 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| Defendants. | ) | |

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**PROOF OF SERVICE OF DISCOVERY DOCUMENTS**

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

I HEREBY CERTIFY THE FOLLOWING DOCUMENTS WERE SERVED TO THE ABOVE NAMED:

1) Plaintiff's First Request for Production of Documents to Defendants;

2) Plaintiff's First Set of Interrogatories to Defendants; and

3) Plaintiff's 213(f) (1)(2) & (3) Interrogatories to Defendants.

Via McHenry County E-file system and email from Wauconda, Illinois before 5:00 p.m. on October 8, 2018.

Thomas W. Gooch, III
Thomas W. Gooch, III

THE GOOCH FIRM
209 S, Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No. 3123355

Received 10-10-2018 08:09 AM / Circuit Clerk Accepted on 10-10-2018 03:08 PM / Transaction #2464522 / Case #17LA000377

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McHenry County, Illinois
17LA000377
Date: 10/10/2018 11:24 AM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>Plaintiff, | ) | |
| | ) | No.: 17 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendants. | ) | |

**MOTION FOR ADDITIONAL TIME TO FILE A SECOND AMENDED COMPLAINT**

NOW COMES, your Plaintiff, PAUL DULBERG, (hereinafter referred to as "DULBERG") by and through his attorneys, THE GOOCH FIRM, and for his Motion states to the Court the following:

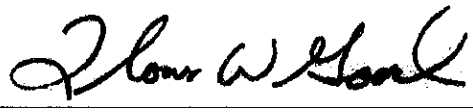
1. That on September 12, 2018 this Honorable Court granted Plaintiff until October 10, 2018 to file his Second Amended Complaint.
2. That recently, there has been a break down of communication between Plaintiff and his attorneys.
3. THE GOOCH FIRM, is concurrently filing a Motion to Withdraw their appearance on behalf of Plaintiff, PAUL DULBERG.
4. Plaintiff will need additional time to file his Second Amended Complaint, after the twenty-one (21) days to hire new counsel expires.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court grants Plaintiff additional time to file his Second Amended Complaint, after retaining new counsel or filing his *pro se* appearance, and for all other relief this Honorable Court deems equitable and just.



Received 10-10-2018 02:43 PM / Circuit Clerk Accepted on 10-10-2018 03:13 PM / Transaction #2493504 / Case #17LA000377
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Respectfully submitted by
THE GOOCH FIRM, on behalf of
PAUL DULBERG, Plaintiff,



Thomas W. Gooch, III

THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
gooch@goochfirm.com
office@goochfirm.com
ARDC: 3123355



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Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>Plaintiff, | ) | |
| | ) | No.: 17 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendants. | ) | |

## NOTICE OF MOTION

TO: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

Please take notice that on **October 15, 2018 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before **The Honorable Judge Meyer** in **Room 201**, or any judge sitting in his stead, in the courtroom usually occupied by him in the McHenry County Courthouse, Woodstock, Illinois, and then and there present, **Motion for Additional Time to File a Second Amended Complaint.**

/s/Thomas W. Gooch, III
Thomas W. Gooch, III

## PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that he served a copy of the foregoing to whom it is addressed via email and Odyssey E-filing system from Wauconda, Illinois on October 9, 2018, before 5:00 p.m.

/s/Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 South Main Street
Wauconda, Illinois 60084
847-526-0110
ARDC No. 3123355
gooch@goochfirm.com
office@goochfirm.com

Received 10-10-2018 02:43 PM / Circuit Clerk Accepted on 10-10-2018 03:13 PM / Transaction #2493504 / Case #17LA000377

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# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

Dulberg vs. Mast

FILED
McHenry County, Illinois
OCT 15 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 10/15/18 Plaintiff's Attorney S. Walczyk Defendant's Attorney G. Flynn

## ORDER

Matter before the Court on Plaintiff's Motion for Extension of Time and Motion to Withdraw

Plaintiff appearing in open court, the Court fully advised in the premises

IT IS ORDERED:

1.) Plaintiff's Motion for Extension of Time is granted and entered and continued. Thomas W Gooch + The Gooch Firm granted leave to withdraw Appearance.

2.) Plaintiff granted 21 days to file his appearance or retain new counsel

3) All further notices to be sent to:

Mr. Paul Dulberg
4606 Hayden Ct
McHenry, IL 60051

4) Status of attorney/pleadings set for November 13, 2018 at 9:00 am

Prepared by: SWalczyk
Attorney for: P Dulberg
Attorney Registration No.: 6315819 Judge: [signature]

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McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:19 PM
Katherine M. Keefe
Clerk of the Circuit Court

**STATE OF ILLINOIS**
**IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT**
**McHENRY COUNTY**

Paul Dulberg

vs.
The Law Offices of Thomas Popovich, et al.

**Case Number** 17 LA 377

# APPEARANCE

**I HEREBY ENTER THE APPEARANCE OF**
Paul Dulberg
(Insert the name of the party for whom you are entering your appearance)

**AND MY OWN AS**

- [x] REGULAR COUNSEL
- [ ] TRIAL COUNSEL
- [ ] SPECIAL & LIMITED APPEARANCE
- [ ] SUBSTITUTE COUNSEL
- [ ] PRO-SE
- [ ] COUNSEL IN FORCIBLE ENTRY
- [ ] ADDITIONAL COUNSEL
- [ ] APPELLATE COUNSEL
- [ ] GUARDIAN AD LITEM
- [ ] COURT APPOINTED COUNSEL

**AND AS (HIS) (~~HER~~) (~~THEIR~~) COUNSEL IN THE ABOVE ENTITLED CASE.**

SIGNED /s/ Edward X. Clinton, Jr.
(Signature of Attorney filing appearance)

Name The Clinton Law Firm
Edward X. Clinton, Jr.
Printed Name
ARDC Number 6206773
Attorney for Plaintiff
Address 111 W Washington, Ste. 1437
City, State Zip Chicago, IL 60602
Phone 312.357.1515
Email ed@clintonlaw.net

CC-APP1 (Revised 07-01-2018)

Received 11-08-2018 04:03 PM / Circuit Clerk Accepted on 11-08-2018 04:21 PM / Transaction #2840654 / Case #17LA000377
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17LA000377
Date: 11/8/2018 3:22 PM
Katherine M. Keefe
Clerk of the Circuit Court

**STATE OF ILLINOIS**
**IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT**
**McHENRY COUNTY**

Paul Dulberg

**vs.**
The Law Offices of Thomas Popovich, et al.

**Case Number** 17 LA 377

# APPEARANCE

**I HEREBY ENTER THE APPEARANCE OF**
Paul Dulberg
(Insert the name of the party for whom you are entering your appearance)

**AND MY OWN AS**

- [x] REGULAR COUNSEL
- [ ] TRIAL COUNSEL
- [ ] SPECIAL & LIMITED APPEARANCE
- [ ] SUBSTITUTE COUNSEL
- [ ] PRO-SE
- [ ] COUNSEL IN FORCIBLE ENTRY
- [ ] ADDITIONAL COUNSEL
- [ ] APPELLATE COUNSEL
- [ ] GUARDIAN AD LITEM
- [ ] COURT APPOINTED COUNSEL

**AND AS (HIS) (~~HER) (THEIR~~) COUNSEL IN THE ABOVE ENTITLED CASE.**

SIGNED /s/ Julia C. Williams
(Signature of Attorney filing appearance)

Name The Clinton Law Firm
Julia C. Williams
Printed Name
ARDC Number 6296386
Attorney for Plaintiff
Address 111 W Washington, Ste. 1437
City, State Zip Chicago, IL 60602
Phone 312.357.1515
Email juliawilliams@clintonlaw.net

CC-APP1 (Revised 07-01-2018)


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** FILED ** Env: 2840968
McHenry County, Illinois
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Date: 11/8/2018 3:25 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>PLAINTIFF, | ) | |
| v. | ) | Case No. 17 LA 377 |
| THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST,<br>DEFENDANTS. | ) | |

MOTION FOR EXTENSION OF TIME

Plaintiff Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, respectfully request that this Court grant an extension of time for Plaintiff to file his amended pleading. In support of this Motion, Plaintiff states as follows:

1. On or about September 12, 2018, Plaintiff's First Amended Complaint was stricken in part and Plaintiff was granted to October 10, 2018 to replead.

2. On October 15, 2018, Plaintiff's counsel withdrew and Plaintiff was granted time to obtain new counsel.

3. Recently, Plaintiff obtained The Clinton Law Firm to represent him in this case.

4. On November 8, 2018, The Clinton Law Firm filed its appearance.

5. Plaintiff respectfully requests 28 days for counsel to review the file and prepare an amended pleading.

6. Plaintiff brings this motion in good faith, without intention of harassment or delay.

WHEREFORE, Plaintiff respectfully requests 28 days (December 6, 2018) to file his amended pleading and for such further relief that this Court find equitable and just.

Received 11-08-2018 04:10 PM / Circuit Clerk Accepted on 11-08-2018 04:26 PM / Transaction #2840968 / Case #17LA000377

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Respectfully Submitted,
By: /s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net



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Page 2 of 2
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** FILED ** Env: 2840654
McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:19 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>PLAINTIFF,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST,<br>DEFENDANTS. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 17 LA 377 |

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on November 8, 2018, the undersigned caused the appearance of Julia C. Williams and Edward X. Clinton, Jr. of The Clinton Law Firm, LLC to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

Received 11-08-2018 04:03 PM / Circuit Clerk Accepted on 11-08-2018 04:21 PM / Transaction #2840654 / Case #17LA000377

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Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>PLAINTIFF,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST,<br>DEFENDANTS. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 17 LA 377 |

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TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

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/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

Received 11-08-2018 04:09 PM / Circuit Clerk Accepted on 11-08-2018 04:22 PM / Transaction #2840882 / Case #17LA000377

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McHenry County, Illinois
17LA000377
Date: 11/8/2018 3:25 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>PLAINTIFF,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST,<br>DEFENDANTS. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 17 LA 377 |

NOTICE OF MOTION

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on November 13, 2018 at 9:00 am, or as soon thereafter as counsel may be herd, we shall appear before the Honorable Judge Thomas A. Meyer, or any Judge sitting in his stead in Courtroom 201, in the McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois, and present Plaintiff's Motion for Extension of Time to File Amended Complaint, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

Received 11-08-2018 04:10 PM / Circuit Clerk Accepted on 11-08-2018 04:26 PM / Transaction #2840968 / Case #17LA000377

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# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

ORD

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

FILED
McHenry County, Illinois
NOV 13 2018
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377
☒ Jury ☐ Non-Jury

Paul Dulberg

vs. 17 LA

The Law Offices of Thomas Popovich, et al.

Date: 11-13-2018 Plaintiff's Attorney Clinton Law / J. Williams Defendant's Attorney Clausen Miller George Flynn

**ORDER**

This matter is coming to be heard on agreed order and status, It IS HEREBY ORDERED:

1. Plaintiff is granted to December 6, 2018 to file an Amended Complaint.

2. Defendants are granted to January 11, 2019 to answer or otherwise plead.

3. This matter is set for status on pleading and written discovery on February 25, 2019 at 9:00AM in Courtroom 201.

Prepared by: Julia Williams / The Clinton Law
Attorney for: Plaintiff
Attorney Registration No.: 6279638
juliawilliams@clintonlaw.net

Judge:

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendant. | ) | |

**SECOND AMENDED COMPLAINT AT LAW**

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

**COUNT I**
**LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

**B. Relevant Facts**

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.



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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.



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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.



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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.



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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.



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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing



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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.



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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

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COPY FILED
MAY 15 2012
KATHERINE M. KEEFE,
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 17LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 9/18, 20 22, AT 2 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ___ ON ___
20___ AT ___ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER
DEFAULT BEING ENTERED.

EXHIBIT
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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

**Paul Dulberg vs. Caroline McGuire and Bill McGuire**

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

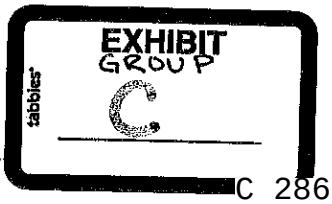
---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.




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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
D

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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# GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2016 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

EXHIBIT
tabbies
E

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
Purchased from re:SearchIL

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

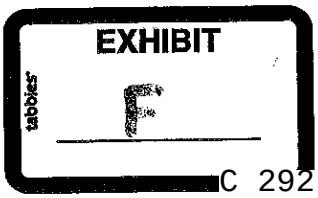
The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.




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Purchased from re:SearchIL

ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (If applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)



EXHIBIT tabbies G

Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000
Page 19 of 19
Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377
Page 25 of 25
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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>PLAINTIFF,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS POPOVICH,<br>and HANS MAST,<br>DEFENDANTS. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 17 LA 377 |

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on December 6, 2018, the undersigned caused the enclosed Second Amended Complaint to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Mary Winch
Mary Winch

Received 12-07-2018 03:38 PM / Circuit Clerk Accepted on 12-10-2018 01:03 PM / Transaction #3126388 / Case #17LA000377

Purchased from re:SearchIL

** FILED ** Env: 3962018
McHenry County, Illinois
17LA000377
Date: 2/19/2019 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendant. | ) | |

MOTION FOR DEFAULT JUDGEMENT

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, respectfully requests that this Court enter a default judgment against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"). In support of this Motion, Plaintiff states as follows:

1. Plaintiff filed his amended complaint on December 6, 2018.
2. Defendants were granted to January 11, 2019 to file their responsive pleading. (Exh. A, Order of November 13, 2018)
3. The parties agreed to a brief extension for Defendants' to file a responsive pleading.
4. To date, Defendants have not filed any response to the Amended Complaint.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order of default against Defendants, set the matter for prove-up on damages and entry of monetary judgment, and for such further relief that this Court deems just and equitable.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

Received 02-19-2019 02:09 PM / Circuit Clerk Accepted on 02-19-2019 02:14 PM / Transaction #3962018 / Case #17LA000377

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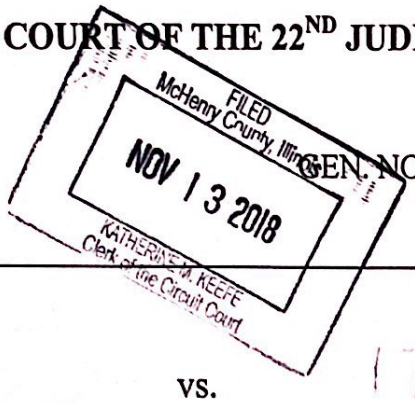
/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Received 02-19-2019 02:09 PM / Circuit Clerk Accepted on 02-19-2019 02:14 PM / Transaction #3962018 / Case #17LA000377

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# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT




**STATE OF ILLINOIS** )
) SS
**COUNTY OF MCHENRY** )

GEN. NO. 17 LA 377

☒ Jury ☐ Non-Jury

Paul Ludwig

VS.

17 LA

The Law Offices of Howard Bernstein et al.

Date: 11-13-2018 Plaintiff's Attorney Julia Williams / Williams Law

Defendant's Attorney Craig Eilpin

**ORDER**

This matter is coming to be heard on agreed order and states, it is HEREBY ORDERED:

1. Plaintiff is granted to December 6, 2018 to file an Amended Complaint.

2. Defendants are granted to January 11, 2019 to answer or otherwise plead.

3. This matter is set for status on pleading and motion hearing on February 15, 2019 at 9:00AM in Courtroom 201.

Prepared by: Julia Williams / Williams Law

Attorney for: Plaintiff

Attorney Registration No.: 6296236

Judge:

Exhibit A

Received 02-19-2019 02:09 PM / Circuit Clerk Accepted on 02-19-2019 02:14 PM / Transaction #3962018 / Case #17LA000377
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** FILED ** Env: 3962018
McHenry County, Illinois
17LA000377
Date: 2/19/2019 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>PLAINTIFF,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS POPOVICH,<br>and HANS MAST,<br>DEFENDANTS. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 17 LA 377 |

NOTICE OF FILING

TO: George Flynn
Clausen Miller, PC
10 S. LaSalle St.
Chicago, IL 60603
gflynn@clausen.com

PLEASE TAKE NOTICE that on February 25, 2019 at 9:00 a.m., I will appear before the Honorable Judge Thomas A. Meyer, or any judge sitting in that Judge's stead, in Courtroom 201 of the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, 2200 N. Seminary Ave., Woodstock, IL 60098, and present the enclosed Motion for Default Judgment, a copy of which is attached.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams



Received 02-19-2019 02:09 PM / Circuit Clerk Accepted on 02-19-2019 02:14 PM / Transaction #3962018 / Case #17LA000377
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Page 1 of 1
C 298

** FILED ** Env: 4006301
McHenry County, Illinois
17LA000377
Date: 2/21/2019 11:15 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOI**

| | | |
|---|---|---|
| Paul Dulberg, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 000377 |
| | ) | Jury Demand |
| The Law Offices of Thomas J. Popovich, P.C., And Hans Mast, | ) | (Court Room 201) |
| | ) | |
| | ) | |
| Defendants. | ) | |

**MOTION TO WITHDRAW**
**AND TO SUBSTITUTE COUNSEL**

Defendants THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST and Karbal Cohen Economou Silk & Dunne, LLC, respectfully move this Court to grant Clausen Miller, P.C. leave to withdraw, and Karbal Cohen Economou Silk & Dunne, LLC leave to substitute its appearance as counsel of record for THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST. In support of this motion, movants state:

1. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST have requested that the law firm of Karbal Cohen Economou Silk & Dunne, LLC represent their interests in this matter.

2. A Substitution of Attorneys signed by Clausen Miller, P.C. and Karbal Cohen, Economou Silk & Dunne, LLC is attached as Exhibit A.

3. Granting of this motion will not delay discovery or trial in this matter.

WHEREFORE, movants respectfully request this Court to grant Clausen Miller, P.C. leave to withdraw, and Karbal, Cohen, Economou Silk & Dunne, LLC leave to substitute its appearance



Received 02-21-2019 02:12 PM / Circuit Clerk Accepted on 02-21-2019 02:26 PM / Transaction #4006301 / Case #17LA000377
Purchased from re:SearchIL

as counsel of record for THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST.

Respectfully submitted,

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: /s/ George K. Flynn

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com



Received 02-21-2019 02:12 PM / Circuit Clerk Accepted on 02-21-2019 02:26 PM / Transaction #4006301 / Case #17LA000377
Purchased from re:SearchIL

C 300

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| Paul Dulberg,<br><br>Plaintiff,<br><br>v.<br><br>The Law Offices of Thomas J. Popovich, P.C., And Hans Mast,<br><br>Defendants. | ) | Case No. 17 LA 000377<br>Jury Demand<br>(Court Room 201) |

**STIPULATION FOR SUBSTITUTION OF COUNSEL**

It is hereby stipulated that Clausen Miller P.C. hereby withdraws its appearance on behalf of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST in this action and Karbal, Cohen, Economou Silk & Dunne, LLC hereby enters its appearance on behalf of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST. All future notices and communications should be sent to Karbal, Cohen, Economou Silk & Dunne, LLC as follows:

George K. Flynn
Karbal, Cohen, Economou Silk & Dunne, LLC
150 South Wacker Drive, 17th Floor
Chicago, IL 60606
(312) 431-3700
Fax: (312) 431-3670
gflynn@karballaw.com

CLAUSEN MILLER, P.C.

By: _____
Brian J. Riordan
10 South LaSalle Street
Chicago, IL 60603
Tel. 312-855-1010
Fax: 312-606-7777
Email: briordan@clausen.com

KARBAL, COHEN, ECONOMOU SILK & DUNNE, LLC

By: _____
George K. Flynn
150 South Wacker Drive
17th Floor
Chicago, Illinois 60606
Tel.: 312-431-3700
Fax: 312-431-3670
Email: gflynn@karballaw.com



EXHIBIT
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Received 02-21-2019 02:12 PM / Circuit Clerk Accepted on 02-21-2019 02:26 PM / Transaction #4006301 / Case #17LA000377
Purchased from re:SearchIL

**ORDER**

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOI**

| | | |
|---|---|---|
| Paul Dulberg, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 000377 |
| | ) | Jury Demand |
| The Law Offices of Thomas J. Popovich, P.C., | ) | (Court Room 201) |
| And Hans Mast, | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER**

THIS CAUSE coming to be heard on DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST's Motion for Substitution of Attorneys, due notice having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED:

1) The Appearance of Clausen Miller, P.C. on behalf of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST is withdrawn; and

2) The Appearance of the Karbal Cohen Economou Silk & Dunne, LLC is entered on behalf of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST.


**Atty No.** **George K. Flynn (ARDC #6239349)**
**Name:** **Karbal, Cohen, Economou, Silk & Dunne, LLC**
**Attorney for:** **Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast**
**Address:** **150 S. Wacker Drive, Suite 1700**
**City:** **Chicago, IL 60606**
**Telephone:** **(312) 431-3700**


**....., 2019**

**ENTER:**

**.....**
**Judge** **Judge's No.**

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**


Received 02-21-2019 02:12 PM / Circuit Clerk Accepted on 02-21-2019 02:26 PM / Transaction #4006301 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 4006301
McHenry County, Illinois
17LA000377
Date: 2/21/2019 11:15 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOI**

| | | |
|---|---|---|
| Paul Dulberg, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 000377 |
| | ) | Jury Demand |
| The Law Offices of Thomas J. Popovich, P.C., | ) | (Court Room 201) |
| And Hans Mast, | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF MOTION**

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that on the **25th day of February 2019 at 9:00 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS' MOTION FOR SUBSTITUTION OF COUNSEL, a copy of which was previously served upon you.

Dated this 21st day of February 2019 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that I served this notice by e-mailing a copy to each party to whom it is directed on February 21, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 02-21-2019 02:12 PM / Circuit Clerk Accepted on 02-21-2019 02:26 PM / Transaction #4006301 / Case #17LA000377

Purchased from re:SearchIL

## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Edward X. Clinton, Jr.<br>Julia C. Williams<br>The Clinton Law Firm<br>111 W. Washington Street, Suite 1437<br>Chicago, IL 60602<br>312-357-1515<br>ed@clintonlaw.net<br>juliawilliams@clintonlaw.net | |

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#8

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Paul Dulberg
Plaintiff

vs

Law Offices of Thomas Poporich
Defendant

| Circuit Clerk Use Only |
|---|
| _____ ORD |
| _____ ORDJ |
| _____ ORDDWP |

Case Number 17 LA 377

FILED
McHenry County, Illinois
FEB 25 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

# ORDER

☐ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☒ Defendant(s) shall file an answer or other pleading within 14 days of today's date.

☒ This case is continued on Motion of ☒ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to May 30, 20 19 at 9:00 ☒ A m. for status (Motion for Default).

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** All parties to issue written discovery within 21 days and - March 18, 2019.
Case continued to May 30, 2019 at 9:00 AM for status on discovery

Date: _____

Judge

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

**ORDER**

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOI**

FILED
McHenry County, Illinois
FEB 25 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

| | | |
|---|---|---|
| Paul Dulberg, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 000377 |
| | ) | Jury Demand |
| The Law Offices of Thomas J. Popovich, P.C., | ) | (Court Room 201) |
| And Hans Mast, | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER**

THIS CAUSE coming to be heard on DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST's Motion for Substitution of Attorneys, due notice having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED:

1) The Appearance of Clausen Miller, P.C. on behalf of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST is withdrawn; and

2) The Appearance of the Karbal Cohen Economou Silk & Dunne, LLC is entered on behalf of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST.

**Atty No.** George K. Flynn (ARDC #6239349)
**Name:** Karbal, Cohen, Economou, Silk & Dunne, LLC
**Attorney for:** Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast
**Address:** 150 S. Wacker Drive, Suite 1700
**City:** Chicago, IL 60606
**Telephone:** (312) 431-3700

....., 2019

ENTER:

.....
Judge Judge's No.

CLERK OF CIRCUIT COURT OF MCHENRY COUNTY

Purchased from re:SearchIL

** FILED ** Env: 4230960
McHenry County, Illinois
17LA000377
Date: 3/11/2019 12:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW**

Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, by and through their attorneys, GEORGE K. FLYNN, and KARBAL, COHEN, ECONOMOU, SILK, & DUNNE, LLC, for their Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law, state as follows:

**COUNT I**
**LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

**ANSWER: Defendants admit the allegations contained in Paragraph 1.**

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

**ANSWER: Defendants admit the allegations contained in Paragraph 2.**



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3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

**ANSWER: Defendants admit only that Mast was an associate of The Law Offices of Thomas Popovich, P.C., and admit that he is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.**

4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

**ANSWER: Defendants deny the allegations contained in Paragraph 4.**

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

**ANSWER: Defendants admit the allegations contained in Paragraph 5.**

**B. Relevant Facts**

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") [sic] (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

**ANSWER: Defendants deny the allegations contained in Paragraph 6.**

7. Dulberg lives in the next neighborhood over from the McGuire family.

**ANSWER: Defendants admit the allegations contained in Paragraph 7.**

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

**ANSWER: Defendants admit the allegations contained in Paragraph 8.**

9. David Gagon [sic] is Caroline's son and William's stepson.

**ANSWER: Defendants admit the allegations contained in Paragraph 9.**



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10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.**

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11.**

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.**

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

**ANSWER: Defendants deny the allegations contained in Paragraph 13.**

14. Caroline supervised Gagnon's and William's actions.

**ANSWER: Defendants deny the allegations contained in Paragraph 14.**

15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

**ANSWER: Defendants deny the allegations contained in Paragraph 15.**

16. Gagnon was acting on behalf of Caroline and William and at their direction.

**ANSWER: Defendants deny the allegations contained in Paragraph 16.**

17. Caroline, William, and Gagnon all knew or show [sic] have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.**



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18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.**

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

**ANSWER: Paragraph 19 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 19.**

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

**ANSWER: Paragraph 20 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 20.**

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.**

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

**ANSWER: Paragraph 22 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 22.**

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.**



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24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a [sic] trained in operating the chainsaw.

**ANSWER: Defendants deny the allegations contained in Paragraph 24.**

25. Gagnon was operating the chain saw in close proximity to Dulberg.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25.**

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.**

27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.**

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28.**

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

**ANSWER: Defendants deny the allegations contained in Paragraph 29.**

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

**ANSWER: Defendants deny the allegations contained in Paragraph 30.**



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31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

**ANSWER: Defendants admit only that in May 2012, Dulberg hired Popovich to represent him in prosecuting his claims against Gagnon and the McGuires.**

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B**.

**ANSWER: Defendants admit only that Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. Defendants deny the remainder of the allegations contained in Paragraph 32.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

**ANSWER: Defendants admit only that Popovich entered into an attorney client relationship with Dulberg. Defendants deny the remainder of the allegations contained in Paragraph 33.**

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

**ANSWER: Paragraph 34 calls for legal conclusions, to which no answer need be given. To the extent that an answer is required, Defendants deny the allegations contained in Paragraph 34.**

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

**ANSWER: Defendants admit the allegations contained in Paragraph 35.**

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36.**

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.



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**ANSWER: Defendants admit only that the allegations made in the complaint stand for themselves. Defendants deny the remainder of the allegations contained in Paragraph 37.**

38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

**ANSWER: Defendants deny the allegations contained in Paragraph 38.**

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

**ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 39.**

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.**)

**ANSWER: Defendants admit only that Mast authored emails contained in Group Exhibit C. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 40.**

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them [sic] there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.



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**ANSWER:** **Defendants admit that on or around December 2013 or January 2014 Mast met with Dulberg, but deny that Mast told Dulberg he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.**

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

**ANSWER:** **Defendants deny the allegations contained in Paragraph 42.**

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.

**ANSWER:** **Defendants deny the allegations contained in Paragraph 43.**

44. Based upon Mast's erroneously [sic] advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

**ANSWER:** **Defendants deny the allegations contained in Paragraph 44.**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

**ANSWER:** **Defendants admit only that if information regarding Gagnon's insurance policy being limited to $100,000 was provided, it was gleaned from communications with defense counsel.**

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

**ANSWER:** **Defendants admit the allegations contained in Paragraph 46.**



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47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

**ANSWER: Defendants deny the allegations contained in Paragraph 47.**

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

**ANSWER: Defendants admit only that Dulberg authored emails contained in Group Exhibit E. Defendants deny that Plaintiff has completely and accurately transcribed the emails into paragraph 48.**

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

**ANSWER: Defendants admit only that Popovich continued to represent Dulberg into 2015, and that Mast was the primary handling attorney. Defendants deny the remainder of the allegations contained in Paragraph 49.**

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.**

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

**ANSWER: Defendants deny the allegations contained in Paragraph 51.**

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52.**

53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.



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**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53.**

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54.**

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

**ANSWER: Defendants deny the allegations contained in Paragraph 55.**

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

**ANSWER: Defendants deny the allegations contained in Paragraph 56.**

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

**ANSWER: Defendants deny the allegations contained in Paragraph 57.**

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

(a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

(b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;



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(c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires' and Gagnon's insurance policies, including, but not limited to, incorrectly informing Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance company would pay close to that;

(d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

(e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability [sic] pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the [sic] all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

(f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

**ANSWER: Defendants deny the allegations contained in Paragraph 58 and subparagraphs (a) through (f) inclusive.**

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

**ANSWER: Defendants deny the allegations contained in Paragraph 59.**

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, respectfully request that this Court grant judgment in their favor, and against Plaintiff, and for any further relief that this Court deems fair and proper.



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## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE: CONTRIBUTORY NEGLIGENCE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that any damages awarded to Plaintiff, be reduced by Plaintiff's proximate share of liability or, if such share is more than 50%, be barred in its entirety.



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**SECOND AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS**

1. In Plaintiff's Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiff v. David Gagnon, et al., Defendants*, Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

4. Accordingly, this matter is time-barred.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that Plaintiff be completely barred from recovery under the statute of limitations.



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## AFFIRMATIVE DEFENSES

## THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause of Dulberg's damages.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

/s/ George K. Flynn

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
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Dahlberg

## AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Hans Mast, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

Hans Mast

Subscribed and sworn to before me
this 1st day of March 2019.

Notary Public

JOANN MORRISON PAXTON
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
October 04, 2022



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## AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

Thomas J. Popovich, after being duly sworn, deposes and says that he has read the foregoing **Defendant's Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint at Law**; and has reviewed the Answer; and that the answers and allegations of insufficient knowledge contained within the Answer filed on behalf of Defendants, are true and correct to the best of his knowledge and belief.

The Law Offices of Thomas J. Popovich, P.C.

By: Thomas J. Popovich
Thomas J. Popovich

Subscribed and sworn to before me
this _____ day of January, 2019.

_____
Notary Public



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served electronically via the Clerk's Office e-filing system and by emailing a copy to counsel of record on the 11th day of March 2019 before the hour of 5:00 p.m. as follows:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/ Linda Walters

Linda Walters



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Date: 3/11/2019 12:12 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF FILING

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that, on the 11th day of March 2019, we filed DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 11th day of March 2019.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on March 11, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Edward X. Clinton, Jr.<br>Julia C. Williams<br>The Clinton Law Firm<br>111 W. Washington Street, Suite 1437<br>Chicago, IL 60602<br>312-357-1515<br>ed@clintonlaw.net<br>juliawilliams@clintonlaw.net | |



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** FILED ** Env: 4403805
McHenry County, Illinois
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Date: 3/22/2019 11:57 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17 LA 377 |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO: SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on the 22nd day of March 2019 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- Requests for Production to Plaintiff;
- Interrogatories to Plaintiff;
- Rule 213(f)(1)(2) and (3) Interrogatories to Plaintiff;
- Rule 237 Notice to Produce; and

Defendant Hans Mast's

- Interrogatories to Plaintiff

copies of which are attached hereto and herewith served upon you.

Dated this 22nd day of March 2019 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
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Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on March 22, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters


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## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENTS was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

by email on March 22, 2019.

/s/ *George K. Flynn*
One of their Attorneys



Received 03-22-2019 01:47 PM / Circuit Clerk Accepted on 03-22-2019 03:11 PM / Transaction #4403805 / Case #17LA000377
Purchased from re:SearchIL

## SERVICE LIST

| | |
|---|---|
| **Plaintiff's Attorney**<br><br>Edward X. Clinton, Jr.<br>Julia C. Williams<br>The Clinton Law Firm<br>111 W. Washington Street, Suite 1437<br>Chicago, IL 60602<br>312-357-1515<br>ed@clintonlaw.net<br>juliawilliams@clintonlaw.net | |



Received 03-22-2019 01:47 PM / Circuit Clerk Accepted on 03-22-2019 03:11 PM / Transaction #4403805 / Case #17LA000377
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** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIIVE DEFENSES**

Paul Dulberg, by and through his attorneys, The Clinton Law Firm, LLC, answers Paul Dulberg's Affirmative Defenses as follows:

**AFFIRMATIVE DEFENSES**
**FIRST AFFIRMATIVE DEFENSE: CONTRIBUTION NEGLIGENCE**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiffs own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2.

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Purchased from re:SearchIL

3. If Plaintiff's contributing fault is found to be more than 50% of the proximate cause of the injury or damage, then Plaintiff shall be barred from recovering any damages whatsoever.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #3.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

**SECOND AFFIRMATIVE DEFENSE**
**STATUTE OF LIMITATIONS**

1. In Plaintiffs Complaint, it alleges that The Law Offices of Thomas J. Popovich, P.C. and Hans Mast failed to adequately represent him in the action captioned, *Paul Dulberg, Plaintiffv. David Gagnon, et al., Defendants,* Case No. 12 LA 178, McHenry County, Illinois (the 'Underlying Action").

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiffs damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiffs proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:
   (a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.
   (b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.
   (c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.
   (d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2, subparts a-d.

3. Plaintiff, however, did not file this action until November 28, 2017, more than two years after the applicable statute of limitations had run.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #3.

4. Accordingly, this matter is time-barred.



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**ANSWER:** Plaintiff denies the allegations of this Paragraph #4.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

**AFFIRMATIVE DEFENSES**
**THIRD AFFIRMATIVE DEFENSE: PROXIMATE CAUSE**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

**ANSWER:** Plaintiff admits the allegations of this Paragraph #1.

2. Plaintiff retained successor counsel after Popovich and Mast withdrew. To the extent that any malpractice occurred during Dulberg's representation by the Popovich firm or its agents, which is expressly denied, and to the extent that any malpractice or proximately caused damages could have been remedied by Dulberg and his successor counsel, then Mast and Popovich can never be found to be the proximate cause ofDulberg's damages.

**ANSWER:** Plaintiff denies the allegations of this Paragraph #2.

WHEREFORE, Plaintiff, PAUL DULBERG, respectfully requests that Defendants' Affirmative Defenses be denied and that Plaintiff be awrded damages as requested in his Second Amended Complaint.

Respectfully submitted,

By: /s/ Julia C. Williams

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm, LLC
111 Washington Street, Suite 2400
Chicago, IL 6002
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net



Received 04-08-2019 04:13 PM / Circuit Clerk Accepted on 04-09-2019 11:58 AM / Transaction #4610589 / Case #17LA000377
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** FILED ** Env: 4610589
McHenry County, Illinois
17LA000377
Date: 4/8/2019 3:52 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br>PLAINTIFF,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS POPOVICH, and HANS MAST,<br>DEFENDANTS. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 17 LA 377 |

NOTICE OF FILING

TO: George Flynn
Karbal Cohen Economou Silk Dunne LLC
150 S. Wacker Dr., Ste. 1700
Chicago, IL 60606
gflynn@karballaw.com

PLEASE TAKE NOTICE that on April 8, 2019, the undersigned caused the enclosed Plaintiff's Answer to Defendants' Affirmative Defenses to be filed in the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, Illinois, a copy of which is hereby served upon you.

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a copy of the foregoing notice and document to be served upon the above service list via email and the court's electronic filing system.

/s/ Julia C. Williams
Julia C. Williams

Received 04-08-2019 04:13 PM / Circuit Clerk Accepted on 04-09-2019 11:58 AM / Transaction #4610589 / Case #17LA000377

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** FILED ** Env: 5214049
McHenry County, Illinois
17LA000377
Date: 5/29/2019 11:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17 LA 377 |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO: SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on the 29th day of May 2019 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:
- Response to Plaintiff's First Set of Document Requests;
- Answer to Plaintiff's First Set of Interrogatories to Defendants;

Defendant Hans Mast's:
- Response to Plaintiff's First Set of Document Requests;
- Answer to Plaintiff's First Set of Interrogatories to Defendants; and

Defendant The Law Offices of Thomas J. Popovich, P.C.'s and Hans Mast's:
- Answer to Plaintiff's Rule 213(f) Interrogatories to Defendants

copies of which are attached hereto and herewith served upon you.

Dated this 29th day of May 2019 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on May 29, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 05-30-2019 10:13 AM / Circuit Clerk Accepted on 05-30-2019 12:22 PM / Transaction #5214049 / Case #17LA000377

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Edward X. Clinton, Jr.<br>Julia C. Williams<br>The Clinton Law Firm<br>111 W. Washington Street, Suite 1437<br>Chicago, IL 60602<br>312-357-1515<br>ed@clintonlaw.net<br>juliawilliams@clintonlaw.net<br>Marywinch@clintonlaw.net | |



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Page 2 of 2
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2

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAY 30 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

Paul Dulberg
Plaintiff

vs

Law Offices of Thomas Popovich
Defendant

Case Number 17 LA 377

| Circuit Clerk Use Only |
|---|
| _____ ORD |
| _____ ORDJ |
| _____ ORDDWP |

# ORDER

☐ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☒ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☒ By Agreement; ☐ Court; to September 5, 20 19 at 9:00, A m. for Status.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** Status on written and f(l) discovery. Plaintiff's motion for default is withdrawn as moot.

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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IN THE CIRCU COURT OF THE TWENTY-SECOND JU CIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Paul Dulberg
Plaintiff

vs

Law Offices of Thomas Poporich PC et al.
Defendant

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17 LA 377

FILED
McHenry County, Illinois
SEP - 5 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

# ORDER

☐ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ .m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☒ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☑ By Agreement; ☐ Court; to 11/7, 2019 at 9:00 A m. for Status.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** Status on written discovery and f(l) discovery

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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** FILED ** Env: 6822850
McHenry County, Illinois
17LA000377
Date: 10/3/2019 2:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**MOTION FOR LEAVE TO FILE AFFIRMATIVE DEFENSE**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast pursuant to 735 ILCS 5/2-613 and 735 ILCS 5/2-616, move for leave to file their Amended Affirmative Defense to Plaintiff's Second Amended Complaint, and in support state as follows:

1) This is a legal malpractice action. Defendants filed their Answer and Affirmative Defenses on March 12, 2019. Written discovery has been exchanged. No depositions have proceeded.

2) 735 ILCS 5/2-616 allows the amendment of pleadings at any time before final judgment on just and reasonable terms.

3) The filing of defendant's amended affirmative defenses will cause no unfair surprise, prejudice or unreasonable delay in the case.

WHEREFORE, Defendants, respectfully request that this Court grant them leave to file their Amended Affirmative Defense to Plaintiff's Second Amended Complaint (proposed



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pleading attached as Exhibit A), and grant any and all further relief that this Court deems just and appropriate.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



Received 10-03-2019 02:53 PM / Circuit Clerk Accepted on 10-03-2019 02:55 PM / Transaction #6822850 / Case #17LA000377
Purchased from re:SearchIL

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast plead the following amended affirmative defense in the alternative and without prejudice to Defendants' earlier denials and contentions:

**FOURTH AFFIRMATIVE DEFENSE**
**(Judgmental Immunity/Lawyer's Judgement Rule)**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.



**EXHIBIT A**

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(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. *Goldstein*, 154 Ill. App. 3d at 599-601; *O'Brien & Assocs., P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. *Goldstein*, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained in one of these scenarios does not suggest that any standard of care was breached. *Id.* Further, if the client must speculate as to how it would have been better off, there is no actionable harm. *O'Brien*, 274 Ill. App. 3d at 479-80.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

Respectfully submitted,

/s/ *George K. Flynn*



Received 10-03-2019 02:53 PM / Circuit Clerk Accepted on 10-03-2019 02:55 PM / Transaction #6822850 / Case #17LA000377
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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
ARDC No. 6239349
Attorneys for Defendants
gflynn@karballaw.com



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Page 5 of 5
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** FILED ** Env: 6822850
McHenry County, Illinois
17LA000377
Date: 10/3/2019 2:04 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOI**

| | | |
|---|---|---|
| Paul Dulberg, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 000377 |
| | ) | Jury Demand |
| The Law Offices of Thomas J. Popovich, P.C., | ) | (Court Room 201) |
| And Hans Mast, | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF MOTION**

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that on the **4th day of November 2019 at 9:00 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS' MOTION FOR LEAVE TO FILE AMENDED AFFIRMATIVE DEFENSE, a copy of is attached hereto and herewith served upon you.

Dated this 3rd day of October 2019 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that I served this notice by e-mailing a copy to each party to whom it is directed on October 3, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 10-03-2019 02:53 PM / Circuit Clerk Accepted on 10-03-2019 02:55 PM / Transaction #6822850 / Case #17LA000377

Purchased from re:SearchIL

## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Edward X. Clinton, Jr.<br>Julia C. Williams<br>The Clinton Law Firm<br>111 W. Washington Street, Suite 1437<br>Chicago, IL 60602<br>312-357-1515<br>ed@clintonlaw.net<br>juliawilliams@clintonlaw.net<br>Marywinch@clintonlaw.net | |

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Purchased from re:SearchIL

** FILED ** Env: 7222883
McHenry County, Illinois
17LA000377
Date: 11/4/2019 1:37 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast plead the following amended affirmative defense in the alternative and without prejudice to Defendants' earlier denials and contentions:

**FOURTH AFFIRMATIVE DEFENSE**
**(Judgmental Immunity/Lawyer's Judgement Rule)**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.



Received 11-04-2019 03:49 PM / Circuit Clerk Accepted on 11-05-2019 09:03 AM / Transaction #7222883 / Case #17LA000377
Purchased from re:SearchIL

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. *Goldstein*, 154 Ill. App. 3d at 599-601; *O'Brien & Assocs., P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. *Goldstein*, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained in one of these scenarios does not suggest that any standard of care was breached. *Id.* Further, if the client must speculate as to how it would have been better off, there is no actionable harm. *O'Brien*, 274 Ill. App. 3d at 479-80.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

Respectfully submitted,

/s/ *George K. Flynn*



Received 11-04-2019 03:49 PM / Circuit Clerk Accepted on 11-05-2019 09:03 AM / Transaction #7222883 / Case #17LA000377
Purchased from re:SearchIL

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
ARDC No. 6239349
Attorneys for Defendants
gflynn@karballaw.com



Received 11-04-2019 03:49 PM / Circuit Clerk Accepted on 11-05-2019 09:03 AM / Transaction #7222883 / Case #17LA000377
Page 3 of 3
Purchased from re:SearchIL
C 346

** FILED ** Env: 7222883
McHenry County, Illinois
17LA000377
Date: 11/4/2019 1:37 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF FILING

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that, on the 4th day of November 2019, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 4th day of November 2019.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on November 4, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 11-04-2019 03:49 PM / Circuit Clerk Accepted on 11-05-2019 09:03 AM / Transaction #7222883 / Case #17LA000377
Purchased from re:SearchIL

## SERVICE LIST

**Plaintiff's Attorney**

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net



Received 11-04-2019 03:49 PM / Circuit Clerk Accepted on 11-05-2019 09:03 AM / Transaction #7222883 / Case #17LA000377
Page 2 of 2
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C 348

#5

# IN THE CIR( IT COURT OF THE 22ND JUI IAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17LA377
☒ Jury ☐ Non-Jury

Oulsey

vs.

Popovich

FILED
McHenry County, Illinois
NOV - 4 2019
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 11-4-19 Plaintiff's Attorney Julia Williams Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard for status, it is ordered:

1) Popovich is granted leave to file an affirmative defense (amended).

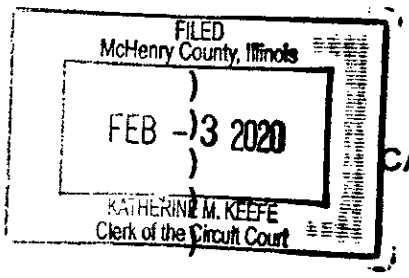
2) status or discovery on Feb. 3, 2020 at 9:00 a.m. and status on f(1) discovery.

Prepared by: George Flynn
Attorney for: Popovich
Attorney Registration No.: 6239399 Judge:

Purchased from re:SearchIL

# IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
# McHENRY COUNTY, ILLINOIS

Dulberg
v.
Mast et al.




CASE NO. 17 LA 377

## CASE MANAGEMENT ORDER

This case being heard for Case Management Conference, pursuant to Supreme Court Rule 218, the parties have been notified and the Court being fully advised, IT IS HEREBY ORDERED: (Mark applicable box(s) below)

☐ 1. That any and all Cross, Counter, and Third-Party Complaints shall be filed not later than _____, _____.

☐ 2. That Plaintiff(s) shall disclose the identity of all Supreme Court Rule 213(g) opinion witnesses, together with their business address and opinions, not later than _____ _____.

☐ 3. That Defendant(s) shall disclose the identity of all Supreme Court Rule 213(g) opinion witnesses, together with their business address and opinions, not later than _____.

☐ 4. That Cross-Defendants, Counter Defendants, and Third Party Defendants shall disclose the identity of all Supreme Court Rule 213(g) opinion witnesses, together with their business address and opinions, not later than _____.

☐ 5. That all discovery shall be completed not later than _____.

☒ 6. The Case Management Conference is continued to 4.3.2020 at 9:00 AM.

~~☐~~ 7. That a Settlement Conference/Pre-Trial is set for _____ at _____M.

☐ 8. That the final Pre-Trial Conference is set for _____ at _____M. at which time each party shall tender a statement of the case, a list of witnesses who may be called at trial indicating their relationship to the case, their occupation and the city and state of their residence and/or employment, all motions in limine; a list of all marked exhibits to be offered at trial and the original exhibits themselves, a list of all evidence depositions to be offered at trial and a list of all objections to be ruled on by the court, and all proposed jury instructions.

☐ 9. That this cause is set for Jury/Bench Trial on _____ _____ at _____ M.

☐ 10. All dispositive motions must be filed and set for hearing no later than 60 days before the date that the case has been set for trial and be in compliance with Local Rules of Practice, in particular Rules 2.01, 2.02 and 2.04.

☒ 11. Status of completion of f(1) depositions

ENTERED: _____ 20___ ENTER _____
JUDGE

PREPARED BY: Julia Williams/The Clinton Law Firm
ATTORNEY FOR: P
A.R.D.C. REGISTRATION NO. 6294306

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# IN THE CIR IT COURT OF THE 22ND JU IAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17 L A 377
☑ Jury ☐ Non-Jury

Dulberg

vs.

Popovich

FILED
McHenry County, Illinois
JUN - 5 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 6/5/20 Plaintiff's Attorney Julia Williams Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard for status, it is ordered:

1) Matter is set for status on f(1) depositions on September 10, 2020 at 9:00 a.m.

Prepared by: George Flynn
Attorney for: Popovich
Attorney Registration No.: 6239349 Judge:

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** FILED ** Env: 9649054
McHenry County, Illinois
17LA000377
Date: 7/2/2020 9:30 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17 LA 377 |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO:** Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

Received 07-02-2020 11:02 AM / Circuit Clerk Accepted on 07-02-2020 11:07 AM / Transaction #9649054 / Case #17LA000377

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

/s/ *George K. Flynn*
One of their Attorneys



Received 07-02-2020 11:02 AM / Circuit Clerk Accepted on 07-02-2020 11:07 AM / Transaction #9649054 / Case #17LA000377
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** FILED ** Env: 10141495
McHenry County, Illinois
17LA000377
Date: 8/18/2020 1:35 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF PAUL DULBERG**

The Clinton Law Firm, LLC, ("The Clinton Law Firm") as attorneys for Plaintiff Paul Dulberg, respectfully request that this Court grants it leave to withdraw as counsel. In support of this Motion, The Clinton Law Firm states as follows:

1. Edward Clinton Jr. and Julia Williams of The Clinton Law Firm filed appearances for Paul Dulberg on November 8, 2018.

2. Since that time, The Clinton Law Firm has diligently prosecuted the case on behalf of Mr. Dulberg.

3. Due to irreconcilable differences, The Clinton Law Firm cannot continue to represent Plaintiff Paul Dulberg and it is in the best interests of all parties that The Clinton Law Firm withdraws.

4. Pursuant to Rule 13 of the Illinois Supreme Court Rules and Local Rule 1.4(b), a copy of the Notice of Motion and this Motion for Leave to Withdraw will be served by Certified mail, returned receipt requested, by First Class U.S. Mail, to Dulberg at his last known address and by email.

6. The last known address for Dulberg is 4606 Hayden Court, McHenry, IL 60051.

Received 08-18-2020 01:44 PM / Circuit Clerk Accepted on 08-18-2020 01:55 PM / Transaction #10141495 / Case #17LA000377
Purchased from re:SearchIL

7. Dulberg is advised and notified that to insure notice of any action in the above-referenced matter, he should, within 21 days after entry of the order of withdrawal, retain other counsel and/or file with the Clerk of the Court her supplementary appearance stating an address at which service of notices or other papers may be had upon her.

7. This Court should grant The Clinton Law Firm, LLC leave to withdraw its appearance as attorneys for Dulberg.

WHEREFORE, Clinton respectfully requests this Honorable Court as follows:

A. The Clinton Law Firm, LLC be granted leave to withdraw as attorneys for Dulberg; and

B. For such other and further relief as this Court deems just and equitable.

Respectfully Submitted,

By: /s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm, LLC
111 W Washington Street
Suite 1437
Chicago, IL 60602
312.357.1515
**ed@clintonlaw.net**
**juliawilliams@clintonlaw.net**

Received 08-18-2020 01:44 PM / Circuit Clerk Accepted on 08-18-2020 01:55 PM / Transaction #10141495 / Case #17LA000377

Purchased from re:SearchIL

** FILED ** Env: 10141495
McHenry County, Illinois
17LA000377
Date: 8/18/2020 1:35 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF MOTION**

TO: Attached service list

PLEASE TAKE NOTICE that on September 10, 2020 at 8:45a.m., or as soon thereafter as I may be heard, I will appear before the Honorable Judge Thomas A. Meyer, or any judge sitting in that Judge's stead, in Courtroom 201 of the Circuit Court of the Twenty Second Judicial Circuit, McHenry County, 2200 N. Seminary Ave., Woodstock, IL 60098, and present the enclosed Motion to Withdraw, a copy of which is attached.

Please further note that the undersigned intends to appear via Zoom per the instructions available on the McHenry County Circuit Court Clerk Website:
Meeting ID: 272-959-8070
Password: No password required

****Upon the Court granting The Clinton Law Firm, LLC leave to withdraw as attorney for Plaintiff, Paul Dulberg, he should retain other counsel therein or file with the Clerk of the Court, within 21 days after entry of the Order of Withdrawal, his appearance stating therein an address at which service of Notices or other papers may be had upon him.**

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
312.357.1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net

Received 08-18-2020 01:44 PM / Circuit Clerk Accepted on 08-18-2020 01:55 PM / Transaction #10141495 / Case #17LA000377

Purchased from re:SearchIL

## CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109I, the undersigned, on oath, certifies that on August 18, 2020, she caused a copy of the above and foregoing Notice of Motion and Motion to Withdraw to be served upon all persons to whom directed as outlined above.

/s/ Julia C. Williams
Julia C. Williams

Service List:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051.
*Via US Mail and Certified Mail*

George Flynn
Attorney for Defendants
Karbal Cohen Economou Silk Dunne LLC
150 S. Wacker Dr., Ste. 1700
Chicago, IL 60606
gflynn@karballaw.com
*Via Odysssey eFile IL filing system*

Received 08-18-2020 01:44 PM / Circuit Clerk Accepted on 08-18-2020 01:55 PM / Transaction #10141495 / Case #17LA000377

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# IN THE CIRC IT COURT OF THE 22ND JUI IAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

FILED
McHenry County, Illinois
SEP 10 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377
☒ Jury ☐ Non-Jury

Pulbers

VS.

Popovich

Date: 9-10-20 Plaintiff's Attorney Julia Williams Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard on the Clinton Law firms motion to Withdraw as counsel for Plaintiff, it is ordered:

1) The Clinton Law Firms Motion to Withdraw is granted.

2) Plaintiff Paul Dulbers must file an appearance with 21 days, or an attorney must appear on his behalf with 21 days.

3) Status on October 7, 2020 at ~~9:00 a.m.~~ 8:45 AM (AM)

Prepared by: George Flynn
Attorney for: Popovich
Attorney Registration No.: 6239349 Judge:

Purchased from re:SearchIL

** FILED ** Env: 10481328
McHenry County, Illinois
17LA000377
Date: 9/17/2020 11:01 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry **COUNTY**

# APPEARANCE
## Pro Se

*For Court Use Only*

**Instructions**

Directly above, enter the name of the county where the case was filed.

Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendant/Respondent.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
**Plaintiff / Petitioner** *(First, middle, last name or Company)*

v.

THE LAW OFFICES OF THOMAS J. ) POPOVICH, P.C., and HANS MAST,
**Defendant / Respondent** *(First, middle, last name)*

17LA000377
**Case Number**

In **1**, enter your full name.

In **2**, check only one box to ask for a trial with only a judge or a trial with a judge and jury.

You do not have a right to a jury trial in every case.

**1. I,** Paul Dulberg **enter my appearance in this case.**
*First Middle Last*

**2. I would like a trial with:**

☐ a judge

☑ a judge and jury

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address and telephone number.

**I certify that everything above is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS5/1-109.**

/s/ Paul Dulberg
*Your Signature*

4606 Hayden Ct.
*Street Address*

Paul Dulberg
*Your Name*

McHenry, IL. 60051
*City, State, ZIP*

847-497-4250
*Telephone*

**GETTING COURT DOCUMENTS BY EMAIL:** If you agree to receive court documents by email, check the box below and enter your email address. You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information or notice of court dates. Other parties may still send you court documents by mail.

☑ I agree to receive court documents at this email address during my entire case.

Paul_Dulberg@comcast.net
*Email*


Received 09-17-2020 11:05 AM / Circuit Clerk Accepted on 09-17-2020 02:15 PM / Transaction #10481328 / Case #17LA000377
Purchased from re:SearchIL
Page 1 of 3

Enter the Case Number given by the Circuit Clerk: 17LA000377

## PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

**CAUTION:** If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:

   Name: George Flynn
   *First* *Middle* *Last*

   Address: 150 S. Wacker Drive, Suite 1700, Chicago, IL 60606
   *Street, Apt #* *City* *State* *ZIP*

   Email address: gflynn@karballaw.com

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     *Address of Post Office or Mailbox*
   - ☐ Third-party commercial carrier, with delivery paid for at:

     *Name (for example, FedEx or UPS ) and office address*
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☑ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     *Name of prison or jail*

In **c**, fill in the date and time that you sent the document.

   c. On: 09/17/2020
   *Date*

   At: 12:00 ☐ a.m. ☑ p.m.
   *Time*

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:

   Name:
   *First* *Middle* *Last*

   Address:
   *Street, Apt #* *City* *State* *ZIP*

   Email address:

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     *Address of Post Office or Mailbox*
   - ☐ Third-party commercial carrier, with delivery paid for at:

     *Name (for example, FedEx or UPS ) and office address*
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☐ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     *Name of prison or jail*



Received 09-17-2020 11:05 AM / Circuit Clerk Accepted on 09-17-2020 02:15 PM / Transaction #10481328 / Case #17LA000377
Page 2 of 3
Purchased from re:SearchIL
C 360

c. On: _____
*Date*

At: _____ ☐ a.m. ☐ p.m.
*Time*

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:
☐ Personal hand delivery
☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
*Address of Post Office or Mailbox*

☐ Third-party commercial carrier, with delivery paid for at:

_____
*Name (for example, FedEx or UPS ) and office address*

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
☐ Email *(not through an EFM or EFSP)*
☐ Mail from a prison or jail at:

_____
*Name of prison or jail*

If you sent your document to more than 3 parties or lawyers, check the box and file *Additional Proof of Delivery* with this form.

c. On: _____
*Date*

At: _____ ☐ a.m. ☐ p.m.
*Time*

☑ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Paul Dulberg
*Your Signature*

Paul Dulberg
*Print Your Name*

847-497-4250
*Telephone*

4606 Hayden Ct.
*Street Address*

McHenry, IL. 60051
*City, State, ZIP*



Received 09-17-2020 11:05 AM / Circuit Clerk Accepted on 09-17-2020 02:15 PM / Transaction #10481328 / Case #17LA000377
Page 3 of 3
Purchased from re:SearchIL

** FILED ** Env: 10481649
McHenry County, Illinois
17LA000377
Date: 9/17/2020 11:12 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

| STATE OF ILLINOIS, CIRCUIT COURT<br>McHenry COUNTY | PROOF OF DELIVERY | For Court Use Only |
|---|---|---|

| Instructions | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| Enter the name of the Defendant/Respondent. | v.<br>THE LAW OFFICES OF THOMAS J. ) POPOVICH, P.C., and HANS MAST,<br>**Defendant / Respondent** *(First, middle, last name)* |
| Enter the Case Number given by the Circuit Clerk. | 17LA000377<br>**Case Number** |

In **1**, enter the name of the court document you are sending to the other parties in the court case (*e.g.,* a Court Order or Answer).

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

**CAUTION:** If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

In **c**, fill in the date and time that you sent the document.

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

**1. I am sending the following court document:** APPEARANCE Pro Se

a. To:

Name: George Flynn
*First Middle Last*

Address: 150 S. Wacker Drive, Suite 1700, Chicago, IL 60606
*Street, Apt # City State ZIP*

Email address: gflynn@karballaw.com

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

  *Address of Post Office or Mailbox*
- ☐ Third-party commercial carrier, with delivery paid for at:

  *Name (for example, FedEx or UPS ) and office address*
- ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☑ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

  *Name of prison or jail*

c. On: 09/19/2020
*Date*

At: 12:00 ☐ a.m. ☑ p.m.
*Time*

2. I sent this document:

a. To:

Name:
*First Middle Last*

Address:
*Street, Apt # City State ZIP*

Email address:



Received 09-17-2020 11:14 AM / Circuit Clerk Accepted on 09-17-2020 03:10 PM / Transaction #10481649 / Case #17LA000377
Page 1 of 2
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b. By:
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c. On: _____
*Date*

At: _____ ☐ a.m. ☐ p.m.
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**I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Paul Dulberg
*Your Signature*

Paul Dulberg
*Print Your Name*

847-497-4250
*Telephone*

4606 Hayden Ct.
*Street Address*

McHenry, IL. 60051
*City, State, ZIP*



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** FILED ** Env: 10637725
McHenry County, Illinois
17LA000377
Date: 10/1/2020 10:43 AM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

| STATE OF ILLINOIS, CIRCUIT COURT<br>MCHENRY COUNTY | MOTION TO CONTINUE OR EXTEND TIME | For Court Use Only |
|---|---|---|

| Instructions ▼ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person who started the lawsuit as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name)* |
| Enter the name of the person being sued as Defendant/Respondent. | v.<br>POPOVICH PC, THOMAS J, LAW OFFICES OF and Hans Mast<br>**Defendant / Respondent** *(First, middle, last name)* |
| Enter the Case Number given by the Circuit Clerk. | 17LA000377<br>**Case Number** |

In **1**, check if you are the Plaintiff/Petitioner or Defendant/Respondent.

**1.** ***Motion*** **by:** ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

In **2**, check the box if you are asking the court to continue (reschedule) a court date that has already been scheduled.

☐ **2.** I am asking the court **to continue (reschedule)** a court date that has already been scheduled.

In **2a**, check the reason for the court date you are asking the court to continue (reschedule).

a. Reason for court date: ☐ Motion ☐ Trial ☐ Status ☐ Other

In **2b**, enter the date and time of the court date you are asking the court to continue (reschedule).

b. Date: _____ at _____ ☐ a.m ☐ p.m.

In **2c**, explain why you need to continue (reschedule) the court date.

c. I need a continuance because:

In **3**, check the box if you are asking for more time to do something (e.g. file an *Answer*).

☒ **3.** I am asking the court **for more time** to do something.

In **3a**, explain what you are asking for more time to do.

a. I need more time to: Find new Counsel
which has a deadline of: October 7, 2020
*Date*

In **3b**, enter the date you are asking the judge to give you until.

b. I need until: October 28, 2020
*Date*

In **3c**, explain why you need more time.

c. I need more time because: I need to hire new counsel.


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Enter the Case Number given by the Circuit Clerk: 17LA000377

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If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete current address and telephone number.

**I certify that everything in the *Motion To Continue Or Extend Time* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Paul Dulberg
*Your Signature*

4606 HAYDEN COURT
*Street Address*

Paul Dulberg
*Print Your Name*

MCHENRY, IL 60051
*City, State, ZIP*

(847) 497-4250
*Telephone*

## PROOF OF DELIVERY

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In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

**CAUTION:** If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:
   Name: George Flynn
   *First Middle Last*
   Address: 150 S. Wacker Drive Suite 1700, Chicago, IL 60606
   *Street, Apt # City State ZIP*
   Email address: gflynn@karballaw.com

   b. By:
   ☐ Personal hand delivery
   ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:
   *Address of Post Office or Mailbox*
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   ☐ Mail from a prison or jail at:
   *Name of prison or jail*

In **c**, fill in the date and time that you sent the document.

   c. On: October 1, 2020
   *Date*
   At: 12:00 ☐ a.m. ☒ p.m.
   *Time*

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:
   Name: George Flynn
   *First Middle Last*
   Address: 150 S. Wacker Drive Suite 1700, Chicago, IL 60606
   *Street, Apt # City State ZIP*
   Email address: gflynn@karballaw.com


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*Name of prison or jail*

c. On: October 1, 2020
*Date*
At: 12:00 ☐ a.m. ☒ p.m.
*Time*

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a. To:
Name:
*First* *Middle* *Last*
Address:
*Street, Apt #* *City* *State* *ZIP*
Email address:

b. By: ☐ Personal hand delivery
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c. On:
*Date*
At: ☐ a.m. ☐ p.m.
*Time*

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Enter the Case Number given by the Circuit Clerk: 17LA000377

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If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

**I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Paul Dulberg
*Your Signature*

Paul Dulberg
*Print Your Name*

(847) 497-4250
*Telephone*

4606 HAYDEN COURT
*Street Address*

MCHENRY, IL 60051
*City, State, ZIP*


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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

| STATE OF ILLINOIS, CIRCUIT COURT<br>MCHENRY COUNTY | ORDER GRANTING/DENYING MOTION TO CONTINUE OR EXTEND TIME | *For Court Use Only* |
|---|---|---|

| Instructions ▼ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person who started the lawsuit as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name)* |
| Enter the name of the person being sued as Defendant/Respondent. | v.<br>POPOVICH PC, THOMAS J, LAW OFFICES OF and Hans Mast<br>**Defendant / Respondent** *(First, middle, last name)* |
| Enter the Case Number given by the Circuit Clerk. | 17LA000377<br>**Case Number** |

In **1,** check if you are the Plaintiff/Petitioner or Defendant/Respondent.

**1.** ***Motion*** **by:** ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

In **2**, enter the date you filed the *Motion to Continue or Extend Time.*

**2. Date *Motion* Filed:** October 1, 2020

In **3**, enter what you are asking the court for with the *Motion to Continue or Extend Time.*

**3.** ***Motion*** **to:** ☐ Continue (reschedule) a court date
☒ Extend time

**DO NOT** complete the rest of the form. The judge will complete it.

**People in court** ☐ Plaintiff/Petitioner ☐ Plaintiff Attorney ☐ Defendant/Respondent
☐ Defendant Attorney ☐ Other: _____

**The *Motion to Continue or Extend Time* is:** ☐ **GRANTED**

☐ Court date is continued to: _____ Time: _____ a.m./p.m
*Date*

☐ Time for _____ is extended to: _____
*Date*

**The *Motion to Continue or Extend Time* is:** ☐ **DENIED**

**DO NOT** complete this section. The judge will sign and date here.

**ENTERED:**

_____ _____
*Judge* *Date*



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Page 5 of 8
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This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit courts.

| STATE OF ILLINOIS, CIRCUIT COURT<br>MCHENRY COUNTY | NOTICE OF COURT DATE FOR MOTION | *For Court Use Only* |
|---|---|---|

| Instructions ▼ | | |
|---|---|---|
| Directly above, enter the name of the county where the case was filed. | | |
| Enter the name of the person who started the lawsuit as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name)* | |
| Enter the name of the person being sued as Defendant/Respondent. | v.<br>POPOVICH PC, THOMAS J, LAW OFFICES OF and Hans Mast<br>**Defendant / Respondent** *(First, middle, last name)* | |
| Enter the Case Number given by the Circuit Clerk. | | 17LA000377<br>**Case Number** |

In **1a**, enter the date and time of your hearing.

The Circuit Clerk will give you the date and time of the hearing when you file your *Motion*.

In **1b**, also enter the address of the court and court room number for the hearing.

**1. Hearing Information**

The reasons for this hearing are listed in the attached papers called *Motion*.

The hearing for the *Motion* I filed is scheduled for:

a. Date: _____ , 20 _____ Time: _____ ☐ a.m. ☐ p.m.

b. Address: McHenry County Courthouse, 2200 North Seminary Ave., Room 352, Woodstock, IL 60098
*Street* *City* *State* *ZIP*

Courtroom: _____

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the *Notice of Court Date for Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Paul Dulberg
*Your Signature*

Paul Dulberg
*Print Your Name*

Enter your complete current address and telephone number.

4606 HAYDEN COURT
*Street Address*

MCHENRY, IL 60051
*City, State, ZIP*

(847) 497-4250
*Telephone*



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Enter the Case Number given by the Circuit Clerk: 17LA000377

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In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

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1. I sent this document:

   a. To:

   Name: George Flynn
   *First* *Middle* *Last*

   Address: 150 S. Wacker Drive Suite 1700, Chicago, IL 60606
   *Street, Apt #* *City* *State* *ZIP*

   Email address: gflynn@karballaw.com

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     *Address of Post Office or Mailbox*
   - ☐ Third-party commercial carrier, with delivery paid for at:

     *Name (for example, FedEx or UPS ) and office address*
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☒ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     *Name of prison or jail*

In **c**, fill in the date and time that you sent the document.

   c. On: October 1, 2020
   *Date*

   At: 12:00 ☐ a.m. ☒ p.m.
   *Time*

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   Email address: gflynn@karballaw.com

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   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

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*Date*

At: 12:00 ☐ a.m. ☒ p.m.
*Time*

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

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Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

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/s/ Paul Dulberg
*Your Signature*

Paul Dulberg
*Print Your Name*

(847) 497-4250
*Telephone*

4606 HAYDEN COURT
*Street Address*

MCHENRY, IL 60051
*City, State, ZIP*



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McHenry County, Illinois
17LA000377
Date: 10/5/2020 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast ("Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, for their motion to compel Plaintiff to answer written discovery, state as follows:

1) On November 28, 2017, Plaintiff Paul Dulberg ("Dulberg") filed a complaint for legal malpractice against Defendants, more than two years after Defendants withdrew their appearance for Dulberg in his personal injury action against Defendant David Gagnon in *Dulberg v. Gagnon*, Case No. 12 LA 178 in the Circuit Court of McHenry County, Illinois (the underlying complaint), which arose out of a chainsaw accident.

2) At the time of the original filing in the instant matter, Plaintiff was represented by the Gooch Law Firm, and the complaint against Popovich was signed by Thomas W. Gooch, III. (Complaint, Ex. A)

3) In ¶20 of Exhibit A, Dulberg invoked the "discovery rule" in an attempt to toll the two year statute of limitations for legal malpractice claims under 735 ILCS 5/13-214.3. He alleged that Mast and Popovich had provided Dulberg false and misleading information in



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connection with his settlement in the premises liability case with Gagnon's co-defendants, Bill and Carolyn McGuire in the premises liability case, and that Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016.

4) The Gooch firm withdrew from representing Dulberg in the instant case, and the Clinton Law Firm substituted as his counsel, with attorney Julia Williams as the primary handling attorney.

5) On December 6, 2018, Dulberg filed his second amended complaint in this case (Ex., B) filed by the Clinton Law Firm. As compared to Exhibit A, Dulberg's allegations regarding the "discovery" on his cause action against Popovich are slightly different. In ¶¶ 56 and 57 of his second amended complaint, Dulberg alleges that he did not learn that false and misleading information had been provided to him until the mediation in December 2016 based on the expert opinions that Dulberg retained for the mediation.

6) Dulberg gave a discovery deposition in this case on February 19, 2020 (Ex. C). Dulberg was questioned about the "discovery" of his cause of action against Popovich and his law firm beginning on page 106 of his deposition (See also, page 108 where plaintiff Dulberg testified that his attorney at the time, Randy Boudin had told him to seek an independent opinion from an attorney that handles malpractice matters, and that Dulberg received that opinion on or about December 16, 2016 from Thomas Gooch.) Dulberg again confirmed that Gooch provided him with the legal opinion on December 16, at page 112 of his deposition. See also, pp. 113 and 114.

7) At Dulberg's deposition, Ms. Williams asserted the attorney-client privilege on behalf of her client relative to Gooch's advice in December 2016, but over the objection allowed



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Dulberg to testify concerning the substantive the discussions. The substantive testimony was sparse and vague. At p. 126 of his deposition, Dulberg agreed that his discussion with any malpractice lawyer in December 2016 is responsive to interrogatory no. 1 from Hans Mast (Ex. D). At p. 127 of his deposition, Dulberg responded to the following question:

Q: How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A: Yes.

Q: That's what you've alleged here in this complaint.

A: Yes.

8) On July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December of 2016, including the following production requests. (Ex. E)

9) On July 30, 2020, Julia Williams, then Dulberg's counsel requested 28 days to respond to Popovich's supplemental request for production. Counsel for Popovich agreed, but then received notice of the Clinton Law Firm's motion to withdraw on August 18, 2020.

10) On September 10, 2020, this Honorable Court granted the Clinton Law firm's motion to withdraw as Dulberg's counsel. Dulberg currently has a *pro se* appearance filed on his own behalf.

11) The attorney-client privilege exists to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information. *Waste Management, Inc. v. International Surplus Lines Ins. Co*., 144 Ill. 2d 178, 190 (1991); *Daily v. Greensfelder, Hemker & Gale, P.C.*, 2018 IL App (5th) 150384, ¶1122-23. However, it is not unconditional, and it is the privilege, not the duty to disclose, that is the exception. Id. Illinois adheres to a strong policy of encouraging disclosure, with an eye toward



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ascertaining that the truth which is essential to the proper disposition of a lawsuit. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 35; Daily, 2018 IL App (5th) 150384 at ¶ 23. Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." *Waste Management, Inc.*, 144 Ill. 2d at 190; Daily, 2018 IL App (5th) 150384, ¶ 23.

While the Illinois Supreme Court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists where the client voluntarily injects into a case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications. *Center Partners, Ltd.*, 2012 IL 113107 at ¶ 35; Daily, 2018 IL App (5th) 150384 at Irri 24-25. The Illinois Supreme Court in *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.* illustrated that the test in determining whether the exception exists is whether or not the communications in question are necessary to resolve the truthfulness of a factual or legal issue that was introduced by the client holding the privilege. 189 Ill. 2d 579 (2000). Furthermore, when a plaintiff places at issue in a case the extent to which multiple attorneys representing it proximately caused its alleged damages, all communications between the plaintiff and its attorneys are discoverable "to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of plaintiff's claims." *Daily*, 2018 IL App (5th) 150384 at ¶¶31- 32 (finding that the "at-issue" exception applied because "there is an issue of whether [plaintiffs' attorneys] contributed to the cause . . . and the relative contribution of each to the plaintiffs' damages").

12) In *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004), the Plaintiff's husband met with an attorney 4 days after her medical procedure (in March 1999) that was the subject of a medical malpractice claim. The claim was untimely filed, and the doctor sought production of



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records relative to the husband's meeting with the attorney. The patient asserted that production would violate the attorney-client privilege. The court affirmed the trial court's finding that the privilege was waived when she voluntarily injected the statute of limitations issue into her case, alleging she did not discover her medical malpractice claim until June 1999. This case is on point and binding.

13) At pages 133-142 of his deposition, Dulberg admitted that he communicated in writing with Gooch regarding Popovich's breaches of the standard of care, and the bases for same.

14) Based on all of the above, Dulberg has placed the discovery of his malpractice claim "at issue" and must produce any and all communications which form the basis for his "discovery" of his malpractice claims, and the bases for his argument that the 2 year statute of limitations should be tolled.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their motion to compel Plaintiff to answer written discovery and produce requested documents and that Plaintiff be required to answer the outstanding written discovery and produce all documents requested in Exhibit D within 14 days of the presentation of this motion, deny any and all objections to said production, including any objection based on the attorney-client privilege, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC



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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Katherine M. Keefe
Clerk of the Circuit Court
****Electronically Filed****
Transaction ID: 17111117451
17LA000377
11/28/2017
McHenry County, Illinois
22nd Judicial Circuit
**********

PAUL DULBERG,

Plaintiff,

v.

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,

Defendant.

No. 17LA000377

**NOTICE**

**THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM 201 ON 02/27/2018, AT 9:00 AM. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.**

COMPLAINT AT LAW
(Legal Malpractice)

COMES NOW your Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE GOOCH FIRM, and as and for his Complaint against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), states the following:

1. Your Plaintiff, PAUL DULBERG, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. Your Defendant, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Your Defendant, HANS MAST, is either an agent, employee, or partner of THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. MAST is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



**EXHIBIT A**

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4. That due to the actions and status of MAST in relation to POPOVICH, the actions and inactions of MAST are directly attributable to his employer, partnership, or principal, being THE LAW OFFICES OF THOMAS J. POPVICH, P.C.

5. Venue is therefore claimed proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

6. On or about June 28, 2011, your Plaintiff, DULBERG was involved in a horrendous accident, having been asked by his neighbors Caroline McGuire and William McGuire, in assisting a David Gagnon in the cutting down of a tree on the McGuire property. DULBERG lived in the neighborhood.

7. At this time, Gagnon lost control of the chainsaw he was using causing it to strike DULBERG. This caused substantial and catastrophic injuries to DULBERG, including but not limited to great pain and suffering, current as well as future medical expenses, in an amount in excess of $260,000.00, along with lost wages in excess of $250,000.00, and various other damages.

8. In May of 2012, DULBERG retained THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., pursuant to a written retainer agreement attached hereto as **Exhibit A**.

9. A copy of the Complaint filed by MAST on his own behalf, and on behalf of DULBERG, is attached hereto as **Exhibit B**, and the allegations of that Complaint are fully incorporated into this Complaint as if fully set forth herein.

10. An implied term of the retainer agreement attached hereto as **Exhibit A**, was that at all times, the Defendants would exercise their duty of due care towards their client and conform their acts and actions within the standard of care every attorney owes his client.



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11. That as **Exhibit B** reveals, Defendants property filed suit against not only the operator of the chain saw, but also his principals, Caroline McGuire and William McGuire, who purportedly were supervising him in his work on the premises.

12. At the time of filing of the aforesaid Complaint, MAST certified pursuant to Supreme Court Rule 137, that he had made a diligent investigation of the facts and circumstances around the Complaint he filed, and further had ascertained the appropriate law. MAST evidently believed a very good and valid cause of action existed against Caroline McGuire and William McGuire.

13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of $5,000.00. DULBERG, having no choice in the matter, reluctantly agreed with MAST and to accept the sum of $5,000.00 releasing not only William and Caroline McGuire, but also Auto-Owners Insurance Company from any further responsibility or liability in the matter. A copy of the aforesaid general release and settlement agreement is attached hereto as **Exhibit C**.

14. MAST and POPOVICH continued to represent DULBERG through to and including March of 2015, following which DULBERG and the Defendants terminated their relationship.

15. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lulled DULBERG into believing that the matter was being properly handled. Then, due to a claimed failure of communication, MAST and POPOVICH withdrew from the representation of DULBERG.



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16. Thereafter, DULBERG retained other attorneys and proceeded to a binding mediation before a retired Circuit Judge, where DULBERG received a binding mediation award of $660,000.00 in gross, and a net award of $561,000.00. Unfortunately, a "high-low agreement" had been executed by DULBERG, reducing the maximum amount he could recover to $300,000.00 based upon the insurance policy available. The award was substantially more than that sum of money, and could have been recovered from McGuire's had they not been dismissed from the Complaint. A copy of the aforesaid Mediation Award is attached hereto as **Exhibit D**.

17. The McGuire's were property owners and had property insurance covering injuries or losses on their property, as well as substantial personal assets, including the property location where the accident took place at 1016 West Elder Avenue, in the City of McHenry, Illinois. McGuire's were well able to pay all, or a portion of the binding mediation award had they still remained parties.

18. DULBURG, in his relationship with POPOVICH and MAST, cooperated in all ways with them, furnishing all necessary information as required, and frequently conferred with them.

19. Until the time of the mediation award, DULBURG had no reason to believe he could not recover the full amount of his injuries, based on POPOVICH'S and MAST'S representations to DULBERG that he could recover the full amount of his injuries from Gagnon, and that the inclusion of the McGuire's would only complicate the case.

20. Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBURG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the



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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



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h) Failed to properly explain to DULBURG all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

i) Continually reassured DULBURG that the course of action as to the property owners was proper and appropriate;

j) Were otherwise negligent in their representation of DULBERG, concealing from him necessary facts for DULBURG to make an informed decision as to the McGuire's, instead coercing him into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury.

22. That DULBERG suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of MAST and POPOVICH in urging DULBURG to release the McGuire's, lost the sum of well over $300,000.00 which would not have occurred but for the acts of MAST and THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.

WHEREFORE, your Plaintiff, PAUL DULBERG prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys THE GOOCH FIRM,

Thomas W. Gooch, III



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PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY OF TWELVE (12) PERSONS.

Thomas W. Gooch, III

Thomas W. Gooch, III
THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
ARDC No.: 3123355
gooch@goochfirm.com
office@goochfirm.com



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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ____% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

PLAINTIFF'S EXHIBIT

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COPY
MAY 15 2012
KATHERINE M. KELLER
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

ALL-STATE LEGAL®
PLAINTIFF'S EXHIBIT
B

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ___ ON 9-28-2012 AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ___ ON ___ AT ___ AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

**Paul Dulberg vs. Caroline McGuire and Bill McGuire**

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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The Law Offices of Thomas J. Popovich P.C.

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McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohiak

Mark J. Vogg
James P. Tutaj
Robert J. Lumbek
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

PLAINTIFF'S EXHIBIT C
ALL-STATE LEGAL®

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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# GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five-Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| Future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.S | 75,000. |
| L N L | 25,000. |

The Honorable James P. Etchingham, (Ret.)

PLAINTIFF'S EXHIBIT D

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** FILED ** Env: 3126388
McHenry County, Illinois
17LA000377
Date: 12/6/2018 2:46 PM
Katherine M. Keefe
Clerk of the Circuit Court

THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendant. | ) | No. 17 LA 377 |

**SECOND AMENDED COMPLAINT AT LAW**

Plaintiff, PAUL DULBERG (hereinafter also referred to as "DULBERG"), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as "POPOVICH"), and HANS MAST (hereinafter also referred to as "MAST"), as follows:

**COUNT I**
**LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.



**EXHIBIT B**

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4. As an agent, employee, or principal in Popovich, Popovich is liable for Mast's actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

**B. Relevant Facts**

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire ("Caroline"), William McGuire ("Williams") (Caroline and William collectively referred to herein as "the McGuires"), and David Gagnon ("Gagnon") in cutting down a tree on the McGuire's property.

7. Dulberg lives in the next neighborhood over from the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, McHenry County, Illinois ("the Property").

9. David Gagon is Caroline's son and William's stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. The McGuire's purchased and owned the chainsaw that was being utilized to trim, remove branches, and cut down the tree.

12. Dulberg was invited to the McGuire's property to see if he wanted any of the wood from the tree.

13. William physically assisted with cutting down the tree and, then, later supervised Gagnon's actions.

14. Caroline supervised Gagnon's and William's actions.



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15. Gagnon and the McGuires asked Dulberg to assist with trimming and removal of the tree.

16. Gagnon was acting on behalf of Caroline and William and at their direction.

17. Caroline, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

18. The safety information was readily available to Caroline and William as the safety instructions are included with the purchase of the chainsaw.

19. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

20. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

21. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

22. Caroline, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

23. Caroline, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

24. Caroline and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained in operating the chainsaw.

25. Gagnon was operating the chain saw in close proximity to Dulberg.

26. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.



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27. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner's manual.

28. Caroline and William failed to instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner's manual.

29. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

30. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, loss of use of his right arm, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, and other damages.

31. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

32. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

33. Mast and Popovich entered into an attorney client relationship with Dulberg.

34. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

35. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire's.

36. The claims against Gagnon were resolved later through binding mediation with new counsel.

37. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son and agent.



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38. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire's for $5,000.

39. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, "the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery...." * * * "So if we do not accept their $5,000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case". (See Emails attached as **Group Exhibit C.**)

40. Similarly, on November 20, 2013, Mast emailed Dulberg urging him to accept the $5,000.00 otherwise "the McGuires will get out for FREE on a motion." (See Emails attached as **Group Exhibit C.)**

41. On or around December 2013 or January 2014, Mast met with Dulberg and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told Dulberg that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

43. Mast failed to advise or inform Dulberg of other basis for recovery against the McGuires.



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44. Based upon Mast's erroneously advice that Dulberg's claims against the McGuire's were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire's and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire's and claim for indemnification under the McGuire's insurance policy. **Exhibit D (Settlement).**

45. Mast also told Dulberg that Gagnon's insurance policy was limited to $100,000.

46. From 2013 forward, Mast and Popovich represented repeatedly to Dulberg that there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and led Dulberg to believe that the matter was being properly handled.

47. Mast also reassured Dulberg that Dulberg would be able to receive the full amount of any eventual recovery from Gagnon.

48. After accepting the $5,000 settlement, Dulberg wrote Mast an email on January 29, 2014 stating "I trust your judgment." (See Email attached as **Exhibit E.**)

49. Mast and Popovich continued to represent Dulberg into 2015 and continuously assured him that his case was being handled properly.

50. The McGuires owned their home, had homeowner's insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

51. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

52. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.



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53. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

54. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon's insurance and was unable to collect from Gagnon personally.

55. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

56. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

57. It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

58. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) failed to fully and properly investigate the claims and/or basis for liability against the McGuires;

b) failed to properly obtain information through discovery regarding McGuires assets, insurance coverages, and/or ability to pay a judgement and/or settlement against them;

c) failed to accurately advise Dulberg of the McGuires' and Gagnon's insurance coverage related to the claims against them and/or Dulberg's ability to recover through McGuires'and Gagnon's insurance policies, including, but not limited to, incorrectly informing



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Dulberg that Gagnon's insurance policy was "only $100,000" and no insurance compnay would pay close to that;

d) failed to take such actions as were necessary during their respective representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed and/or were principals of Gagnon, and who sought the assistance Dulberg by for example failing to obtain an expert;

e) failed to accurately advise Dulberg regarding the McGuires' liability, likelihood of success of claims against the McGuires, the McGuires' ability pay any judgment or settlement against them through insurance or other assets, and/or necessity of prosecuting the all the claims against both the McGuires and Gagnon in order to obtain a full recovery;

f) Coerced Dulberg, verbally and though emails, into accepting a settlement with the McGuires for $5,000 by misleading Dulberg into believing that he had no other choice but to accept the settlement or else "The McGuires will get out for FREE on a motion."

59. As a direct result of Mast and Popovich's wrongful actions, Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.



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Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his attorneys The Clinton Law Firm

/s/ Julia C. Williams
Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773
Julia C. Williams, ARDC No. 6296386
The Clinton Law Firm
111 W. Washington, Ste. 1437
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# CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the_____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

EXHIBIT
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COPY

MAY 15 2012

KATHERINE M. KEEFE, McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS )
)SS
COUNTY OF McHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

## COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

### Count I

**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM 206 ON 11/28, 20 12, AT 2 AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING CONFERENCE IN COURTROOM ____ ON ____ 20__ AT ____ AM/PM
FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED ON AN ORDER OF DEFAULT BEING ENTERED.

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3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.



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8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.



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13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.



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## Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.



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21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.



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WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684



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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Dave's Best and oldest friend John**
**Date:** December 28, 2016 10:33:35 AM CST
**To:** paul_dulberg@comcast.net

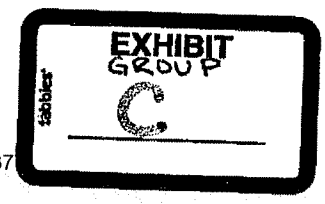
---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** November 20, 2013 at 7:26:53 AM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: Dave's Best and oldest friend John**

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>>
>> Sent from my iPhone
>>
>>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>>
>>> Only 5, That's not much at all.
>>> Is this a take it or leave it or do we have any other options?
>>>
>>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>>
>>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.




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They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

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The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kohnak

Mark J. Vogg
James P. Tutaj
Robert J. Lumbier
Theresa M. Freeman

January 24, 2014

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
**McHenry County Case: 12 LA 178**

Dear Paul:

Please find enclosed the General Release and Settlement Agreement from defense counsel for Caroline and Bill McGuire. Please Release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

COPY
HANS A. MAST

smq
Enclosure

EXHIBIT
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Waukegan Office:
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

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# GENERAL RELEASE AND SETTLEMENT AGREEMENT

NOW COMES PAUL DULBERG, and in consideration of the payment of Five Thousand ($5,000.00) Dollars to him, by or on behalf of the WILLIAM MCGUIRE and CAROLYN MCGUIRE (aka Bill McGuire; improperly named as Caroline McGuire) and AUTO-OWNERS INSURANCE COMPANY, the payment and receipt of which is hereby acknowledged, PAUL DULBERG does hereby release and discharge the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, and any agents or employees of the WILLIAM MCGUIRE and CAROLYN MCGUIRE and AUTO-OWNERS INSURANCE COMPANY, of and from any and all causes of action, claims and demands of whatsoever kind or nature including, but not limited to, any claim for personal injuries and property damage arising out of a certain chain saw incident that allegedly occurred on or about June 28, 2011, within and upon the premises known commonly as 1016 West Elder Avenue, City of McHenry, County of McHenry, State of Illinois.

IT IS FURTHER AGREED AND UNDERSTOOD that there is presently pending a cause of action in the Circuit Court of the 22nd Judicial Circuit, McHenry County, Illinois entitled "Paul Dulberg, Plaintiff, vs. David Gagnon, Individually, and as agent of Caroline McGuire and Bill McGuire, and Caroline McGuire and Bill McGuire, Individually, Defendants", Cause No. 2012 LA 178, and that this settlement is contingent upon WILLIAM McGUIRE and CAROLYN McGUIRE being dismissed with prejudice as parties to said lawsuit pursuant to a finding by the Circuit Court that the settlement between the parties constitutes a good faith settlement for purposes of the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/0.01, *et seq.*

IT IS FURTHER AGREED AND UNDERSTOOD that as part of the consideration for this agreement the undersigned represents and warrants as follows (check applicable boxes):

- ☐ I was not 65 or older on the date of the occurrence.
- ☐ I was not receiving SSI or SSDI on the date of the occurrence.
- ☐ I am not eligible to receive SSI or SSDI.
- ☐ I am not currently receiving SSI or SSDI.

IT IS FURTHER AGREED AND UNDERSTOOD:

a. That any subrogated claims or liens for medical expenses paid by or on behalf of PAUL DULBERG shall be the responsibility PAUL DULBERG, including, but not limited to, any Medicare liens. Any and all reimbursements of medical expenses to subrogated parties, including Medicare's rights of reimbursement, if any, shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released herein.

b. That any outstanding medical expenses are PAUL DULBERG's responsibility and all payment of medical expenses hereafter shall be PAUL DULBERG's responsibility, and not the responsibility of the parties released

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c. That PAUL DULBERG agrees to save and hold harmless and indemnify the parties released herein against any claims made by any medical providers, including, but not limited to Medicare or parties subrogated to the rights to recover medical or Medicare payments.

IT IS FURTHER AGREED AND UNDERSTOOD by the parties hereto that this agreement contains the entire agreement between the parties with regard to materials set forth herein, and shall be binding upon and inure to the benefit of the parties hereto, jointly and severally, and the executors, conservators, administrators, guardians, personal representatives, heirs and successors of each.

IT IS FURTHER AGREED AND UNDERSTOOD that this settlement is a compromise of a doubtful and disputed claim and no liability is admitted as a consequence hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the dates set forth below.

Dated: _____

_____
PAUL DULBERG

STATE OF ILLINOIS )
) SS.
COUNTY OF MCHENRY )

PAUL DULBERG personally appeared before me this date and acknowledged that she executed the foregoing Release and Settlement Agreement as his own free act and deed for the uses and purposes set forth therein.

Dated this _____ day of January, 2014.

_____
Notary Public

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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: McGuire settlement**
**Date:** December 28, 2016 10:21:55 AM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** January 29, 2014 at 1:59:31 PM CST
**To:** Hans Mast <hansmast@comcast.net>
**Subject: Re: McGuire settlement**

Ok, it's signed and in the mail.
Hope that some yahoo in the govt. doesn't someday decide to go after everyone they think they might get a dollar out of and end up holding me responsible for the McGuires fees incurred while they fight it out.
I'm not in the business of warranting, insuring or protecting the McGuires from government. Especially for only 5 grand. For that kind of protection it could cost millions but I trust your judgement.
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Jan 29, 2014, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> SSD has to be part of it...its not going to effect anything...
> We can't prevent disclosure of the amount...
>
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Wed, 29 Jan 2014 17:47:39 -0000 (UTC)
> Subject: Re: McGuire settlement
> What and why do those questions have any relevance at all and why do they need to be part of this agreement?
> Particularly the one about being eligible.
> Also, I cannot warranty against what SSDI, Medicare or any other government institution wishes to do.
> Is it possible to make this agreement blind to the McGuires or David Gagnon?
> What I mean is can we make it so that the amount of money cannot be told to them in any way?
> It would drive David's ego crazy if he thought it was a large sum and was banned from seeing how much it is.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Jan 29, 2014, at 10:51 AM, Hans Mast <hansmast@comcast.net> wrote:
>>
>> Its not a big deal...if you weren't receiving it than don't check it...not sure what the question is...
>> ----- Original Message -----
>> From: Paul Dulberg <pdulberg@comcast.net>
>> To: Hans Mast <hansmast@comcast.net>
>> Sent: Wed, 29 Jan 2014 16:16:04 -0000 (UTC)
>> Subject: McGuire settlement
>> Here is a copy of the first page.
>> It has check boxes and one of the check boxes says;
>> I am not eligible to receive SSI or SSDI.
>> Another says;
>> I am not receiving SSI or SSDI.
>> As you know, I have applied for SSDI and SSI

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**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: Memo**
**Date:** December 27, 2016 6:11:20 PM CST
**To:** paul_dulberg@comcast.net

---

**From:** Paul Dulberg <pdulberg@comcast.net>
**Date:** February 22, 2015 at 7:42:25 PM CST
**To:** Hans Mast <hansmast@att.net>
**Subject: Re: Memo**

To believe David's version of events you must believe I was committing suicide.
Who in their right mind puts his arm into a chainsaw?

I figured you would cop out again...

Now I'm left wondering...
How hard is it to sue an atty?

And yes I am and have been looking for someone who will take this case...

The issue of my word vs David Gagnons... Did he cut me or did I cut myself?

Of coarse he cut me.

Next issue please?

Paul Dulberg
847-497-4250
Sent from my iPad

> On Feb 22, 2015, at 7:20 PM, Hans Mast <hansmast@att.net> wrote:
>
> Paul I no longer can represent you in the case. We obviously have differences of opinion as to the value of the case. I've been telling you over a year now the problems with the case and you just don't see them. You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear - it is not. My guess is that seven out of 10 times you will lose the case outright. That means zero. That's why I have been trying to convince you to agree to a settlement. You clearly do not want to. There's only $100,000 in coverage. Allstate will never offer anything near the policy limits therefore there's no chance to settle the case. The only alternative is to take the case to trial and I am not interested in doing that. I will wait for you to find a new attorney. I can't assist you any further in this case. Just let me know.
>
> Sent from my iPhone
>
> > On Feb 22, 2015, at 7:14 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> >
> > Let's not be harsh, We have a couple of weeks till dr Kujawa's billing arrives.
> > I agree showing me the memo is a good idea it's just not the accuracy I expected.
> > I know I'm being confrontative about all of this but let's face it, my working days are over let alone a career I have been building since I was in high school. My dreams of family are over unless I have enough to provide and pay for the care of children and a roof.
> > What's left for me?
> > Facebook, scrap booking, crafts, etc... A life of crap...
> > With ongoing pain and grip issues in my dominate arm/hand that are degenerative.
> >
> > This is as total as it gets for us in the working class short of being paralyzed or dead.
> >
> > I need someone who is on my side, top of their game and will see to it that I'm comfortable after all this is over.
> >
> > What I feel is an attempt to settle for far less than this is remotely worth just to get me off the books.




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ADR systems

Binding Mediation Award

Paul Dulberg

v.

David Gagnon

ADR Systems File # 33391BMAG

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (If applicable)

Net Award: $561,000

Comments/Explanation

| | |
|---|---|
| Medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

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**Pamela Walker**

**From:** McHenry County Circuit Clerk <mchenrycircuitclerk@circuitclerkofmchenrycounty.org>
**Sent:** Monday, December 10, 2018 1:37 PM
**To:** George K. Flynn; Pamela Walker
**Subject:** 17LA000377 - 2 Documents Filed

# 17LA000377

## DULBERG, PAUL VS MAST, HANS, ET AL

| | |
|---|---|
| Doc Type | **COAA** |
| Description | **COMPLAINT - AMENDED** |
| Date Filed | **12/6/2018** |
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|---|---|
| Doc Type | **NOTF** |
| Description | **NOTICE - FILING** |
| Date Filed | **12/6/2018** |
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End of Message



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IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, )
Plaintiff, )
vs. ) 17 LA 377
THE LAW OFFICES OF THOMAS J. )
POPOVICH, P.C., and HANS MAST, )
Defendants. )

The deposition of PAUL DULBERG, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Realtime Reporter of said state, at 150 South Wacker Drive, Chicago, Illinois, February 19, 2020, at the approximate hour of 1:00 p.m.

Page 2

PRESENT:
THE CLINTON LAW FIRM,
111 West Washington Street, Suite 1437,
Chicago, Illinois 60602,
312-357-1515, by:
MS. JULIA C. WILLIAMS,
juliawilliams@clintonlaw.net,
appeared on behalf of the Plaintiff;

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC,
150 South Wacker Drive, Suite 1700,
Chicago, Illinois 60606,
312-431-3700, by:
MR. GEORGE K. FLYNN,
gflynn@karballaw.com,
appeared on behalf of the Defendants.

REPORTED BY: Karen Pileggi, CSR, RPR, RMR, CRR,
CSR License No. 84-3404

Page 3

(WHEREUPON, the witness was duly sworn.)

PAUL DULBERG,

called as the plaintiff herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLYNN:

Q. Let the record reflect that this is the discovery deposition of Paul Dulberg taken by agreement of the parties and pursuant to notice.

This deposition is being taken pursuant to the Rules of the Illinois Supreme Court, the Illinois Code of Civil Procedure and any applicable local rules in McHenry County.

Sir, could you state your name and spell your last name for the record.

A. Palm Dulberg, D-u-l-b-e-r-g.

Q. What is your address?

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. How long have you lived there?

A. Forty-nine years.

Q. Who do you live there with now?

A. Mike McArtor.

Page 4

Q. Did your mother live there at some point throughout the history of this case?

A. Yes.

Q. I'm just going to go over a few rules for the deposition. I know you've testified at least one time in a deposition before because you testified in the underlying personal injury case, correct?

A. Correct.

Q. Have you testified in any other depositions before?

A. No.

Q. I'll just remind you of a few rules that I'm sure you were aware of back then when you gave your deposition.

The court reporter is here to take down everything that you and I say. She can only take down one at a time so I'd ask that before you answer a question, let me finish the entire question. Okay?

A. Yes.

Q. I'll try to do the same. I'll try to let you respond before I ask a follow-up question.

You just nodded your head. That's



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another good point to make. She can't take down nods of the head, shrugs of the shoulders or other hand gestures. Your answers need to be verbal.

From time to time we forget those rules and I may just point to the court reporter as a reminder, if that's okay.

A. Yes.

Q. If you need to take a break at any time, feel free to stop me. I just ask that it's not while a question is pending that has not been answered. Fair enough?

A. I'll try to do that.

Q. If you've answered a question, I will assume you understood it. Okay?

A. Yes.

Q. I was asking you about your mother. She lived at the house during the pendency of the underlying case?

A. Yes.

Q. Is she still alive?

A. Yes.

MS. WILLIAMS: Can we define "underlying case"?

BY MR. FLYNN:

Q. The underlying case is a personal injury

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case that you filed against Bill and Caroline McGuire and David Gagnon.

A. That sounds correct.

Q. We'll get into the dates of the filing a little bit later. We'll call that, generally, the underlying case.

Your mother lived at the house at that time?

A. Yes.

Q. Did she own the house?

A. No.

Q. Do you own the house currently?

A. Yes.

Q. Does anyone else own the house?

A. No.

Q. How long have you owned it?

A. I think I first purchased it off my parents in '97, '98, something like that.

Q. Did you hire a lawyer in connection with that transaction?

A. No.

Q. Were your parents represented by a lawyer?

A. No.

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Q. The building, as I understand it, is a duplex; is that right?

A. No.

Q. Were there two apartments in the building at one time?

A. No.

Q. Was there a point in time where you and your mother lived in one half of the house and Mike McArtor lived in the other half?

A. Yes.

Q. How was that arrangement with respect to the location of the living spaces, if you can describe it?

A. It has a walkout basement. He had the downstairs with an exit out the back. We had the upstairs with an exit out the front.

Q. Have you ever been convicted of a crime of fraud, dishonesty or deceit?

A. No.

Q. Besides the hiring of the Popovich firm in connection with the underlying personal injury case, up to that point in time had you ever had an occasion to hire a lawyer?

A. I did during a traffic accident, and I

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don't remember the year.

Q. Were you injured in about 2002? Does that sound right?

A. Roughly.

Q. Who did you hire?

A. I might get the name wrong because it's been a long time. I think it was Weiss and Michling and something else. It was a lawyer right outside the courthouse in Woodstock.

Q. A McHenry County lawyer?

A. Yeah.

Q. It was a personal injury case?

A. Yeah. It was a car accident.

Q. Did you file a lawsuit in that case?

A. I don't think we needed to.

Q. You just filed an insurance claim?

A. They did, yes.

Q. You settled it?

A. Yes.

Q. Any other occasions to hire a lawyer between that time and the time you hired the Popovich firm?

A. May I consult for a minute because I'm not sure how to answer that.



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Q. Why don't you just tell me why you can't answer it.
A. Because I've hired lawyers, but they were for the company that I had. That's different.
Q. I'm asking general questions about any interaction you've had with hiring lawyers. Any experience you've had with hiring lawyers.
A. I had a corporate lawyer. My mom and dad hired a lawyer for me when I was a kid. It was something. And myself, just the corporate lawyer, the car accident lawyer and the Popovich firm.
Q. Have you ever been married?
A. No.
Q. So you never hired a divorce lawyer. Good. How old are you now?
A. Forty-nine.
Q. The underlying case arose out of an injury that occurred on June 28, 2011, correct?
A. That sounds correct.
Q. How old were you at that time?
A. Forty-one.
Q. Besides the underlying lawsuit against the McGuires and Mr. Gagnon, had you ever filed any other lawsuit up until that point in time?

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A. No.
Q. Have you filed any lawsuits since that time besides the lawsuit against Popovich and Mast?
A. No.
Q. Do you have any military experience?
A. Yes.
Q. Please tell me about that.
A. Army National Guard. Illinois Army National Guard.
Q. How long have you been in the National Guard?
A. I'm not currently in it.
Q. When were you, from when to when?
A. I may not get the year correct. '88 or '89 to '92 or '93, somewhere in there.
Q. What was your highest rank when you were discharged from the National Guard?
A. When I was discharged?
Q. Correct.
A. I don't know. I've gotten moved up and moved down. I don't know where I ended up.
Q. How was it that you were discharged?
A. Less than honorable.
Q. What was the cause?

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A. I missed morning call, roll call. If you're not there, you're AWOL.
Q. Absent without leave?
A. Yes.
Q. What is the highest level of education that you've attained?
A. I do not have a degree. Two years of college.
Q. You graduated from high school?
A. Yes.
Q. Was that in Johnsburg in 1988?
A. Yes.
Q. Did you know Mr. Gagnon from Johnsburg High School?
A. Not from high school but just after high school.
Q. Just coincidentally you attended the same high school?
A. He was three years older than I was. I didn't know who he was until after high school.
Q. You had some education after high school but did not receive a degree, correct?
A. Correct.
Q. Where did you study?

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A. I had a couple classes at McHenry County College and McMurray College.
Q. What did you study?
A. The first two years. The basics.
Q. General studies?
A. Yeah. I did a criminal justice course. I did a macro/microeconomics. I did psychology, sociology. The normal stuff.
Q. How did you meet David Gagnon?
A. Through a mutual friend.
Q. When was that?
A. I want to say, roughly, 1990.
Q. Was your home located somewhere fairly close to his parents' home or his mom and stepdad's home?
A. Two streets away.
Q. That's where you were injured on June 28, 2011, was at David Gagnon's mom's house and his stepdad's house?
A. Yes.
Q. And their name is McGuire?
A. Yes.
Q. Generally speaking, you were injured assisting David with a chainsaw trying to cut down a



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tree?
A. He was cutting a branch.
Q. Cutting branches off a tree, correct?
A. Cutting up the branches after they were off the tree.
Q. Could you tell me a little bit about your work history. Do you have any licenses or certifications?
A. I'm certified to run printing presses. Or at least I was.
Q. You worked for Sharp Printing, Inc. from '91 to 2011; is that right?
A. Ninety-one? No. I would say 1999.
Q. Did you own that corporation?
A. Yes. Well, partner. I was a partner. I didn't own like...
Q. It was an Illinois corporation?
A. Yes.
Q. Were you –
A. A stockholder.
Q. Let me just finish my question so she can take us down.
You were a stockholder in Sharp Printing, Inc.?

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A. Yes.
Q. Who else were the stockholders?
A. Mike McArtor and Scott Dulberg and at that time it was Herbert Dulberg.
Q. What does that mean? Do you mean Scott's name was Herbert?
A. No. Scott Dulberg was an owner and Herbert Dulberg was an owner. Three different Dulbergs: me, my brother, my dad.
Q. And Mike McArtor?
A. Yes.
Q. There were four owners at what time?
A. Until my dad died and then it went to three.
Q. Was that business incorporated?
A. Yes.
Q. Did a lawyer assist the corporation with setting up the corporation?
A. Yes.
Q. When did that happen?
A. 1999.
Q. Did you hire the lawyer yourself?
A. All three of us did. All four of us. Sorry.

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Q. What was the name of that attorney?
A. McAndrews, and I don't remember the rest of it. It was McAndrews in McHenry. I can get you the rest of that information.
Q. They are based in Crystal Lake, Illinois?
A. It used to be in McHenry when we did that.
Q. Patrick McAndrews, he was also identified as the registered agent of that corporation?
A. Yes.
Q. It was voluntarily dissolved on April 8, 2011; is that right?
A. That's what the Secretary of State's Office has, yes.
Q. Is that your understanding as well?
A. I was corrected. My partners – I was corrected. It was actually after the accident. How it got to end up with that date, I'm not sure.
Q. What was corrected, exactly?
A. Well, do you want me to -- Mike read my deposition and he said, "You got that wrong." I said, "What do you mean?" because I answered it twice in that deposition.
I was thinking that Juskie happened

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before the accident. Sharp Printing wasn't actually dissolved until after the accident when we decided to sell off the equipment and end it all. That's the honest truth.
Q. I will represent to you that the Illinois Secretary of State's Website as of today shows that the company was involuntarily dissolved on April 8, 2011. So it's your testimony that that is not true?
A. I don't know how they come up with that.
Q. Why don't we break it down and start with why the corporation was involuntarily dissolved. Do you know that?
A. Involuntarily? I don't know. It may be that I was late on paying the corporate licensing thing, which we just pay a fine and did it. We didn't renew it because we decided to end it.
We had a ten-year thing, I think, on it. I may be wrong. I've got to go back and look at the records.
Q. Is it possible that the corporation was actually involuntarily dissolved by the Illinois Secretary of State on April 8, 2011?
A. Sure.
Q. Did Sharp Printing, Inc. file corporate



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tax returns while it was a going concern?
A. We had a problem the couple of years before the accident because I was not up in Illinois and I usually did that with the lawyer and the accountant and things got screwed up while I was taking care of a loved one who was dying down in Florida.
Q. Did the corporation ever file tax returns?
A. Oh, yes.
Q. When did they file?
A. Quarterly and annually.
Q. Until what year?
A. Roughly somewhere in 2008. I was missing things because I was not here. I know we missed a few.
Q. I believe you testified in your underlying deposition that Sharp Printing, Inc. was not dissolved as a result of your June 28, 2011 chainsaw accident, correct?
A. Yes, I did. I stood corrected by my partners.
Q. So is it your testimony that the corporation was dissolved because of your personal

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injury?
A. I don't know how to answer that without going back and looking at records.
Q. Was the company winding down up until about the time you were hurt?
A. The company books got screwed up when I was down in Florida and I was back up in Illinois in 2010 getting back on my feet and I was going to pick things back up, get everything paid up, the fines and everything.
Q. Who were you taking care of in Florida?
A. My grandmother.
Q. You were gone from when until when?
A. I want to say from the mid to end of 2007 until somewhere in the beginning of 2010.
Q. Was anyone running Sharp Printing during that period of time?
A. Mike McArtor.
Q. Did Sharp Printing have any customers for that three-year period?
A. Yes, they did.
Q. How many?
A. I'm not sure, without looking at the books.

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Q. Can you estimate what the yearly revenues were for Sharp Printing in the year 2007?
A. In 2007? I'd have to look at the books, to be honest with you.
Q. Was it more than $5,000?
A. Yes.
Q. Was it more than $100,000?
A. No.
Q. Was it more than $20,000?
A. Yes.
Q. Same line of questioning with respect to 2008. Do you know what the revenues were for Sharp Printing in '08?
A. Are you asking me what we reported or what we made and put into accounts for equipment?
Q. I'm asking you about revenues.
A. Total sales?
Q. Total revenues.
A. In two thousand...?
Q. 2008.
A. I'd have to go back and look.
Q. Can you estimate what they were?
A. No, because I wasn't there.
Q. Do you know how many customers the

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company had in 2008?
A. We had a few, I know that. I don't know how many. Mike was handling it and it got messed up.
Q. What types of customers did Sharp Printing have in 2007 and 2008?
A. What kind of customers?
Q. Right. What did you do?
A. We printed on t-shirts. We printed on CDs. We printed on anything that wasn't wet. We printed on glass, all different stuff.
Q. Were there any full-time employees of Sharp Printing in '07 and '08?
A. In '07 and '08, no.
Q. Just the owners?
A. Just the owners.
Q. Did all the owners operate the business?
A. Yes.
Q. Including your brother?
A. Yes.
Q. What were the yearly revenues of Sharp Printing in 2009?
A. I don't know.
Q. What about 2010, do you know?



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A. No.
Q. When did Sharp Printing start selling its equipment?
A. I put up the ad in August. I think August. I might be off by a month or two. August of 2011.
Q. Did you sell any equipment prior to August 2011?
A. No.
Q. What type of equipment did Sharp Printing, Inc. have or own?
A. Mostly textile screen printing equipment, but we had other screen printing stuff too. Paper.
Q. Where was the equipment located?
A. My home.
Q. Did you require a license to conduct this business out of your home?
A. We had what was called a temporary – we're in a rural area so we didn't have to have that.
Q. In any event, you didn't have a license, correct?
A. We had a license to do business there, yes.

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Q. In that location?
A. Yes.
Q. Did customers ever come to the shop?
A. Yes.
Q. Do you recall how many customers the business had in 2010?
A. Not in 2010.
Q. Was it more than five?
A. Yes.
Q. Was it more than 100?
A. It might be around that. I don't know, specifically.
Q. In 2010 you may have had 100 customers that you did t-shirt screen prints for?
A. Possibly. I'm not saying that is the number, but it's possible.
Q. Did Sharp Printing have any customers in 2011?
A. Mike was finishing up one customer's thing in the spring of 2011, yes. We don't – I'll give you -- we don't typically get much work between January 1st and the first warm days of Spring. We sell t-shirts and not a lot of people buy during that period. They just don't.

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Q. You did not earn a salary from Sharp Printing, correct?
A. No.
Q. You did not earn an hourly wage, correct?
A. No.
Q. I think your interrogatory answers indicate you didn't take a profit or a draw, correct?
A. Correct.
Q. How much, if any, money did you earn from Sharp Printing in 2011?
A. Can I ask how to define that? In 2011 I didn't pull any.
Q. Did you earn any income whatsoever from Sharp Printing in 2010?
A. I don't think so.
Q. You were down in Florida for '07 to 2010?
A. Sometime in early 2010, yes.
Q. Did you earn any income from Sharp Printing from 2007 to 2010?
A. No.
Q. Were you working in Florida?
A. No.
Q. Is it fair to say you were unemployed

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from 2007 to 2010?
A. Yes. I was not officially collecting unemployment.
Q. You weren't an employee of any business or working for any individual, correct?
A. I did do some work for Mark. I did some traveling back and forth from Florida to Illinois back and forth during that time. When I was up here, I did do some work for Juskie Printing. Not much, though.
Q. What is Juskie Printing?
A. Juskie Printing is another one that I had listed as an employer in the underlying case.
Q. What are they?
A. Another print broker.
Q. Where are they located?
A. I don't know the exact address, but it's off of Chicago Avenue off of 355 going south.
MS. WILLIAMS: I think he's asking what city.
BY THE WITNESS:
A. I don't know how the cities break up down there.
BY MR. FLYNN:
Q. Somewhere in the western suburbs of



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Chicago?
A. Yes.
Q. How long did you have a relationship with Juskie Printing?
A. Since the early 2000s.
Q. What type of printing did Juskie do?
A. Offset, mostly.
Q. What does that mean?
A. Prints on paper.
Q. Did you have a set schedule at any time working for Juskie?
A. I don't know what you mean by "a set schedule."
Q. Did you have a particular number of hours per week?
A. No. The jobs I got were project based.
Q. How many projects did you have from 2007 to 2011 for Juskie?
A. Probably a few hundred quick little things, yeah. At least.
Q. Do you know what you earned from working at Juskie in 2007?
A. Not without looking at the returns, I don't know offhand.

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Q. How often were you in the Chicago area in 2007?
A. I didn't leave here until, I want to say, August or September of '07.
Q. And then thereafter?
A. I was not back that year.
Q. You didn't work for Juskie in 2008, correct?
A. I might have done some stuff.
Q. You're not sure?
A. I'd have to go back and look.
Q. Were you in Florida?
A. Part of the time, yeah.
Q. How often did you come back and forth between --
A. About every three months I tried to get back up here.
Q. For how long?
A. Sometimes a few weeks. Sometimes a month.
Q. Did you come back and work or did you take care of other things?
A. If I'd let Mark know I was back, "I've got something for you or I don't."

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Q. Who is Mark?
A. Mark owns Juskie Printing.
Q. I think your interrogatory answers indicated from 1999 through 2006 you were employed in a barter situation; is that right?
A. With Mark, yes.
Q. What does that mean, exactly?
A. Well, he would owe me money and he would give me printing equipment instead of cash.
Q. He owed you money for working for him?
A. Well, he owed both Sharp Printing and me, personally, money. They are two different things. But he would just pay by saying, hey, I've got this or I've got this paper cutter or this or that. It was a barter.
Q. So you worked for him from 1999 to 2006 but did not earn any income in the traditional sense?
A. No money changed hands.
Q. He gave you things to pay you for projects?
A. Correct.
Q. You gave a deposition in the underlying case on January 24, 2013. Does that sound right?

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A. If it says it on there, yes.
Q. You took an oath that day?
A. Yes.
Q. You told the truth?
A. I tried to, to the best of my knowledge, on that day, yes.
Q. You told the truth in response to all of the questions that day, correct?
A. I tried to, yes.
Q. You testified you were last employed prior to the accident in May of 2011?
A. That would be with Juskie, yes.
Q. It's accurate --
A. Actually, I wasn't employed. I was a 1099 so I was self-employment.
Q. When in May did you stop working for Juskie, whether it be as an employee or an independent contractor?
A. I believe it was the end of May.
Q. Then from the beginning of June until your accident on June 28, 2011, you were not employed; is that an accurate statement?
A. Correct.
Q. You were not even acting as an



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independent contractor for any business from that period of time, correct?
A. Not during that month, no.
Q. Your deposition testimony from 2013 is typed up on 175 pages. I don't intend to go back over each of those details.
A. Okay.
Q. It's fair to say you were injured, your arm was injured on June 28, 2011, correct?
A. Correct.
Q. Which arm was that?
A. My right arm.
Q. As a result of the injury, you hired the Popovich law firm to explore a recovery in the case?
A. I hired them to represent me, yes.
Q. You hired them to represent you and file a lawsuit against David Gagnon who was operating the chainsaw that injured you, correct?
A. He was one of them, yes.
Q. I'm asking you if you hired him to --
listen to the question, please.
David Gagnon was operating the chainsaw, correct?
A. Correct.

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Q. No one else was operating the chainsaw?
A. Correct.
Q. You also hired Popovich to sue Bill and Caroline McGuire, correct?
A. Correct.
Q. They were the land owners where your accident occurred?
A. They did own the land, yes.
Q. The accident occurred at their house, correct?
A. Correct.
Q. This was in the backyard, so to speak?
A. Yes.
Q. Hans Mast was the primary handling attorney at the Popovich firm for your case?
A. That's who I met with, yes.
Q. Did any other lawyer communicate with you while Popovich was handling your case?
A. The lady who sat in on my deposition. Ms. Freeman I think it is. I'm not sure about that.
Q. Generally speaking, Hans Mast, though, was the primary handling attorney?
A. Yes.
Q. Before you hired the Popovich firm in May

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of 2012, is that the correct time period?
A. I don't think so. I don't think they filed it until then, but I might be wrong. I'd have to go back and look.
Q. Was there a retainer agreement executed in May 2012?
A. I don't think I paid a retainer.
Q. Did you execute an attorney engagement agreement in May 2012?
A. I believe it was much earlier than that.
Q. You only executed one engagement letter or engagement agreement with Popovich, correct?
A. Yeah.
Q. Before you executed or came to an arrangement with Popovich, had you talked to any other lawyers about investigating --
A. One.
Q. Let me finish the question.
-- investigating or filing the lawsuit?
A. Yes.
Q. Who was that?
A. I went back to the same firm that handled the car accident for me years earlier.
Q. What was the name of that firm?

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A. They changed names when I went back there. It was Weiss -- I have to go back through paperwork and get you the actual name.
Q. They are known as a personal injury firm; is that right?
A. Yes.
Q. Why did you not hire them to take your case?
A. The man who handled my case previously with the car accident was no longer with the firm and they said go find somebody else.
Q. I'm not sure what one has to do with the other.
A. I don't either. I just said okay and I went and found somebody else.
Q. Did you meet with an attorney at that firm?
A. Yes.
Q. Did you tell them what happened with your incident?
A. Yes.
Q. They told you that they did not want to take the case; is that right?
A. Yes.



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Q. They declined the case?
A. They declined the case.
Q. Did they tell you why they declined the case?
A. No.
Q. You next went to the Popovich firm?
A. Yes.
Q. They took the case?
A. Yes.
Q. They, ultimately, filed a lawsuit against Gagnon and the McGuires on May 15, 2012; is that right?
A. Yes.
Q. You reviewed the lawsuit and approved it, correct?
A. I didn't -- I never got anything to review.
Q. Did you ever read the lawsuit?
A. No. I was never given any paperwork.
Q. Back to the incorporation of Sharp. What interaction did you have with corporate lawyers when they were first retained?
A. McAndrews?
Q. Correct.

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A. What relationship?
Q. What experience did you have with McAndrews when you first retained them?
A. He was good.
Q. How often did you meet with him or speak to him?
A. Once a year.
Q. Did he file corporate returns or other documents for the company?
A. No. I had to file them. He just made sure they were all done right, I believe.
Q. Have you ever had occasion to hire a criminal lawyer?
A. I did in 1990. My mom and dad had to hire one. Not me.
Q. Did you hire a criminal lawyer for your mom and dad?
A. No. They hired one for me.
Q. Who was that?
A. Give me a second. You're digging back far in my memory. Driscoll was the last name.
Q. This was a McHenry County-based criminal lawyer?
A. No. Des Plaines.

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Q. What was the general nature of the reason for the need for a lawyer?
A. Drug possession.
Q. Were you convicted of it?
A. Yes. I pled guilty.
Q. That was a Cook County case, then?
A. No. It was a McHenry County case.
Q. The lawyer was in Des Plaines, though?
A. Yes.
Q. But he represented you in McHenry County in criminal court?
A. Yes.
Q. Throughout the case you met with the lawyer?
A. A few times.
Q. While Popovich represented you in the underlying personal injury case, did you ever communicate with any other lawyers about your case?
A. At the end, yes.
Q. Popovich withdrew sometime in March 2015?
A. Correct.
Q. And Brad Balke entered his appearance on March 19, 2015. Does that sound correct?
A. That is correct.

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Q. Popovich also withdrew that day, right?
A. I don't know if it was on the same day. I'd have to look at the paperwork.
Q. Besides Mr. Balke, had you talked to any other lawyers towards the end of the relationship with Popovich?
A. Yes.
Q. How many?
A. Hundreds.
Q. Hundreds of lawyers?
A. I'm not kidding. Yes.
Q. Did you ask those lawyers to take your case?
A. I asked them to review it.
Q. Did any of them take the case?
A. No.
Q. They all reviewed it, though?
A. Yes. Most took the time to review it.
Q. Did any of them tell you why they didn't want to take the case?
A. There were different reasons I got from various. Some people just didn't get back to me and some people wrote me letters. I think I gave you some of those. But I got various reasons back from



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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he –
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

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A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of



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money?
A. Yes.
Q. Was this before or after the McGuires settled out of the case?
A. They were settled.
Q. So there was an offer of settlement from David Gagnon or his insurer?
A. Yes.
Q. Do you recall what that amount of money was?
A. $50,000.
Q. You refused the offer?
A. Yes.
Q. Why did that cause you to fire Brad Balke?
A. He wouldn't take it any further than that and he agreed to when I hired him. He agreed that that was not going to be the end of it and then he changed his tune, and I said, you know what -- and the other thing was, I finally got through to the Baudins who I wanted to take the case because they had helped my family -- his dad helped my family many eons earlier.
Q. Did you ever talk to Brad Balke about the

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liability or lack of liability by the McGuires, the property owners in the case?
A. I don't think so. We were on the Gagnon case.
Q. You didn't discuss the McGuires?
A. There may have been a word or something, but that's not what he was there for.
Q. He never gave you an opinion one way or the other whether the settlement was appropriate?
A. I don't believe Brad did, no. Like I said -- I don't think he did.
Q. At some point after your accident did you hire the Daley Disability Law Firm?
A. Yes.
Q. Was that for --
A. I didn't hire.
Q. I know you're anticipating what I'm saying.
A. I was trying to correct myself. I did not hire.
Q. Either way, let me try to get out my question before you raise any kind of response, just so she can take down --
A. Count before I answer.

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Q. That's a good idea.
Did you ever retain the Daley Disability Law Firm?
A. NO.
Q. Did you have any relationship with Daley Disability --
A. Yes.
Q. -- Law? Let me finish it before you answer. I know you're anticipating what you think I'm going to say, but it might not come out the way you think. Either way, she can't take down both of us talking over each other.
What relationship did you ever have with the Daley Disability Law Firm?
A. They stepped in as a substitute counsel for the law firm that I did hire.
Q. You originally hired some other law firm to represent you in connection with social security disability?
A. Yes.
Q. What was the name of that original law --
A. The lady's ladies name was Margaret Bradshaw.
Q. You terminated your relationship with her

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one way or another?
A. No.
Q. Why did Daley Disability Law substitute in for her?
A. I was told by -- I have to go back and look at the communications exactly how it happened, but I was told that, basically, they are going to be taking over the hearing part of it. I don't know why. I don't know whether they sub out work. I don't know how it works.
Q. Would it be fair to say that you first retained Ms. Bradshaw in 2012 sometime?
A. I'd have to go back and look.
Q. Is that approximately when you applied for social security?
A. It sounds like it.
Q. The Daley Disability Law Firm came in sometime in 2012 as well?
A. I don't know exactly when. I don't know.
Q. Would it be 2012 or 2013?
A. I know that they were there and -- I know that something had to be signed when we went in for the hearings. Margaret Bradshaw had to sign something for the judge allowing Daley Disability to



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represent me at the hearings. I don't know when exactly they got involved. That's behind the scenes. I didn't have anything to do with that.
Q. Did you file for bankruptcy while your personal injury case was pending?
A. Yes.
Q. When did you file for bankruptcy?
A. I'd have to look at the paperwork again, but I don't believe that was until, I want to say, about eight or nine months, but I'm guessing, after the McGuire settlement.
MS. WILLIAMS: The question was what month and year.
BY THE WITNESS:
A. I don't know exactly. I'd have to go back and look at the paperwork.
BY MR. FLYNN:
Q. Did you hire a lawyer to represent you in a bankruptcy?
A. Yes.
Q. Who was that lawyer?
A. David Stretch.
MS. WILLIAMS: If it helps, we can stipulate to the date the bankruptcy was filed.

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MR. FLYNN: That's fine. I think we've got some e-mails that may reflect when it was. I just wondered if he knew offhand.
MS. WILLIAMS: I can stipulate, at least, that it was 2014.
BY MR. FLYNN:
Q. You filed for bankruptcy while the Popovich firm was still representing you --
A. Yes.
Q. -- in the underlying case, correct?
A. Yes.
Q. Sometimes I'll still pause in my question so if you could please pause before you answer.
In the underlying case you answered written discovery; is that true?
A. I believe so.
Q. Then you later testified at your deposition January 24, 2013, correct?
A. If that's the date, yes.
Q. Ultimately, David Gagnon was also deposed, true?
A. Yes.
Q. Were you present for his deposition?
A. No.

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Q. Did Caroline McGuire give a deposition in that case?
A. I believe so, yes.
Q. Were you present for that dep?
A. No.
Q. What about Bill McGuire's deposition?
A. I was not present.
Q. Did you e-mail back and forth with Hans Mast a fair amount during the Popovich firm's representation of you?
A. By "fair amount," what do you mean?
Q. Did you regularly e-mail with Hans Mast?
A. Yes.
Q. Those e-mail communications have all been produced in this case?
A. Yes.
Q. On to the exhibits. This will be 1.
(WHEREUPON, a certain document was marked Exhibit No. 1, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Let me show you what's been marked as Exhibit 1. These are one set of your Answers to Interrogatories in our case, the current legal

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malpractice case you filed against the Popovich firm and Hans Mast.
Do you recognize this document?
A. Yes.
Q. We've been providing you with various copies of the signature page in the case that's been back and forth between me and your counsel.
I don't, frankly, know if this verification that's attached is the one that went with this document, but I'll just ask you, for the record, if these are your answers, that's your signature, and that this verification is accurate?
A. That is my signature on there, yes.
Q. What was the e-mail address you used in the communication with Hans Mast?
A. Primarily it was pdulberg@comcast.net.
Q. His address was hansmast@comcast.net?
A. And he switched it to at&t.net.
Q. Did you use some other e-mail address as well?
A. I may have accidentally e-mailed him a couple of times from a Yahoo account.
Q. In answering discovery in our case, the legal malpractice case, did you search through both



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of those e-mail accounts of yours?
A. I no longer have the Yahoo account.
Q. Did you search through the Comcast account?
A. Yes.
Q. Did you search for PDFs or attachments to those e-mails that you produced?
A. Everything that I got, I turned over. I had converted the e-mails to PDFs because Comcast started purging the e-mails after so many years, so I turned them all into PDFs.
MS. WILLIAMS: The question was what did you search in your in box.
BY THE WITNESS:
A. What did I search?
BY MR. FLYNN:
Q. Let me ask you a different question. You produced e-mails in this case?
A. Yes.
Q. You turned e-mails into PDFs and sent them to your lawyer; is that right?
A. Yes.
Q. Some of the e-mails I reviewed have an icon that indicates there was a PDF or some other

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attachment to the e-mail. Do you understand that?
A. Yes.
Q. Did you produce the attachments to each of the e-mails in this case?
A. We went through that. I produced the attachments that I still had.
Q. There were some that were not available, correct?
A. Yeah. When I looked at them, 99 percent of them were already part of some other document that we turned over. I think 100 percent of them.
Q. At some point in time while Hans was handling your case, did he start to communicate with you relative to his analysis of the McGuires' liability in the case?
A. Yes.
Q. Did he start to generally advise you that he didn't believe that there was a strong case for liability against the McGuires?
A. Yes.
Q. Is it fair to say that Hans' opinion was that the McGuires did not have liability in the case because they did not control the work that David Gagnon was doing?

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A. Yes.
Q. That's generally a fair summary of Hans' opinion?
A. Not quite exactly those words, but yeah.
Q. The McGuires' liability as property owners was questionable because based on Hans' analysis of the evidence, they did not control the work or the manner of work of David Gagnon on the date of the accident; is that a fair summary?
A. Depends on which time he said that.
Q. Did he say things like that over and over again?
A. He did say things like that, yes.
Q. Again, I don't want to go over the facts you already testified to with regards to the date of the accident. At some point in time was William McGuire swimming in the swimming pool?
A. Yes.
Q. Was that an above ground pool or --
A. Above ground.
Q. Was there a fair amount of time during the day that Mr. McGuire was inside the house watching television?
A. Maybe -- he went inside the house for

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probably about 45 minutes before the accident happened. I don't know that he was watching television.
MR. FLYNN: Let's mark the next exhibit as 2.
(WHEREUPON, a certain document was marked Exhibit No. 2, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 2, which is an e-mail chain including e-mails from November 18, 2013, are these e-mails between you and Hans Mast?
A. It looks like it, yes.
Q. I think the time stamps on these e-mails go from the bottom, which would be page 2, to the top of the first page, correct?
A. It's backwards, yes.
Q. In the original e-mail at 1:28 p.m., did Hans Mast relay to you a $5,000 settlement offer from the McGuires?
A. Which -- where are you at?
Q. We're on Exhibit 2, which is also labeled as Bates label POP 181. At the bottom of the page, does Hans relay to you a settlement offer for



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$5,000?
A. Yes.
Q. He was telling you that the McGuires' attorney offered to settle the case for $5,000?
A. Yes.
Q. Did you have an understanding that that was a settlement just for the McGuires, not including David Gagnon?
A. Yes.
Q. In the e-mail Hans says, quote, "As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now."
Is that an accurate reading?
A. Of that sentence, yes.
Q. Is it fair to say that he suggested that you take the $5,000 but didn't force you to take it?
A. It says, "So my suggestion is..."
Q. Then did you respond to the e-mail?
A. Yes.
Q. Hans replied again at 8:07 p.m. that same day, right?
A. Yes.

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Q. He said, "Paul, whether you like it or not, they don't have a legal liability for your injury because they were not directing the work."
Is that right?
A. Part of it, yes.
Q. Was my prior summary of Hans' legal analysis a fair summary in view of these e-mails and his opinion that he relayed to you?
A. I think it went further than this, and other things, but yes.
Q. As far as these e-mails, I've accurately --
A. This e-mail, yes.
Q. What else did he tell you about the McGuires and why he didn't think they would be found liable in the case?
A. I'm pulling out of memory because I can't quote which document it's off of.
Q. That's what we're here for.
A. I can only give you the gist.
Q. I'll ask you for the exact language, but if you don't have it –
A. At one point he defined what an independent contractor is for me and he said that

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David was an independent contractor and that the McGuires weren't liable because they had hired somebody outside even though it's their own son, he's an adult, outside to do the work and that they weren't responsible.
Q. By the way, how old was David at the time that this accident occurred?
A. I'm adding. If I was 41 -- I don't know what his birthday is, but I'm assuming he would be 44, 45.
Q. Is it fair to say that there were two 40-plus-year-olds, a 41- and a 44-year-old trimming trees with a chainsaw in David's parent's backyard that day, correct?
A. I was not using it. There was one 44-year-old using a chainsaw.
Q. You, the 41-year-old was holding some branches for him?
A. Yes. Just before the accident, yes.
Q. Up until this point in time when Hans is providing this legal analysis to you, you had a fair number of occasions to interact with lawyers, as we've discussed today, correct?
A. At this point, the only lawyer that I

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interacted with was the first one.
Q. I'm talking about in your lifetime. You had a corporate lawyer, you had a criminal lawyer, another personal injury lawyer –
A. I didn't hire –
Q. Let me finish. You had experience with lawyers representing you up to this point in time?
A. Yes.
Q. Did you have an understanding that lawyers evaluate cases differently?
A. Yes.
Q. And judges evaluate cases differently?
A. Sure. That's fair.
Q. Would it be fair to say that some laws in our country are clearer and some are open to interpretation?
A. I think all of them are.
MS. WILLIAMS: Objection. Calls for speculation.
If you understand the question, you can answer it.
BY MR. FLYNN:
Q. Would you say, for example, that the tax code is a little more clearcut than common law



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that's created by cases and case precedent?
A. I'm not real familiar with tax law. I have accountants for that.
Q. How about an easier question. The stop sign means that you stop, and if you go through it, it's pretty clear that you're liable for a traffic violation?
A. I'll agree with that.
Q. The legal liability for a property owner in Illinois might be a little more complicated; is that a fair statement?
A. I don't know.
Q. Would it be fair to say, in your opinion or your knowledge of the law, the property owner isn't necessarily liable because somebody is injured on their property?
A. Are you talking about what I know now or what I knew back when this was?
Q. At any time.
A. What I know now is in the circumstances that we were in, they were very liable.
Q. I'm just asking if -- just because somebody is injured on a property owner's property, they are not necessarily liable, correct? Other

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factors are required too.
MS. WILLIAMS: I'm going to object for -- he's not an expert and can't testify to legal analysis.
BY MR. FLYNN:
Q. As you sit here today, do you know whether a premises liability case involves multiple factors to prove liability against the property owner?
A. I don't know. I'd say that's fair. You're asking the wrong person for that.
Q. It was Hans' opinion that the McGuires did not control the work based on the evidence, correct?
A. In my opinion?
Q. That's not what I'm asking.
Was it Hans' opinion --
A. I can't --
Q. Let me just finish.
Did Hans tell you that it was his opinion that the McGuires were not liable because they did not control the work?
A. He said that right there, yes.
Q. Do you believe that he truly felt that way? That was his legal opinion?

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A. Do you want the Monday morning quarterbacking version or at the time?
Q. I'm asking if at that time you felt that he truly believed that the McGuires did not have liability?
A. At the time I trusted him, yes. I hired him to represent me, and yeah.
Q. You believed that he was relying his honest legal opinion to you at that time?
A. Yes.
Q. Including on November 18, 2013?
A. Yes.
Q. You did not accept the settlement offer of $5,000 that he relayed to you on that day, correct?
A. Correct.
Q. Did you ultimately meet with Hans to discuss the settlement offer?
A. I think it was the day before this, but I'm not sure. It was either the day before or the day after.
MS. WILLIAMS: I think the question was, did you meet with him, at all, not the date.

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BY THE WITNESS:
A. Yes.
MR. FLYNN: Can we mark this as Exhibit 3, please.
(WHEREUPON, a certain document was marked Exhibit No. 3, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 3. Do you recognize this memorandum?
A. Yes.
Q. You may have seen it from the document production that we made in this case. This is a memorandum drafted by Hans Mast, which purportedly memorializes a meeting that he had with you on November 20, 2013.
Does this refresh your memory as to when you met with him or if you met with him?
A. If he took the memorandum on the same day, then sure.
Q. In the memo Hans says, "I met with Paul and his friend."
Do you see that?
A. Yes.



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Q. Did you meet with Hans and some third person –
A. Yes.
Q. -- at or about this time regarding the case?
A. Yes.
Q. Who was that friend?
A. Tom Kost.
Q. Who is Tom Kost?
A. My brother.
Q. Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?
A. We have the same mom.
Q. He was with you and observed the meeting between you and Hans?
A. Yes.
Q. The $5,000 settlement offer was discussed, correct?
A. Yes.
Q. At that time did Hans, again, relay his opinion as to the questionable liability about the McGuires -- strike that.
Did he relay to you his opinion about the

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questionable nature of the McGuires' liability?
A. At the meeting with Tom, yes.
Q. He advised you they maintain they were not directing Dave's work. That was the McGuires' position, correct?
A. I don't know that he stayed on that at that meeting. At different times he gave different reasons.
Q. The next line says, "Paul maintains the McGuires controlled everything that Dave was doing."
Is that an accurate reflection of your opinion?
A. Yes.
Q. As you sit here today, do you know if that statement is consistent with your own deposition testimony from the underlying case?
A. Yes.
Q. We'll come back to that. Did you tell Hans that you wanted to read the depositions of the McGuires and David Gagnon's depositions?
A. Say that again.
Q. Did you tell Paul that you wanted to read the depositions of the McGuires and Dave Gagnon's depositions?

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A. Did I tell Paul?
Q. I'm sorry. Did you tell Hans that?
A. That I wanted to read the McGuires and David Gagnon's depositions?
Q. Yes.
A. Yes, I did.
Q. What was the purpose of your wanting to review those depositions?
A. Hans had told me that what they said in their depositions meant that they had no liability.
Q. You wanted to review the testimony to determine whether you wanted to consider the $5,000 settlement offer; is that correct?
A. Right.
Q. Did you do that?
A. Eventually, yes.
Q. Before you accepted the offer?
A. I think so.
Q. So sometime after this meeting on November 20, 2013 and before you accepted the settlement offer on January 29, 2014, did you review those three deposition transcripts?
A. I'll correct you. I did not accept the offer on January 20th. I signed a release on

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January 29th.
Q. Fair point. Did you read the depositions between those two dates, November 20, 2013 and January 29, 2014?
A. Yes.
Q. Those are --
A. I believe I asked him -- I don't know -- it may be a little earlier because I don't know that I asked him before or after the meeting. I don't remember. I'd have to go back in the e-mails to give the date.
Q. Some point in time between those two dates you read the deps?
A. I may have asked for them before. I don't know without seeing the e-mail. It was, roughly, in the last quarter of that year, yes. Or the first month. I don't remember the first time that I asked to read them. I don't remember off the top of my head.
Q. At any point in time did you ever grant Hans authority to make a settlement demand in the case?
A. No.
MR. FLYNN: Mark this as Exhibit 4.



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(WHEREUPON, a certain document was marked Exhibit No. 4, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 4. This is a copy of the original complaint in this instant case. It reflects a filing date of November 28, 2017.

Is this your original legal malpractice complaint against the Popovich firm and Hans Mast?

A. I believe so.

Q. Did you review and approve the allegations in this complaint?

A. For the most part. I wanted to reword some things, but the lawyer, they do their thing.

Q. At the time you were represented by the Gooch firm is when you filed this lawsuit, correct?

A. Yes.

Q. Directing your attention back to Exhibit 1, if you still have it. If you could turn to page 10.

The answer to Interrogatory No. 24 indicates that on November 4, 2013, Mast was granted authority to investigate a settlement but a specific

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dollar amount was never provided. Do you see that?

A. He was verbally granted authority to investigate, yes.

Q. Who did you want him to investigate a settlement with?

A. The McGuires.

Q. Just the McGuires or the McGuires and --

A. He wanted to do it. I didn't. I said, "If you want to look at that, go ahead."

Q. Did you grant him authority to investigate a settlement with David Gagnon as well?

A. I don't know if I did or not, off the top of my head, but that would have been much later.

Q. Eventually did you tell Hans that you would agree to accept the $5,000 settlement offer from the McGuires?

A. Eventually did I tell him that?

Q. Yes.

A. Yes.

Q. When did you tell him that?

A. I want to say just before Christmas in December of 2013.

Q. There's no doubt in your mind that you relayed your acceptance of the $5,000 settlement

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offer to Hans Mast before Christmas Day, which would be December 25, 2013?

A. Right.

Q. Then did Hans mail to you a settlement release by letter dated January 24, 2014?

A. I'd like to see the letter, but yeah, I believe so.

Q. I believe it's –

A. I believe he had to mail it a couple times because I didn't get it.

MR. FLYNN: Let's mark Exhibit 5.

(WHEREUPON, a certain document was marked Exhibit No. 5, for identification, as of 02/19/2020.)

BY MR. FLYNN:

Q. Showing you what's been marked as Exhibit 5. I'll represent to you that this is a copy of the second amended complaint that you filed in this case by your new lawyers, your current lawyers. If I could direct your attention to Exhibit D attached to this Exhibit 5.

Is Exhibit D a January 24, 2014 cover letter from Hans Mast to you enclosing the general release and settlement agreement from defense

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counsel for Caroline and Bill McGuire?

A. That's what it says.

Q. In the letter did he ask you to -- it looks like it might be a typo. It says, "Please release and return it to me in the enclosed self-addressed stamped envelope at your earliest convenience."

A. Right, but I believe it was just a release – it was all tied into one.

Q. This letter is unsigned. Did you receive the letter unsigned?

A. Did I receive this unsigned?

Q. Yes.

A. Yes.

Q. Have you ever seen a signed copy of this letter?

A. No.

Q. If I could direct your attention to the next page of Exhibit D. Is that page 1 of the general release and settlement agreement?

A. Exhibit D?

Q. Correct.

MS. WILLIAMS: Turn the page.



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BY MR. FLYNN:
Q. Is this what you received attached to the cover letter?
A. I don't think so. Let me see. Yes, this looks like it because it's got these things I remember.
Q. When did you receive this letter and the attachment?
A. I would say I wrote back on January 29th and I probably got it that day, signed it and sent it back.
Q. The copy of the release is also unsigned. It's attached as exhibit -- part of Exhibit D to your second amended complaint.
Do you see the signature lines and the notary signature here that's missing?
A. Yes.
Q. Is this the document that you signed and sent back to Hans Mast?
A. The document that I signed had my signature.
Q. I'm asking if this is the same document that you signed and sent back to him?
A. Yes.

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Q. Right now we don't have a signed copy. I don't know that I've seen one in the case.
MS. WILLIAMS: Can we go off the record for a second?
MR. FLYNN: Sure.
(WHEREUPON, discussion was had off the record.)
BY MR. FLYNN:
Q. Is there any doubt, in your mind, that Exhibit D is the letter and attachment that you received from Hans Mast?
A. No. I believe that this is it.
Q. You signed some copy of this release and sent it back to Hans on January 29; is that correct?
A. Yes.
Q. You accepted the settlement offer prior to Christmas and presumably defense counsel or Hans drafted the settlement release and then Hans mailed it to you, correct?
A. Yes.
Q. At any point in time from December 25th until you received this settlement release, did you contact any lawyer to discuss whether it would be appropriate to let the McGuires out for 5,000?

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A. I believe I contacted Hans again.
Q. Besides Hans, did you talk to anyone else?
A. No.
Q. Was there anything preventing you from seeking a second opinion from some other lawyer at that time?
A. No.
Q. Directing your attention to Exhibit E attached to the second amended complaint, the second amended complaint, again, being Exhibit 5. Is this an e-mail from you to Hans on January 29, 2014?
A. This is the e-mail chain between me and Hans, yes.
Q. Down below at the bottom of the page, January 29 at 10:51 a.m., it appears that you were questioning Hans regarding some of the language in the release, including social security disability check boxes. Do you see that?
A. Yes.
Q. Hans responded to you and then at the top of the page here at 1:59 p.m. it says, "Okay, it's signed and in the mail."
A. Correct.

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Q. What did you mean by that?
A. I signed it and mailed it.
Q. Did you -- where did you mail it from?
A. My home.
Q. How did you do that?
A. Put a stamp on the envelope and put it in the mailbox, put the flag up and waited for the mailman.
Q. Is the mailbox attached to your home or is it --
A. It's out on the street.
Q. You walked down there and you put the mail -- the envelope in the mailbox, put the flag up and --
A. That is correct.
Q. Your understanding of signing that release and sending it back to your lawyer was that you would agree to take the $5,000 settlement, correct?
A. Yes.
Q. Hans didn't deliver the letter to you personally. He mailed it to you, correct?
A. He mailed it to me?
Q. He mailed it to you.



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A. Correct. U.S. mail.
Q. Do you recall an allegation in your complaint or amended complaint or second amended complaint in this case alleging that you were pressured or alleging undue influence by Hans in urging you to accept the $5,000 settlement from the McGuires?
A. Yes.
Q. How is it, as you sit here today, can you tell me how Hans unduly influenced you to accept the $5,000 settlement offer?
A. I don't know what Hans was thinking. How did I feel influenced?
Q. Unduly influenced.
Let me put it this way. He didn't put a gun to your head?
A. No.
Q. He suggested that you take the settlement?
A. Correct.
Q. He didn't force you to take the settlement?
A. Correct.
Q. It was your decision?

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A. Correct.
Q. You signed it and you sent it back to him in the mail?
A. Yes.
Q. Aside from your e-mails with Hans on January 29, did you call him that day?
A. I believe so.
Q. Did you also discuss whether it was appropriate to accept the McGuires' $5,000 settlement offer at that time?
A. Yes.
Q. You deliberated on it and decided to take it, correct?
A. There wasn't much -- it was take it or get nothing.
Q. You had the opportunity to deliberate on it, correct?
A. For that day, yeah.
Q. You had reviewed the transcripts of the McGuire depositions and David Gagnon's depositions in order to provide you with some information in order to determine whether to accept the settlement offer, correct?
A. I believe I did try to read those, yes.

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Q. Did you call Hans or e-mail him and question him with respect to the evidence, the testimony contained in those deposition transcripts?
A. Yes.
Q. What did you say to him and what did he say to you?
A. There were many conversations over the phone and I'm sure some through e-mails.
Q. He continued to tell you that it was his opinion that the liability on the McGuires is questionable because they did not control David Gagnon's work that day, correct?
A. It depends on which time. Sometimes he said because they didn't tell them how to squeeze the trigger. It depends which time you are talking about.
Q. Again, there was nothing preventing you from seeking a second opinion from some other lawyer at the time you signed the settlement release and sent it back to Hans, correct?
A. From the time I received it, signed it and sent it back?
Q. Right.
A. No. It was a matter of hours. I got it

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that morning.
Q. You decided to mail it that day, right?
A. He needed it. He said now or you're not going to get anything.
Q. There was nothing preventing you from seeking the advice of another attorney at that time?
A. At that time it was time. It was now or nothing.
Q. You were in the comfort of your own house when you received the letter, correct?
A. Yes.
Q. You had the ability to go find another lawyer and ask them to discuss the case at that time. You had done it hundreds of times earlier -- strike that.
After the settlement with the McGuires, you continued to prosecute the case against Gagnon, correct?
A. Yes.
Q. Did you have an understanding as to what, if any, insurance coverage he had?
A. Yes.
Q. How much was that?
A. What time frame are you talking about?



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Q. What was your initial understanding as to the limits on David Gagnon's insurance coverage?
A. Hans Mast told me he had $100,000.
Q. Was that in an e-mail?
A. There were -- not initially, no, but later on he reiterated that in e-mails, yes.
Q. Did you, ultimately, learn that there was some additional amount of coverage with respect to Gagnon's policy?
A. Long after Hans Mast was gone, not part of the case.
Q. How much was the coverage?
A. The Allstate coverage, I believe, was 300,000.
Q. We'll talk about the settlement later, but did you ultimately settle the case again Gagnon for 300,000?
A. I believe it went to binding mediation.
Q. Was there an award of $300,000 based on a high/low agreement?
A. Yes.
Q. Is it fair to say that if Hans made a mistake about the $100,000 in coverage, that that was corrected and there was never any harm done as a

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result of his –
A. No.
Q. Explain to me how you were harmed by the representation that there was $100,000 in coverage.
A. You want me to explain?
Q. Yes.
A. Had I known the value of the case, I would have not filed for bankruptcy.
Q. Explain to me why one has something to do with the other.
A. Is my family and me going to dump money into a black hole that we can't recover or is there a light at the end of the tunnel where I can pay them back.
Q. At the time that you filed for bankruptcy, had any settlement offer been made from David Gagnon or his lawyers to you?
A. At the time of when?
Q. When you filed for bankruptcy.
A. I don't think so. I'd have to check the dates, but I don't think so.
Q. As the case was progressing against David Gagnon, were your doctors deposed?
A. As the case progressed with David Gagnon,

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I believe they were deposed. I don't remember. I'd have to look at the dates.
Q. Discovery continued on in the case?
A. I believe one doctor was deposed after the McGuire settlement. I'm not sure, though.
Q. Did Hans continue to represent you for some period of time?
A. Yes.
MR. FLYNN: I'll have you mark this as Exhibit 6.
(WHEREUPON, a certain document was marked Exhibit No. 6, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 6. Do you recognize this e-mail chain?
A. Yes.
Q. This is from September 23, 2014. If we go from the bottom up, it appears that Hans said to you that he wanted to give you the option of finding other counsel at this point if you really want to take the case to trial, which I think ultimately will be necessary. Correct?
A. Are we at "before I proceed" or "that's

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the very reason"?
Q. "That's the very reason."
Is it fair to say he was suggesting you find another counsel in the case at that point?
A. Yes.
Q. He also said, "I just do not believe strongly that defense counsel will offer much in the way of settlement."
Do you see that?
A. Yes.
Q. That's his opinion regardless of what he believed the coverage limits to be; is that a fair statement?
A. Yes.
Q. You responded to him, he responded to you and then you wrote an e-mail to him at 8:25 p.m. that night?
A. Okay.
Q. Do you see that? Did you say, "First, I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw"?
A. Yes.
Q. Did you start to look for other lawyers to help you in your case against Gagnon at that



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point in time?
A. I believe I did, that summer. This is fall, September.
Q. You had already started looking for new lawyers?
A. I believe that Hans had told me to start looking for a new lawyer in April of that year.
Q. Did he say why?
A. We'd have to read his thing. He says why.
Q. Do you recall why he said that to you?
A. He did not feel that the case was provable against David. He did not feel the value of the case was worth it. He did not feel -- actually, this is 2014. The dates are rough.
Q. He thought the case against David was difficult, correct?
A. Yes.
Q. Have you ever described the case as a he said, she said with respect to the facts of the accident?
A. He described that to me many times.
Q. Have you also --
A. And I used that back, yes.

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Q. Have you ever described this case as a he said, she said case?
A. I may have. I don't know.
Q. It is your word against David Gagnon's as to what happened and whose fault it was that day?
A. That's what Hans explained to me as what the problem was.
Q. Did you ever describe the accident as a he said, she said?
A. I don't think I called David a "she said" or me a "she said." I don't know. Right here I do.
Q. What do you say there?
A. I said, "I'm sorry that I'm not a better witness to help prove David cut me with a chainsaw."
Q. He was denying that he even cut you, correct?
A. No, he never denied that.
Q. What was your reason for writing this sentence in that way?
A. Because Hans said that he believed David over me.
Q. With respect to what fact at issue?
A. His deposition versus mine. He said that I didn't make a good witness.

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Q. With respect to what points?
A. All of it. He was dumping me and he was coming up with his own excuses.
Q. You and David were the only ones that witnessed this accident?
A. Correct.
Q. Based on your understanding of how the evidence came out in the case, would you agree that there were differences with respect to the version of events?
A. Oh, yeah.
Q. There were differences between what he said happened and what you said happened?
A. Oh, definitely.
Q. Would it be fair to say, then, it would be up to the trier of fact, whether it be a judge or a jury, to determine who they believed?
MS. WILLIAMS: Objection. Calls for a legal conclusion.
You can answer, if you understand.
BY THE WITNESS:
A. I believe it would be up to a judge or jury, sure.

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BY MR. FLYNN:
Q. At the bottom of Exhibit 7 you say, "Bottom line Hans... do the best you can with what you got."
I'm sorry. I didn't mark this one yet. My apologies.
(WHEREUPON, a certain document was marked Exhibit No. 7, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 7. Is this an e-mail chain between you and Hans?
A. I don't think it's a chain. I think it's one.
Q. Point is well taken. It's you writing to Hans?
A. Yes.
Q. At the bottom it sounds like you had been in the hospital with a migraine and then you wrote, "Bottom line, Hans... do the best you can with what you got."
A. Yes.
Q. What did you mean by that?



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A. He wanted to settle, and I can tell you right now this letter was written after a very traumatic experience and -- let me read it and refresh myself. I'm melting down in this letter.
Q. You said after a traumatic experience. Are you referring to the bankruptcy filing from that day?
A. That, in combination with migraines, yes.
Q. David Stretch was your lawyer that filed bankruptcy for you?
A. Yes.
Q. Did you meet with Mr. Stretch and discuss the bankruptcy process before you hired him?
A. Yes.
Q. How long did you meet with him?
A. I think I asked about it. I don't know. It may have been a couple of months or a couple weeks before it got filed. I wanted to learn about it.
Q. Did you, ultimately, list the case against David Gagnon as an asset in your bankrupt filing?
A. Yes, I did.
Q. Is that why the bankruptcy trustee became

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involved with the binding mediation?
A. Yes.
Q. Did you ever meet the bankruptcy trustee?
A. Yes. The first one.
Q. What was the name of that person?
A. The first one was Heeg was her last name. H-e-e-g, I think.
Q. Again, we established that Brad Balke became your lawyer in the case on March 19, 2015, correct?
A. Yes.
Q. Is it fair to say that your relationship with Hans Mast was deteriorating over the fall and beginning of the winter of 2015?
A. I would say it had been deteriorating long before that. You can see from the last exhibit I'm melting down and it was already started deteriorating.
Q. By the time you drafted Exhibit 7, had you talked to other lawyers about taking your case?
A. I have to go back and look, but probably. If he told me to look at other lawyers in April before this, yes.
Q. How many lawyers would you say you talked

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to between April and the time you drafted this e-mail on September 26?
A. I couldn't count that high, probably.
Q. Quite a few?
A. Yeah.
Q. Did any of them take your case?
A. No.
MR. FLYNN: Mark this as Exhibit 8.
(WHEREUPON, a certain document was marked Exhibit No. 8, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Showing you what's been marked as Exhibit 8. Is this an e-mail from you to Hans Mast?
A. Yes. It's an e-mail chain, yes.
Q. On February 22, 2015 at 7:42 p.m. you wrote to Hans, correct?
A. Yes.
Q. Halfway down in that e-mail message you said, quote, "Now I'm left wondering... how hard it is to sue an attorney?"
A. That is true.
Q. You wrote that?
A. Yes.

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Q. The next line you wrote, "And yes, I am and have been looking for someone who will take this case..."
A. That is not in reference to suing the attorney. That was in reference to the Gagnon case.
Q. What did the reference to suing an attorney mean?
A. That was me being angry.
Q. With Hans?
A. Yes. I was seeing red.
Q. You're suggesting that you may sue him?
A. Yeah. I didn't know that I could. I'm wondering about it.
Q. You, basically, made a threat, whether it be a veiled threat or an overt threat to sue him, correct?
A. Yes.
Q. You, ultimately, sued him for legal malpractice, right?
A. Yes.
Q. Is that what you had in mind when you wrote this?
A. No. This was about dropping Gagnon. The malpractice is about dropping the McGuires.



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Q. This --
A. We're talking -- this is 2015.
Q. In this 2015 e-mail you are suggesting to Hans that you may sue him because of the McGuire settlement; is that right?
A. No.
Q. Then what is it that you're saying to him?
A. That if he damaged the Gagnon case, I didn't know if he did or didn't, and I'm threatening because I'm angry. You can see, again, I'm melting down here. These are emotional outbursts, I guess.
Q. Moving up the page a little bit also on February 22, 2015 at 8:14 p.m., you say, "To be honest, you took this case knowing it was my word versus his."
A. Yes.
Q. He said, he said, right?
A. Yes.
Q. Is that a fair characterization of the case, your word against David's?
A. That's how Hans kept describing it. That's the way I put it back to him, yes.
Q. You didn't correct him or dispute his

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characterization, did you?
A. No. I used his characterization.
Q. You agreed with it?
A. He said – how did it go? We had conversations between these e-mails on the phone. Then we would hang up and I would get angry and type it in an e-mail, type whatever it was that bothered me so he had it.
Q. Let me ask another question, if that's okay.
Did you ever correct Hans if he called this a he said, he said case? Did you ever say it's more than that?
A. Do I ever say it's more than that?
Q. Did you ever correct him? If he said it's a he said, he said case, did you say no, that's not right?
A. He said there's no witnesses. I said, "I'm a witness."
Q. You're one of the hes. It's your word against David Gagnon's, as you said in this e-mail?
A. Yes.
MR. FLYNN: If I could have you mark that as Exhibit 9.

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(WHEREUPON, a certain document was marked Exhibit No. 9, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. Exhibit 9, is that Brad Balke's substitute appearance that was filed on March 19, 2015 in the case against Gagnon?
A. It looks like it, yes.
Q. Back to Exhibit 5, which is the second amended complaint. If I could direct your attention to Exhibit F. This appears to be a more complete copy of another e-mail we just talked about. Is Exhibit F more of the February 22, 2015 e-mail chain?
A. I'm not sure if that's separate or the same. Oh, it looks like it.
Q. At 7:20 p.m. Hans wrote to you and said, "Paul, I can no longer represent you in the case. We obviously have differences of opinion as to the value of the case."
Right?
A. Yes.
Q. He says, "I've been telling you over a year now the problems with the case and you just

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don't see them."
Correct?
A. That's what it says.
Q. Obviously, a difference of opinion, right?
A. Yes. Are you talking about difference of opinion as to the value or difference of opinion of the problems within the case?
Q. Let's go on. He says, "You keep telling me how injured you are and completely ignore that it doesn't matter if you passed away from the accident because we still have to prove that the defendant was at fault. While you think it is very clear, it is not. My guess is that seven out of ten times you will lose the case outright. That means zero. That's why I've been trying to convince you to agree to a settlement. You clearly do not want to."
Did I accurately read that?
A. Just that part of that paragraph, yes.
Q. So Hans is telling you that in his opinion your case against Gagnon you're going to lose it seven out of ten times, correct?
A. In this one, yes.
Q. He's acknowledging that you may have a



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chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

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could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail --
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

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enters an appearance on March 19. Just the name of any lawyer you --
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

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A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.



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Q. Do you recall how long the mediation lasted?
A. All day.
Q. Do you know if the parties submitted mediation briefs or statements to the judge?
A. I believe both sides submitted a whole bunch of things.
Q. The Boudins represented you in this mediation?
A. Yes.
Q. Because you had fired Balke by this point?
A. Oh, yes.
Q. Directing your attention, again, to Exhibit 5, the second amended complaint and Exhibit G. Exhibit G is, apparently, a memorialization of the mediation award. Do you see that?
A. It's how the judge decided to break it down, yes.
Q. Do you see that there's an award for future medical expenses of $200,000?
A. Yes.
Q. Since that date of December 8, 2015, have you received any medical treatment relative to your

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injuries --
A. Yes.
Q. Let me finish. Strike the question.
Since that date, December 8, 2015, have you received any medical treatment for your injuries incurred on January 28, 2011?
A. You're asking since the date of the binding mediation?
Q. That's right.
A. Yes.
Q. What medical treatment have you received?
A. I do an ongoing with the neurologist for the dystonia.
Q. That's in your right arm?
A. Yes.
Q. Have you calculated the medical bills that you've incurred since that day?
A. No, I have not.
Q. Are they anywhere near $200,000?
A. It depends if you calculate with or without insurance. I know what I pay, but then I have to pay for the insurance that pays for that.
Q. How much have you paid out of pocket since that date for medical treatment on your arm?

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A. I don't know, offhand.
Q. Was there any doctor that opined that you would require $200,000 in future medical expenses?
A. I believe so.
Q. Who was that?
A. I believe that was Dr. Patel. I don't know that she said $200,000. She was the doctor that was handling it at the time.
Q. Did you discuss your injury with the mediator at the mediation?
A. He did ask me a few questions.
Q. How much time did you spend with him?
A. On and off. He would come in and ask me questions and then go away and then come in and would ask me questions and then go away.
I don't remember which one was the mediator, which one was the Allstate adjuster, which one was the -- I don't remember.
Q. You're not sure which one was the mediator?
A. They came in and they said they are going to ask you some questions and I answered them.
Q. As you sit here today, you don't know how much face time you had with the mediator that day?

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A. I don't remember the face of which one is which.
Q. Did the issue of lost wages ever come up?
A. At the mediation with me?
Q. Yes.
A. I don't remember.
Q. Did you ever make a claim of lost wages of $250,000?
A. I may have.
Q. Do you know what that was based on?
A. Yeah.
Q. What is that based on?
A. Past and future.
Q. What past wages had you ever earned that could lead to an award of $250,000?
A. To me, that's not a very high number. I think I asked for more than that. It would be an average over a certain number of years plus benefits and that's all lost.
Q. Would it be fair to say that your income would be accurately reflected in the tax returns you've produced in this case, so I don't want to ask you about each one of them?
A. I would say my personal income, yeah.



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Q. Have you filed personal tax returns since 2015?
A. Tried.
Q. I didn't ask you if you tried.
A. No. They won't let me. They said I don't make enough anymore.
MR. FLYNN: I believe the next exhibit is 10.
(WHEREUPON, a certain document was marked Exhibit No. 10, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what's been marked as Exhibit 10. This is a six-page binding mediation agreement. The copy I have is unsigned.
Do you recognize this as the mediation agreement that governed your December 8, 2016 mediation?
A. Yes.
Q. If I could direct your attention to -- first, let me ask you.
Do you know why the bankruptcy trustee or the bankruptcy court ordered binding mediation as opposed to nonbinding?
A. I have no idea.

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Q. On page 4, section F, subsection B -- I'm sorry, 1B. It says, "The parties agree that for this mediation the minimum award to Paul Dulberg will be $50,000. Also, the maximum award to Paul Dulberg will be $300,000."
Do you see that?
A. Yes.
Q. Do you know why the parties agreed to this high/low agreement?
A. No.
Q. Do you recall alleging in your original complaint against Popovich that there was a high/low agreement?
A. There is. There was.
MS. WILLIAMS: Can you repeat the question, please.
(WHEREUPON, the record was read by the reporter as requested.)
BY THE WITNESS:
A. I don't know. I'd have to read it.
MS. WILLIAMS: I asked her to read it. And you had answered it previously.
BY MR. FLYNN:
Q. Directing your attention back to

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Exhibit 4, which is the original complaint in this case. Page 4, paragraph 16.
A. Okay.
Q. There's a sentence that begins with, "Unfortunately, a high/low agreement had been executed by Dulberg reducing the maximum account he could recover to $300,000 based upon the insurance policy available."
Do you see that?
A. Yes.
Q. It's not your position or testimony that Popovich had anything to do with the high/low agreement?
A. That was a mistake in there. No.
Q. You would agree that Popovich had nothing to do with the high/low agreement?
A. I believe that events that unfolded the way they did was due to Hans Mast's initial assessment of the value of the case.
Q. Let me ask it a different way.
Did Popovich have any idea that this high/low agreement existed when it was entered into?
A. I don't know.
Q. Do you have any reason to believe that he

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did?
A. I don't know. I don't know how much the Boudins were in contact with them because they worked together. I don't know.
Q. What do you mean, "they worked together"?
A. They worked together on all different cases. That's a small county out there.
Q. Did you ever write to Hans and accuse Popovich of having a conflict of interest because he may have gone to high school with David Gagnon?
A. I did learn that.
Q. Do you believe the fact that someone went to high school with another person may give rise to a conflict of interest in a lawsuit?
A. I was shooting in the dark and guessing why they didn't see this as a viable case.
Q. Do you think that was appropriate to send to your lawyer at the time?
A. When you're wondering why they are doing what they are doing and you learn that and they were pretty much in the same class and they all knew each other and it's a small town, let me ask you, are you friends with the guy I'm suing? That's an appropriate question.



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Q. You didn't say that. You asked if they went to school together.
A. Correct.
Q. Popovich did not enter into this high/low agreement on your behalf, correct?
A. Popovich, no.
Q. When I say "Popovich," I mean generally the Popovich firm and your lawyers.
A. This was years later. No.
Q. They had nothing to do with it, right?
A. I wouldn't say anything to do with it.
Q. Withdrawn.
Who drafted this high/low agreement that's contained in the mediation agreement?
A. I'm not sure who drafted it.
Q. Would it have been either the mediator, the bankruptcy trustee, your lawyers or the defense attorneys?
A. I assume that this would have been an agreement of all of them.
Q. You don't think Popovich had anything to do with drafting this high/low agreement, do you?
A. I don't know that he did or didn't.
Q. Do you have any reason to believe that he

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did?
A. At this point, no.
Q. Continuing on in Exhibit 4. Directing your attention to the bottom of page 4, paragraph 10.
A. Exhibit 4. Say it again.
Q. The bottom of page 4, paragraph 20. This is your complaint against Popovich and Mast.
A. This has been amended since then.
Q. I understand. Paragraph 20 reads, "Following the execution of the mediation agreement with the high/low agreement contained therein and the final mediation award, Dulberg realized for the first time that the information Mast and Popovich had given Dulberg was false and misleading and that, in fact, the dismissal of the McGuires was a serious and substantial mistake."
Do you see that?
A. Yes.
Q. Can you tell me, as you sit here today, what false and misleading information did Mast and Popovich give you?
A. That I realized on the day of the -- following the execution of the mediation agreement?

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Q. Correct.
A. The liability of the McGuires.
Q. What was false about it?
A. What made them liable and what didn't.
Q. What is it you learned to dispute what you were told?
A. I learned from a reliability expert that had the report there that day that the McGuires provided the tools which made Gagnon an agent of the McGuires. He was working at their behest.
Q. Who was this liability expert?
A. What's his name?
Q. He's a doctor?
A. Yes.
Q. Continue on with that paragraph. "Following mediation, Dulberg was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016."
Do you see that allegation?
A. Yeah.
Q. Who advised you to seek an independent opinion from an attorney handling legal malpractice matters?

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A. I believe that was Boudin.
Q. You believe that or you know that?
A. I know that.
Q. You alleged it in this complaint so it's important that we know who that was.
A. Yes, that was Boudin.
Q. Boudin told you to seek an independent opinion from an attorney that handles malpractice matters?
A. Yes.
Q. It says you received that opinion on or about December 16, 2016.
A. Yes.
Q. That's separate and apart from any opinion you may have received from a liability expert, a doctor, an expert on chainsaws?
A. Yes.
Q. Who was the lawyer that you received a legal opinion from on December 16, 2016?
A. I believe that would be Thomas Gooch.
Q. The drafter of this complaint?
A. I'd have to look at the dates because I think -- December 8th was the mediation; is that right?



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Q. Correct.
A. So the 16th would sound about right to be meeting with Gooch, but I can get that date.
Q. You met with Gooch –
A. Soon, within weeks. It was quick.
Q. Now that the door has been opened, you fired Gooch in this case, correct?
A. Yes.
Q. He drafted this complaint and he's also the one that gave you an opinion about legal malpractice liability on the part of my clients?
A. Yes.
Q. What is it that he told you on December 16, 2016?
MS. WILLIAMS: Objection. I don't think we've waived that privilege, but – can we go off the record for a second?
MR. FLYNN: I don't want to go off the record. I've asked this interrogatory in about five different ways and it hasn't been answered appropriately.
The allegation was made in the complaint. That's why I drafted the interrogatory the way I did. I don't think that there's been a square

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answer to it. This is clear that you're talking about a legal opinion.
BY THE WITNESS:
Q. Is this the same wording as we have in the current complaint?
BY MR. FLYNN:
Q. It's not exactly.
A. What would this be valid for, then?
Q. You've raised a response to a statute of limitations defense in this case and placed your knowledge of the malpractice and the date of incurring of an injury at issue.
Because your discovery of malpractice has been placed at issue, it's our position that you've waived privilege anyhow with respect to this conversation on December 16, 2016.
A. I'm not sure --
MS. WILLIAMS: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.
If we can agree that that objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is

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admissible. Are you agreeable to that?
MR. FLYNN: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for -- to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.
MS. WILLIAMS: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to have to continue to make the objection as to -- if questions are asked about advice given by a legal malpractice attorney, I'm going to raise an objection as to that.
MR. FLYNN: Okay. But this is why we had the 201K conferences, multiple 201K conferences. It was made clear, to me, that there was a waiver with respect to subsequent counsel.
MS. WILLIAMS: Tom Gooch isn't subsequent counsel.
MR. FLYNN: The allegation has been made in this complaint and apparently this is subsequent counsel subsequent to my client's representation.
MS. WILLIAMS: It is a different case. It's not subsequent counsel in the underlying case. It's a new case.

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MR. FLYNN: We'll get to the interrogatory in a few minutes. I'll pull that out.
BY MR. FLYNN:
Q. Let me ask you. Is there any other attorney besides Mr. Gooch that gave you an opinion that's referenced here on December 16?
A. No one that isn't privileged.
Q. Could it have been anyone else?
A. No.
Q. So Gooch is the only person that's being referenced here in this allegation that's in your complaint that's a public record?
I'm not asking you right now what the opinion is. I'm going to do that later. I'm asking you who gave it to you. It's not anyone besides Mr. Gooch, correct?
A. Yes. It was Thomas Gooch.
Q. He drafted the very complaint that that allegation is contained in?
A. Yes.
Q. Dr. Landford was the liability expert that you referenced earlier, correct?
A. Yes.
Q. Back to the allegation that Gooch and --



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that Popovich and Mast provided you false and misleading information. That information was simply their legal opinion on the McGuires' liability; isn't that correct?
A. No. There was nothing simple about that. That's a very complex series of things that go all the way back to before the McGuire settlement.
Q. They didn't lie to you, did they?
A. It depends on how you define lie.
Q. How do you define lie?
A. If you know better and you say something else, that's a lie. Omission is a lie.
Q. Did they provide you with anything other than a legal opinion as to the McGuires' liability?
A. Yes. They provided me with case laws. They provided me with all different stuff. Yes.
Q. Whatever the advice that was given to you on December 16, 2016, you felt that you were mislead by Popovich and Mast at that point in time, correct?
A. At that point in time it was confirmed to me that I had a valid case against Popovich.
Q. You had a valid malpractice case against Popovich?
A. Yes. I did not know before that.

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Q. As of December 16, 2016?
A. Yes.
Q. Why is it that you didn't file that lawsuit until nearly a year later on November 28, 2017?
A. I believe because Thomas Gooch had some health issues and then his wife had some health issues. It took a while.
(WHEREUPON, a certain document was marked Exhibit No. 11, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm handing you what has been marked as Exhibit 11. This is one set of your supplemental Answers to Interrogatories.
First, I'll ask you if that is your verification and signature at the end?
A. That is my signature.
Q. Again, I don't know if that verification was attached to this original document. It may have been. But there's been some confusion with respect to these verification pages. This is your signature and you answered these interrogatories, correct?
A. Yeah.

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Q. So this is a valid verification page with respect to this discovery document; is that a fair statement?
A. This is supplemental to original answers.
Q. That's your signature and you agree these are your answers?
A. I've reviewed them and we went over them and yes, I agree.
Q. And they are accurate?
A. As accurate as we can be.
Q. If I could direct your attention to Interrogatory No. 26. Do you see that?
A. Okay. Yes, I see it.
Q. This is similar to what we just talked about a few minutes ago. I'll read the interrogatory to you. "Identify and describe the false and misleading information Mast and Popovich provided to you and explain how you realized for the first time in December of 2016 that the information was false and misleading and the dismissal of the McGuires was a serious and substantial mistake as alleged in paragraph 56 of your second amended complaint."
Do you see your supplemental answer here?

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A. I see it, yes.
Q. You reference the mediation award and then you state, quote, "At that time Dulberg realized that Mast's advice to settle with the McGuires for $5,000 was incorrect because Mast had cited Dulberg being able to recover in full from Gagnon as his reasoning."
A. I do.
Q. Can you explain what that means because I don't quite understand it.
A. Hans Mast assured me – I want to go back to 2013, the Fall between October and the signature of the final release for the McGuires.
He assured me that, he said -- at that time he didn't tell me what anybody's policies were. He assured me that if we let the McGuires out of the case, Gagnon has enough insurance, you're going to get everything from him, so it doesn't matter that you're carrying the McGuires in the case.
Q. The next interrogatory is 27. "Identify and describe the expert opinions provided to you in December 2016 as alleged in paragraph 57 of your second amended complaint including the identity of the expert, any opinions and any other information



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provided by the expert which caused you to learn in the summer of 2016 and became reasonably aware that Mast and Popovich did not properly represent you."

What does the summer of 2016 have to do with your discovery of malpractice?

A. Technically, I was sent Dr. Landford's report -- I might be off a little by a couple months here, but I think in July of that year. And I read it, but I didn't -- you don't catch everything the first time you read it.

It was not until later that I caught the part of the report that was brought to the attention -- it caught my eye when I was sitting there and reading it.

Q. You didn't read any of this interrogatory or the original interrogatory as requesting legal opinions that you had alleged that gave you notice that there was a malpractice claim against Mast and Popovich?

A. Excuse me?

MR. FLYNN: Can you read that back.

(WHEREUPON, the record was read by the reporter as requested.)

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BY THE WITNESS:

A. The way she said it, I don't understand.

BY MR. FLYNN:

Q. I'll rephrase it.

We've known about this allegation in the original complaint since it was filed. You received some legal opinion in 2016. That's why you didn't know you had a malpractice case against Mast and Popovich.

We asked you in discovery answers a couple different ways what those legal opinions are. You didn't read 26 and 27 as requesting information about legal opinions?

A. I don't know that an expert witness would be considered a legal opinion. Wouldn't that be more like an attorney?

Q. I'll ask you again. Why is it that you first became aware of a legal malpractice matter against Mast and Popovich on or about December 16, 2016?

A. December 16th I was talking to a legal malpractice attorney.

Q. You were told that there was a case against --

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A. A valid case, yes.

Q. -- Mast and Popovich?

A. Yes.

Q. Why is it you didn't know about this valid case prior to that date?

A. Because I hadn't talked to anybody that was a lawyer that specialized in that area.

Q. Whatever it is that he said to you gave you the basis for believing you had a valid case against Mast and Popovich?

A. Very much so, yes.

Q. You're withholding that information from me right now, as we sit here. You won't tell me what that expert said, correct?

MS. WILLIAMS: Repeat the question.

(WHEREUPON, the record was read by the reporter as requested.)

MS. WILLIAMS: I'm asserting attorney-client privilege on behalf of my client for Gooch's advice on December -- in December of 2016.

However, because I want to move forward with this deposition, if he can answer the question, I believe we should go ahead and move forward and have him answer the question.

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I'll assert the privilege with the understanding that this may have to be briefed later.

MR. FLYNN: To be stricken later?

MS. WILLIAMS: Right.

MR. FLYNN: The substance of the answer he can put on the record. You're just saying you may move to strike it later?

MS. WILLIAMS: Right. I want to maintain the privilege with the objection, but I don't want to have to call the judge right now. I don't think it's something we should have to call the judge about right now.

MR. FLYNN: Just for the record, I believe it's been placed at issue by virtue of the first amended complaint. The responses to the statute of limitation defenses that were raised in very dispositive motions before Gooch withdrew from the case, the gist of that is the discovery rule has been raised and, therefore, it's our position that the date of discovery has been placed at issue and, accordingly, any legal opinions that were provided to this plaintiff have been exposed and that we're entitled to know what those are.



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MS. WILLIAMS: Can I also note one more thing?
MR. FLYNN: Sure.
MS. WILLIAMS: In the supplemental -- in the request it specifically refers to paragraph 57 of the second amended complaint, which is different.
MR. FLYNN: It is different. I'll acknowledge that. I believe that the prior original interrogatories asked for any opinions relative to the discovery of the malpractice. I could be wrong. There was a reason I asked this and that's why I believe that's what it was about.
MS. WILLIAMS: So --
MR. FLYNN: That particular one I agree with you is not phrased as calling for --
MS. WILLIAMS: Right. That's the question that was asked. We answered the question that was asked, which that particular paragraph does not refer to a legal expert. It just merely -- I'll read it out loud. "It was not until the mediation in December of 2016 based on the expert's opinion that Dulberg retain for mediation that Dulberg became reasonably aware."
I just want it clear that he did answer the question that was asked. I understand your line

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of questioning and we'll agree to move forward.
MR. FLYNN: I believe there were other discovery requests that did point to that and I think we can take a break here and I can find them fairly quickly because I think we're getting close to the end anyway.
MS. WILLIAMS: Okay.
BY MR. FLYNN:
Q. Did you ever receive any money from the mediation award?
A. No. I received money from the bankruptcy itself. It was a surplus bankruptcy.
Q. There was a $300,000 award given in the mediation.
A. That did not go to me. That went to bankruptcy.
Q. It was collected on your behalf and paid to the bankruptcy trustee, correct?
A. Correct.
Q. All $300,000?
A. I don't know that because I think -- I don't know how exactly it works. I heard attorneys have a lien that's special. I don't know how they break it up. I assume it goes to the trustee.

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Q. The Boudins weren't working for free. They got something out of it, right?
A. Yes.
Q. The trustee took the remainder and paid off some of your creditors, correct?
A. Correct. All of them.
Q. But the award was paid to the trustee on your behalf?
A. I believe so. I don't know how it worked.
Q. How much was the surplus after your creditors were paid?
A. After just the creditors?
Q. How much did you get?
A. How much did I get?
Q. Yes.
A. A third.
Q. I'm asking how much money did you get?
A. A third of the award.
Q. Dollars. How much money did you get?
A. Roughly a hundred.
Q. $100,000?
A. I don't know the exact number. It's roughly a hundred.

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Q. Was there a check that was issued to you?
A. By the trustee, yes.
Q. Did you cash it?
A. Yes.
Q. At what bank?
A. McHenry Bank & Trust.
Q. Do you still have an account there?
A. Yes.
Q. Do you have a copy of the canceled check?
A. I'm sure the bank has a photo thing.
Q. You can request a copy of the check, correct?
A. I could. I could see if they got it.
Q. I would ask you to do that. If you have any other documentation relative to the payouts that were made by the bankruptcy trustee on your behalf, we are requesting that information.
MR. FLYNN: Why don't we take a break and I'm going to look for one document and then we're just about done here.
(WHEREUPON, a recess was had.)
MR. FLYNN: Mark these as the next two.



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(WHEREUPON, a certain document was marked Exhibit No. 12, for identification, as of 02/19/2020.)
(WHEREUPON, a certain document was marked Exhibit No. 13, for identification, as of 02/19/2020.)
BY MR. FLYNN:
Q. I'm going to show you what I've marked as Exhibits 12 and 13. Twelve are your answers to Hans Mast's interrogatories. Thirteen is your responses to Popovich's request for production.
Interrogatory No. 1 from Mast asks, "Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach."
Do you understand that?
A. Yes.
Q. So how is it they committed malpractice?
A. May I see it?
Q. I'm going to show it to you in a second. I only have one copy.
This is basically, how did you first become aware that they committed malpractice?

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That's the essence of that interrogatory.
Here is your response. I can show that to you. It doesn't reflect any discussion with any malpractice lawyer in December of 2016.
Tell me --
A. Let me read it again. We're talking about No. 1 on this?
Q. Correct.
A. Okay.
Q. You understand it?
A. Yes.
Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?
A. Yes.
Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?
A. Say that again.
Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

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A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.
Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?
A. Yes.
Q. That's what you've alleged here in this complaint.
A. Yes.
Q. Here I'm asking you, each and every way that they ever breached a duty of care to you. I covered the waterfront. You didn't answer --
A. On the McGuire case it was between October 2013 and January 2014. Yes. There's a multitude of things and that's why I listed a range.
Q. I'm asking when you became aware of it, in that interrogatory. Do you see that?
A. I became aware of that when Thomas Gooch read them and said there's a problem here.
Q. That's not the way you answered the interrogatory, correct?
A. I answered the first part. I did not answer after the comma and the and.

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Q. There's no objection and indication that any information is being withheld, correct?
A. Excuse me?
Q. There's no objection and an indication that you're withholding --
A. I was not withholding.
Q. I'll show you Exhibit 13. It asks -- Exhibit 13 are the production requests to you. Number 8 asks for you to produce a privilege log identifying the creator and recipient of any document withheld, the basis for any claimed privilege, the date the document was created and the date the recipient received the document.
The answer is, "The plaintiff is only withholding attorney-client communication between his successor counsel."
Is that your answer to the production request and did I accurately read No. 8?
A. May I consult with her for a minute?
Q. Sure.
THE WITNESS: Can we go off the record?
MS. WILLIAMS: If you can answer the question, answer the question first.



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BY THE WITNESS:
A. It's been a while since I've done this, so I'm not sure who the successor counsel is. Is it her or is it the Boudins or Balke?
BY MR. FLYNN:
Q. I think successor counsel, we can both agree, the successor counsel in the underlying case which would be Balke and then Boudin.
You didn't identify any documents withheld other than documents between you and successor counsel, correct?
THE WITNESS: I believe we waived those, didn't we, for Balke and Boudin?
MS. WILLIAMS: For Balke and Boudin we can represent that we waived those.
BY MR. FLYNN:
Q. Let me ask a different question.
Did Gooch communicate with you in writing relative to his opinion that you had a legal malpractice case against Mast and Popovich?
A. In writing?
Q. Yes.
A. I suppose the agreement between us that he would represent me because I had the case is a

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document in writing.
Q. Did he tell you -- strike that.
The discussion that you reference in the complaint, paragraph 20 of December 16, 2016, was that a face-to-face communication with Gooch?
A. What number is that?
Q. Exhibit 4, paragraph 20. The legal opinion you received, was it verbal, was it written?
A. I believe it was verbal.
Q. Now, I'm going to ask you what he said. There was an objection and that will be addressed by the Court later. Please tell me what Gooch told you.
A. He read what I brought him, looked through some things, and I don't remember if it was the same day that we talked to him or he took a day or two. I don't remember. He got back to me and he said, "You have a case here. You have a valid case."
Q. Did he say why?
A. On the basis of what I brought to him. Yes.
Q. Specifics, though. I don't want to talk about generalities. Did he tell you what Mast and

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Popovich did wrong and how it injured you?
A. How it injured me? Yeah.
Q. The first part of my question was, did he tell you exactly what they did wrong in connection with your -- their representation of you?
A. He probably did. I'm not recalling it right now. I'm pulling a blank.
The parts of the conversation I'm remembering, and for some reason I'm not pulling it. We've been at this a while and this is a long thing. Yes, he said based on what he saw, he saw reason for malpractice.
Q. You don't remember any details, as you sit here? Did you discuss the liability of property owners in Illinois?
A. Well, if they were just property owners in the case, that would be one thing, but they weren't just property owners.
Q. That wasn't my question. I'm asking if you discussed it?
A. Certainly.
Q. You and Gooch discussed the liability of the McGuires in the case?
A. Yes.

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Q. What did you say to him and what did he say to you?
A. I showed him the expert opinion.
Q. The chainsaw expert?
A. Yes.
Q. Did you show him any deposition transcripts?
A. Yes.
Q. Which ones?
A. All of them.
Q. And he read them before you talked?
A. I don't remember. Like I said, it may have been a few days between our initial meeting and bringing the whole file that I had and trying to get what the Boudins had and letting him go through it. I don't remember how long that took.
Q. How did you transmit the documents to him –
A. My brother carried them.
Q. Let me finish.
How did you transmit the documents to Mr. Gooch, including the deposition transcripts?
A. I believe we brought him a box.
Q. So you physically handed the documents to



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him?
A. I didn't physically hand them. My brother did.
Q. Did you communicate with Mr. Gooch by e-mail, at all, leading up to this meeting?
A. No.
Q. Did he ever write you any letters?
A. An e-mail or regular mail or what are you talking about?
Q. Any letters whatsoever.
A. Throughout the course of his representation, yes.
Q. What about in December of 2016?
A. I believe we started communicating in December, yes.
Q. But in writing?
A. In e-mails, sure.
Q. Did he discuss –
A. We may have. I'm not -- whenever we started -- whenever he started sending me things and going back and forth, I don't remember the exact date, but it was right after he started representing me, sure, we exchanged e-mails and started, yes.
Q. When did Gooch begin representing you?

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A. The day that he agreed to represent me. I believe it would have been the day that he decided that he had a case.
Q. On or about December 16?
A. Yes.
Q. At that point in time, or shortly thereafter, he communicated with you in writing the details of the breach of the standard of care committed by Popovich and Mast; is that correct?
A. I believe he started to detail those out in the complaint and we were working it back and forth trying to get it right.
Q. When did you first exchange drafts of the complaint?
A. I'd have to look back in the e-mails. I don't remember the dates.
Q. Did you look for any of these e-mails in connection with my discovery requests in this case?
A. At the time I think we thought they were privileged.
Q. That privilege objection wasn't exactly made. My question is, did you look for them?
A. Did I look for them? I have them.
Q. I would ask that you preserve each and

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every communication between you and Mr. Gooch, all written communications, even phone records that might reflect the dates and times of your phone communications, if any. Did you use a cell phone back then?
A. I used VOIP over a data line.
Q. Who was your carrier?
A. Comcast.
Q. Is that still your carrier?
A. Yes.
Q. Do you have the same phone that you utilized?
A. Same phone number for 50 years, yes.
Q. What else could you remember that Gooch told you on or about the 16th of December 2016 about Mast and Popovich breaching the standard of care and how it damaged you?
A. Say that again.
Q. What, if anything, else do you recall about your discussions with Gooch on December 16 regarding the breach of the standard of care by Popovich and Mast and how it injured you?
A. We discussed the whole scenario between October and January and what happened. It was

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pretty detailed. We discussed everything that you see that's been communicated in the e-mails. He didn't have much else to go on other than the documents and the e-mails.
Q. You're talking about the e-mails between you and Hans from the fall of 2013?
A. Yes.
Q. Ultimately leading to the $5,000 settlement?
A. Yes.
Q. Other than you have a case, what did Gooch say to you?
A. He said that they definitely committed malpractice.
Q. Did he ever put this in writing?
A. Did he ever put it in writing? I think he backed it up by filing a suit. That's documented.
Q. Again, the suit wasn't filed until November of 2017.
A. Yes, he had some health problems and then his wife had some health problems. Believe me, I was pushing for him to get that done.
Q. From December of 2016 until the complaint



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was filed, you exchanged some drafts of complaints with him?
A. I believe he let me see what he wanted to put in the complaint. I got to review some things. Of course I had, do this or that's not right. In fact, a couple of these things in here we had to definitely -- you caught one. He totally worded it wrong. It was wrong. We had to amend.
MS. WILLIAMS: His question was, did he give you drafts for you to review?
THE WITNESS: Yes.
BY MR. FLYNN:
Q. These were exchanged by e-mail?
A. I believe so, yes.
Q. So you would have records of them?
A. Yes.
Q. Any comments with respect to the pleadings, as well, did you ever ask him questions? Did he explain to you the basis for the allegations in the draft complaints, similar to what you did with Hans?
A. Over many times, yes.
Q. This is all reflected in e-mails?
A. Yes.

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Q. Ultimately, you didn't file until November of 2017?
A. Correct.
Q. Popovich ceased being your lawyer March 19 of 2015, correct?
A. That sounds about right.
Q. Until December 16, 2016, you didn't have any reason to believe there was a malpractice case against --
A. Say the date again.
Q. Until December 16, 2016, you didn't have any other reason to believe there was a malpractice case against Popovich and Mast?
A. I did not know that I had a case, no.
Q. You threatened one with respect to the Gagnon case --
A. Yes.
Q. -- at another point in time, correct?
A. I think I threatened him a few times in there. Yeah. I was actually nice to what I really wanted to say.
Q. Subject to the ruling on these objections, you don't recall any other specific details that you discussed with Popovich -- I'm

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sorry -- Gooch on December 16, other than what we already talked about?
A. I discussed the exact same things that you -- the same documents that you already have. We went over the case that Mast and Popovich had against the McGuires. He followed through all the way to the end. We went over the whole case. You see as much as he did.
Q. Did Gooch ever explain to you why the McGuires would have been liable any more than Mast explained to you that they wouldn't be liable?
A. He said he agreed right away. He said that's obvious.
Q. Did Gooch ever provide you with any cases or statutes?
A. Provide to me, maybe. Maybe. I don't know.
Q. Would that be by e-mail?
A. It could be. I was in his office quite a few times. He may have.
Q. As you sit here today, other than you have a case against Popovich and Mast, what did Gooch tell you specifically that was any different than what Mast and Popovich told you with respect to

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the McGuires' liability?
A. That they were definitely liable. He tried to say that -- like Popovich and Mast were first- or second-year lawyers and that they may have made a mistake here.
I said they've got 20 years in this. You think they'd know the difference. That's the kind of thing. He agreed with me. Twenty years, yeah, they should have known better.
Q. Did you ever discuss the specifics of the McGuires' potential liability with Gooch?
A. Liability with Gooch?
Q. With Gooch, did you ever discuss the specifics of the McGuires' liability other than he thinks you have a case?
A. Yes.
Q. Did he ever tell you why? What was it?
A. Because he agreed with the expert's opinion.
Q. The expert on the chainsaw?
A. Yes. The liability expert.
Q. The expert said you should use safety goggles and gloves and things like that?
A. He said more than that, but yes.



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Q. Do you know who commissioned that expert report?
A. Boudins.
Q. Do you know when the first draft of that doctor's expert report was circulated?
A. I heard that Boudin got it in February, maybe. I don't think I got it until July, but I'm not sure about that.
Q. July of what year?
A. The same year as the mediation.
Q. Of 2016?
A. Yeah.
Q. So you actually read it in advance of the mediation?
A. I talked about this earlier. I said yes. You don't catch everything the first time you read it. I was sitting there at the mediating table and I was reading it and I caught it and I turned to Randy and I said, after it was over, does this mean -- that means.
Q. Means what?
A. Does this mean the McGuires are liable? Yeah, that means they are liable. He said, call my office after everything and I'll give you a name for

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an attorney you should go see.
MR. FLYNN: Any follow-up, Julia?
MS. WILLIAMS: I have two follow-up questions.

EXAMINATION

BY MS. WILLIAMS:
Q. Did you ever give Hans authority to make a settlement demand regarding Mr. Gagnon?
A. I think at one time in one of my meltdown letters I said get whatever you can, but no, I never actually signed anything saying you have the right to offer a settlement.
Q. Did you ever give Hans authority to make a settlement demand with regard to the McGuires?
A. A demand, no. He said he was going to probe and see what was out there, and I said, if you want to do that, that's fine.
MS. WILLIAMS: I have no further questions.
MR. FLYNN: Signature?
MS. WILLIAMS: We can waive signature.
THE REPORTER: Are you ordering this?
MR. FLYNN: Yes.
THE REPORTER: Regular delivery, e-tran?
MR. FLYNN: Yes.
THE REPORTER: Copy?

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MS. WILLIAMS: Yeah.
THE REPORTER: Regular delivery, e-tran?
MS. WILLIAMS: PDF.
(WHEREUPON, at 4:00 p.m., the deposition of PAUL DULBERG was concluded.)
* * * * *

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STATE OF ILLINOIS )
) SS:
COUNTY OF DUPAGE )

I, KAREN PILEGGI, a Notary Public within and for the County of DuPage, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto



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set my hand and affix my seal of office at Chicago, Illinois this 3rd day of March, 2020.

Karen Pileggi

Notary Public, DuPage County, Illinois.
My commission expires 1/2/24.

CSR Certificate No. 84-3404



EXAMINATION


| | Page | Line |
|---|---|---|
| PAUL DULBERG | | |
| Examination by Mr. Flynn | 3 | 6 |
| Examination by Ms. Williams | 142 | 4 |


E X H I B I T S


| Deposition Exhibit | Page | Line |
|---|---|---|
| Exhibit No. 1 | 47 | 19 |
| Exhibit No. 2 | 52 | 6 |
| Exhibit No. 3 | 60 | 6 |
| Exhibit No. 4 | 65 | 2 |
| Exhibit No. 5 | 67 | 13 |
| Exhibit No. 6 | 79 | 12 |
| Exhibit No. 7 | 84 | 8 |
| Exhibit No. 8 | 87 | 10 |
| Exhibit No. 9 | 91 | 2 |
| Exhibit No. 10 | 101 | 9 |
| Exhibit No. 11 | 114 | 10 |
| Exhibit No. 12 | 125 | 2 |
| Exhibit No. 13 | 125 | 5 |




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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANT HANS MAST'S**
**INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

**DEFINITIONS & INSTRUCTIONS**

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of



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illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

**INTERROGATORIES**

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

**ANSWER:**

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

**ANSWER:**

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

**ANSWER:**



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4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

**ANSWER:**

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANT HANS MAST'S**
**INTERROGATORIES TO PLAINTIFF PAUL DULBERG**

NOW COMES Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 213, propounds the following interrogatories on Plaintiff, Paul Dulberg, to be answered under oath within 28 days:

**DEFINITIONS & INSTRUCTIONS**

The pronoun "you" refers to Plaintiff, Paul Dulberg, to whom this production request is addressed, as well as their agents, representatives, employees, anyone acting on his behalf, and unless privileged, his attorneys.

The term "document" as used herein means all records, papers, and books, transcriptions, pictures, drawings, or diagrams of every nature, whether transcribed by hand or by mechanical, electronic, photographic, or other means, as well as sound reproduction of oral statements or conversations by whatever means made, whether in your actual or constructive possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes originals, all file copies, and all other copies, no matter how prepared, and all drafts prepared in connection with such writing, whether used or not, including by way of



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illustration and not by way of limitation, the following: books, records, contracts, agreements, expense accounts, canceled checks, catalogues, price lists, sound and tape recordings, memorandum (including written memoranda of telephone conversations, other conversations, discussions, agreements, acts, and activities), minutes, diaries, calendar or desk pads, scrapbooks, notebooks, correspondence, emails, bulletins, circulars, forms, pamphlets, notices, statements, journals, postcards, letters, telegrams, reports, intra-office communications, photographs, microfilm, maps, and deposition transcripts, whether prepared by you for your own use or for transmittal or received by you.

**INTERROGATORIES**

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

**ANSWER:**

2. Identify the date and location of any discussion between you and Mast in which Mast represented to you that there was no possibility of any liability against William or Caroline McGuire and/or Auto Owners Insurance Company, and identify what you said to Mast, and what he said to you.

**ANSWER:**

3. Identify the other property owned by the McGuire's as alleged in paragraph 50 of your Second Amended Complaint.

**ANSWER:**



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4. When did you or your attorneys (following the withdrawal by Popovich and Mast) first learn that the McGuire's had an insurance policy that potentially would have covered the claim for an amount greater than $100,000?

**ANSWER:**

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
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Attorneys for Defendants
gflynn@karballaw.com



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** FILED ** Env: 9649054
McHenry County, Illinois
17LA000377
Date: 7/2/2020 9:30 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17 LA 377 |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO:** Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

PLEASE TAKE NOTICE that on the 2nd day of July 2020 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- **Supplemental Requests for Production to Plaintiff;**

a copy of which is attached hereto and herewith served upon you.

Dated this 2nd day of July 2020.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

**EXHIBIT E**

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing DEFENDANT'S NOTICE OF SERVICE OF DISCOVERY DOCUMENT was served upon:

Edward X. Clinton, Jr.
Julia C. Williams
The Clinton Law Firm
111 W. Washington Street, Suite 1437
Chicago, IL 60602
312-357-1515
ed@clintonlaw.net
juliawilliams@clintonlaw.net
Marywinch@clintonlaw.net

by email on July 2, 2020.

/s/ *George K. Flynn*
One of their Attorneys



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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION TO PLAINTIFF**

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. by and through its attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to the provisions of Illinois Supreme Court Rule 214, respectfully requests Plaintiff, Paul Dulberg, to produce within 28 days at the law offices of Karbal, Cohen, Economou, Silk & Dunne, LLC, 150 South Wacker Drive, Suite 1700, Chicago, Illinois 60606, the following photographs, documents, objects, and other tangible things:

**SUPPLEMENTAL PRODUCTION REQUESTS**

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

**RESPONSE:**

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

**RESPONSE:**



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3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

**RESPONSE:**

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their representation of you or provision of legal services to you.

**RESPONSE:**

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

**RESPONSE:**

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition from February 19, 2020.

**RESPONSE:**

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

**RESPONSE:**

Respectfully submitted,

/s/ *George K. Flynn*



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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



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**George Flynn**

**From:** George Flynn
**Sent:** Thursday, September 17, 2020 4:06 PM
**To:** Paul Dulberg
**Subject:** RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Thank you.

Pursuant to Illinois Supreme Court Rule 201(k), please advise when the supplemental discovery answers and documents will be served. As I indicated in court on September 10, I plan to file a motion to compel very soon if we do not receive the sworn answers and all responsive documents.

Best regards,

-----Original Message-----
From: Paul Dulberg <Paul_Dulberg@comcast.net>
Sent: Thursday, September 17, 2020 11:19 AM
To: George Flynn <gflynn@karballaw.com>
Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear Mr Flynn,

Please find the attached files named 2020-09-17_Appearance Pro se.pdf and 2020-09-17_ProofOfDelivery.pdf

I have filed these with the McHenry County Clerk via the i2file web site.

Thank you,
Paul

Paul Dulberg
847-497-4250

***GROUP EXHIBIT F***



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## George Flynn

**From:** George Flynn
**Sent:** Saturday, August 29, 2020 8:59 PM
**To:** Julia WIlliams
**Cc:** Ed Clinton; Mary Winch; Linda Walters
**Subject:** Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

> On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).
>
> I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.
>
> I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).
>
> The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.
>
> Please feel free to contact me if you would like to discuss this matter.
>
> Very truly yours,



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**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Thursday, July 30, 2020 10:07 AM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
**Subject:** Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

**From:** Linda Walters <lwalters@KARBALLAW.com>
**Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)**
**Date:** July 2, 2020 at 11:11:39 AM CDT
**To:** "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
**Cc:** George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**



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150 S. Wacker Drive
Suite 1700
Chicago, IL 60606



P: (312) 431-3641



F: (312) 431-3670



E: lwalters@KARBALLAW.com

**CONFIDENTIALITY NOTE:**
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.



Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

## George Flynn

**From:** George Flynn
**Sent:** Thursday, July 30, 2020 10:12 AM
**To:** Julia WIlliams
**Cc:** Ed Clinton; Mary Winch
**Subject:** Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Hi Julia. Yes, agreed.

On Jul 30, 2020, at 10:07 AM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

**From:** Linda Walters <lwalters@KARBALLAW.com>
**Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)**
**Date:** July 2, 2020 at 11:11:39 AM CDT
**To:** "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
**Cc:** George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff



Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

Thank you.

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg>

P: (312) 431-3641

<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png>

F: (312) 431-3670

<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png>

E: lwalters@KARBALLAW.com

**CONFIDENTIALITY NOTE:**
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<2691756v1 - Supplemental Request for Prod. to Plaintiff.PDF>
<2691837v1 - Notice of Service of Discovery Documents -- Supplemental RTP to Plaintiff (FS).PDF>



Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

## George Flynn

**From:** George Flynn <gflynn@karballaw.com>
**Sent:** Tuesday, September 1, 2020 10:31 AM
**To:** Julia WIlliams
**Cc:** Ed Clinton; Mary Winch; Linda Walters
**Subject:** RE: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Julia:

Thank you. I understand the position you and your firm are in. I will plan to either file a motion to compel, or advise the court of our intentions to file a motion on September 10.

Stay safe.

Very Truly Yours,

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

**CONFIDENTIALITY NOTE:**
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**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Monday, August 31, 2020 8:45 AM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>; Linda Walters <lwalters@KARBALLAW.com>
**Subject:** Re: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

I will certainly pass this along to our client.

Unfortunately, because we are withdrawing, we are not comfortable answering discovery when another counsel may be appearing. Mr. Dulberg is seeking new counsel and would like to have his new counsel answer. I expect that we will be withdrawing on September 10, 2020. The court will grant Mr. Dulberg 21 days to find alternative counsel. Based upon this, it is unlikely that any answers to supplemental discovery will be prepared prior to the end of September.



Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

Thank you again for your time and courtesy in this case. It has been nice to work with you as well.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Aug 29, 2020, at 8:58 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I write pursuant to rule 201(k) and rule 219(c). Mr. Dulberg is late in responding to discovery pursuant the the extension you requested, and to which I agreed.

It is finally time for Mr. Dulberg to properly answer discovery in conformity to his allegations, and relative to the matters which he has placed at issue.

Once the Gooch discovery is produced, I would like to immediately depose Dulberg and Gooch. Please pass this along to your client.

You and your firm have been nothing but professional and it was a pleasure working with you.

Best regards,

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

**CONFIDENTIALITY NOTE:**
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

On Aug 18, 2020, at 2:13 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

This correspondence is being forwarded pursuant to Illinois Supreme Court Rule 201(k).



Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

I just received your firm's motion to withdraw. If you could please pass along to Mr. Dulberg or his new counsel, that we must insist on the outstanding written discovery being answered by August 27, 2020 per our agreement below, it would be appreciated.

I think we have been very patient with Mr. Dulberg in responding to discovery which has been directed at his assertion of the discovery rule in this case, where he is attempting to overcome a statute of limitations defense (issues which are evident from the face of the pleadings and the applicable statutes involved).

The supplemental discovery we served merely clarified and more specifically identified communications and documents which were the subject of prior discovery requests, and some of which were identified at Mr. Dulberg's discovery deposition taken on February 19, 2020.

Please feel free to contact me if you would like to discuss this matter.

Very truly yours,

---

**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Thursday, July 30, 2020 10:07 AM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Ed Clinton <ed@clintonlaw.net>; Mary Winch <marywinch@clintonlaw.net>
**Subject:** Fwd: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)

Dear George,

Are you agreeable to an extension of 28 days on these answers?

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Begin forwarded message:

**From:** Linda Walters <lwalters@KARBALLAW.com>



Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

**Subject: PAUL DULBERG v. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C, et al. (Circuit Court of McHenry County, IL No. No. 17 LA 377)**
**Date:** July 2, 2020 at 11:11:39 AM CDT
**To:** "ed@clintonlaw.net" <ed@clintonlaw.net>, "juliawilliams@clintonlaw.net" <juliawilliams@clintonlaw.net>, "Marywinch@clintonlaw.net" <Marywinch@clintonlaw.net>
**Cc:** George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please see the attached:

- Supplemental Request for Production to Plaintiff; and
- Notice of Service of Discovery Document – Supp. RFP to Plaintiff

Thank you.

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606

<image001.jpg>

P: (312) 431-3641

<image002.png>

F: (312) 431-3670

<image003.png>

E: lwalters@KARBALLAW.com

**CONFIDENTIALITY NOTE:**
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<image002.png><image003.png><image001.jpg>



Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 10675216
McHenry County, Illinois
17LA000377
Date: 10/5/2020 3:27 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| Paul Dulberg,<br><br>Plaintiff,<br><br>v.<br><br>The Law Offices of Thomas J. Popovich, P.C., And Hans Mast,<br><br>Defendants. | ) | Case No. 17 LA 000377<br>Jury Demand<br>(Court Room 201) |

## NOTICE OF MOTION

**TO: Paul Dulberg**
**4606 Hayden Court**
**McHenry, IL 60051**
**Paul_Dulberg@comcast.net**

PLEASE TAKE NOTICE that on the **7th day of October 2020 at 8:45 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY, a copy of which is attached hereto and herewith served upon you.

Dated this 5th day of October 2020 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to each party to whom it is directed via the Odyssey eFileIL system on October 5, 2020.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 10-05-2020 04:28 PM / Circuit Clerk Accepted on 10-06-2020 06:17 AM / Transaction #10675216 / Case #17LA000377

Purchased from re:SearchIL

#11

# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17LA377

☒ Jury ☐ Non-Jury

FILED
McHenry County, Illinois
OCT - 7 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

Dulberg

vs.

Popovich

Date: 10-8-20 Plaintiff's Attorney Pro-Se Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard for status and on Dulberg's motion for extension of time to hire counsel, and on Popovich's motion to compel, it is ordered:

1) Plaintiff's motion is granted over Defendant's objection. Plaintiff is granted leave to hire counsel within 21 days.

2) Popovich's motion to compel is entered and continued to October 27, 2020 at 8:45 a.m.

Prepared by: George Flynn
Attorney for: Popovich
Attorney Registration No.: 6239349 Judge:

C 482

Purchased from re:SearchIL

** FILED ** Env: 10893447
McHenry County, Illinois
17LA000377
Date: 10/23/2020 4:21 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY

Paul Dulberg

vs.

The Law Offices of Thomas J. Popovich, P.C. and Hans Mast

Case Number 17LA000377

# APPEARANCE

**I HEREBY ENTER THE APPEARANCE OF**

Paul Dulberg

(Insert the name of the party for whom you are entering your appearance)

**AND MY OWN AS**

- ☐ REGULAR COUNSEL
- ☐ SPECIAL & LIMITED APPEARANCE
- ☐ PRO-SE
- ☑ ADDITIONAL COUNSEL
- ☐ GUARDIAN AD LITEM
- ☐ TRIAL COUNSEL
- ☐ SUBSTITUTE COUNSEL
- ☐ COUNSEL IN FORCIBLE ENTRY
- ☐ APPELLATE COUNSEL
- ☐ COURT APPOINTED COUNSEL

**AND AS (HIS) (HER) (THEIR) COUNSEL IN THE ABOVE ENTITLED CASE.**

SIGNED _____
(Signature of Attorney filing appearance)

Name Alphonse A. Talarico

Alphonse A. Talarico
Printed Name

ARDC Number 6184530

Attorney for Paul Dulberg

Address 707 Skokie Blvd. Suite 600

City, State Zip Northbrook, Illinois 60062

Phone (312) 808-1410

Email contact@lawofficeofalphonsetalarico.com

CC-APP1 (Revised 07-01-2018)

Received 10-26-2020 08:17 AM / Circuit Clerk Accepted on 10-26-2020 08:20 AM / Transaction #10893447 / Case #17LA000377

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** FILED ** Env: 10893447
McHenry County, Illinois
17LA000377
Date: 10/23/2020 4:21 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry COUNTY

# ADDITIONAL PROOF OF DELIVERY

For Court Use Only

| Instructions |
|---|
| Directly above, enter county where the case is filed. |
| Enter the name of the Plaintiff/ Petitioner. |
| Enter the name of the Defendant/Respondent. |
| Enter the Case Number given by the Circuit Clerk. |

Paul Dulberg
**Plaintiff / Petitioner** *(First, middle, last name)*

v.

Hans Mast et al
**Defendant / Respondent** *(First, middle, last name)*

17 LA 000377
**Case Number**

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

**CAUTION:** If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:
   a. To:
      Name: George K. Flynn
      *First Middle Last*
      Address: 150 S. Wacker Drive, Suite 1700 Chicago Illinois 60606
      *Street, Apt # City State ZIP*
      Email address: gflynn@karballlaw.com
   b. By:
      ☐ Personal hand delivery
      ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:
      *Address of Post Office or Mailbox*
      ☐ Third-party commercial carrier, with delivery paid for at:
      *Name (for example, FedEx or UPS ) and office address*
      ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
      ☐ Email *(not through an EFM or EFSP)*
      ☐ Mail from a prison or jail at:
      *Name of prison or jail*

In **c**, fill in the date and time that you sent the document.

   c. On: October 23, 2020
      *Date*
      At: 3:00 ☐ a.m. ☑ p.m.
      *Time*

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:
   a. To:
      Name:
      *First Middle Last*
      Address:
      *Street, Apt # City State ZIP*
      Email address:
   b. By:
      ☐ Personal hand delivery
      ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:
      *Address of Post Office or Mailbox*



Received 10-26-2020 08:17 AM / Circuit Clerk Accepted on 10-26-2020 08:20 AM / Transaction #10893447 / Case #17LA000377
Purchased from re:SearchIL

☐ Third-party commercial carrier, with delivery paid for at:

*Name (for example, FedEx or UPS ) and office address*

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

☐ Email *(not through an EFM or EFSP)*

☐ Mail from a prison or jail at:

*Name of prison or jail*

c. On: _____
*Date*

At: _____ ☐ a.m. ☐ p.m.
*Time*

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By: ☐ Personal hand delivery

☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

*Address of Post Office or Mailbox*

☐ Third-party commercial carrier, with delivery paid for at:

*Name (for example, FedEx or UPS ) and office address*

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

☐ Email *(not through an EFM or EFSP)*

☐ Mail from a prison or jail at:

*Name of prison or jail*

c. On: _____
*Date*

At: _____ ☐ a.m. ☐ p.m.
*Time*

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the *Additional Proof of Delivery* is true and correct. I understand a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

707 Skokie Boulevard #600
*Street Address*

Northbrook, Illinois, 60062
*City, State, ZIP*

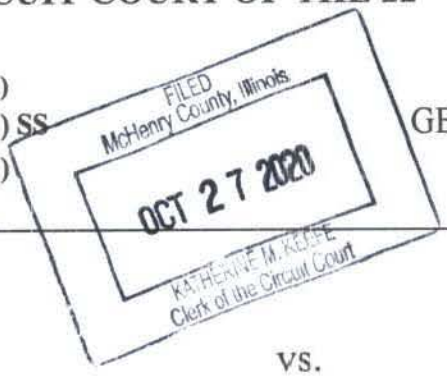


Received 10-26-2020 08:17 AM / Circuit Clerk Accepted on 10-26-2020 08:20 AM / Transaction #10893447 / Case #17LA000377
Purchased from re:SearchIL

#10

# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )




GEN. NO. 17 LA 377

☒ Jury ☐ Non-Jury

Owings

vs.

Popovich

Date: 10-27-20 Plaintiff's Attorney Alphon Talarico Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard for status on Popovich's Motion to Compel, it is ordered:

1) Popovich's motion to Compel is entered and continued to November 29, 2020 at 8:45 a.m. for status on compliance of discovery related to Popovich's Motion to Compel.

Prepared by: Flynn

Attorney for: Popovich

Attorney Registration No.: 6239349 Judge:

Purchased from re:SearchIL

CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY of McHENRY )

CASE NUMBER 17LA000377

☑ Jury ☐ Non-Jury

Paul Dulberg, Plaintiff

FILED
NOV 25 2020
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

vs. The law Offices Of Thomas J. Popovich and Hans Mast

Date Nov. 24, 2020 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

# ORDER

This matter coming on to be heard for status on Defendant Popovich's Motion to Compel and this Honorable Court being fully briefed in the premises, it is hereby Ordered that:

I) Defendant Popovich's Motion to Compel is entered and continues;

II) Plaintiff is granted 28 days, up to and including December 22, 2020 to Respond to said Motion;

III) Defendant Popovich is granted 14 days, up to and including January 5, 2021 to Reply;

IV) this Motion is set for hearing before this Honorable Court in room 201 on January 14, 2021 at 10:00 a.m.

Prepared by: Alphonse A. Talarico

Attorney for: Plaintiff Paul Dulberg

Judge: Thomas A. Meyer

eSigned by THOMAS A. MEYER 11/25/2020 13:14:32 bs6QN5md

Purchased from re:SearchIL

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

FILED Env: 11708302
McHenry County, Illinois
17LA000377
Date: 1/5/2021 12:10 PM
Katherine M. Keefe
Clerk of the Circuit Court

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry **COUNTY**

# PROOF OF DELIVERY

*For Court Use Only*

| Instructions ▾ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| Enter the name of the Defendant/Respondent. | v. |
| Enter the Case Number given by the Circuit Clerk. | Hans Mast et al<br>**Defendant / Respondent** *(First, middle, last name)*<br>17 LA 000377Plaintiff's<br>**Case Number** |

In **1**, enter the name of the court document you are sending to the other parties in the court case (*e.g.*, a Court Order or Answer).

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

**CAUTION:** If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

In **c**, fill in the date and time that you sent the document.

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

**1. I am sending the following court document:** Response To Motion To Compel

a. To:

Name: George K. Flynn
*First* *Middle* *Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
*Street, Apt #* *City* *State* *ZIP*

Email address: gflynn@kargallaw.com

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

  *Address of Post Office or Mailbox*
- ☐ Third-party commercial carrier, with delivery paid for at:

  *Name (for example, FedEx or UPS ) and office address*
- ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

  *Name of prison or jail*

c. On: January 5, 2021
*Date*

At: 11:00 ☑ a.m. ☐ p.m.
*Time*

**2.** I sent this document:

a. To:

Name:
*First* *Middle* *Last*

Address:
*Street, Apt #* *City* *State* *ZIP*

Email address:



Received 01-05-2021 02:41 PM / Circuit Clerk Accepted on 01-05-2021 05:41 PM / Transaction #11708302 / Case #17LA000377
Purchased from re:SearchIL

Enter the Case Number given by the Circuit Clerk: 17 LA 000377Plaintiff's

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

  _____
  *Address of Post Office or Mailbox*
- ☐ Third-party commercial carrier, with delivery paid for at:

  _____
  *Name (for example, FedEx or UPS ) and office address*
- ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

  _____
  *Name of prison or jail*

If you sent your document to more than 3 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

707 Skokie Blvd. #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*



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Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and in support of said Response states as follows:

1. Plaintiff admits the allegations in Defendants' Motion to Compel #1.
2. Plaintiff admits the allegations in Defendants' Motion to Compel #2.
3. Plaintiff Paul Dulberg admits that ¶ 20 of his original Complaint states "Following the execution of the mediation agreement with the "high-low agreement" contained therein, and the final mediation award, DULBERG realized for the first time that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuire's was a serious and substantial mistake. Following the mediation, DULBERG was advised to seek an independent



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opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016." To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 3 of Defendants' Motion to Compel.

In addition, on February 7, 2018 Defendants brought their 735 ILCS 5/2-619.1 combined motion against Plaintiff's original Complaint which contained a 735 ILCS5/2-619(a)(5) motion to dismiss (not commenced within the time allowed by law) and a 735 ILCS 5/2-619(a)(9) motion (other affirmative matter avoiding the legal effect of or defeating the claim-based on judicial estoppel) and said motions were denied by this Honorable court on May 10, 2018.

4. Plaintiff admits the allegations in defendants' Motion to Compel #4.

5. Plaintiff Paul Dulberg admits that ¶56 of his Second Amended Complaint states "Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake." Plaintiff further admits that ¶57 of his Second Amended Complaint states "It was not until the mediation in December 2016, based on the expert's opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis". To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 5 of Defendants' Motion to Compel.



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6. Plaintiff admits that Dulberg gave a discovery deposition in this case on February 19, 2020. Paul Dulberg admits that he was questioned by an attorney for Defendants and that said questions and answers can be found on DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C page 106 L1-page 114 L24. To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 6 of Defendants' Motion to Compel.

7. Plaintiff Paul Dulberg denies that his attending attorney Julia C. Williams waived the attorney-client privilege on behalf of her then client Plaintiff Paul Dulberg and additionally, states that the ability to waive the attorney-client privilege belongs to the client. Further responding Plaintiff states that his attorney did not waive or even attempt to waive the attorney-client privilege pursuant to Ill.R.Evid.502(d) illustrated by the following quotes:

Ms. Williams: There's not a question pending. I'm going to make a standing objection as to privilege with Gooch.

If we can agree that the objection will stand, we can go through this line of questioning and then if we need to later, have a judge determine whether or not that line of questioning is admissible. Are you agreeable to that?

Mr. Flynn: I'm agreeable to continuing on for a few minutes. I want to explore. I'll try to lay foundation for –to confirm this wasn't anyone else, for starters. Why don't we continue on and if you need to raise it again, we can talk.



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Ms. Williams: Otherwise, I'm just going to raise it to every single question you ask. I just don't want to continue to make the objection as to --- if questions are asked about advice given by a legal malpractice attorney. I'm going to raise an objection as to that.

please see THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C Page 110 L18-Page 111 L12.

In addition, Plaintiff Paul Dulberg admits that the following questions and answers are transcribed as part of his Deposition:

Q. Would you agree that the legal opinion you received on December 16, 2016 is responsive to that interrogatory, whatever it is that you were told?

A. Yes.

Q. You didn't identify this December 16, 2016 discussion in the answer to that interrogatory, correct?

A. Say that again.

Q. Your discussion with Mr. Gooch on December 16, 2016, that's referenced in your original complaint, you didn't respond and identify it in this answer to the interrogatory, correct?

A. This asks for every way Popovich or Mast breached the duty of care. It didn't ask for Gooch's opinion.

please see THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C Page 126 L12-Page 127 L3.



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Also, Plaintiff Paul Dulberg admits that the following questions and answers are transcribed as part of his Deposition:

Q. How did you find out that Mast and Popovich breached the duty of care to you? Because Gooch told you, right?

A. Yes.

Q. That's what you've alleged here in this complaint.

A. Yes.

please see THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C Page 127 L4-L10.

To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 7 of Defendants' Motion to Compel.

8. Plaintiff Paul Dulberg admits that the Clerk of the Circuit Court's Website reflects a NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

● Supplemental Requests for Production to Plaintiffs;

a copy of which is attached hereto and herewith served upon you.

Said notice contains a Filed date of July 2, 2020

please see THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit E.

To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 8 of Defendants' Motion to Compel.

9. Plaintiff Paul Dulberg admits that the Clerk of the Circuit Court's Website



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reflects a NOTICE OF MOTION and a MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF PAUL DULBERG filed on August 18, 2020.

To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 9 of Defendants' Motion to Compel.

10. Plaintiff Paul Dulberg admits that the Clerk of the Circuit Court's Website reflects an Order entered by this Honorable Court granting the Clinton Law Firm's motion to withdraw. The file date is September 10, 2020. Further responding Paul Dulberg admits that he filed his Appearance Pro Se on September 17, 2020.

11. Plaintiff Paul Dulberg admits that contained within *Waste Management, Inc. v. International Surplus Lines Ins. Co.,*144 Ill.2d 178, 579 N.E.2d 322, 161 Ill.Dec. 774 (Ill. 1991) the Illinois Supreme Court stated :

"The purpose of the attorney-client privilege is to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled

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[161 Ill.Dec. 779] disclosure of information." (Consolidation Coal Co. v. Bucyrus-Erie Co. (1982), 89 Ill.2d 103, 117-18, 59 Ill.Dec. 666, 432 N.E.2d 250.) However, the privilege is not without conditions, and we are mindful that it is the privilege, not the duty to disclose, that is the exception. (Consolidation Coal, 89 Ill.2d at 117-18, 59 Ill.Dec. 666, 432 N.E.2d 250.) Therefore, the privilege ought to be strictly confined within its narrowest possible limits. Further, the attorney-client privilege is limited solely to those communications which the claimant either expressly made confidential or which he could reasonably believe under the circumstances would be understood by the attorney as such. (Consolidation, 89 Ill.2d at 119, 59 Ill.Dec. 666, 432 N.E.2d 250; McCormick, Evidence § 91, at 217 (3d ed. 1984).) Finally, we note that in Illinois, we adhere to a strong policy of encouraging disclosure, with an eye toward ascertaining that truth which is essential to the proper disposition of a lawsuit. Monier v. Chamberlain (1966), 35 Ill.2d 351, 359, 221 N.E.2d 410.

Further responding, Plaintiff Paul Dulberg admits that contained within Bill Daily, M.D., &



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Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C., 2018 IL App (5th) 150384, 98 N.E.3d 604 (Ill. App. 2018) the Appellate court stated in ¶22-23:

¶ 22 We begin with the issue of whether the documents referenced in Daily, Stinson, and Padberg's privilege logs are discoverable based on the "at issue" waiver of the attorney-client privilege. "All matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure." Ill.S.Ct. R. 201(b)(2) (eff. July 30, 2014). "Where legal advice of any kind is sought from a lawyer in his or her capacity as a lawyer, the communications relating to that purpose, made in confidence by the client, are protected from disclosure by the client or lawyer, unless the protection is waived."

[98 N.E.3d 614]

Center Partners, Ltd. , 2012 IL 113107, ¶ 30, 367 Ill.Dec. 20, 981 N.E.2d 345. Although this statement regarding the privilege "suggests that only communications 'by the client' are protected from disclosure, the modern view is that the privilege is a two-way street, protecting both the client's communications to the attorney and the attorney's advice to the client." People v. Radojcic , 2013 IL 114197, ¶ 40, 376 Ill.Dec. 279, 998 N.E.2d 1212 (citing Edward J. Imwinkelried, The New Wigmore: A Treatise on Evidence § 6.6.1, at 585 (2002) ). " 'The purpose of the attorney-client privilege is to encourage and promote full and frank consultation between a client and legal advisor by removing the fear of compelled disclosure of information.' " Waste Management, Inc. , 144 Ill.2d at 190, 161 Ill.Dec. 774, 579 N.E.2d 322 (quoting Consolidation Coal Co. v. Bucyrus–Erie Co. , 89 Ill.2d 103, 117–18, 59 Ill.Dec. 666, 432 N.E.2d 250 (1982) ).

¶ 23 While the attorney-client privilege serves a purpose that our supreme court has characterized as " 'essential "to the proper functioning of our adversary system of justice" ' " ( Center Partners, Ltd. , 2012 IL 113107, ¶ 30, 367 Ill.Dec. 20, 981 N.E.2d 345 (quoting In re Marriage of Decker , 153 Ill.2d 298, 313, 180 Ill.Dec. 17, 606 N.E.2d 1094 (1992), quoting United States v. Zolin , 491 U.S. 554, 562, 109 S.Ct. 2619, 105 L.Ed.2d 469 (1989) ), our supreme court has also made clear that the attorney-client privilege is not without conditions, finding that it is the privilege, not the duty to disclose, that is the exception. Waste Management, Inc. , 144 Ill.2d at 190, 161 Ill.Dec. 774, 579 N.E.2d 322 (citing Consolidation Coal Co. , 89 Ill. 2d at 117–18, 59 Ill.Dec. 666, 432 N.E.2d 250 ). "Illinois adheres 'to a strong policy of encouraging disclosure, with an eye toward ascertaining that truth which is essential to the proper disposition of a lawsuit.' " Center Partners, Ltd. , 2012 IL 113107, ¶ 32, 367 Ill.Dec. 20, 981 N.E.2d 345 (quoting Waste Management, Inc. , 144 Ill.2d at 190, 161 Ill.Dec. 774, 579 N.E.2d 322 ). Accordingly, "the privilege ought to be strictly confined within its narrowest possible limits." Waste Management, Inc. , 144 Ill.2d at 190, 161 Ill.Dec. 774, 579 N.E.2d 322.



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In addition, Plaintiff Paul Dulberg admits that in Ctr. Partners, Ltd. v. Growth Head GP, LLC, 2012 IL 113107, 981 N.E.2d 345, 367 Ill.Dec. 20 (Ill. 2012) the Illinois Supreme Court in ¶35 stated:

> ¶ 35 Among the exceptions to the attorney client privilege is the concept of "waiver." The attorney-client privilege belongs to the client, rather than the attorney, although the attorney asserts the privilege on behalf of the client. *Decker,* 153 Ill.2d at 313, 180 Ill.Dec. 17, 606 N.E.2d 1094. Only the client may waive the privilege. *Decker,* 153 Ill.2d at 313, 180 Ill.Dec. 17, 606 N.E.2d 1094. The attorney, although presumed to have authority to waive the privilege on the client's behalf, may not do so over the client's objection. Richard O. Lempert et al., A Modern Approach to Evidence 884–85 (3d ed. 2000). "Any disclosure by the client is inherently inconsistent with the policy behind the privilege of facilitating a confidential attorney-client relationship and, therefore, must result in a waiver of the privilege." *Profit Management Development, Inc., v. Jacobson, Brandvik & Anderson, Ltd.,* 309 Ill.App.3d 289, 299, 242 Ill.Dec. 547, 721 N.E.2d 826 (1999). Thus, for example, the attorney-client privilege may be waived by the client when the client voluntarily testifies to the privileged matter ( *Profit Management,* 309 Ill.App.3d at 299, 242 Ill.Dec. 547, 721 N.E.2d 826), or when the client voluntarily injects into the case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications, such as legal malpractice actions ( *Fischel & Kahn,* 189 Ill.2d at 585, 244 Ill.Dec. 941, 727 N.E.2d 240;*Lama v. Preskill,* 353 Ill.App.3d 300, 305, 288 Ill.Dec. 755, 818 N.E.2d 443 (2004)). The basic, well-settled rule is that when a client discloses to a third-party a privileged communication, that particular communication is no longer privileged and is discoverable or admissible in litigation. Michael



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> H. Graham, Evidence: An Introductory Problem Approach 563 (2002)(“The holder of the privilege against disclosure of the confidential matter or communication waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication * * *.”).

Further responding, Plaintiff Paul Dulberg admits that contained within Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C., 2018 IL App (5th) 150384, 98 N.E.3d 604 (Ill. App. 2018) the Appellate court stated in ¶24-25:

¶ 24 While our supreme court has not had occasion to find an "at issue" exception to the attorney-client privilege, it has clearly recognized that such an exception exists. See *Center Partners, Ltd.* , 2012 IL 113107, ¶ 35, 367 Ill.Dec. 20, 981 N.E.2d 345. Specifically, our supreme court has stated that the "at issue" exception to the attorney-client privilege may be invoked "when the client voluntarily injects into the case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications, such as legal malpractice actions." *Id.* (citing *Fischel & Kahn, Ltd. v. Van Straaten Gallery , Inc.* , 189 Ill.2d 579, 585, 244 Ill.Dec. 941, 727 N.E.2d 240 (2000), and *Lama v. Preskill* , 353 Ill.App.3d 300, 305, 288 Ill.Dec. 755, 818 N.E.2d 443 (2004) ); see also *Waste Management, Inc.* , 144 Ill.2d at 19193, 161 Ill.Dec. 774, 579 N.E.2d 322 (recognizing the "at issue" exception applies where an attorney's litigation files from underlying litigation are "relevant and at issue in the present [litigation]").

¶ 25 The plaintiffs recognize that "Illinois jurisprudence does not have a case with this exact fact pattern." Nonetheless, they point to what they characterize as "well established Illinois law," which they contend sets forth a standard by which a plaintiff does not waive the attorney-client privilege by placing privileged material "at issue," unless the plaintiff "actually discloses or describes, *i.e.* , in some way expressly relies upon, attorney[-]client communications in making its claim." We disagree and find the cases cited by Greensfelder—the most relevant of which [98 N.E.3d 615] is the Illinois Supreme Court's decision in *Fischel*



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*& Kahn, Ltd.* , 189 Ill.2d 579, 244 Ill.Dec. 941, 727 N.E.2d 240 —to be distinguishable.

Another response by Plaintiff Paul Dulberg to Defendants Motion to Compel regarding Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc., 727 N.E.2d 240, 189 Ill.2d 579, 244 Ill.Dec. 941 (Ill. 2000) is to neither admit nor deny as the reference to this case on page 4 of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY does not contain a specific page or paragraph citation and therefore Plaintiff Paul Dulberg respectfully refrains from responding until the exact page or paragraph is provided.

As an added response, Plaintiff Paul Dulberg admits that contained within Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C., 2018 IL App (5th) 150384, 98 N.E.3d 604 (Ill. App. 2018) the Appellate court stated in ¶31-32:

¶ 31 Based on our analysis of existing Illinois law, as set forth above, we
[98 N.E.3d 617]
find that documents within Daily, Stinson, and Padberg's files, as set forth in their respective privilege logs, may contain communications that are required to be examined in order to truthfully resolve factual and legal issues that have been injected into the instant litigation by the plaintiffs. See *Center Partners, Ltd.* , 2012 IL 113107, ¶ 35, 367 Ill.Dec. 20, 981 N.E.2d 345. Although the plaintiffs are not asserting a cause of action for legal malpractice against Greensfelder, they are asserting a cause of action for breach of fiduciary duty based on Greensfelder's role as their prior counsel and its use of information acquired in that role in its representation of an adverse party leading up to, during, and in settlement of the Missouri litigation. An essential element of a claim for breach of fiduciary duty is damages proximately caused by the breach. *Huang v. Brenson* , 2014 IL App (1st) 123231, ¶ 44, 379 Ill.Dec. 891, 7 N.E.3d 729. Accordingly,



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the case at bar is more like *Pappas* than *Fischel & Kahn, Ltd.* , because there is an issue of whether Greensfelder, Daily, Stinson, and Padberg contributed to cause the Missouri litigation and its outcome and the relative contribution of each to the plaintiffs' damages.
¶ 32 In order to truthfully resolve the factual and legal issues necessary to adjudicate the causation element of the plaintiffs' claims against Greensfelder, all communications between the plaintiffs and Daily, Stinson, and Padberg that are related to the role Daily, Stinson, and Padberg played in the events leading up to and including the plaintiffs' defense of the Missouri litigation are discoverable pursuant to the "at issue" exception to the attorney-client privilege.[8] However, pursuant to the holding of our supreme court in *Fischel & Kahn , Ltd.* , 189 Ill.2d at 590, 244 Ill.Dec. 941, 727 N.E.2d 240, documents evidencing communications between the plaintiffs and Daily, Stinson, and Padberg that are relevant solely to the reasonableness of the plaintiffs' decision to settle the Missouri litigation, and the amount of that settlement, remain privileged because, for the above-stated reasons, they are not "required to be examined in order to truthfully resolve" the causation element of the plaintiffs' claim against Greensfelder for breach of fiduciary duty. Instead, they are relevant to the issue of the reasonableness of the settlement of the Missouri litigation, which, as explained above, is subject to an objective measure of proof.

To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 11 of Defendants' Motion to Compel.

12. Plaintiff Paul Dulberg response to Defendants' Motion to Compel regarding Lama v. Preskill, 353 Ill.App.3d 300, 288 Ill.Dec. 755, 818 N.E.2d 443 (Ill. App. 2004) is to neither admit nor deny as the citation to this case on page 4 of DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY does not contain a specific page or paragraph citation and therefore Plaintiff Paul Dulberg respectfully refrains from responding until the exact page or paragraph is provided.



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To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 12 of Defendants' Motion to Compel.

13. Plaintiff admits that Dulberg gave a discovery deposition in this case on February 19, 2020. Paul Dulberg admits that he was questioned by an attorney for Defendants and that said questions and answers can be found on DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY attached as Exhibit C pages 133 L1-page 142 L24. To the extent that a further response is required, Plaintiff Paul Dulberg denies the allegations contained in Paragraph 13 of Defendants' Motion to Compel.

14. Plaintiff Paul Dulberg denies the allegations contained in Paragraph 14 of Defendants' Motion to Compel.

Further responding Plaintiff Paul Dulberg states that on November 28, 2012 the Illinois Supreme Court adopted Ill.R.Evid. 502 ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVERS, effective January 1, 2013. Rule 502 is as follows:

**Rule 502**.

**ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVER**

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.



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**(a) Disclosure Made in an Illinois Proceeding or to an Illinois Office or Agency; Scope of a Waiver.** When the disclosure is made in an Illinois proceeding or to an Illinois office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in any proceeding only if:

**(1)** the waiver is intentional;

**(2)** the disclosed and undisclosed communications or information concern the same subject matter; and

**(3)** they ought in fairness to be considered together.

**(b) Inadvertent Disclosure.** When made in an Illinois proceeding or to an Illinois office or agency, the disclosure does not operate as a waiver in any proceeding if:

**(1)** the disclosure is inadvertent;

**(2)** the holder of the privilege or protection took reasonable steps to prevent disclosure; and

**(3**) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Supreme Court Rule 201(p).

**(c) Disclosure Made in a Federal or Another State's Proceeding or to a Federal or Another State's Office or Agency.** When the disclosure is made in a federal or another state's proceeding or to a federal or another state's office or agency and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in an Illinois proceeding if the disclosure:

**(1)** would not be a waiver under this rule if it had been made in an Illinois proceeding; or

**(2**) is not a waiver under the law governing the federal or state proceeding where the disclosure occurred.

**(d) Controlling Effect of a Court Order.** An Illinois court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other proceeding.

**(e) Controlling Effect of a Party Agreement.** An agreement on the effect of disclosure in an Illinois proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

**(f) Definitions.** In this rule:

**(1)** "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and



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**(2)** "work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

Adopted Nov. 28, 2012, eff. Jan. 1, 2013.

This Honorable Court should deny DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY based upon the following:

1) On February 7, 2018 Defendants brought their 735 ILCS 5/2-619.1 combined motion against Plaintiff's original Complaint which contained a 735 ILCS 5/2 -619(a)(5) motion to dismiss (not commenced within the time allowed by law) and a 735 ILCS 5/2-619(a)(9) motion (other affirmative matter avoiding the legal effect of or defeating the claim-based on judicial estoppel) and said motions were denied by this Honorable Court on May 10, 2018;

2) On November 28, 2012 the Illinois Supreme Court adopted Ill.R.Evid. 502 ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVERS, effective January 1, 2013;

3) All of Defendants citations are to cases decided before the effective date of the Illinois Rule of Evidence 502 except Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C.,2018 IL App (5th) 150384, 98 N.E.3d 604 (Ill. App. 2018);

4) Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C.,2018 IL App (5th)150384, 98 N.E.3d 604 (Ill. App. 2018) Court relied on cases decided before the effective date of Illinois Rule of



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Evidence 502;

5) ) Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C.,2018 IL App (5th)150384, 98 N.E.3d 604 (Ill. App. 2018) Court did not recognize Illinois Rule of Evidence 502 in its majority analysis;

6) ) Bill Daily, M.D., & Cardiothoracic Surgery Assocs., P.C. v. Greensfelder, Hemker & Gale, P.C.,2018 IL App (5th)150384, 98 N.E.3d 604 (Ill. App. 2018) case had a pending but not yet decided 735 ILCS 5/2 619.1 combined motions, one of which was a 735 ILCS 5/2 619(a)(5) motion to dismiss based on a statute of limitation while in the current matter before this Honorable Court the 735 ILCS 5/2-619(a)(5) and 735 IILCS 5/2-619 (a)(9) motions to dismiss were denied on May 10, 2018.

WHEREFORE PLAINTIFF PAUL DULBERG prays that DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY be denied in its entirety and for any and all further relief as this HONORABLE COURT deems right and just.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico



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By: Alphonse A. Talarico
Plaintiff's attorney
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CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY of McHENRY )

CASE NUMBER 17LA000377

☑ Jury ☐ Non-Jury

FILED
JAN - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

Paul Dulberg, Plaintiff

vs. The Law Offices Of Thomas J. Popovich and Hans Mast

Date January 5, 2021 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

# ORDER

This matter coming on to be heard pursuant to agreement of the parties after direct communication between the attorneys for the parties, a briefing schedule being previously entered on November 25, 2020 by this Honorable Court that the parties now desire to amend, the Court being fully advised in the premises , it is hereby ordered that:

I) Defendant Popovich's Motion to Compel is entered and continued;

II) Plaintiff is granted an additional 14 days, up to and including January 5, 2021 to respond to said motion;

III) Defendant is granted an additional 14 days, up to and including February 2, 2021 to reply;

IV) the hearing date of January 14, 2021 in room 201 at 10:00 a.m. is stricken;

v) this Motion is set for hearing before this Honorable Court in room 201 on February 10, 2021 at 11:00 a.m.

Prepared by: Alphonse A. Talarico

Attorney for: Plaintiff Paul Dulberg

Judge: Thomas A. Meyer

eSigned by THOMAS A. MEYER 01/06/2021 08:14:38 7rNP5PQH

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** FILED ** Env: 12069834
McHenry County, Illinois
17LA000377
Date: 2/2/2021 2:54 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF FILING

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that, on the 2nd day of February 2, 2021, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REPLY IN SUPPORT OF MOTION TO COMPEL, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 2nd day of February 2021.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to each party to whom it is directed via the Odyssey eFileIL system on February 2, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |



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** FILED ** Env: 12069834
McHenry County, Illinois
17LA000377
Date: 2/2/2021 2:54 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PLAINTIFF TO ANSWER WRITTEN DISCOVERY**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, by and through their attorneys KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, for their Reply in Support of Motion to Compel Plaintiff to Answer written Discovery, state as follows:

## I. INTRODUCTION

Dulberg's evasiveness, failure to respond or timely object to proper written and oral discovery, and his delay tactics should not be rewarded. Dulberg's response to the instant motion to compel provides little in the way of opposition to Popovich's position or the issues raised, and basically fails to analyze the issues material to this motion to compel, or offer any basis for the denial of said motion. Nor does he offer any valid reason why the court should not dismiss his case with prejudice pursuant to Illinois Supreme Court Rule 219.

## II. ARGUMENT

Dulberg's response is formatted similar to an answer to a complaint, and in some cases admits, and some cases denies the allegations and arguments contained in the motion to compel.



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In some instances, for example Plaintiff's response to ¶8, Dulberg admits that on July 2, Popovich served supplemental production requests aimed at Dulberg's discovery of the malpractice as alleged in December 2016, including the following production requests. (Ex. F) First, Dulberg admitted service of the discovery documents, and then wrote, "to the extent that affirmative response is required, Plaintiff Paul Dulberg denies the allegations contained in ¶8 of Defendants' motion to compel." What is left to deny?

Dulberg continues on to admit the existence of some of the facts contained in the motion to compel, and admits or regurgitates some of the caselaw cited in the motion to compel. On page 10 of his response, Dulberg acknowledges citations to *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.*, 189 Ill. 2d 579 (2000), but fails to analyze the case because a specific page or paragraph citation was not included. The cases that were cited by defendants were general propositions, and not necessarily a quote or a court's holding in the cases. Similarly, defendants' citation to *Lama v. Preskill*, 353 Ill. App. 3d 300 (2nd Dist. 2004) was for the general proposition, and the entire factual scenario contained in the case. In fact, defendants described the material facts contained in the case. Goldberg opted to ignore the case, at his own peril.

At page 12 of his response, Dulberg responds to the defendants' argument (contained at ¶¶13 and 14) by simply denying the allegations. Dulberg then cites to Illinois Rules of Evidence including Rule 502 regarding attorney/client privilege and work product, but fails to analyze same. Finally, at page 14 of his response, Dulberg seems to argue that any of the cases analyzed in the attorney/client privilege and work product [doctrine] predate the codification of Ill. R. Evid. 502. But Dulberg fails to analyze the rule, or its application here.

Lastly, Dulberg apparently argues that page 15 of his response that the defendants' motions to dismiss under 735 ILCS 5/2-619(a)(5) were denied on May 10, 2018. Dulberg makes



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no argument that the ruling on May 10, 2018 precludes discovery and litigation concerning the statute of limitations for legal malpractice actions. In fact, defendants' motion to dismiss heard by this Honorable Court on May 10, 2018 was a combined a motion to dismiss under 735 ILCS 5/2-619.1. The Court granted the defendants' motion to dismiss for failure to state a claim under 735 ILCS 5/2-615. During the hearing (See transcript attached as Ex. F) the court held that more specificity was going to be required [by the plaintiff]. "Because they – ultimately, these things are going to factor into the statute of limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect." Ex. F at pp.2, 3. At page 4, the Court wrote "With respect to the issue of – upon the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the – the application of the discovery rule. And, ultimately, I saw that in the long run it was going to be a question of fact, and I would probably need – and I can only address that with some more facts than what's contained in the complaint." (emphasis added) At page 9, the Court essentially wrote that because of the absence of information contained in the complaint, it was reluctant to go further [in ruling on the motion to dismiss based on statute of limitations].

## II. CONCLUSION

Dulberg placed the discovery of his malpractice claim at issue. He failed to timely object to proper discovery in the form of interrogatories and production requests, and failed to answer proper and timely discovery requests, specific questioning at his deposition, and a supplemental production request and interrogatories aimed at a discovery rule. In fact, as of the time of this writing, Dulberg has failed to respond to or object to the July 2 supplemental discovery served by defendants. His response to the motion fails to address defendants' arguments, and certainly fails to provide this Court with any basis on which to deny the motion to compel. Moreover, Dulberg's egregious abuse of the discovery rules of Illinois, warrants sanctions



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available at this Court's discretion. Defendants respectfully request that the Court consider appropriate discovery sanctions, including dismissal of Dulberg's complaint. At a minimum, grant the relief requested in its motion, and compel Dulberg to properly respond to Exhibit D (interrogatory no. 1) and Exhibit E, and for any further relief this Court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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STATE OF ILLINOIS )
)
COUNTY OF McHENRY )

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, )
Plaintiff, )
vs. ) No. 17 LA 377
THE LAW OFFICES OF THOMAS J. )
POPOVICH, P.C., and HANS MAST, )
Defendants. )

ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS had in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 10th day of May, 2018, at the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

THE GOOCH FIRM, by
MS. SABINA WALCZYK,
On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
MR. GEORGE K. FLYNN,
On behalf of the Defendants.



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EXHIBIT 1

THE COURT: Let's go to work on Dulberg.

MS. WALCZYK: Good morning, Your Honor.

THE COURT: Good morning.

MS. WALCZYK: Sabina Walczyk on behalf of Dulberg.

MR. FLYNN: Good morning. George Flynn on behalf of the Popovich firm and Hans Mast.

THE COURT: It is -- it is rare when I know both the plaintiff and the defendant ahead of time. Only through the courtroom, but still unusual.

I looked at -- I'm going to tell you what I'm thinking. And then if you choose to argue, you can to -- if you wish to convince me that I'm wrong; or we can go forward. Either is fine.

I felt that the 2-615 motion was appropriate because I felt that -- and I -- for a specific reason, not -- not perhaps all the reasons that were cited by the defendant. I felt that the complaint, when it talked about how -- I'm looking for the words, misled -- when it said that the attorneys misled -- lied and misled Mr. Dulberg, I felt that there was some specificity that was going to be required. Because they -- ultimately, these things are going to factor into the statute of



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limitations issue. And if you're going to say that it was a breach of his duty in lying or misleading, I think we need more particularity in the allegations. You can't just make a conclusory statement to that effect.

That's my perspective. What would you like -- I'll give you an opportunity -- opportunity to replead; but if you want to argue against my thinking, I'll listen.

MS. WALCZYK: Well, Your Honor, I -- I won't argue with the Court. If Your Honor would like some more specificity as to those certain terms, we can certainly replead and plead those a little bit more specifically to --

THE COURT: And with respect to the discovery rule issue --

MS. WALCZYK: Uh-huh.

THE COURT: -- since it's going to come up one way or another, although I think it's a question of fact, I would like to see it touched upon, because I'm not following the -- the fact that he got more from the arbitrator than had been initially suggested by his attorneys, isn't really telling me anything. So I need maybe a little bit more



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information to understand the relationship of the two things.

With respect to the issue of -- on the 2-619, I felt that in light of how I was going with the 2-615, I really couldn't rule on the -- the application of the discovery rule. And, ultimately, I saw that in the long run, it was going to be a question of fact, and I would probably need -- and I could only address that with some more facts than what's just contained in the complaint.

With respect to estoppel, I didn't agree -- and you can tell me why you think I'm wrong, but I didn't agree with the argument that you were making because it -- it, carried to its logical conclusion, I could mislead and lie to my client about the -- about the implications and why he should settle, and then once he agrees to it, then I'm -- I'm released from my breach of my duty.

So I don't think that it -- that that was the type of scenario involved when the courts were discussing the estoppel issue.

Do you have anything -- do you want to contest that?

MR. FLYNN: Not at this time, Your Honor. I --



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I've always learned that it's better to quit while you're ahead. And with -- without giving a roadmap to the plaintiff, I do think that having their best complaint on file benefits us all.

THE COURT: Yes.

MR. FLYNN: So going back to the 2-615 issues, again, a legal malpractice case, they've got to plead and prove, not only the legal malpractice, but the elements of the underlying case. And it seemed to me, and as we pointed out, that -- that all of the allegations were very conclusory. That they would have gotten more, they wouldn't have done this, that the -- that Hans Mast and the Popovich firm should have undertaken additional actions in the underlying case, but they don't say what those are. And I think that they -- they're required to if they believe that there was a breach of a duty that led to damages.

The high-low agreement, which is very confusing to me and to my client, frankly, because he's never seen it, and as I understand it, that's outside of the four corners --

THE COURT: It is outside, but it did lead to an area where I was also a little bit confused. And



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I -- and I think you touched on -- I'll ask you: Is the complaint having to do with the settlement with the McGuires, or does it somehow relate to the suit that continued with respect to Gagnon and the high-low agreement?

MS. WALCZYK: Well, I think it's a little bit of both, because it started with the suit against McGuires, which settled. And then it looks like there was a high-low agreement signed.

THE COURT: Okay.

MS. WALCZYK: And --

THE COURT: Was it signed by Mr. Mast?

MS. WALCZYK: Oh, I believe it was signed by Mr. Dulberg. I haven't seen it.

THE COURT: Okay.

MS. WALCZYK: However, we can attach it if -- if you want --

THE COURT: If -- if you are going to allege malpractice as a result of entering into the high-low agreement, yes, I would require you, then, to attach it and to make that a little more explicit.

MS. WALCZYK: Yes.

THE COURT: Because I -- I came away thinking



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that was not part of your complaint, but I wasn't a 100 percent sure.

Also, let's see -- yeah, I need to know with some specificity what facts were concealed and how he was misled. I had problems with, particularly, I had -- paragraphs 20 and 21 and felt that you should have included more in that. And I won't probably say more than that.

MS. WALCZYK: Uh-huh.

THE COURT: And I -- on the estoppel argument, as I've said, I don't think that it is clear that the signing of the release was something that could be assumed to be knowing and voluntary when the plaintiff is alleging that he was misled as to the ramifications of that. Excuse me. Let's see. Okay.

Any -- so I'm granting on the 2-615. I will grant you leave to refile or replead.

MS. WALCZYK: Okay.

THE COURT: And what else? Is there anything else that we need?

MR. FLYNN: Just as a housekeeping, again, depending on what theory you're going under, if it's related to the Gagnon settlement, and we may have



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more people coming to the party; but if not, then that's it.

THE COURT: Yeah. I mean, if you're going to draw that in, then I need it a little more explicit.

MS. WALCZYK: Okay.

THE COURT: And I got -- in fact -- I'm reading from my notes. I need facts on what was false, misleading and what -- what you mean by coercion.

MR. FLYNN: So the 615 is granted with leave to replead.

THE COURT: Yes.

MR. FLYNN: I wasn't clear, I guess, on whether there's an actual ruling on the 619 or --

THE COURT: 619, I'm denying because --

MR. FLYNN: Okay.

THE COURT: -- there's a question of fact --

MR. FLYNN: Okay.

THE COURT: -- at this stage.

And I think that even if they include additional facts in their complaint, I would still come back to it being a question of fact, because I -- there's going to be a lot more about their relationship than I think can be reflected in merely the complaint. I would -- so I mean, if you were to



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bring another 2-619, feel free.

MR. FLYNN: Sure.

THE COURT: But I would still think it's going to be a question of fact as to what is clear -- Dulberg's claims are with respect to how he was misled or facts were concealed.

MR. FLYNN: Okay.

THE COURT: Because it's going to depend on their interaction.

MR. FLYNN: And it is the -- the language of statute is "knew or reasonably should have been known." And, again, this -- he does have counsel that came in right after my clients got out. So, again, the Blue Water Partners case says you -- potentially, you can't bury your head in the sand.

THE COURT: No, you can't. But because I -- of the absence of information --

MR. FLYNN: Fair enough.

THE COURT: -- I was reluctant to go further. The statute of limitations, you might get a little bit farther, but I still might run into a fact question.

MR. FLYNN: Understood.

THE COURT: So how long do you need?



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MS. WALCZYK: If I could have 28 days, Your Honor.

THE COURT: Sure.

MS. WALCZYK: We have a trial coming up.

THE COURT: And to answer or otherwise plead?

MR. FLYNN: 28, please.

THE COURT: All right. That would -- excuse me. Why don't we come back in -- 60 days is July 9th. How about July 11th, a Wednesday? Or do you have -- it's all the same to me, so long as I am here.

MR. FLYNN: Let's see. I believe I'm going to be out of state that week.

THE COURT: Okay. When is it convenient for you to come here? She's here all the time, so I don't --

MR. FLYNN: The following week would be --

THE COURT: What day works for either of you the following week?

MS. WALCZYK: We may actually have a trial that week. That may or may not go; I'm not sure at this point. At least the first two days, if we could do towards the end of week, that would be great for us.

THE COURT: 20th?

MR. FLYNN: 20th works.



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MS. WALCZYK: That's perfect.

THE COURT: All right. We'll see you on July 20th.

MR. FLYNN: Thank you, Your Honor.

MS. WALCZYK: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)



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STATE OF ILLINOIS )
) SS:
COUNTY OF McHENRY )

I, MAUREEN URBANSKI, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Maureen S. Urbanski

Certified Shorthand Reporter
License No. 084-003308



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ORDER

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

FILED
FEB 11 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| **Defendants.** | ) | |

**ORDER**

This matter coming to be heard for oral argument on Defendants' Motion to Compel, it is ordered:

1) Defendants' motion is granted in part, as stated on the record. Defendant's motion to compel supplemental answers to Mast's interrogatories served on March 19, 2019 is entered and continued.
2) Plaintiff is to answer Popovich's Supplemental Request for Production, served on July 2, 2020, within 28 days (March 10, 2021).
3) Plaintiff is ordered to produce all records which provide the basis for his reliance on "the discovery rule" by March 10, 2021, including any communications between Plaintiff and Attorney Tom Gooch in December of 2016 relative to discovery of a breach of the standard of care by defendants, or any such related damages.
4) Plaintiff is ordered to provide a privilege log to defendants by March 10, 2021 identifying any documents withheld in response to the July 2 Supplemental Production Request or number 3 above, and the basis for any privilege claimed and basis for withholding of any document.
5) Plaintiff is ordered to deliver the privilege log and any documents identified and withheld from production, to chambers by March 10, 2021.
6) Hearing/ruling on discoverability/disclosure of any withheld documents and further ruling on motion to compel is set for March 25, 2021 at ~~1:00 p.m.~~ 1:30 pm TAM


***Prepared by:***

| | |
|---|---|
| **Atty. No.** | **George K. Flynn ARDC #6239349** |
| **Name:** | **Karbal, Cohen, Economou, Silk & Dunne, LLC** |
| **Attorney for:** | **Defendants** |
| **Address:** | **150 S. Wacker Drive, Suite 1700** |
| **City:** | **Chicago, IL 60606** |
| **Telephone:** | **(312) 431-3700** |
| **E-Mail:** | **gflynn@karballaw.com** |


..... Thomas A. Meyer ....., 2021
eSigned by THOMAS A. MEYER 02/11/2021 09:55:29 7e8CeZh

.....
**Judge** **Judge's No.**

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

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McHenry County, Illinois
17LA000377
Date: 3/8/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

| STATE OF ILLINOIS, CIRCUIT COURT<br>McHenry COUNTY | MOTION TO CONTINUE OR EXTEND TIME | For Court Use Only |
|---|---|---|

| Instructions ▾ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person who started the lawsuit as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name)* |
| Enter the name of the person being sued as Defendant/Respondent. | v. |
| Enter the Case Number given by the Circuit Clerk. | Law Offices of Thomas J. Popovich P.C., and Hans Mast<br>**Defendant / Respondent** *(First, middle, last name)*<br>17 LA 377<br>**Case Number** |

In **1**, check if you are the Plaintiff/Petitioner or Defendant/Respondent.

**1.** ***Motion*** **by:** ☑ Plaintiff/Petitioner ☐ Defendant/Respondent

In **2**, check the box if you are asking the court to continue (reschedule) a court date that has already been scheduled.

☐ **2.** I am asking the court **to continue (reschedule)** a court date that has already been scheduled.

In **2a**, check the reason for the court date you are asking the court to continue (reschedule).

a. Reason for court date: ☐ Motion ☐ Trial ☐ Status ☑ Other

In **2b**, enter the date and time of the court date you are asking the court to continue (reschedule).

b. Date: March 25, 2021 at 01:30 ☐ a.m ☑ p.m.

In **2c**, explain why you need to continue (reschedule) the court date.

c. I need a continuance because:
This date was set for hearing 14 days after Plaintiff was ordered to respond to Defendants' Supplemental Request to Produce and submit a Privilege Log to Defendants' attorney and to the Court. Plaintiff is requesting an extention of time to comply with the order of February 10, 2021 up to and including March 24, 2021 therefore the hearing date, in a like manner, would be continued for an additional 14 days to April 5, 2021.

In **3**, check the box if you are asking for more time to do something (e.g. file an *Answer*).

☑ **3.** I am asking the court **for more time** to do something.

In **3a**, explain what you are asking for more time to do.

a. I need more time to: comply with the order of February 10, 2021
which has a deadline of: March 10, 2021 *Date*

In **3b**, enter the date you are asking the judge to give you until.

b. I need until: March 24, 2021 *Date*

In **3c**, explain why you need more time.

c. I need more time because: Prior to representing Paul Dulberg,he had appeared Pro Se and had in his possession all documents from his two previous Law Firms. In early 2021 Plaintiff Paul Dulberg's medical condition deteriorated where he was advised to submit to two major gland removal surgeries.The first surgery was scheduled on February 4, 2021 to take place and did take place of February 22, 2021. Plaintiff has been unable to consult with his attorney during his recovery period until March 4, 2021. Starting on that date Plaintiff began transfering thousands of pages of documents that Plaintiff's attorney needs to review and evaluate regarding whether those documents are responsive to Defendants' Supplemental Request to Produce, whether they are to be claimed as privileged or whether they have been previously sent ( over eight thousand documents) by prior counsel. I am the third and current attorney representing Plaintiff Paul Dulberg and I have diligently acted pursuant to this Honorable Court's Order of February 10, 2021 but my client has only been available for a short time within the time originally granted to comply.


Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Page 1 of 4
Purchased from re:SearchIL

Enter the Case Number given by the Circuit Clerk: 17 LA 377

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete current address and telephone number.

**I certify that everything in the *Motion To Continue Or Extend Time* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

707 Skokie Boulevard #600
*Street Address*

Northbrook, Illinois, 60062
*City, State, ZIP*

## PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

**CAUTION:** If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:
   Name: George K. Flynn
   *First* *Middle* *Last*
   Address: 150 S. Wacker Drive #1700 Chicago Illinois 60606
   *Street, Apt #* *City* *State* *ZIP*
   Email address: gflynn@karballaw.com

   b. By:
   ☐ Personal hand delivery
   ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:
   *Address of Post Office or Mailbox*
   ☐ Third-party commercial carrier, with delivery paid for at:
   *Name (for example, FedEx or UPS ) and office address*
   ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   ☐ Email *(not through an EFM or EFSP)*
   ☐ Mail from a prison or jail at:
   *Name of prison or jail*

In **c**, fill in the date and time that you sent the document.

   c. On: March 8, 2021
   *Date*
   At: 4:30 ☐ a.m. ☑ p.m.
   *Time*

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:
   Name:
   *First* *Middle* *Last*
   Address:
   *Street, Apt #* *City* *State* *ZIP*
   Email address:


Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377

Purchased from re:SearchIL

b. By: ☐ Personal hand delivery
☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
*Address of Post Office or Mailbox*

☐ Third-party commercial carrier, with delivery paid for at:

_____
*Name (for example, FedEx or UPS ) and office address*

☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
☐ Email *(not through an EFM or EFSP)*
☐ Mail from a prison or jail at:

_____
*Name of prison or jail*

c. On: _____
*Date*
At: _____ ☐ a.m. ☐ p.m.
*Time*

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:
Name: _____
*First* *Middle* *Last*
Address: _____
*Street, Apt #* *City* *State* *ZIP*
Email address: _____

b. By: ☐ Personal hand delivery
☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
*Address of Post Office or Mailbox*

☐ Third-party commercial carrier, with delivery paid for at:

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*Name (for example, FedEx or UPS ) and office address*

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☐ Email *(not through an EFM or EFSP)*
☐ Mail from a prison or jail at:

_____
*Name of prison or jail*

c. On: _____
*Date*
At: _____ ☐ a.m. ☐ p.m.
*Time*

If you sent your document to more than 3 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

☐ I have completed an *Additional Proof of Delivery* form.


Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377

Purchased from re:SearchIL

Enter the Case Number given by the Circuit Clerk: 17 LA 377

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

**I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

707 Skokie Boulevard #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*


Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Page 4 of 4
Purchased from re:SearchIL

** FILED ** Env: 12489552
McHenry County, Illinois
17LA000377
Date: 3/8/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

| STATE OF ILLINOIS, CIRCUIT COURT<br>McHenry COUNTY | NOTICE OF COURT DATE FOR MOTION | For Court Use Only |
|---|---|---|

| Instructions | | |
|---|---|---|
| Directly above, enter the name of the county where the case was filed. | | |
| Enter the name of the person who started the lawsuit as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name)* | |
| Enter the name of the person being sued as Defendant/Respondent. | v. | |
| Enter the Case Number given by the Circuit Clerk. | Law Offices of Thomas J. Popovich P.C.,and Hans Mast<br>**Defendant / Respondent** *(First, middle, last name)* | 17 LA 377<br>**Case Number** |

In **1a**, enter the date and time of your hearing.

he Circuit Clerk will give you the date and time of the hearing when you file your *Motion*.

In **1b**, also enter the address of the court and court room number for the hearing.

## 1. Hearing Information

The reasons for this hearing are listed in the attached papers called *Motion*.

The hearing for the *Motion* I filed is scheduled for:

a. Date: March 15 , 20 21 Time: 09:45 ☑ a.m. ☐ p.m.

b. Address: 2200 N. Seminary Avenue, Woodstock Illinois, 60098
*Street* *City* *State* *ZIP*

Courtroom: 201

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the *oti e o Court D te or Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

Enter your complete current address and telephone number.

707 Skokie Boulevard #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*

(312) 808-1410
*Telephone*



Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Page 1 of 3
Purchased from re:SearchIL
C 530

Enter the Case Number given by the Circuit Clerk: 17 LA 377

## PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

**CAUTION:** If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

   a. To:

   Name: George K. Flynn
   *First* *Middle* *Last*

   Address: 150 S. Wacker Drive #1700 Chicago Illinois 60606
   *Street, Apt #* *City* *State* *ZIP*

   Email address: gflynn@karballaw.com

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     *Address of Post Office or Mailbox*
   - ☐ Third-party commercial carrier, with delivery paid for at:

     *Name (for example, FedEx or UPS ) and office address*
   - ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☐ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     *Name of prison or jail*

In **c**, fill in the date and time that you sent the document.

   c. On: March 8, 2021
   *Date*

   At: 4:30 ☐ a.m. ☑ p.m.
   *Time*

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

2. I sent this document:

   a. To:

   Name:
   *First* *Middle* *Last*

   Address:
   *Street, Apt #* *City* *State* *ZIP*

   Email address:

   b. By:
   - ☐ Personal hand delivery
   - ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

     *Address of Post Office or Mailbox*
   - ☐ Third-party commercial carrier, with delivery paid for at:

     *Name (for example, FedEx or UPS ) and office address*
   - ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
   - ☐ Email *(not through an EFM or EFSP)*
   - ☐ Mail from a prison or jail at:

     *Name of prison or jail*



Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Purchased from re:SearchIL

c. On: _____
*Date*

At: _____ ☐ a.m. ☐ p.m.
*Time*

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:
Name: _____
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_____
*Name of prison or jail*

c. On: _____
*Date*

At: _____ ☐ a.m. ☐ p.m.
*Time*

If you sent your document to more than 3 parties or lawyers, check the box and file the *Additional Proof of Delivery* form with this form.

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

707 Skokie Boulevard #600
*Street Address*

Northbrook, Illinois, 60062
*City, State, ZIP*



Received 03-08-2021 03:06 PM / Circuit Clerk Accepted on 03-08-2021 03:25 PM / Transaction #12489552 / Case #17LA000377
Page 3 of 3
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C 532

** FILED ** Env: 12509452
McHenry County, Illinois
17LA000377
Date: 3/9/2021 3:44 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF FILING

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that, on the 9th day of March 2021, we filed Defendants' Objection to Plaintiff's Motion for an Extension of Time to Comply with the February 10, 2021 Order , with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 9th day of March 2021.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to each party to whom it is directed via the Odyssey eFileIL system on March 9, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377

Purchased from re:SearchIL

**SERVICE LIST**

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |



Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
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** FILED ** Env: 12509452
McHenry County, Illinois
17LA000377
Date: 3/9/2021 3:44 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**OBJECTION TO PLAINTIFF'S MOTION FOR AN EXTENSION OF TIME TO COMPLY WITH THE FEBRUARY 10, 2021 ORDER**

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, by and through their attorneys KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, object to Plaintiff's Motion for an Extension of Time to Comply with the February 10, 2021 Order and state as follows:

1. Defendants' Motion to Compel was filed on October 5, 2020.

2. On October 23, 2020, Plaintiff's third attorney, his current counsel, entered his appearance.

3. On October 27, 2020, Defendants' Motion to Compel was entered and continued to November 24, 2020, in order for Plaintiff's counsel to investigate the case, review documents, and determine whether he would recommend compliance, or file an objection to the motion to compel. It was at this time that Dulberg should have forwarded the responsive documents to his attorney. (October 27, 2020 order attached as Ex. A.)



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4. On November 24, 2020, a briefing schedule on Defendants' motion to compel was entered, allowing Plaintiff 28 days, up to and including December 22, 2020, to respond to the motion. (November 24, 2020 order attached as Ex. B.)

5. Due to an illness, Plaintiff's counsel contacted defendants' counsel, who agreed for an additional 14 days, up to and including January 5, 2021 for plaintiff to respond to the Motion to Compel. (January 5, 2021 order attached as Ex. C.)

6. Having still not apparently been provided with the responsive documents at issue, Plaintiff's counsel appeared for a hearing on February 10, 2021. Notably, the Plaintiff himself, Mr. Dulberg, was present in court, and was admonished due to his interruptions. Dulberg having been aware of the court's ruling on February 10, 2021, should have begun to prepare the responsive documents to send to his attorney, if he had not already done so, as of that date.

Due to Dulberg's lack of diligence, delay tactics, failure to comply with proper discovery requests, failure to make timely responses or objections to written discovery, and failure to comply with this court's February 10, 2021order, Defendants object to Plaintiff's motion, and request any additional relief the court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
Purchased from re:SearchIL

#10

# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

FILED
McHenry County, Illinois
OCT 27 2020
KATHERINE M. KEEFE
Clerk of the Circuit Court

GEN. NO. 17 LA 377

☑ Jury ☐ Non-Jury

Oulbrs

vs.

Popovich

Date: 10-27-20 Plaintiff's Attorney Alphonse Talarico Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard for status on Popovichi motion to compel, it is ordered:

1) Popovichi motion to compel is entered and continued to November 24, 2020 at 8:45 a.m. for status on compliance of discovery related to Popovichs Motion to Compel.

***EXHIBIT A***

Prepared by: Flynn

Attorney for: Popovich

Attorney Registration No.: 6239349 Judge:

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377

Purchased from re:SearchIL

CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY of McHENRY )

CASE NUMBER 17LA000377

☑ Jury ☐ Non-Jury

Paul Dulberg, Plaintiff

FILED
NOV 25 2020
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

vs. The law Offices Of Thomas J. Popovich and Hans Mast

Date Nov. 24, 2020 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

# ORDER

This matter coming on to be heard for status on Defendant Popovich's Motion to Compel and this Honorable Court being fully briefed in the premises, it is hereby Ordered that:

I) Defendant Popovich's Motion to Compel is entered and continues;

II) Plaintiff is granted 28 days, up to and including December 22, 2020 to Respond to said Motion;

III) Defendant Popovich is granted 14 days, up to and including January 5, 2021 to Reply;

IV) this Motion is set for hearing before this Honorable Court in room 201 on January 14, 2021 at 10:00 a.m.

Prepared by: Alphonse A. Talarico

Attorney for: Plaintiff Paul Dulberg

Judge: Thomas A. Meyer

eSigned by THOMAS A. MEYER 11/25/2020 13:14:32 bs6QN5md

EXHIBIT B

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
Purchased from re:SearchIL

CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY of McHENRY )

CASE NUMBER 17LA000377

☑ Jury ☐ Non-Jury

FILED
JAN - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

Paul Dulberg, Plaintiff

vs. The Law Offices Of Thomas J. Popovich and Hans Mast

Date January 5, 2021 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

# ORDER

**This matter coming on to be heard pursuant to agreement of the parties after direct communication between the attorneys for the parties, a briefing schedule being previously entered on November 25, 2020 by this Honorable Court that the parties now desire to amend, the Court being fully advised in the premises , it is hereby ordered that:**

**I) Defendant Popovich's Motion to Compel is entered and continued;**

**II) Plaintiff is granted an additional 14 days, up to and including January 5, 2021 to respond to said motion;**

**III) Defendant is granted an additional 14 days, up to and including February 2, 2021 to reply;**

**IV) the hearing date of January 14, 2021 in room 201 at 10:00 a.m. is stricken;**

**v) this Motion is set for hearing before this Honorable Court in room 201 on February 10, 2021 at 11:00 a.m.**

Prepared by: Alphonse A. Talarico

Attorney for: Plaintiff Paul Dulberg Judge: Thomas A. Meyer

eSigned by THOMAS A. MEYER 01/06/2021 08:14:38 7rNP5PQH

EXHIBIT C

Received 03-09-2021 04:21 PM / Circuit Clerk Accepted on 03-09-2021 04:22 PM / Transaction #12509452 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 12529231
McHenry County, Illinois
17LA000377
Date: 3/10/2021 5:05 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**150 So. Wacker Drive, Suite 1700**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**

PLEASE TAKE NOTICE that on March 10, 2021 I served the parties by email:

Plaintiff Paul Dulberg's:

- Response to Defendant's Supplemental Request for Production.
- Paul Dulberg's Privilege Log

Copies of which are attached hereto and herewith served upon you.



Received 03-11-2021 08:13 AM / Circuit Clerk Accepted on 03-11-2021 08:14 AM / Transaction #12529231 / Case #17LA000377
Purchased from re:SearchIL

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

**AFFIDAVIT OF SERVICE**

I , Alphonse A. Talarico, an attorney, certify that on March 10, 2021, I caused to be served the attached Response to Defendant's Supplemental Request for Production and Paul Dulberg's Privilege Log to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: March 10, 2021



Received 03-11-2021 08:13 AM / Circuit Clerk Accepted on 03-11-2021 08:14 AM / Transaction #12529231 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 12579872
McHenry County, Illinois
17LA000377
Date: 3/15/2021 4:25 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**150 So. Wacker Drive, Suite 1700**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**

PLEASE TAKE NOTICE that on March 15, 2021 I served the parties by email:

Plaintiff Paul Dulberg's:

●**Additional** Response to Defendant's Supplemental Request for Production #3

Bates stamped email string 8744-8746 communication between Plaintiff and his first attorney's office pursuant to Court Order of March 15, 2021.



Received 03-16-2021 08:16 AM / Circuit Clerk Accepted on 03-16-2021 08:23 AM / Transaction #12579872 / Case #17LA000377
Purchased from re:SearchIL

Copies of which are attached hereto and herewith served upon you.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

**AFFIDAVIT OF SERVICE**

I , Alphonse A. Talarico, an attorney, certify that on March 15, 2021, I caused to be served the attached Additional Response to Defendant's Supplemental Request for Production to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: March 15, 2021



Received 03-16-2021 08:16 AM / Circuit Clerk Accepted on 03-16-2021 08:23 AM / Transaction #12579872 / Case #17LA000377
Purchased from re:SearchIL

**ORDER**

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

FILED
MAR 16 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

**ORDER**

This matter coming to be heard on Plaintiff's Motion for Extension of Time to Comply with the Court's February 10, 2021 order, with counsel for all parties present and the court hearing argument, it is ordered:

1) Plaintiff's Motion for Extension is withdrawn;

2) Plaintiff is ordered to produce documents previously withheld as privileged, bates labelled Dulberg 008744-008746;

3) The parties agree that the written communication from Paul Dulberg to the Court is to be discarded;

4) Defendant's counsel is to forward courtesy copies of Popovich's July 2, 2020 Supplemental Production Request and Plaintiff's Response, to chambers for continued hearing on Defendant's Motion to Compel on March 25, 2021 at 1:30 p.m.


***Prepared by:***

| | |
|---|---|
| **Atty. No.** | **George K. Flynn ARDC #6239349** |
| **Name:** | **Karbal, Cohen, Economou, Silk & Dunne, LLC** |
| **Attorney for:** | **Defendants** |
| **Address:** | **150 S. Wacker Drive, Suite 1700** |
| **City:** | **Chicago, IL 60606** |
| **Telephone:** | **(312) 431-3700** |
| **E-Mail:** | **gflynn@karballaw.com** |


**....., 2021**

**ENTER:**

..... Thomas A. Meyer .....

eSigned by THOMAS A. MEYER 03/16/2021 14:47:07 K:tAN2gQ

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Dolbus

Plaintiff

vs

Mast

Defendant

FILED
McHenry County, Illinois
MAR 25 2021
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17LA 377

# ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☒ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 4/1, 2021 at 8:45 A m. for Status on Defendants Motion

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☐ **COURT FURTHER ORDERS:** _____

Date: _____

/s/ Thomas A. Meyer
Judge

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

**ORDER**

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| **Defendants.** | ) | |

**FILED**
APR - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

**ORDER**

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.


***Prepared by:***

| | |
|---|---|
| **Atty. No.** | **George K. Flynn ARDC #6239349** |
| **Name:** | **Karbal, Cohen, Economou, Silk & Dunne, LLC** |
| **Attorney for:** | **Defendants** |
| **Address:** | **150 S. Wacker Drive, Suite 1700** |
| **City:** | **Chicago, IL 60606** |
| **Telephone:** | **(312) 431-3700** |
| **E-Mail:** | **gflynn@karballaw.com** |


**....., 2021**

**ENTER:**

.....

eSigned by THOMAS A. MEYER 04/06/2021 09:09:24 RN0hbgqY

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

Purchased from re:SearchIL

** FILED ** Env: 13517710
McHenry County, Illinois
17LA000377
Date: 6/1/2021 10:57 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**150 So. Wacker Drive, Suite 1700**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**

PLEASE TAKE NOTICE that on June 1, 2021 I served the parties by email:

Plaintiff Paul Dulberg's:

● AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY #1

●AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICE OF THOMAS J. POPOVICH P.C.'S SUPPLEMENTAL REQUESTS FOR



Received 06-01-2021 12:08 PM / Circuit Clerk Accepted on 06-01-2021 01:16 PM / Transaction #13517710 / Case #17LA000377
Purchased from re:SearchIL

PRODUCTION

Copies of which are attached hereto and herewith served upon you.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

**AFFIDAVIT OF SERVICE**

I , Alphonse A. Talarico, an attorney, certify that on June 1, 2021, I caused to be served the attached AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY #1 and AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICE OF THOMAS J. POPOVICH P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: June 1, 2021



Received 06-01-2021 12:08 PM / Circuit Clerk Accepted on 06-01-2021 01:16 PM / Transaction #13517710 / Case #17LA000377
Purchased from re:SearchIL

14

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
JUN 14 2021
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Plaintiff Dolberg

vs

Defendant Popovich

Case Number 17LA377

# ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☐ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 8/19, 2021 at 8:45 Am. for STATUS FI.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☐ **COURT FURTHER ORDERS:** _____

Date: _____

Judge

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

** FILED ** Env: 14019112
McHenry County, Illinois
17LA000377
Date: 7/13/2021 1:29 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND TO REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021 ORDER ON DEFENDANTS' MOTION TO COMPEL**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Supplement Defendants' Motion to Compel and To Request Hearing on Plaintiff's Compliance with April 6, 2021 Order on Defendants' Motion to Compel, state as follows:

1) Defendants are bringing this motion to supplement their prior Motion to Compel and request a hearing on Plaintiff's compliance with the Court's April 6, 2021 Order (attached as Ex. A).

2) The Defendants never received a file-stamped copy of the draft order which their counsel submitted to the Court for entry on April 2, 2021 (see Group Ex. B, April 2, 2021 email from Linda Walters, and attached Order). Defendants never received a response, nor received electronic notice of the entry of the Order on April 6, 2021, and accordingly did not diary the June 14, 2021 hearing, and thus did not appear.



Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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Page 1 of 29
C 550

3) In the Court's April 6, 2021 Order granting Defendants' motion to compel, the Court ordered the Plaintiff to serve a supplemental answer to Mast's Interrogatory No. 1, and amend its responses to Popovich's Supplemental Request. The Court further ordered, "Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

4) On June 1, 2021, the Plaintiff served Exhibit C (Plaintiff's Amended Additional Answer to Defendant Hans Mast's Interrogatory to Plaintiff Paul Dulberg), and Exhibit D (Plaintiff's Amended Additional Response to Defendant The Law Offices of Thomas J. Popovich, P.C.'s Supplemental Request for Production). Dulberg also produced fourteen pages of bates labeled records (See Ex. E).

5) The Plaintiff has not complied with the Court's April 6, 2021 Order. Accordingly, Defendants respectfully request that the Court strike the non-responsive portions of Exhibits C, D, and E and close written discovery.

6) With respect to Exhibit C, Dulberg provide a "non-answer." Dulberg was ordered to specifically answer each discovery request. Mast's Interrogatory No. 1 states as follows: Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach. Dulberg's amended additional answer does not describe how there was a breach of the standard of care, he simply identifies a discovery date (December 12, 2016) based upon a binding mediation order. He does not describe the breach of the standard of care, or how, specifically, he became aware of it. He simply writes, "He knew the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016." He does not describe the



Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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discussion or explain how the standard of care was breached, or why his discussion with Tom Gooch enlightened him as to the breach.

7) Moreover, Popovich's supplemental requests for production are aimed specifically at identifying how Dulberg "discovered" his breach of the standard of care, and when he recognized damages as a result of same. In Exhibit D, Dulberg's amended additional response, Dulberg simply attaches various pages from pleadings in this case. He does not attach any discoverable materials, such as emails, letters, etc. Instead, he is simply regurgitating his position in this case. As previously argued in Defendants' Motion to Compel and at hearing, if Dulberg has no documents responsive to the discovery requests, and he has no basis for a tolling of the statute of limitations in this case, then his answer should simply state, "none." Enough is enough. Dulberg's non-responses to this discovery requests should be stricken, and he should be barred attempting to present any additional evidence in support of his tolling theory.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court grant their Motion to Supplement Defendants' Motion to Compel and set hearing on Plaintiff's compliance with April 6, 2021 Order on Defendants' Motion to Compel, and for any and all further relief this Court deems just and appropriate.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

**ORDER**

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| **Defendants.** | ) | |

**FILED**
APR - 6 2021
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

**ORDER**

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.


***Prepared by:***

| | |
|---|---|
| **Atty. No.** | **George K. Flynn ARDC #6239349** |
| **Name:** | **Karbal, Cohen, Economou, Silk & Dunne, LLC** |
| **Attorney for:** | **Defendants** |
| **Address:** | **150 S. Wacker Drive, Suite 1700** |
| **City:** | **Chicago, IL 60606** |
| **Telephone:** | **(312) 431-3700** |
| **E-Mail:** | **gflynn@karballaw.com** |


**....., 2021**

**ENTER:**

.....

eSigned by THOMAS A. MEYER 04/06/2021 09:09:24 RN0hbgqY

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

**EXHIBIT A**


Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

## Linda Walters

**From:** Linda Walters <lwalters@karballaw.com>
**Sent:** Friday, April 2, 2021 10:17 AM
**To:** proposedorders
**Cc:** contact@lawofficeofalphonsetalarico.com; George Flynn
**Subject:** RE: Paul Dulberg v. The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (Circuit Court of McHenry County, IL Case No.: 17 LA 000377)
**Attachments:** 2868280v1 - Proposed Order (4-2-21).PDF; 2867639v1 - Proposed Order (4-2-21).DOCX

On behalf of George Flynn, attached is a copy of a proposed order in both word and pdf format relative to the above. All counsel of record have been copied on this email.

Thank you.
Linda Walters
Asst. to George Flynn

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

**CONFIDENTIALITY NOTE:**
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@karballaw.com

**CONFIDENTIALITY NOTE:**
This electronic message transmission contains information from the law firm of Karbal, Cohen, Economou, Silk & Dunne, LLC. which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.



**GROUP EXHIBIT B**

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

**ORDER**

This matter coming to be heard for status and continued hearing on Defendant's Motion to Compel, the court having heard argument, it is hereby ordered:

1) Defendant's motion is granted and Plaintiff is required by June 1, 2021 to serve a supplemental answer to Mast's Interrogatory #1 (served on Plaintiff on March 22, 2019), and Amended Responses to Popovich's Supplemental Production Requests. Plaintiff is directed to provide specific answers and responses to each interrogatory and production request.

2) Plaintiff's objections of "undue burden" raised in its initial responses to Popovich's Supplemental Requests for Production numbers 1-7 are overruled.

3) This matter is set for a hearing on June 14, 2021 at 1:30 p.m. for status on Plaintiff's compliance with this order and to determine whether hearing is necessary for rulings on objections contained in the transcript of the discovery deposition of Paul Dulberg.

***Prepared by:***
**Atty. No.** **George K. Flynn**
**ARDC #6239349**
**Name:** **Karbal, Cohen, Economou, Silk & Dunne, LLC**
**Attorney for:** **Defendants**
**Address:** **150 S. Wacker Drive, Suite 1700**
**City:** **Chicago, IL 60606**
**Telephone:** **(312) 431-3700**
**E-Mail:** **gflynn@karballaw.com**

**……., 2021**
**ENTER:**

**…….**
**Judge** **Judge's No.**

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S AMENDED ADDITIONAL ANSWER TO DEFENDANT HANS MAST'S INTERROGATORY TO PLAINTIFF PAUL DULBERG**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Answer to Defendant Hans Mast's Interrogatory #1 states as follows:

1. Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

**ANSWER:** Between October 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires' in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires. Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment.



**EXHIBIT C**

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon.

**AMENDED ADDITIONAL ANSWER:** Dulberg discovered the pecuniary injury on December 12, 2016 based upon a binding mediation award and knew he had a legal malpractice case on December 16, 2016. He knew that the Defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

Dulberg discovered in the defendants' document disclosure, POP 000192, that Mast had in fact sent the McGuires' attorney a $7,500.00 offer on October 22, 2013 without Dulberg's knowledge and that was before the November 4, 2013 meeting in Mast's office when Mast first asked Dulberg if Mast could probe and see what was on the table for a possible settlement with the McGuires.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com



Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

## VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily belies the same to be true.

Paul Dulberg

June 1, 2021



Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | |
|---|---|
| PAUL DULBERG, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| | ) |
| v. | ) Case No. 17LA 377 |
| | ) |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) |
| | ) |
| | ) |
| Defendants. | ) |

**PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Response states as follows:

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746



**EXHIBIT D**

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2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their



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representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133, and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November 30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please see above)

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition



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from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022



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(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.

2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.

3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.

4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

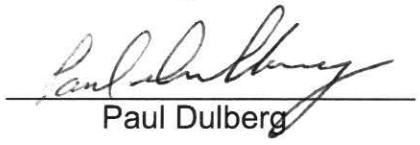
## VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid



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that he verily belies the same to be true.



Paul Dulberg

June 1, 2021



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LA 178. (Exhibit 2, ¶ 9, and Exhibit 2B)[1]. In late 2013, Dulberg settled with the McGuires and executed a Release in their favor in exchange for the payment of $5,000.00. The McGuires and their insurance carrier, Auto Owners Insurance Company, were released. (Exhibit 2, ¶ 18 and Exhibit 2D). Defendants continued to represent Dulberg until March 2015. (Exhibit 2, ¶ 21). Dulberg retained successor counsel and proceeded to a binding mediation and received a mediation award (Exhibit 2, ¶ 24 and Exhibit 2G). After the mediation, Dulberg allegedly realized for the first time that the information Mast and Popovich had given him was false and misleading and that the dismissal of the McGuires was a serious and substantial mistake. He was advised to seek an independent opinion from an attorney handling legal malpractice matters and received that opinion on or about December 16, 2016. (Exhibit 2, ¶ 28-29).

**B. Alleged Acts of Negligence**

Popovich's and Mast's alleged malpractice revolves around the settlement of the underlying case between Dulberg and McGuires. The allegations of a breach of the standard of care are all contained in ¶ 31, subsections a) through o) inclusive. Paragraph 31 states as follows:

> 31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:
>
> a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;
>
> b) Failed to thoroughly investigate liability issues against property owners of the subject property;

[1] The exhibits to the underlying complaint in Case No. 12 LA 178 will be referenced as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, and 2G.

**EXHIBIT E**



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28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

31. MAST and POPOVICH, jointly and severally, breached the duties owed DULBERG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of DULBERG, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;



Received 06-07-2018 01:29 PM / Circuit Clerk Accepted on 06-07-2018 03:53 PM / Transaction #17111166062 / Case #17LA000377
Page 6 of 24
Dulberg 001809
Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Page 17 of 29
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fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

46. Therefore DULBERG would have until December 2021 to file his claims under fraudulent concealment. DULBERG filed his claims well within the five-year fraudulent concealment statute.

## CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court



Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 13 of 32
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Page 18 of 29
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C 567

fact." *(Emphasis added)* (citation omitted) *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶37 (2nd Dist., 2015).

44. DULBERG would have had 5 years from the date of discovery to bring his cause of action under fraudulent concealment. "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." *See* 735 ILCS 5/13-215.

45. DULBERG's Complaint states that DULBERG discovery the negligence of the Defendants on December 16, 2016 when he was informed by outside counsel of his claim for malpractice, or at the earliest by December 8, 2016 when DULBERG learned that he was limited in recovering his damages under the binding mediation.

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## CONCLUSION

After review of the allegations in the Complaint, this Honorable Court must find that DULBERG properly filed his claim for legal malpractice and is not judicially estopped from bringing those claims. Also, the claims are not time barred based on the discovery rule and fraudulent concealment. More importantly, due to the factual questions in this case, granting the Motion to Dismiss would be inappropriate. However, in the event this Court grants the Motion, DULBERG requests a reasonable time to file a First Amended Complaint.

WHEREFORE your Plaintiff PAUL DULBERG prays this Honorable Court denies and Dismiss Defendants' Combined Motion to Dismiss, and for all other relief this Honorable Court



Dulberg 008999
Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 13 of 32
Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Page 19 of 29
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mediation, DULBERG was advised to seek an independent opinion from an attorney handling Legal Malpractice matters, and received that opinion on or about December 16, 2016.

21. MAST and POPOVICH, jointly and severally, breached the duties owed DULBURG by violating the standard of care owed DULBERG in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of DULBERG to fix liability against the property owners of the subject property (the McGuire's) who employed Gagnon, and sought the assistance of DULBERG;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to DULBERG;

d) Failed to understand the law pertaining to a property owner's rights, duties and responsibilities to someone invited onto their property;

e) Improperly urged DULBURG to accept a nonsensical settlement from the property owners, and dismissed them from all further responsibility;

f) Failed to appreciate and understand further moneys could not be received as against Gagnon, and that the McGuire's and their obvious liability were a very necessary party to the litigation;

g) Falsely advised DULBURG throughout the period of their representation, that the actions taken regarding the McGuire's was proper in all ways and respects, and that DULBURG had no choice but to accept the settlement;



Received 11-28-2017 04:31 PM / Circuit Clerk Accepted on 11-29-2017 09:53 AM / Transaction #17111117451 / Case #17LA000377 Dulberg 009016
Received 03-27-2018 01:48 PM / Circuit Clerk Accepted on 03-28-2018 09:49 AM / Transaction #17111147104 / Case #17LA000377
Page 5 of 10
Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Page 30 of 32
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Page 20 of 29
C 569

28. Following the execution of the mediation agreement and the final mediation award, DULBERG realized for the first time in December of 2016 that the information MAST and POPOVICH had given DULBERG was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

29. It was not until the mediation in December 2016, based on the expert's opinions that DULBERG retained for the mediation, that DULBERG became reasonably aware that MAST and POPOVICH did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an "all or nothing" basis.

30. DULBERG was advised to seek an independent opinion from a legal malpractice attorney and received that opinion on or about December 16, 2016.

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e.) Incorrectly informed DULBERG that Gagnon's insurance policy was "only $100,000.00" and no insurance company would pay close to that;



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LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl



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Purchased from re:SearchIL

**From:** Randy Baudin II <randybaudin2@gmail.com>
**Subject:** award
**Date:** December 12, 2016 7:34:42 PM CST
**To:** pdulberg@comcast.net
1 Attachment, 45.2 KB

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg

Gross Award: $660,000.

Comparative fault: 15 % (if applicable)

Net Award: $561,000

| Comments/Explanation | |
|---|---|
| medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P+S | 75,000. |
| L N L | 75,000. |

Dulberg 002928

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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The Honorable James P. Etchingham, (Ret.)

ADR Systems • 20 North Clark Street • Floor 29 • Chicago, IL 60602
312.960.2260 • info@adrsystems.com • www.adrsystems.com



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Purchased from re:SearchIL

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: award**
**Date:** December 13, 2016 10:48:50 AM CST
**To:** paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

Begin forwarded message:

**From:** Randy Baudin II <randybaudin2@gmail.com>
**Date:** December 12, 2016 at 7:34:42 PM CST
**To:** pdulberg@comcast.net
**Subject:** award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

Binding Mediation Award

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg
Gross Award: $660,000.
Comparative fault: 15 % (if applicable)
Net Award: $561,000

Dulberg 002930

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| | |
|---|---|
| Comments/Explanation medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| P+S | 75,000. |
| L N L | 75,000. |

The Honorable James P. Etchingham, (Ret.)

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ADR systems

# Binding Mediation Award

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

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| Comments/Explanation | |
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| Lost wage | $ 250,000. |
| P.I.S | 75,000. |
| L.N.L | 75,000. |

The Honorable James P. Etchingham, (Ret.)



Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

**From:** Paul Dulberg <pdulberg@comcast.net>
**Subject:** **Fwd: award**
**Date:** December 13, 2016 10:48:50 AM CST
**To:** paul_dulberg@comcast.net
1 Attachment, 45.2 KB

Paul Dulberg
847-497-4250
Sent from my iPad

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**Date:** December 12, 2016 at 7:34:42 PM CST
**To:** pdulberg@comcast.net
**Subject:** award

Congrats!!

Click to get my LinkedIn Profile

W. Randal Baudin II's Linkedin Profile
Cell 815.814.2193

Dec 12 2016 3:06PM HP Fax page 2

ADR systems

**Binding Mediation Award**

Paul Dulberg )
)
)
)
v. ) ADR Systems File # 33391BMAG
)
)
David Gagnon )

On December 8, 2016, the matter was called for binding mediation before the Honorable James P. Etchingham, (Ret.), in Chicago, IL. According to the agreement entered into by the parties, if a voluntary settlement through negotiation could not be reached the mediator would render a settlement award which would be binding to the parties. Pursuant to that agreement the mediator finds as follows:

Finding in favor of: Paul Dulberg
Gross Award: $660,000.
Comparative fault: 15 % (if applicable)
Net Award: $561,000

Dulberg 004884

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
Purchased from re:SearchIL

Comments/Explanation

| | |
|---|---|
| medical | $ 60,000. |
| future medical | $ 200,000. |
| Lost wage | $ 250,000. |
| PIS | 75,000. |
| LNL | 75,000. |

The Honorable James P. Etchingham, (Ret.)





Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377
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** FILED ** Env: 14019112
McHenry County, Illinois
17LA000377
Date: 7/13/2021 1:29 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| Paul Dulberg, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 000377 |
| | ) | Jury Demand |
| The Law Offices of Thomas J. Popovich, P.C., | ) | (Court Room 201) |
| And Hans Mast, | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF MOTION

**TO: ALL ATTORNEYS OF RECORD – See Attached Service List**

PLEASE TAKE NOTICE that on the **19th day of July 2021 at 8:45 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO SUPPLEMENT DEFENDANTS' MOTION TO COMPEL AND REQUEST HEARING ON PLAINTIFF'S COMPLIANCE WITH APRIL 6, 2021 ORDER ON DEFENDANTS' MOTION TO COMPEL, a copy of which is attached hereto and herewith served upon you.

Dated this 13th day of July 2021 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on July 13, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

Received 07-13-2021 02:23 PM / Circuit Clerk Accepted on 07-13-2021 02:35 PM / Transaction #14019112 / Case #17LA000377

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |

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# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT #10

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

GEN. NO. 17 L 4 377

☒ Jury ☐ Non-Jury

Dolberg

vs.

Popovich

FILED
McHenry County, Illinois
JUL 19 2021
KATHERINE M. KEEFE
Clerk of the Circuit Court

Date: 7/19/21 Plaintiff's Attorney _____ Defendant's Attorney George Flynn

## ORDER

This matter coming to be heard on Popovich's motion to supplement its motion to compel and requesting hearing on Plaintiffs compliance, it is ordered:

1) Based on Plaintiffs representations on the record, Defendants' motion is withdrawn.

2) The August 19, 2021 status hearing is stricken.

3) status hearing on September 17, 2021 at 8:45 a.m.

Prepared by: George Flynn
Attorney for: Defendants
Attorney Registration No.: 6239549 Judge: _____

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** FILED ** Env: 14112950
McHenry County, Illinois
17LA000377
Date: 7/20/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF FILING**

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that, on the 20th day of July 2021, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT TO PLAINTIFF PAUL DULBERG, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 20th day of July 2021.

George K. Flynn
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700, Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com
Firm No. 38100

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on July 20, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

Received 07-20-2021 03:59 PM / Circuit Clerk Accepted on 07-20-2021 04:04 PM / Transaction #14112950 / Case #17LA000377

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## SERVICE LIST

| | |
|---|---|
| **Plaintiff's Attorney**<br><br>Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |



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Page 2 of 2
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McHenry County, Illinois
17LA000377
Date: 7/20/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT TO PLAINTIFF PAUL DULBERG**

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to Illinois Supreme Court Rule 216, respectfully request that Plaintiff, Paul Dulberg, respond to the following request for admissions of fact and genuineness of document within 28 days under oath:

**WARNING:**
**If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine.**

**REQUESTS FOR ADMISSION**

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015 letter drafted by attorney Saul Ferris.

2. Admit that you received Exhibit A on or within 7 days of March 4, 2015.

3. Admit that you received Exhibit A on or within 30 days of March 4, 2015.

4. Admit that you met with Saul Ferris on or about December 31, 2014 with regard to your personal injury case.



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**RESPONSE:**

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



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LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl

**EXHIBIT A**



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** FILED ** Env: 14453076
McHenry County, Illinois
17LA000377
Date: 8/16/2021 4:21 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**150 So. Wacker Drive, Suite 1700**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**
**Linda Walters on behalf of George K. Flynn**
**lwalters@karballaw.com**

PLEASE TAKE NOTICE that on August 16, 2021 I served the parties by email:

Plaintiff Paul Dulberg's:

●Response to DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSION OF FACT AND GENUINENESS OF DOCUMENT TO PLAINTIFF PAUL DULBERG.



Received 08-16-2021 04:30 PM / Circuit Clerk Accepted on 08-17-2021 08:31 AM / Transaction #14453076 / Case #17LA000377
Purchased from re:SearchIL

Copies of which are attached hereto and herewith served upon you.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

**AFFIDAVIT OF SERVICE**

I , Alphonse A. Talarico, an attorney, certify that on August 16, 2021, I caused to be served the attached Plaintiff's Responses to DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST'S REQUEST FOR ADMISSION OF FACT AND GENUINENESS OF DOCUMENT to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: August 16, 2021



Received 08-16-2021 04:30 PM / Circuit Clerk Accepted on 08-17-2021 08:31 AM / Transaction #14453076 / Case #17LA000377
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** FILED ** Env: 14574184
McHenry County, Illinois
17LA000377
Date: 8/25/2021 1:26 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO DEEM FACTS ADMITTED**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Deem Facts Admitted, state as follows:

1) Dulberg's pattern and practice of abusing the discovery process with improper and incomplete responses is repeated in his latest filing, Plaintiff's Responses to Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast's Request for Admissions of Fact and Genuineness of Document (Exhibit 1). (Request for Admissions attached as Exhibit 2).

2) Defendants' Requests for Admissions simply intended to authenticate a March 4, 2015 letter purportedly drafted by attorney Saul Ferris, and establish when it was received by Dulberg. Dulberg finally produced said letter in discovery on June 7, 2021 with no explanation why it was not previously produced in this litigation (Exhibit 3, Plaintiff's Amended Additional Response to Defendant Law Offices of Thomas J. Popovich, P.C.'s Supplemental Requests for Production).



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3) Notably, Dulberg was deposed on February 19, 2020 and was asked about the discovery of his malpractice action at that time at pgs. 38 and 95 (attached as Group Exhibit 4). On page 38, Dulberg described a communication from Ferris and other attorneys who would not take over his underlying personal injury case from defendant Popovich. "As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that." Dulberg testified that Saul Ferris made that comment in a letter, "and he said it on the phone and he sent me an email, I think. I don't remember the ways he contacted me. I would have to go back and look."

4) The attached Request for Admissions was an attempt at simply authenticating the copy of Ferris's letter, which again should have been produced years ago in this litigation but was not. Instead of acknowledging the authenticity of the copy of the letter, Dulberg's response is a muddled and evasive attempt at muddying the water, and should not be countenanced by this court. Dulberg's specious objections and attempt at explaining away the content of Ferris's letter is deserving of a sanction.

5) Perhaps the most egregious of Dulberg's violations, aside from his attempt at redefining common legal terms and their variations such as "genuine" and "authentic", is his denial of the genuineness of Exhibit A because he does not agree with the accuracy of the content, and because he is not in control of the author (see Response #1). A close second, is his failure to admit in No. 2 and No. 3 that he received the document from Ferris within 7 or within 30 days respectively, of the date affixed to the face of the letter.

6) Not only should those facts contained in the Request to Admit be admitted, but Defendants should not have to engage in "teeth pulling" discovery in order to simply authenticate a copy of a document which was inexplicably withheld in the first place. The



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document is responsive to discovery, and is relevant to the so-called "discovery" of Dulberg's legal malpractice claim, given that he has filed it outside of the two year statute of limitations.

7) Dulberg should have either objected or answered the Request to Admit, but not both. *Chicago Use of Schools v. Albert J. Schorsch Realty Co.,* 95 Ill. App. 2d 264, 280 (4th Dist. 1968). The purpose of a Rule 216 "admission of fact or of genuineness of documents" request is to not to discover facts. Rather the purpose of such a request is to establish some of the material facts in the case without the necessity of formal proof at trial. This enables the parties and the court to limit the issues and it results in substantial savings of time and expense, for both parties and the court. *Fraser v. Jackson*, 214 IL App (2d) 130283 (an award of costs and fees was warranted due to the defendant's lack of good faith in responding to requests for admission). "Rule 219(c) provides that the trial court may award as sanctions the 'reasonable expenses incurred as a result of the [offending party's] misconduct, including a reasonable attorney fee…. The trial court may award attorney fees as sanctions when a party's misconduct has caused another party to incur fees.'" 2011 IL App (1st) 103506 at **[P19].

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court enter an Order:

1) Granting Defendants' Motion, denying all of Dulberg's objections, and deeming Requests 1, 2, 3, and 4 admitted;
2) Granting fees and costs for Defendants in prosecuting this motion;
3) Alternatively, should the deposition of Saul Ferris be necessary if Requests 1, 2, 3, and 4 are not deemed admitted, that Dulberg be assessed Defendants' attorney fees and costs in deposing Saul Ferris; and
4) For any additional relief this honorable court deems fair and proper.



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Page 3 of 21
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Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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Attorneys for Defendants
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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Response states as follows:

**GENERAL OBJECTIONS:** Plaintiff Paul Dulberg reserves the right to amend his Responses as additional information becomes available through ongoing discovery. This objection applies globally to all the responses following.

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015 letter drafted by attorney Saul Ferris.



**EXHIBIT 1**

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1. Specific Objection to Defendants' Request to Admit #1: Defendants' Request to Admit #1 is vague or ambiguous because it includes the undefined terms true, accurate and genuine. Plaintiff does not intend to waive this objection but responds if Defendants agree to adopt the definitions of the words used in Exhibit A as defined as follows.

Plaintiff, relying upon *Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.*

***What is GENUINE?***

*As applied to notes, bonds, and other written instruments, this termmeans [sic] that they are truly what they purport to be, and that they are not false, forged, fictitious, simulated, spurious, or counterfeit. Baldwin v. Van Deusen, 37 N. Y. 492;Smelt- zer v. White, 92 U. S. 392, 23 L. Ed. 508; Dow v. Spenny, 29 Mo. 390; Cox v.Northwestern Stage Co., 1 Idaho, 379.*

1. Response: Plaintiff admits that Exhibit A attached to Defendants' REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT is a genuine digital scan of a document he received by regular mail delivered by the United States Postal Service. However, Plaintiff denies that the original document itself and the content within the document, purporting to be from Saul M. Ferris, is genuine because Plaintiff believes that the document contains false information; specifically, the date of Plaintiff's accident is misstated as January 24, 2013, and the date of Plaintiff's consultation with Saul M. Ferris is misstated as December 31, 2014. Since Saul M. Ferris is not under the control of Plaintiff, there is no way to verify that this document is genuine in relation to its stated dates and author.

Plaintiff, relying upon *Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.*

***What is TRUE?***



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*Conformable to fact; correct; exact; actual; genuine; honest "In one sense, that only is true which is conformable to the actual state of things. In that sense, a statement is untrue which does not express things exactly as they are. Rut [sic] in another and broader sense, the word 'true' is often used as a synonym of 'honest,' 'sincere,' 'not fraudulent.' " Moulor v. American L. Ins. Co.. [sic] Ill U. S. 345, 4 Sup. Ct. 400, 28 L. Ed. 447*

The clearest example of why the content of Exhibit A is not true is the topic Statement "RE: Your accident of January 24, 2013", which misstates the date of Plaintiff's accident and is the subject of this litigation. The correct date was June 28, 2011. Therefore, this statement is untrue as it does not "express things exactly as they are". Further responding, Plaintiff denies that Exhibit A is an accurate copy (or digital scan) of a document he received purporting to be from Saul M. Ferris because Defendants have failed to include in their Request a definition of the word "true" as they are using it herein.

Plaintiff, relying upon *Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.*

***What is ACCURATE?***

*Honestly agreeing and practicing standards of due diligence. Financial statements are verified for correctness. Refer to precise.*

The clearest example of why Exhibit A is not accurate is because, in paragraph one, the purported author of the document states, "Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter". However, in the final paragraph, the purported author of the document states, "We recommend that you attempt to settle the case at the upcoming pretrial conference



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with your current attorney". Thus, the statements of the purported author are not accurate because they are imprecise and conflicting.

In the first paragraph, the author states that the firm will not be taking any further action on Plaintiff's behalf. Yet, in the final paragraph, the purported author ignores their previous statement and takes further action on Plaintiff's behalf by providing legal advice, where the firm recommends Plaintiff attempt to settle the case.

Plaintiff Paul Dulberg neither admits nor denies that Exhibit A was drafted by attorney Saul M. Ferris because he did not represent Plaintiff, nor is he currently retained by Plaintiff. Therefore, Ferris is not under Plaintiff's control.

2. Admit that you received Exhibit A on or within 7 days of March 4, 2015.

2. Response: Plaintiff neither admits nor denies that he received Exhibit A on or within 7 days of March 4, 2015, because Plaintiff has no independent recollection of the date that the document referenced herein was delivered to him by the United States Postal Service. After conducting a good faith search for records that would support a definite response and reviewing the incorrectly stated date of the accident and the incorrectly stated date of consultation, Plaintiff questions the accuracy of the information stated therein. Plaintiff has made reasonable inquiry, including but not limited to the emails directly related or tangentially related to the document, and states that the



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information known or readily obtainable is insufficient to enable the Plaintiff to admit or deny this inquiry.

3. Admit that you received Exhibit A on or within 30 days of March 4, 2015.

3. Response: Plaintiff neither admits nor denies that he received Exhibit A on or within 30 days of March 4, 2015, because Plaintiff has no independent recollection of the date that the document referenced herein was delivered to him by the United States Postal Service. After conducting a good faith search for records that would support a definite response and reviewing the incorrectly stated date of the accident and the incorrectly stated date of consultation, Plaintiff questions the accuracy of the information stated therein. Plaintiff has made reasonable inquiry, including but not limited to the emails directly related or tangentially related to the document, and states that the information known or readily obtainable is insufficient to enable the Plaintiff to admit or deny this inquiry.

4. Admit that you met with Saul Ferris on or about December 31, 2014, with regard to your personal injury case.

4. Response: Plaintiff denies that he met with Saul Ferris on or about December 31, 2014, with regard to his personal injury case. After conducting a good faith search for records that would support a definite Response, speaking to a person under the "control" of Plaintiff who attended the meeting with Plaintiff and reviewing the incorrectly



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stated date of the accident and the incorrectly stated date of consultation, Plaintiff questions the accuracy of the information stated therein. Plaintiff's investigation indicates that Plaintiff met with Saul M. Ferris between February 23, 2015, and March 6, 2015.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

**VERIFICATION**

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument, including but not limited to Plaintiff's inability to truthfully admit or deny a Request to Admit, are true and correct, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Paul Dulberg — Paul Dulberg

8/14/2021 — Dated



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** FILED ** Env: 14112950
McHenry County, Illinois
17LA000377
Date: 7/20/2021 2:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S REQUEST FOR ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENT TO PLAINTIFF PAUL DULBERG**

Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and pursuant to Illinois Supreme Court Rule 216, respectfully request that Plaintiff, Paul Dulberg, respond to the following request for admissions of fact and genuineness of document within 28 days under oath:

**WARNING:**
**If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine.**

**REQUESTS FOR ADMISSION**

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of a March 4, 2015 letter drafted by attorney Saul Ferris.

2. Admit that you received Exhibit A on or within 7 days of March 4, 2015.

3. Admit that you received Exhibit A on or within 30 days of March 4, 2015.

4. Admit that you met with Saul Ferris on or about December 31, 2014 with regard to your personal injury case.



**EXHIBIT 2**

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**RESPONSE:**

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



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LAW OFFICES
FERRIS, THOMPSON & ZWEIG, LTD.

SAUL M. FERRIS
GARY R. THOMPSON
MICHAEL L. ZWEIG*

RAFAEL J. GUZMÁN
ATTORNEYS AT LAW
*Licensed in IL & NY

103 S. GREENLEAF AVENUE, SUITE G
GURNEE, ILLINOIS 60031

TELEPHONE (847) 263-7770
FAX (847) 263-7771
www.ftzlaw.com

March 4, 2015

Mr. Paul Dulberg
3416 W. Elm Street
McHenry, IL 60050

RE: Your accident of January 24, 2013

Dear Mr. Dulberg:

Thank you for consulting with our firm on December 31, 2014 in regards to your personal injury case. Unfortunately, we have decided not to accept your case. Therefore, on behalf of Ferris, Thompson & Zweig, Ltd., we will not be taking any further action on your behalf as it relates to this matter. I believe you should not have settled with the property owners for $5,000.00. There are other reasons for my decision.

This is merely our professional opinion and does not mean you do not have a case. We recommend that you attempt to settle the case at the upcoming pretrial conference with your current attorney.

Sincerely,

Saul M. Ferris

SMF/cl

**EXHIBIT A**



Received 08-25-2021 02:19 PM / Circuit Clerk Accepted on 08-25-2021 02:58 PM / Transaction #14574184 / Case #17LA000377
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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S AMENDED ADDITIONAL RESPONSE TO DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Amended Additional Response states as follows:

1. Any and all documents relating to your "discovery" of any alleged breach of the standard of care or legal malpractice by Popovich or Mast, and which caused you damages or injury.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016, 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

Objection-privileged Bates stamped e-mail string 8744-8746



**EXHIBIT 3**

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Page 14 of 21
C 602

2. Any and all documents relating to any consultation or advice you received from any attorney or "legal expert" or legal malpractice expert which formed the basis for your alleged discovery of Mast's and Popovich's breach or breaches of the standard of care while they represented you in your claim or lawsuit against William and Caroline McGuire and David Gagnon.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 001793, 001809, 002027, 008999, 009016 and 009099 (note: all of the foregoing are pleadings that are already in defendants' possession).

3. Any and all documents regarding or reflecting advice from any attorney or legal expert, including but not limited to Tom Gooch, including but not limited to your communications with Tom Gooch in December 2016 (up to and including the date of the filing of your original complaint against Popovich and Mast), which relate to your discovery of any breach of the standard of care by Popovich or Mast and proximately caused damages or injury resulting therefrom.

RESPONSE: Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

Bates stamped document 8709-8710 previously enclosed.

Objection-privileged Bates stamped e-mail string 8744-8746

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 006502. (attached)

4. Any and all documents regarding any damages you suffered at any time as a result of any breach of the standard of care by Popovich or Mast in their



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representation of you or provision of legal services to you.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931, 003133, and 004884. (attached)

5. Any and all documents which provide or form the basis for your contention that you did not discover until December 16, 2016 that you had been injured or damaged by Mast or Popovich's negligence in representing you in the claim or lawsuit against William and Caroline McGuire.

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708

Misstates Plaintiff Paul Dulberg's contention was that he discovered the injury on December 16, 2016.

Dulberg actually discovered the pecuniary injury on December 12, 2016 and actually discovered he had a legal malpractice case on December 16, 2016.

2020 IL App (1st) 191953 Nos. 1-19-1953 & 1-19-1973 (consol.) Opinion filed November 30, 2020 Modified upon denial of rehearing December 31, 2020 which is equally available to all parties.

AMENDED ADDITIONAL RESPONSE: Dulberg Bates stamped 002928-2931.(Please see above)

6. All documents, including letters and email communications between Tom Gooch on the one hand, and you on the other hand, regarding legal advice he provided to you on December 16, 2016 and thereafter, that you "had a malpractice case" against Popovich, as testified by you at pages 129-142 of your discovery deposition



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from February 19, 2020.

RESPONSE:

Objection- undue burden, unclear, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

7. Any and all documents reflecting opinions by attorney Randy Baudin regarding the liability of the McGuire's, whether the advice or opinions were rendered at your mediation of the underlying case (on or about December 16, 2016) or prior thereto, as testified at your discovery deposition on February 19, 2020 (see page 141).

RESPONSE: Objection- undue burden, previously submitted please see Plaintiff's Bates stamped 1-8708.

AMENDED ADDITIONAL RESPONSE: None.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022



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(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF COMPLETENESS

The undersigned, Paul Dulberg, being first duly sworn and under oath, deposes and states as follows:

1. I am the Plaintiff in the above-captioned action.

2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.

3. The documents that I produced in response to the Court ordered Amended Additional Supplemental Requests for Production propounded by Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C are complete in accordance with the Court Order and Supplemental Requests for Production.

4. Plaintiff Paul Dulberg reserves the right to supplement his response to Defendant THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'s Supplemental Requests for Production as additional documents become known to me or come into my possession, custody, or control.

## VERIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Plaintiff certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid



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that he verily belies the same to be true.

Paul Dulberg

June 1, 2021



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attorneys.
Q. I don't recall seeing any lawyers, but I would ask you to search for those.
MS. WILLIAMS: We'll search for those. I'll make a note.
BY MR. FLYNN:
Q. As you sit here, do you recall the basis for any attorney declining to take your personal injury case over from Popovich?
A. Say that again.
Q. As you sit here today, do you recall any of the reasons why any attorney declined to take your personal injury case over from the Popovich firm?
A. Yes.
Q. What were those reasons?
A. I remember a few. One I was looking at local lawyers in McHenry County and I was told like -- I can name them. My sister was married to him.
Anyway, I was told if Tom Popovich says you don't have a case, you don't have a case and we're not even going to look at it. That I got a lot of it.

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Q. That's one reason. Any others?
A. That I got locally a lot of. As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that.
Q. Who said that?
A. Sal Ferris.
Q. When did you speak to Sal Ferris?
A. I don't know the exact date.
Q. When did he –
A. He wasn't the only one.
Q. When did he say that to you, that you just described?
A. He said it in a letter and he said it on the phone and he sent me an e-mail, I think. I don't remember the ways that he contacted me. I'd have to go back and look.
MS. WILLIAMS: We'll find it.
BY MR. FLYNN:
Q. Besides Sal Ferris, can you recall any other attorney, specifically, that told you they wouldn't take the case because of your settlement with the McGuires?

Page 39

A. Yes.
Q. Who was that?
A. There was at least three firms downtown here right near the Daley Center that I came down to see and I don't remember their names, but they -- I got the same thing out of all three of them.
Q. Did any of the lawyers give you any other reason for declining your case?
A. Mostly it was because they knew Popovich or it was the McGuire settlement.
Q. Did any lawyer tell you that they didn't want to take your case because there was questionable liability against David Gagnon?
A. No.
Q. Did any lawyer tell you that there was questionable liability against the property owners, the McGuires?
A. No.
Q. We're jumping ahead, but did you have different lawyers that handled a binding arbitration or binding mediation for you in the underlying case?
A. Yes.
Q. Their name was Baudin?
A. Yes.

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Q. Why did Brad Balke not handle the binding arbitration?
A. I fired him.
Q. When did you fire Brad Balke?
A. I'd have to look at the dates. I'm not sure, exactly.
Q. Why did you fire him?
A. Because he forced me to undergo the exact mediation at the McHenry County court in front of Judge Meyer that Hans Mast set up that I specifically said no to.
Q. When was this mediation?
A. I'd have to look at the dates again.
Q. Was it a pretrial conference?
A. Yes.
Q. You actually attended this pretrial conference?
A. Yes, I did.
Q. What happened?
A. I said no.
Q. You said no about what?
A. They offered an amount of money and I said no.
Q. The defendants offered an amount of



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GROUP EXHIBIT 4

Page 93

chance.
A. I think later on he says nine out of ten.
Q. In this e-mail he says seven out of ten you will lose.
A. Yes.
Q. He's recognizing three times out of ten you may win, right?
A. I don't know what Hans is thinking.
Q. Is that what he said?
A. He says seven out of ten times you lose.
Q. You understood that there are risks in taking the case to trial that you could lose?
A. There are unforeseen risks, yes.
Q. There are always risks, period, in taking a case to trial?
A. Yes.
Q. Before you hired Brad Balke and after Hans told you he couldn't represent you, did you talk to any other lawyers about taking your case?
A. Yes.
Q. How many?
A. I can't tell you. A lot.
Q. Did any of them tell you that they wouldn't take the case because they didn't think you

Page 94

could prevail against Gagnon?
A. No.
Q. Not one?
A. No.
Q. What are the names of any of the lawyers you talked to about taking your case over from Popovich?
A. I can't tell you without looking at documents who it was and what date it was, what it was between these two.
Q. I don't think documents I produced would help you in that regard.
I'll just ask you based on your memory the names of any lawyers you met with from the time Hans wrote this February 22 e-mail --
A. I believe –
Q. Let me finish.
A. I believe –
MS. WILLIAMS: He has not finished his question.
THE WITNESS: Sorry.
BY MR. FLYNN:
Q. From the time that Hans wrote this February 22 e-mail and the time that Brad Balke

Page 95

enters an appearance on March 19. Just the name of any lawyer you --
A. I believe that Sal Ferris that I was talking about was one of the lawyers that I talked to.
Q. You're not sure? You believe that he was?
A. In between this time and this time?
Q. Yes.
A. I believe it's right around then.
Q. What type of law practice does Sal Ferris have?
A. I believe personal injury.
Q. Did you ever talk to him about taking your case before that date?
A. Before the date of this e-mail?
Q. Yes.
A. I'd have to look at it.
Q. He wasn't one of the original attorneys that you spoke with at the beginning of the case?
A. No.
Q. Fair to say once Balke entered his appearance on March 19, 2015 that Mast and Popovich were no longer your attorneys, correct?

Page 96

A. When Balke enters his appearance?
Q. Yes.
A. I would believe that, yes.
Q. They were terminated and Balke stepped in?
A. Yes.
Q. Can you tell me how the binding mediation which proceeded on December 8, 2015 evolved and came to be.
A. I was ordered into it from a bankruptcy court.
Q. Why is that?
A. I believe that the trustee put a motion up. I don't know who did it. I assume it was the trustee and the court ordered that it be put into binding mediation.
Q. Did you appear at the mediation?
A. Yes.
Q. Do you recall the name of the mediator?
A. Not off the top of my head, no.
Q. One of the exhibits to your second amended complaint indicates it was retired Judge James Etchingham.
A. That sounds familiar.



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McHenry County, Illinois
17LA000377
Date: 8/25/2021 1:26 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| Paul Dulberg,<br><br>Plaintiff,<br><br>v.<br><br>The Law Offices of Thomas J. Popovich, P.C., And Hans Mast,<br><br>Defendants. | ) | Case No. 17 LA 000377<br>Jury Demand<br>(Court Room 201) |

## NOTICE OF MOTION

**TO: ALL ATTORNEYS OF RECORD – See Attached Service List**

PLEASE TAKE NOTICE that on the **7th day of September 2021 at 8:45 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO DEEM FACTS ADMITTED, a copy of which is attached hereto and herewith served upon you.

Dated this 25th day of August 2021 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on August 25, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |

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McHenry County, Illinois
17LA000377
Date: 9/3/2021 1:30 PM
Katherine M. Keefe
Clerk of the Circuit Court

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

| STATE OF ILLINOIS, CIRCUIT COURT<br>McHenry COUNTY | PROOF OF DELIVERY | For Court Use Only |
|---|---|---|

| Instructions | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| | v. |
| Enter the name of the Defendant/Respondent. | Hans Mast et al<br>**Defendant / Respondent** *(First, middle, last name)* |
| Enter the Case Number given by the Circuit Clerk. | 17 LA 000377Plaintiff's<br>**Case Number** |

In **1**, enter the name of the court document you are sending to the other parties in the court case (*e.g.,* a Court Order or Answer).

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

**CAUTION:** If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

In **c**, fill in the date and time that you sent the document.

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

**1. I am sending the following court document:** Response To Motion To Deem Fact

a. To:

Name: George K. Flynn
*First Middle Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
*Street, Apt # City State ZIP*

Email address: gflynn@kargallaw.com

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

  *Address of Post Office or Mailbox*
- ☐ Third-party commercial carrier, with delivery paid for at:

  *Name (for example, FedEx or UPS ) and office address*
- ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

  *Name of prison or jail*

c. On: September 3, 2021
*Date*

At: 12:01 ☐ a.m. ☑ p.m.
*Time*

2. I sent this document:

a. To:

Name:
*First Middle Last*

Address:
*Street, Apt # City State ZIP*

Email address:



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Page 1 of 2
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b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

*Address of Post Office or Mailbox*

- ☐ Third-party commercial carrier, with delivery paid for at:

*Name (for example, FedEx or UPS ) and office address*

- ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

*Name of prison or jail*

If you sent your document to more than 3 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

707 Skokie Blvd. #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*



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Page 2 of 2
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** FILED ** Env: 14701354
McHenry County, Illinois
17LA000377
Date: 9/3/2021 1:30 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S RESPONSES TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO DEEM FACTS ADMITTED**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Response states as follows:

1) Illinois Supreme Court Rule 201(K) states as follows:

(k) Reasonable Attempt to Resolve Differences Required. The parties shall facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery. Every motion with respect to discovery shall incorporate a statement that counsel responsible for trial of the case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord or that opposing counsel made himself or herself unavailable for personal consultation or was unreasonable in attempts to resolve differences.



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2) Defendants have not, nor could they include this required statement as Defendants have not complied with Illinois Supreme Court Rule 201(K).

3) Request to Admit are listed under Illinois Supreme Court Rule 201(a) which states as follows:

Rule 201. General Discovery Provisions (a) Discovery Methods. Information is obtainable as provided in these rules through any of the following discovery methods: depositions upon oral examination or written questions, written interrogatories to parties, discovery of documents, objects or tangible things, inspection of real estate, requests to admit and physical and mental examination of persons. Duplication of discovery methods to obtain the same information and discovery requests that are disproportionate in terms of burden or expense should be avoided.

4) Although Plaintiff can state many examples of Defendants actually being the party that has been, and by this clear example, the abusive party in this litigation, Plaintiff and his attorney choose to take the high road and for the sake of civility only request that the following be granted:

Defendants' Motion to Deem Facts Admitted be stricken for failure to comply with Supreme Court Rule 201(K) and that Plaintiff be granted attorney's fees for bringing this motion in violation of the discovery rules, and wasting the time of Plaintiff, Plaintiff's Attorney, and this Honorable Court.



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Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com



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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

*KATHERINE M. KEEFE*
Clerk of the Circuit Court
****** FILED ******
09/07/2021 2:10 PM
McHenry County, Illinois
22nd Judicial Circuit
**********

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

**ORDER**

This matter coming to be heard on Defendants' Motion to Deem Facts Admitted, the court having reviewed the motion and response and having heard oral argument in the premises, it is ordered:

1) Request number 1 is deemed admitted.
2) Request number 2 is denied.
3) Request number 3 is denied.
4) Request number4 is denied.
5) Defendant is granted leave to depose attorney Saul Ferris.
6) The hearing on September 17, 2021 is stricken.
7) Status set for November 8, 2021 at 8:45 a.m.

***Prepared by:***
**Atty. No.** **George K. Flynn ARDC #6239349**
**Name:** **Karbal, Cohen, Economou, Silk & Dunne, LLC**
**Attorney for:** **Defendants**
**Address:** **150 S. Wacker Drive, Suite 1700**
**City:** **Chicago, IL 60606**
**Telephone:** **(312) 431-3700**
**E-Mail:** **gflynn@karballaw.com**

9/7/2021
**……., 2021**
**ENTER:**

Thomas A. Meyer
**……**
**Judge** **Judge's No.**

Thomas Meyer
**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

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** FILED ** Env: 14940524
McHenry County, Illinois
17LA000377
Date: 9/23/2021 2:31 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17 LA 377 |

## NOTICE OF SERVICE OF DISCOVERY DOCUMENT

**TO: SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on the 23rd day of September 2021 we served the parties via email DEFENDANTS' SUBPOENA – SAUL FERRIS, a copy of which was previously served upon you.

Dated this 23rd day of September 2021 in Chicago, Illinois.

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on September 23, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

Received 09-23-2021 02:46 PM / Circuit Clerk Accepted on 09-24-2021 09:19 AM / Transaction #14940524 / Case #17LA000377
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## SERVICE LIST

**Plaintiff's Attorney**

Alphonse A. Talarico
Law Office of Alphonse A. Talarico
707 Skokie Blvd 6th Floor Suite
Northbrook, IL 60062-2841
contact@lawofficeofalphonsetalarico.com
(312) 808-1410



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Page 2 of 2
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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Dolberg
Plaintiff

vs

Mass
Defendant

FILED
McHenry County, Illinois
NOV - 8 2021
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17L4377

# ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☒ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 12/7, 2021 at 8:45 A.m. for STATUS #1.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** All outstanding written discovery to be completed

Date: _____

John A. Noverini
Judge

CV-ORD13: Revised 10/01/08

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** FILED ** Env: 15786247
McHenry County, Illinois
17LA000377
Date: 12/1/2021 12:48 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Motion To Compel and for an Extension of Time to Complete outstanding written Discovery states as follows:

1) On October 9, 2018 Plaintiff's first attorney Thomas W. Gooch, III of THE GOOCH FIRM Noticed and Served :

a) Plaintiff's First Request for Production of Documents to Defendants;

b) Plaintiff's First Set of Interrogatories to Defendants;

c) Plaintiff's 213(f) (1)(2) & (3) Interrogatories to Defendants.



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2) Said discovery was filed pursuant to Supreme Court Rule 201(m) and shall hereafter be referred to as the Gooch discovery. (Please see Exhibit A, PROOF OF SERVICE OF DISCOVERT DOCUMENTS attached)

3) On October 15, 2018 this Honorable Court entered an order granting Thomas W. Gooch and The Gooch Firm leave to withdraw (their) appearance.

4) On November 8, 2018 Plaintiff's second attorneys, Julia C Williams and Edward X. Clinton both of The Clinton Law Firm filed separate Appearances.

5) On November 13, 2018, pursuant to inquiry by this Honorable Court, Defendants' attorney stated that the Gooch discovery was outstanding. (Please see Exhibit B, Report of Proceedings pg. 2 line 20 -pg.3 line 3 attached)

6) On March 22, 2019 Julia C. Williams served Plaintiff's second set of Discovery by e-mail upon Defendants' counsel without filing a certificate of service of discovery document pursuant to Illinois Supreme Court Rule 201(m).

7) Plaintiff's second set of Discovery was erroneously titled:

a) PAUL DULBERG'S FIRST SET OF DOCUMENTS REQUESTS;

b) PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS;

c) PLAINTIFF'S RULE 213(F) INTERROGATORIES TO DEFENDANT.

8) Plaintiff's second set of Discovery shall be known hereafter as the Clinton discovery.

9) Defendants responded to the Clinton discovery on May 29, 2019 (Please see Exhibit C, NOTICE OF SERVICE OF DISCOVERY DOCUMENTS, that was filed pursuant to Supreme Court Rule 201(m).



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10) On May 30, 2019, Plaintiff's attorney Julia C. Williams stated that "Written discovery's been issued and defendants have answered…" (Please see Exhibit D, Report of Proceedings pg. 2 line 13 - 14 attached)

11.) The Gooch discovery has not been answered or objected to.

12.) In addition to the Gooch discovery Plaintiff prays that this Honorable Court declare the following answers to be nonresponsive and compel the Defendants to answer the Clinton discovery for the following reasons:

PLAINTIFF'S FIRST [SIC] SET OF INTERROGATORIES TO DEFENDANTS:

a) Interrogatory Number 5 is addressed to claims or defenses in this matter but both Defendants' answers are nonresponsive because the answers address the underlying matter only (not this matter) and neither include the subject of the information;

b) Interrogatory Number 6 requests a detailed response but both Defendants answer with a "General" duplicative one sentence response;

c) Interrogatory Number 7 is answered by both Defendants in mirror image and separately first with an objection and thereafter with a reference to Supreme Court Rule 213(e) directing the recipient to find Mast's and Popovich's response to this interrogatory in their response to Plaintiff's Request for the production of documents by instructing Plaintiff to "…please see all correspondence between Mast and Dulberg in connection with the underlying case, produced in response to Plaintiff's request for the production of documents." Those responses are contrary to the Honorable Thomas A. Meyer instructions in this case. (Please see Exhibit E, Report of Proceedings 1st day of April 2021, pg.4 line 10 -pg.5 line 5 attached)



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Note: Defendants' response to Request for Production #1,#2,#3,#5 & #6 is "See attached documents bates labeled POP 000001 through POP 001455.

d) Interrogatory Number 9 is answered by both Defendants in mirror image and is nonresponsive because it refers the reader to see interrogatory #8 which Plaintiff directed to 12 LA 178 while Plaintiff directed interrogatory #9 to 17 LA 377.

PAUL DULBER'S FIRST [SIC] SET OF DOCUMENT REQUESTS:

e) Request to Produce Number 1 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #1 is "See attached documents bates labeled POP 000001 through POP 001455 .
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

f) Request to Produce Number 2 is answered in duplicative by Defendants and is nonresponsive because of the 1,455 pages approximately 106 pages were completely blacked out;

g) Request to Produce Number 3 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #3 is "See attached documents bates labeled POP 000001 through POP 001455 .
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

h) Request to Produce Number 4 is answered in duplicative by Defendants and is nonresponsive because no documents are specifically identified as Defendants answered with the statement " None other than those documents ultimately served or filed in the underlying matter' ;



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i) Request to Produce Number 5 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #5 is "See attached documents bates labeled POP 000001 through POP 001455 .
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

j) Request to Produce Number 6 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #6 is "See attached documents bates labeled POP 000001 through POP 001455 .
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);

k) Request to Produce Number 8 is answered in duplicative by Defendants and is a nonresponsive because the request is for "A copy of any insurance agreement..." whereas Defendants' response is "see declaration page, bates labeled POP 000001 through POP 00002." ;

l) Request to Produce Number 9 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #9 is "None other than those documents being produced herewith, bates labeled POP 000001 through POP 001455, including transcripts of the depositions from the underlying case in defendant's counsel's possession (Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, Michael McArtor). Investigation continues."
(Note: of the 1,455 pages approximately 106 pages were completely blacked out);



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m) Request to Produce Number 10 is answered in duplicative by Defendants and is nonresponsive because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case. Defendants' response to Request for Production #10 is "None other than those produced herewith bates labeled POP 000001 through POP 001455."

(Note: of the 1,455 pages approximately 106 pages were completely blacked out).

Illinois Supreme Court Rule 201(k) statement: That Alphonse A. Talarico, counsel responsible for trial of the case, after personal consultation and reasonable attempts to resolve differences with counsel for the Defendants, George K. Flynn, have been unable to reach an accord.

Disclosure: During 201(k) email conferences Defendants' attorney, George K. Flynn, indicated that he had recently spoke with Plaintiff's former attorney who agreed with Mr. Flynn that Julia C. Williams of the Clinton Law Firm and George K. Flynn had previously reached an accord that Defendants do not have to respond to the Gooch discovery. An email confirmation sent to Julia C. Williams has gone unanswered.



Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
Purchased from re:SearchIL

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com



Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
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** FILED ** Env: 2464522
McHenry County, Illinois
17LA000377
Date: 10/9/2018 12:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

**THE UNITED STATES OF AMERICA**
**IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, | ) | Case No.: 2017 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| Defendants. | ) | |

---

## PROOF OF SERVICE OF DISCOVERY DOCUMENTS

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

I HEREBY CERTIFY THE FOLLOWING DOCUMENTS WERE SERVED TO THE ABOVE NAMED:

1) Plaintiff's First Request for Production of Documents to Defendants;

2) Plaintiff's First Set of Interrogatories to Defendants; and

3) Plaintiff's 213(f) (1)(2) & (3) Interrogatories to Defendants.

Via McHenry County E-file system and email from Wauconda, Illinois before 5:00 p.m. on October 8, 2018.

Thomas W. Gooch, III
Thomas W. Gooch, III

THE GOOCH FIRM
209 S, Main Street
Wauconda, Illinois 60084
847 526 0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No. 3123355

Exhibit A

Received 10-10-2018 08:09 AM / Circuit Clerk Accepted on 10-10-2018 03:08 PM / Transaction #2464522 / Case #17LA000377
Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
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** FILED ** Env: 15602122
McHenry County, Illinois
17LA000377
Date: 11/15/2021 1:47 PM
Katherine M. Keefe
Clerk of the Circuit Court



STATE OF ILLINOIS )
) SS.
COUNTY OF McHENRY )

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs. ) No. 17 LA 377

THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,

Defendants.

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 13th day of November, 2018, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

MS. JULIA WILLIAMS
ATTORNEY AT LAW

On behalf of the Plaintiff;

MR. GEORGE K. FLYNN
ATTORNEY AT LAW

On behalf of the Defendants.

EXHIBIT B

Received 11-15-2021 03:12 PM / Circuit Clerk Accepted on 11-15-2021 03:47 PM / Transaction #15602122 / Case #17LA000377
Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
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MS. WILLIAMS: Good morning, your Honor. This is line 7, Dulberg versus Pop- --

THE COURT: Yes.

MS. WILLIAMS: Law Offices of Thomas Popovich. Julie Williams, new counsel on behalf of the plaintiff. We did file an appearance, myself and Ed Clinton, last week. And we also filed a motion for extension of time to file an amended pleading. Opposing counsel has indicated that he's had no objection to that and we'd just like to December 6th and then get a -- and time to answer or respond.

MR. FLYNN: Right, the --

MS. WILLIAMS: I apologize. I didn't let you introduce yourself.

MR. FLYNN: George Flynn for the defendants. That takes us to January 3. Due to -- because of the holiday, if I can have until January 10 --

THE COURT: Sure.

MR. FLYNN: -- to file a response of pleading --

THE COURT: And have you started discovery?

MR. FLYNN: We have not. This is -- there's no complaint on file right now.

THE COURT: Okay.

MR. FLYNN: Actually, I take that back.

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Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
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Mr. Gooch served some discovery shortly before he withdrew. My position would be I'd rather not answer that until we're at issue, but --

THE COURT: Let's go towards late February. How is the week of February 25th for status and F-1?

MS. WILLIAMS: That should be fine.

THE COURT: What days -- what day works for you guys?

MS. WILLIAMS: I'm actually really open that week --

MR. FLYNN: Same here.

MS. WILLIAMS: -- since it's far enough out, so --

THE COURT: 25th, Monday?

MS. WILLIAMS: 25th works great.

THE COURT: All right. I'll see you then.

MS. WILLIAMS: At 9:00 a.m. your Honor?

THE COURT: 9:00 a.m.

MS. WILLIAMS: Thank you.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS )
) SS:
COUNTY OF McHENRY )

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: November 15, 2021

Received 11-15-2021 03:12 PM / Circuit Clerk Accepted on 11-15-2021 03:47 PM / Transaction #15602122 / Case #17LA000377
Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
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** FILED ** Env: 5214049
McHenry County, Illinois
17LA000377
Date: 5/29/2019 11:00 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, vs. THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants. | ) | No. 17 LA 377 |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO: SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on the 29th day of May 2019 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:
- Response to Plaintiff's First Set of Document Requests;
- Answer to Plaintiff's First Set of Interrogatories to Defendants;

Defendant Hans Mast's:
- Response to Plaintiff's First Set of Document Requests;
- Answer to Plaintiff's First Set of Interrogatories to Defendants; and

Defendant The Law Offices of Thomas J. Popovich, P.C.'s and Hans Mast's:
- Answer to Plaintiff's Rule 213(f) Interrogatories to Defendants

copies of which are attached hereto and herewith served upon you.

Dated this 29th day of May 2019 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: */s/ George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed on May 29, 2019.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Linda Walters
Linda Walters

Exhibit C

Received 05-30-2019 10:13 AM / Circuit Clerk Accepted on 05-30-2019 12:22 PM / Transaction #5214049 / Case #17LA000377
Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #157862477 / Case #17LA000377
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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Edward X. Clinton, Jr.<br>Julia C. Williams<br>The Clinton Law Firm<br>111 W. Washington Street, Suite 1437<br>Chicago, IL 60602<br>312-357-1515<br>ed@clintonlaw.net<br>juliawilliams@clintonlaw.net<br>Marywinch@clintonlaw.net | |



Received 05-30-2019 10:13 AM / Circuit Clerk Accepted on 05-30-2019 12:22 PM / Transaction #5214049 / Case #17LA000377
Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:09 PM / Transaction #15786247 / Case #17LA000377
Page 14 of 36
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** FILED ** Env: 15681175
McHenry County, Illinois
17LA000377
Date: 11/19/2021 4:07 PM
Katherine M. Keefe
Clerk of the Circuit Court



STATE OF ILLINOIS )
) SS.
COUNTY OF McHENRY )

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

| | |
|---|---|
| PAUL DULBERG,<br>Plaintiff,<br>vs.<br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST,<br>Defendant. | No. 17 LA 377 |

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 30th day of May, 2019, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

MS. JULIA WILLIAMS
ATTORNEY AT LAW

On behalf of the Plaintiff;

MR. GEORGE K. FLYNN
ATTORNEY AT LAW

On behalf of the Defendants.

EXHIBIT D

Received 11-19-2021 04:17 PM / Circuit Clerk Accepted on 11-22-2021 08:47 AM / Transaction #15681175 / Case #17LA000377
Received 12-01-2021 02:33 PM / Circuit Clerk Accepted on 12-01-2021 03:00 PM / Transaction #15786247 / Case #17LA000377
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THE COURT: Yes?

MS. WILLIAMS: Good morning, your Honor. This is Dulberg versus Popovich. It's line 2 on your call. I'm Julia Williams. I represent the plaintiff.

MR. FLYNN: Good morning, your Honor. George Flynn for the defendants.

MS. WILLIAMS: So defendants have answered. We filed a motion for default. We'll withdraw that motion. It was entered --

THE COURT: Okay.

MS. WILLIAMS: -- and continued to today. Written discovery's been issued and defendants have answered, as the plaintiff. We tendered documents today. We have not tendered our written answers yet. We expect to do that within 7 days.

THE COURT: All right. Go ahead.

MS. WILLIAMS: This case -- this is a legal malpractice case, so it's a case within a case. We've tendered, I believe, over 2,000 pieces of paper, essentially. It's all electronic, but --

THE COURT: Yeah.

MS. WILLIAMS: -- but over 2,000 pages, and counsel's indicated that he tendered about 1500

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pages. So we anticipate the review of that taking some time. There were several depositions taken in the underlying case and those all need to be reviewed by both counsel to make sure that we have everything from the underlying case that was done in the underlying case. And then we need to decide are there any fact issues from the underlying case that we need to hash out in this case. And then I think we can start taking party deps. So I think we need a bit of time to get through the 3,000-some pieces of paper --

THE COURT: All right. So I was going to give you 90 days.

MS. WILLIAMS: I think that sounds good.

THE COURT: That's --

MR. FLYNN: That is to get started on --

THE COURT: Yeah, just put it out for status on F1 and I'll let you progress at your own speed. When in late August works for you?

MS. WILLIAMS: I am out that last -- that entire -- family vacation that entire last week of August.

THE COURT: Okay.

MS. WILLIAMS: If we could do sometime during

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the week of the 19th --

MR. FLYNN: Sure.

MS. WILLIAMS: -- or we can go into September 1st, but whatever defendant --

THE COURT: What's your preference?

MR. FLYNN: Doesn't matter to me. Why don't we go into September just to be safe? As long as it's not the week of the (indiscernible).

MS. WILLIAMS: So any time the 3rd, 4th, 5th, or 6th?

THE COURT: All are fine. So what's your preference?

MS. WILLIAMS: How's (indiscernible)?

MR. FLYNN: That's fine.

THE COURT: Sorry. What date?

MS. WILLIAMS: September 5th.

THE COURT: Okay. We'll see you then.

MS. WILLIAMS: At 9:00 a.m.?

THE COURT: Yeah.

MS. WILLIAMS: Thanks, your Honor.

MR. FLYNN: Thanks, Judge.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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STATE OF ILLINOIS )
) SS:
COUNTY OF McHENRY )

I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

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STATE OF ILLINOIS )
) SS:
COUNTY OF MCHENRY )

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG, )
)
Plaintiff, )
)
vs. )
) No. 17 LA 377
THE LAW OFFICES OF THOMAS )
J. POPOVICH, P.C., and )
HANS MAST, )
)
Defendants. )

ELECTRONICALLY RECORDED Report of Proceedings had in the above-entitled cause before The Honorable Thomas A. Meyer, Judge of the Circuit Court of McHenry County, Illinois, on the 1st day of April, 2021, in the Michel J. Sullivan Judicial Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by:
MR. ALPHONSE A. TALARICO,
Appearing via videoconference,

on behalf of the Plaintiff,

KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
MR. GEORGE K. FLYNN,
Appearing via videoconference,

on behalf of the Defendants.

EXHIBIT E

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THE COURT: All right. For the record, this is Dulberg versus Mast. And, plaintiff's counsel, if you could identify yourself.

MR. TALARICO: Your Honor, good morning. Mr. Flynn. My name is Alphonse Talarico. I represent the plaintiff, Paul Dulberg.

THE COURT: Okay. And for the defense?

MR. FLYNN: Attorney George Flynn, F-l-y-n-n. And, Judge, and, counsel, I would like to extend my apologies for the calendaring issue last week.

THE COURT: It happens. But let's -- where are we? Because I -- yeah, bring me up to date with where you are.

MR. FLYNN: Generally, Judge, the -- Okay. So the court ordered the plaintiff to produce certain documents that were withheld. That has been done. We have I think a continued issue with respect to interrogatory answers from the -- Hans Mast interrogatories served in July of 2019, and then the improper and vague answer, responses, to the production request where the plaintiff has just simply identified Bate's documents 1 through 8,708 relative to the discovery of the alleged malpractice.

THE COURT: Yeah, I looked at the answers, those

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answers, and I believe those are nonresponsive. Merely identifying all the records is not a direct response to your request, so I'm going to direct plaintiff to provide a supplemental response to those requests.

Mr. Talarico, you have something to say?

MR. TALARICO: Yes, Judge, actually, I do. Those 8,707 prior documents that had been submitted, according to the information I have, between Mr. Flynn and the Clinton Law Firm, the previous law firm, were under the initial request to produce. The answers that I have from the Clinton Law Firm indicate the wording that the documents will be produced and then there is no objection between Flynn -- Mr. Flynn and the Clinton Law Firm. There's no -- and I have no way of researching how the relationship between the first set of answers that covered document 1 through 8707 have been done. I -- that's why I said that that will be unreasonable and an expense and I have to go back to each document and see how it responded.

Mr. Flynn, as far as I've seen, had not objected to those answers, so to do that would force me to review close to 9,000 documents to see which were responsive -- 9,000 -- 8,707 that have already been turned over and, in addition to that, on February 10th,

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Judge, the last hearing date on this matter, you focused and ordered us to focus our response to the time Mr. Dulberg knew or should have known, and the only documents that at that time hadn't been turned over to Mr. Flynn would be six hundred something odd documents, communications between the second -- the Gooch law firm and Mr. Dulberg. Those I reviewed and submitted the one that responded to what -- to what the court indicated the communications in December of --

THE COURT: Before we get into that -- because I think that issue's resolved. Before we get into that, why are you -- I guess I'm not following. You're saying that it's -- giving him specific responses to his discovery requests is overly burdensome on you at this point?

MR. TALARICO: Right, to go back and review 8,700 documents that had been turned over in the past --

THE COURT: Well, who should?

MR. TALARICO: Excuse me?

THE COURT: Well, who's burden is that to provide the accurate answer?

MR. TALARICO: Judge, those were responded to. They were supplied to Mr. Flynn in the past in response to requests to produce.

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THE COURT: He may have -- I accept he has every single relevant document, but you can't just say in response to a discovery request find it yourself, it's in these thousands of pages of documents. You got to tell him where it is. So --

MR. TALARICO: I understand -- I'm sorry, Judge.

THE COURT: The bottom line, your answer has to be one that you can be pinned down on for purposes of impeachment, and your answers are -- don't permit that. So if you're going to respond, you've got to give him a direct response to a direct question, and you didn't do that. You've given him -- you said here's everything we have, find it yourself. And that is nonresponsive.

MR. TALARICO: Judge, with all due respect, again, the -- this was -- what I'm reflecting on is these are the documents that were submitted to Mr. Flynn by the Clinton Law Firm with no objection.

THE COURT: But I have a motion to compel that -- I mean -- so I think --

MR. FLYNN: And that's not accurate, Judge. There have been multiple 201(k) conferences and it was a long, unusual production in response to the interrogatories in the case as it was.

THE COURT: Regardless, I am ordering compliance and

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you must give specific responses to each of the requests, and you can't just say it's somewhere in these 8,000 plus pages. How long is it going to take you to do that?

MR. TALARICO: Judge, if I could have 60 days to cover 9,000 -- close to 9,000 documents.

THE COURT: Sure, I'll give you 60 days, because, yeah, that is a lot of -- those are a lot of documents, so I'll put this out 60 days.

Mr. Flynn, is there anything else we need to address at this time?

MR. FLYNN: Well, the supplemental production response, again, is a nonresponsive production response. The question is, is there a document in that 8,000 pages. We don't think there is, but Dulberg testified both ways essentially, whether there was a December 16, 2016, written communication with Tom Gooch that provided him with the basis for the tolling of the statute of limitations. If there is none, then the response should say there is none, not see 8,000 documents and maybe it's in them.

THE COURT: I agree.

Mr. Talarico, --

MR. FLYNN: And with respect to the --

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THE COURT: Well, hang on.

Mr. Talarico, I'm not going to tell you how to respond, but if there is no such document, -- I did take note of the fact that I saw none in the documents I reviewed -- if there is no such document, then just say there is no such document.

MR. TALARICO: With all due respect, I think I did answer that question. There was one document and I turned it over to Mr. Flynn. The only document between Gooch and the plaintiff in December of 2016, one document turned over, without objection, without a privilege log.

THE COURT: Mr. Flynn? You're being told that all documents responsive to that request have been turned over. And I agree that at least in the documents I was asked to review, there was nothing that corresponded with the December 2016 date that we initially were discussing, but --

MR. FLYNN: It should be a pretty simple process then and it should be in writing. Then I can attach it to my summary judgment motion, which I know is not a surprise to anyone. The same goes with respect to the interrogatory answers. Dulberg admitted in his deposition that he didn't respond completely to

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interrogatory number one, in particular, from Hans Mast. So that is also part of this motion to compel.

Again, that one is a little different. It says identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach and when and how you became aware of the breach. He didn't answer it.

THE COURT: Okay. Mr. Talarico? And I'm going to move on to everybody else and then come back to you -- in fact, I'll come back to you guys. I'll let -- let me get rid of everyone else and we'll resume this in a moment.

(Whereupon, the above-entitled cause was passed and subsequently recalled.)

THE COURT: That brings us back to Dulberg. What I'm doing right now is looking up -- I want to go to the interrogatory. Mr. Flynn, while I'm looking for -- it's interrogatory number one; am I correct?

MR. FLYNN: Correct.

THE COURT: All right. I'm looking in your motion to compel and since nothing is marked, I've got to page through these one at a time, so while I'm doing that, rather than just staring at me, why don't you tell me what the interrogatory says.

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MR. FLYNN: Sure. It says identify and describe each and every way that Popovich or Mast breached a duty of care to you, the date of the breach, and when and how you became aware of the breach.

THE COURT: Okay. And what was the response?

MR. FLYNN: Between October of 2013 and January 2014, Mast told Dulberg that Illinois law does not permit a recovery against the McGuires in the circumstances of Dulberg's case and that he would not receive any recovery from the McGuires.

THE COURT: Okay.

MR. FLYNN: Mast advised Dulberg that the judge would rule in favor of the McGuires on a motion for summary judgment. Mast further told Dulberg that Dulberg would retain his claim against Gagnon and be able to seek and receive a full recovery from Gagnon. So that says nothing specifically about a breach, the date of the breach or when and how he became aware of it.

THE COURT: Well, it doesn't -- no, it doesn't tell you the date.

Mr. Talarico, do you have a response on that?

MR. TALARICO: No, Your Honor, it doesn't say specifically the date of the breach.

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THE COURT: All right. And --

MR. FLYNN: And we were forwarded the discovery. Again, this goes back to the Gooch -- whether it be a verbal or written communication on December 16, 2016.

MR. TALARICO: Mr. Flynn, verbal -- I don't know where I could get verbal responses. I've gone over everything and I -- Judge, I have in total 90 emails between the two, between Mr. Gooch and Mister -- and the plaintiff, and I would be willing to turn over every one of them. That's the written -- that's what I have.

MR. FLYNN: I just want to know what the basis is for the discovery of the malpractice, and if there isn't anything other than a verbal discussion with Tom Gooch in his office, that's fine; but it just needs to specify that. And I think that's been the ruling with this.

THE COURT: And I think --

MR. FLYNN: And that's what the testimony seems to reflect.

THE COURT: I -- I think the answer -- and I certainly don't know, but based upon what I understand already, I think the answer points to that December 2016 date addressed in the production response, but I don't know and I -- my concern is making sure it is clear from the answer to interrogatory that is in fact what we're

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talking about. If there's another date, fine, but it has to be disclosed.

I don't know about -- I'm not sure how he responds to the date of the breaches because I -- I do think that that's an incredibly broad question because it --

MR. FLYNN: I understand that.

THE COURT: -- in essence, it's every day after the resolution of the initial claim, and you do have a date for that, at least by way of a settlement or order.

So, Mr. Talarico, can you supplement that answer with the date of discovery?

MR. TALARICO: I will do my best, Judge. I will.

THE COURT: Okay. Mr. Flynn, the next one?

MR. FLYNN: You know, generally I think that's it, Judge. It's the supplemental production response and then these interrogatories, so what I would ask that the order reflect, that the specific answers need to be made and that the objections in the supplemental production response be overruled. I think the objection is undue burden on each of them --

THE COURT: Yeah, and to the extent that there are objections to the burdensome nature, those are overruled. I recognize that it is a burden, but you got

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to -- somebody's got to do it, and it is your claim, it is your burden. But I will give you 60 days in which to complete that.

Mr. Talarico, anything you want to add?

MR. TALARICO: No, Judge.

THE COURT: So why don't we -- 60 days is June 1st. Let's assume -- and I'm going to -- I won't assume compliance prior to June 1st, but if we come back on June 14th, that's a Monday, Mr. Flynn, do you think you would be able to give me your comments on compliance by then?

MR. FLYNN: If I have a response and, say, amended interrogatory answers and amended supplemental responses by June 1?

THE COURT: Yeah.

MR. FLYNN: Yes, sure.

THE COURT: Okay. So I will direct a supplemental answer to interrogatory number one. I'll direct amended answers to the production request, and all due by June 1st.

Is there anything else we need to address?

MR. TALARICO: No, Judge, that's my birthday --

THE COURT: Happy birthday.

MR. TALARICO: (Indiscernible).

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MR. FLYNN: I guess the only thing going forward, we've got the objections in the deposition transcript. Does the court typically just rule on those when ruling on a summary judgment motion?

THE COURT: No, I -- let me -- I have not had to deal with ruling on objections in a discovery deposition related to a motion for summary judgment.

MR. FLYNN: Okay.

THE COURT: So I haven't done that before, but I do think that we have to address that and the only way to address it is to just walk through them, so perhaps if we set -- and I know this is putting it out, but I'm wondering -- and you know better -- whether any of the objections are going to become moot once you have responses to the written discovery. Is that going to fix anything?

MR. FLYNN: I think that a lot of them are already moot. I think that some of the rulings over the last month or so on these objections have probably covered those that are contained in the dep transcripts; however, I just want to make the summary judgment process as clean as possible.

Maybe I can talk to Mr. Talarico and we can come up with an agreement on whether some of these

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objections in the dep are withdrawn, but, again, I just -- I don't want the summary judgment motion to bog down on objections in a dep transcript, so --

THE COURT: Okay. And I don't know.

MR. FLYNN: So -- Okay. I wanted to raise that issue in advance so the court's aware that that might be an issue.

THE COURT: Why don't we put the hearing at 1:30 on Monday, June 14th, and if you are unable to work out the issues on the discovery deposition, then we'll walk through the transcript. You'll need to give me a copy. And -- unless there is one in the court file already. You'll need -- and we'll walk through each one and I'll take argument at that time and --

MR. FLYNN: Okay.

THE COURT: -- I'll rule then. And that may get you where you want to go, and if there are none, great. Then we don't have to deal with it.

Does that --

MR. FLYNN: Okay.

THE COURT: Does that resolve your concern for today at least?

MR. FLYNN: I think so.

THE COURT: All right. So, Mr. Flynn, if you could

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draft the order.

Mr. Talarico, is there anything you want to add?

MR. TALARICO: Well, I've read -- I wasn't present at the deposition, so I'm just trying to get my brain wrapped around it. The objections were attorney-client privilege, sir, was that --

MR. FLYNN: Many of them, yes.

MR. TALARICO: Okay. That's all.

MR. FLYNN: And, again, it goes to the discovery of the malpractice. I think that it's been placed at issue by virtue of the pleadings, so -- and, again, I think that there's been a ruling, at least in part, on some of these issues, but, --

THE COURT: In the alternative --

MR. FLYNN: -- you know, why don't we --

THE COURT: -- if you agree that some of the questions could have been answered, can you do this by way of interrogatory rather than a supplemental deposition?

MR. FLYNN: I think that for the most part Mr. Dulberg answered over the objections.

THE COURT: Okay.

MR. FLYNN: And so the record was set there. The

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objections were made on the record. I think that it could probably be dealt with fairly swiftly.

THE COURT: All right. Great. Then I'll wait for your order. As soon as I see it, I'll sign it. And, otherwise, I'll see you June 14th.

MR. FLYNN: Okay. Thanks, Judge. Do you have a time that you needed the order by? I would like to send a draft to Mr. Talarico after my secretary prepares it.

THE COURT: The clerks will harass you, --

MR. FLYNN: Okay.

THE COURT: -- but if you get it in by Monday, that's fine.

MR. FLYNN: Oh, okay. I was thinking sometime today.

THE COURT: Today's perfect. So anytime this afternoon is fine, but Monday is kind of the to-die date. I got to have it by then.

MR. FLYNN: Fair enough.

THE COURT: All right.

MR. FLYNN: Thank you very much, Your Honor.

THE COURT: Thank you.

MR. TALARICO: Thank you, Judge. Thank you, Mr. Flynn.

MR. FLYNN: Thanks, Counsel.

(Which was and is all of the evidence offered at the hearing of said cause this date.)

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STATE OF ILLINOIS )
) SS:
COUNTY OF MCHENRY )

I, Stacey A. Collins, an Official Court Reporter of the 22nd Judicial Circuit of Illinois, do hereby certify the foregoing to be a true and accurate transcription to the best of my ability and based on the quality of the recording of all the proceedings heard on the electronic recording system in the above-entitled cause.

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Official Court Reporter

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**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry COUNTY

# NOTICE OF COURT DATE FOR MOTION

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Directly above, enter the name of the county where the case was filed.

Enter the name of the person who started the lawsuit as Plaintiff/Petitioner.

Enter the name of the person being sued as Defendant/Respondent.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
**Plaintiff / Petitioner** *(First, middle, last name)*

v.

Law Offices of Thomas J. Popovich P.C., and Hans Mast
**Defendant / Respondent** *(First, middle, last name)*

17 LA 377
**Case Number**

In **1**, enter
- he court date and time of your hearing. Call your Circuit Clerk to get this information. If e-filing in Cook County, you may get the date when you e-file.
- he courtroom and address of the court building.
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-The clerk's phone number and website.
ll this information is available from the Circuit Clerk, you can find their contact information at illinoiscourts.gov/courts/circuit-court/circuit-court-clerks/.

## 1. Hearing Information

The reasons for this hearing are listed in the attached papers called *Motion*. The hearing for the *Motion* I filed is scheduled for:

a. On 12/07/2021 *Date* at 8:45 *Time* ☑ a.m. ☐ p.m. in 201 *Courtroom*

**In-person at:**

2200 N. Seminary Avenue, Woodstock Illinois 60098
*Courthouse Address* *City* *State* *ZIP*

OR

**Remotely** (You may be able to attend this court date by phone or video conference. This is called a "Remote Appearance.")

By telephone: 888-882-6878
*Call in number for telephone remote appearance*

By video conference: https://zoom.us/my/mchenrycourtroom201
*Video conference ebsite*

272-959-8070
*Video conference log in information (meeting ID, pass ord, etc )*

Call the Circuit Clerk at: 815.334.4190 *Local Circuit Clerk's phone #* or visit their website at https://www.mchenrycountyil.gov/county-g *ebsite* to find out more about how to do this.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the *Notice of Court Date for Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

Enter your complete address, telephone number, and email address, if you have one.

707 Skokie Boulevard #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

(312) 808-1410 *Telephone* 6184530 *Attorney # (if any)*

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**1.** I am sending the *Notice of Court Date for Motion*

a. To:

Name: George K. Flynn
*First* *Middle* *Last*

Address: 150 S. Wacker Drive #1700 Chicago Illinois 60606
*Street, Apt #* *City* *State* *ZIP*

Email address: gflynn@karballaw.com

b. By:

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*Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: 11/30/2021 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **ust** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **ust** use one of the first two options. Otherwise, you may use one of the other options.

In **c**, fill in the date and time that you are sending the document.

**2.** I am sending this document:

a. To:

Name:
*First* *Middle* *Last*

Address:
*Street, Apt #* *City* *State* *ZIP*

Email address:

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

*Only use one of the methods belo if you do not have an email address, or the person you are sending the document to does not have an email address*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: _____ *Date* at: _____ ☐ a.m. ☐ p.m.



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☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

| | |
|---|---|
| /s/ Alphonse A. Talarico<br>*Your Signature* | 707 Skokie Boulevard #600<br>*Street Address* |
| Alphonse A. Talarico<br>*Print Your Name* | Northbrook Illinois 60062<br>*City, State, ZIP* |
| (312) 808-1410<br>*Telephone* | contact@lawofficeofalphonsetalarico.com<br>*Email* |

**TTIN COU T OCUM NT MAI :** ou should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



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McHenry County, Illinois
17LA000377
Date: 12/6/2021 2:31 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF FILING**

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that, on the 6th day of December 2021, we filed DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 6th day of December 2021.

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on December 6, 2021.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

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## SERVICE LIST

**Plaintiff's Attorney**

Alphonse A. Talarico
Law Office of Alphonse A. Talarico
707 Skokie Blvd 6th Floor Suite
Northbrook, IL 60062-2841
contact@lawofficeofalphonsetalarico.com
(312) 808-1410



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17LA000377
Date: 12/6/2021 2:31 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Response to Plaintiff's Motion to Compel, state as follows:

1) The instant motion to compel is the latest of the Plaintiff's abuses of discovery and another example of unnecessary fees incurred (in responding to this motion) due to the "musical chairs" at the Plaintiff's counsel table in this case. The instant motion brought by Plaintiff's third attorney in this case, at the Plaintiff's direction, should be denied because: 1) it is untimely, and 2) Defendants answered the written discovery at issue in the instant motion to the satisfaction and agreement of Plaintiff's second attorney. Plaintiff's second attorney confirmed as much on December 3, 2021, and her written confirmation supporting Defendants' position on these matters was forwarded to the Plaintiff's counsel. Despite knowledge of the email response from Plaintiff's now withdrawn counsel, he has proceeded with the instant motion. Accordingly, Defendants request that the court award any and all available relief under Illinois Supreme Court Rule 137.



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2) In summary, Defendants' counsel, George K. Flynn, and Dulberg's then-counsel Julia Williams of the Clinton Law Firm, agreed that written discovery propounded by Plaintiff's first counsel, Thomas Gooch, would not be answered by Defendants, and would be replaced by discovery propounded by Williams and the Clinton firm. Defendants answered that written discovery to the satisfaction of Plaintiff's counsel. Plaintiff's counsel reported to this court that Defendants had answered written discovery. The parties then moved on with oral fact discovery including Williams' deposition of Defendant Hans Mast on June 25, 2020. Plaintiff's third attorney entered his appearance in this case on October 23, 2020 and never raised any issue with Defendants' written discovery answers for over thirteen months. Nor has counsel noticed a single deposition in the case. Defendants' written discovery answers were served over 2.5 years ago. Any objection now is untimely to say the least. Written discovery must be closed. Unfortunately, a timeline of events and response to the instant motion is necessary as follows:

3)

**2018**

- October 9, 2018 The Gooch Firm first serves notice of Motion to Withdraw and "The Gooch Discovery."
- October 15, 2018 The Gooch Firm is granted leave to withdraw as Dulberg's counsel.
- November 8, 2018 The Clinton Firm, with attorney Julia Williams as primary handling attorney, appears for Dulberg
- November 13, 2018 George K. Flynn, defendants' counsel reported in court that Gooch had issued written discovery (see Plaintiff's Exhibit B, pages 2-3)
- Williams serves Plaintiff's "First Set" of Interrogatories and First Set of Document Requests



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**2019**

- May 29, 2019 Flynn serves Popovich's and Mast's Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's First Set of Document Requests (Plaintiff's Ex. C)

- May 30, 2019 Williams reports to the court that Defendants have answered written discovery (Plaintiff's Ex. D, p. 2)

**2020**

- February 19, 2020 Flynn takes Dulberg's discovery deposition with Williams defending

- June 25, 2020 Williams takes Hans Mast discovery deposition

- September 10, 2020 Clinton Law Firm Granted Leave to withdraw as counsel for Plaintiff

- October 23, 2020 Alphonse Talarico appears for Plaintiff

**2021**

- November 8, 2021 In court, Talarico first mentions unspecified outstanding discovery owed by Defendants

- November 9, 2021 Flynn sends 201(k) communication to Talarico requesting that allegedly outstanding discovery be identified (Exhibit 1)

- November 13, 2021 Talarico sends 201(k) communication to Flynn outlining alleged incomplete answers and claiming neither Popovich nor Flynn signed (Exhibit 2)

- November 14, 2021 Flynn responds to Talarico email addressing issues and attaching properly signed discovery served on May 29, 2019 (Exhibit 3)

- December 3, 2021 Julia Williams confirms all representations made by Flynn in his December 2, 2021 email (Both attached as Exhibit 4)

- December 3, 2021 Flynn forwards Williams' email to Talarico requesting Motion to Compel be withdrawn and Talarico Response (Exhibit 5)

4) Defendants should be able to rely on the conduct, representations, and agreements made by Dulberg's counsel from when that counsel represented Dulberg. By filing this motion,



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Dulberg apparently does not agree. Based on the 201(k) communications attached here, all of the issues recently raised by Dulberg have been addressed. 1) Mast, Popovich, and Flynn all signed the discovery, 2) Williams agreed that defendants would not answer the "Gooch discovery" and re-issued "First" Requests and Interrogatories, 3) The "redacted pages from defendants' production were not redactions—Williams and Flynn met at Popovich's office where Williams inspected the file and confirmed the blank pages were "file dividers" 4) Defendant's answers were sufficient (Williams reported as much to the court, and moved on with oral discovery). (See Exhibit 4)

5) This leaves only plaintiff's "tit for tat" complaints about the substance of defendants' answers and mischaracterization of Judge Meyer's previous rulings on defendants' motion(s) to compel. First, Dulberg's motion, brought over 2.5 years after defendants answered discovery, is untimely, to say the least. Illinois Supreme Court Rule 214(c) states in pertinent part that "[a]ny objection to the request or the refusal to respond shall be heard by the court upon prompt notice and motion of the party submitting the request." There is nothing prompt about this motion, and the detrimental reliance on prior counsel's conduct and actions is outlined sufficiently above.

6) Plaintiff's claim that Judge Meyer's prior rulings on defendants' motion(s) to compel have any application here, is meritless. Defendants' motions to compel were based on facts placed at issue by Dulberg's pleadings (the accrual date and date of "discovery" of his alleged malpractice claim). Defendants served pointed and specific discovery aimed at discovering and flushing out all facts supporting Dulberg's contention that the 2 year statute of limitations should be tolled since he didn't file his lawsuit within the 2 year limitations period. Here Dulberg is simply complaining about general responses to general requests for



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production. There is really no explanation as to what he is looking for, or what he cannot find. As discussed above, the complaints are untimely and unnecessary. The parties moved on from defendants' written discovery long ago. Dulberg's attorney was satisfied with the responses, reported as much to the court, and the parties provided oral fact discovery.

7) It bears repeating, Flynn and Williams agreed that the "Gooch discovery" would not be answered. This is why Williams titled the "Clinton" discovery as "First" requests. Flynn relied on this agreement, and relied on Williams representations to the court that defendants had answered discovery. Flynn also relied on any lack of objection to the answers in agreeing to present his client at a deposition. Had there been any issues (such as the "redaction issue") they would have been resolved prior to oral fact discovery.

8) Dulberg's motion should be denied and fact discovery closed. Moreover, since Dulberg was provided an opportunity to withdraw this frivolous motion, and was supplied with his prior attorney's written confirmation of the facts and agreements made between counsel at the time, he should be ordered to pay for the costs and fees incurred by defendants in responding to this motion pursuant to Rule 137.

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court enter an Order denying Plaintiff's Motion to Compel, ordering Plaintiff to pay costs and fees associated with this motion, for any further relief this court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC



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KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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150 So. Wacker Drive, Suite 1700
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(312) 431-3700
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gflynn@karballaw.com



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**George Flynn**

**From:** George Flynn
**Sent:** Tuesday, November 9, 2021 10:39 AM
**To:** Alphonse Talarico
**Cc:** Linda Walters
**Subject:** Dulberg v. Popovich

Dear Mr. Talarico:

I was surprised to hear you mention during yesterday's court hearing with Judge Meyer, that there is some written discovery purportedly owed, not completed, or otherwise lacking from defendants. As far as I know, defendants have answered all outstanding written discovery. Moreover, no written discovery has been served on defendants for months, if not years, in the case.

I would like to resolve any purported issues as quickly and efficiently as possible, without duplicating any previous efforts or delaying the process.

If you would kindly advise of the nature of the issue, we would like to resolve it.

Best regards,

**EXHIBIT 1**



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**George Flynn**

**From:** Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
**Sent:** Saturday, November 13, 2021 3:51 PM
**To:** George Flynn
**Cc:** Linda Walters
**Subject:** Dulberg v. Popovich and Mast 201(k) communication

Dear Mr. Flynn,

First let me thank you for your kind words regarding my scheduled medical procedure but unfortunately the Doctor's office telephoned this morning to say that the Doctor had an emergency and will not be able to fulfill her schedule today.
I was understandably upset and their promise to call me to reschedule has not yet been fulfilled so my schedule is very much unsettled.
As a backup I contacted Northwestern Medical and accepted their earliest appointment to start over and that is currently scheduled for December 21, 2021.
As to my concerns regarding Defendants' responses and lack of responses that are the basis of our 201(k) communications, I will attempt to alert you as best I can today so that we may be able to resolve them as soon as possible.

My independent investigation and the court file reveal no responses to 1) Plaintiff's First Request for Production of Documents to Defendants; 2) Plaintiff's First Set of Interrogatories to Defendants; and 3) Plaintiff's 213(f)(1)(2)&(3) Interrogatories to Defendants. Those appear to have been served upon you by Thomas W. Gooch III while you were with your previous firm on or about October 9, 2019.

Next my review of Defendant Hans Mast indicates non responsive answers that must be corrected. I say Defendant Hans Mast's responses because all the discovery served (but not noticed or filed?) was sent to Defendants but the responses were not signed by the Law Offices of Thomas J. Popovich, P.C. nor by you on their behalf.
I will attempt to state my reasons why the responses to discovery from Julia C. Williams of The Clinton Law Firm are non-responsive. Since you responded to the Clintons' discovery, I can safely assume that you were served with the requests sometime prior to your filing date of 5/29/2019.
I believe an analysis of each discovery response will help us find a workable solution .

PLAINTIFF'S FIRST [SIC] SET OF INTERROGATORIES TO DEFENDANTS:
Interrogatory Number 5 is answered/verified by Hans Mast (only) thereafter although the interrogatory is addressed to claims or defenses in this matter Mast's answer is non responsive because it addresses the underlying matter only



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**EXHIBIT 2**

and does not include the subject of the information, therefore there is no response regarding the current matter;
Interrogatory Number 6 is answered/verified by Hans Mast (only) thereafter although the interrogatory requests a detailed response Mast's answer is a "General" one sentence non response;
Interrogatory Number 7 is answered/ verified by Hans Mast (only) first with an objection and thereafter with a nonresponse directing the recipient to find Mast's response to this interrogatory in Masts' response to Plaintiff's Request for the production of documents, which itself is a nonresponsive answer. Defendant Hans Mast responses are specifically in violation of the Honorable Thomas A. Meyer instructions in this case Note: Defendant Hans Mast response to Request for Production #1 is "See attached documents bates labeled POP 000001 through POP 001455;
Interrogatory Number 9 is answered/ verified by Hans Mast (only) and is non responsive because it refers the reader to see interrogatory #8 which is directed to 12 LA 178 while interrogatory #9 refers to 17 LA 377.

PAUL DULBER'S FIRST [SIC] SET OF DOCUMENT REQUESTS:
Request to Produce Number 1 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #1 is "See attached documents bates labeled POP 000001 through POP 001455;
Request to Produce Number 3 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #3 is "See attached documents bates labeled POP 000001 through POP 001455;
Request to Produce #4 is answered by Hans Mast (only) and is non-responsive because no documents are specifically identified;
Request to Produce Number 5 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #5 is "See attached documents bates labeled POP 000001 through POP 001455;
Request to Produce Number 6 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #6 is "See attached documents bates labeled POP 000001 through POP 001455;
Request to Produce Number 8 is answered by Hans Mast (only) and is a non-responsive answer because the request is for "A copy of any insurance agreement..." whereas Mast's response is "see declaration page, bates labeled POP 000001 through POP 00002." ;
Request to Produce Number 9 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response



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to Request for Production #9 is " None other than those documents being produced herewith, bates labeled POP 000001 through POP 001455...";
Request to Produce Number 10 is answered by Hans Mast (only) and is a non-responsive answer because they are specifically in violation of the Honorable Thomas A. Meyer instructions in this case . Note: Defendant Hans Mast response to Request for Production #10 is "None other than those produced herewith bates labeled POP 000001 through POP 001455."

As the old chestnut states " investigation continues" but I wanted to give you a heads up to what I am thinking as soon as possible.

Please call me as soon as possible to continue the 201(K) discussions.

Your anticipated cooperation is greatly appreciated,
Alphonse A. Talarico



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**George Flynn**

**From:** George Flynn
**Sent:** Sunday, November 14, 2021 9:52 PM
**To:** Alphonse Talarico
**Cc:** Linda Walters
**Subject:** FW: Dulberg v. Popovich
**Attachments:** 2367006v1 - Popovich Answer to Plaintiff_s 1st Set of Rogs to Defendants.PDF; 2367038v1 - Mast Answer to Plaintiff_s 1st Set of Rogs to Defendants.PDF; 2367040v1 - Mast Response to Plaintiff_s 1st Set of Document Requests.PDF; 2367045v1 - Popovich Response to Plaintiff_s 1st Set of Document Requests.PDF; 2367088v1 - Popovich & Mast_s Answer to Plaintiff_s 213(f) Rogs to Defendants.PDF; 2367513v1 - Notice of Service of Discovery Documents -- Defendants_ Answers to Plaintiff_s Discovery.PDF

Mr. Talarico:

In response to your 201(k) correspondence of November 13, 2021, please see the attached email from Linda Walters to Julia Williams, Dulberg's predecessor counsel in this case, attaching Popovich's and Mast's discovery answers with signature pages as indicated. These discovery responses and signature (which should be readily available in the file materials from the Clinton firm) refute the contentions made in the November 13 letter regarding missing signatures or lack of discovery responses.

With respect to the written discovery served by Tom Gooch after he noticed his motion to withdraw, this discovery was withdrawn by Ms. Williams and an agreement reached that she would issue the written discovery to be answered. This was why we answered the discovery she propounded and not the discovery served by Gooch. I am certain that Ms. Williams will be able to confirm this.

As to any claimed deficiencies in Popovich's or Mast's written discovery responses, we consider any objection raised nearly 2.5 years after the discovery was answered, to be untimely. Considerable time was spent between me and Ms. Williams in working through written discovery. She had no issues or objections to Popovich's and Mast's discovery answers by the time she noticed and deposed Hans Mast. Nor was any ruling sought as to any objection raised by Popovich or Mast in their respective discovery answers.

Judge Meyer's rulings on discovery disputes in this case were generated by Dulberg's incomplete or non-responsive written discovery answers and non-responsive deposition testimony, which were timely brought to the court's attention after the defendants' many 201(k) overtures were unsuccessful. Suffice it to say that the court seemed to agree with our position.

I am willing to have a brief 201(k) conference. However, the defendant's have incurred considerable costs and incurred delays in moving their case to disposition due to Mr. Dulberg's evasiveness in discovery and in changing counsel two times in the case. The very discovery I am re-sending is one example of a duplication of effort resulting from the substation in counsel. While this may not be your fault Mr. Talarico, it certainly was not caused by my clients in any way.

If you still wish to discuss any issues, I can be available on Tuesday November 16, 2021. I would suggest 10:00 a.m.

Best regards,



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**EXHIBIT 3**

**From:** Linda Walters <lwalters@KARBALLAW.com>
**Sent:** Wednesday, May 29, 2019 1:03 PM
**To:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Cc:** George Flynn <gflynn@karballaw.com>
**Subject:** RE: Dulberg v. Popovich

On behalf of George Flynn, please see the attached:

- Defendant The Law Offices of Thomas J. Popovich, P.C.'s Response to Plaintiff's First Set of Document Requests;
- Defendant The Law Offices of Thomas J. Popovich, P.C.'s Answer to Plaintiff's First Set of Interrogatories to Defendants;
- Defendant Hans Mast's Response to Plaintiff's First Set of Document Requests;
- Defendant Hans Mast's Answer to Plaintiff's First Set of Interrogatories to Defendants;
- Defendant The Law Offices of Thomas J. Popovich, P.C.'s and Hans Mast's Answer to Plaintiff's Rule 213(f) Interrogatories to Defendants; and
- Notice of Service of Discovery Documents (A file-stamped copy of the NOS will be forwarded upon receipt.)

Also, Mr. Flynn asked that I let you know that he will give you a flash drive containing the responsive documents at the hearing tomorrow.

Thank you.

Linda Walters
Secretary to George Flynn

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3641
F: (312) 431-3670
E: lwalters@KARBALLAW.com

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**From:** George Flynn <gflynn@karballaw.com>
**Sent:** Friday, May 24, 2019 1:23 PM
**To:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Cc:** Linda Walters <lwalters@KARBALLAW.com>
**Subject:** RE: Dulberg v. Popovich



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Julia:

Thanks, that is agreed.

Have a nice holiday.

Best regards,

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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---

**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Friday, May 24, 2019 1:22 PM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Linda Walters <lwalters@KARBALLAW.com>
**Subject:** Re: Dulberg v. Popovich

Dear George,

I am in a similar position. Let's just agree that we will exchange before we appear on Thursday.

Best,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On May 23, 2019, at 4:11 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:



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Just writing with an update. I have my discovery answers out for signature. My secretary is out tomorrow, so I may not be able to serve them until Tuesday, unless the signatures come in and I have some assistance on Friday.

We have a little over 1400 pages of documents that we have Bates labelled and plan to put on a flash drive (this includes 5 fact witness depositions we ordered recently). Note that there are still 4 or 5 transcripts from the Physicians who were deposed in the underlying case. I have not ordered those transcripts.

Please let me know if this is agreeable. I certainly want to have everything served before we appear on 5-30.

Thanks

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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---

**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Thursday, May 9, 2019 9:06 AM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Linda Walters <lwalters@KARBALLAW.com>
**Subject:** Re: Dulberg v. Popovich

Of course. Sorry for not responding sooner.

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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Received 12-06-2021 02:49 PM / Circuit Clerk Accepted on 12-06-2021 02:55 PM / Transaction #15837231 / Case #17LA000377
Purchased from re:SearchIL

On May 8, 2019, at 8:28 AM, George Flynn <gflynn@karballaw.com> wrote:

Julia:

I could still use a few weeks to answer. Can we agree on another 14 days?

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
<fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670
<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com
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On Apr 18, 2019, at 3:16 PM, Julia WIlliams <juliawilliams@clintonlaw.net> wrote:

> Perfect.
>
> Thanks!
>
> Julia Williams
> Of Counsel
> The Clinton Law Firm
> 111 W. Washington, Ste. 1437
> Chicago, IL 60602
> P:312.357.1515
> F: 312.201.0737
> juliawilliams@clintonlaw.net
>
> This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.
>
> > On Apr 18, 2019, at 3:13 PM, George Flynn <gflynn@karballaw.com> wrote:
> >
> > Julia:
> >
> > Thanks for your message. We could also use a little extra time to answer discovery. Can we agree on 3 weeks for all parties to answer?
> >
> > **George Flynn**
> >
> > **Karbal | Cohen | Economou | Silk | Dunne | LLC**
> > 150 S. Wacker Drive
> > Suite 1700
> > Chicago, IL 60606
> > <phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
> > <fax_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670



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<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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Received 12-06-2021 02:49 PM / Circuit Clerk Accepted on 12-06-2021 02:55 PM / Transaction #15837231 / Case #17LA000377
Purchased from re:SearchIL

**George Flynn**

**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Friday, December 3, 2021 9:14 AM
**To:** George Flynn
**Cc:** Ed Clinton
**Subject:** Re: Dulberg

Dear George,

I agree with your representations.

I do recall that we issued new discovery after Mr. Gooch had previously issued discovery. I do not recall what exactly we agreed to or whether we formalized the withdraw of the original written discovery issued by Mr Gooch, but it was my assumption that your firm/your clients would answer the written discovery issued by our firm and we were not intending to enforce any requirement to answer the written discovery issued by Mr. Gooch or his office. Again, I thought we had confirmed in writing or with the court in an open hearing, but obviously we were unable to locate that. I am fairly certain that our office had agreed to withdraw those requests.

As for the "black" pages that originally appeared to be improper or unexplained redactions, I do recall that after court one day we met at Mr. Popovich's office to review the original documents that were tendered in response to our written discovery requests. Mr. Popovich was representing that the redactions were dividers or blank pages between the other pages. I did review Mr. Popovich's entire file and the blank, black, or redacted pages that appeared in the scanned documents were actually blank pages and not redactions. I personally reviewed the original physical file and was satisfied that everything in the file had been produced in your scanned copy tendered to us.

I hope this helps everyone resolve these issues.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

> On Dec 2, 2021, at 3:14 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> Further to our recent discussion, please see the attached motion to compel, filed more than 2.5 years after my clients answered the discovery propounded by your firm ("The Clinton Firm").



**EXHIBIT 4**

Received 12-06-2021 02:49 PM / Circuit Clerk Accepted on 12-06-2021 02:55 PM / Transaction #15837231 / Case #17LA000377
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I plan to respond in writing and represent to the court that we agreed that defendants would not answer the "Gooch discovery" and that is why you reported to the court that defendants had answered ["the Clinton"] discovery.

Counsel also asserts that your description of the discovery documents as "First Set..." is erroneous. I believe that his assumption is erroneous.

With respect to the so-called redacted documents, I explained the history to Mr. Talarico—that you suspected improper redactions—that we agreed to meet at Popovich's office where you inspected the original file materials and were satisfied after personal inspection that the "blank" pages in the production were from file dividers in the original file that were copied.

You and I then moved on to oral fact discovery, and you deposed defendant Hans Mast. My position is that neither you nor I would have agreed to proceed with Mast's deposition if there were outstanding issues with defendants' written discovery responses. Moreover, this issue is totally distinct from defendants' decision to depose Dulberg and test his objections and claims of privilege, along with what we perceived to be improper and incomplete answers to discovery aimed at his alleged "discovery" of his malpractice claims and incurred damages in December 2016.

I would appreciate it if you would respond with your agreement to my representations here. As you and I discussed, I recall that we had an agreement that defendants would not answer the Gooch discovery. I thought we had confirmed this agreement in writing, but I have not been able to locate such written confirmation. However, I believe that it is clear from the court orders, transcripts, and our conduct in handling discovery, and my memory, that this was our agreement.

As always, thanks for your time and professionalism, Julia.

Best regards,

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
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Suite 1700
Chicago, IL 60606
<phone_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622
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<envelope_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: gflynn@karballaw.com

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<3007617v1 - Plaintiff_s Motion to Compel Defendants to Answer Outstanding Written Discovery & to Extend Time for OUtstanding Written Discovery to be Completed.PDF>



Received 12-06-2021 02:49 PM / Circuit Clerk Accepted on 12-06-2021 02:55 PM / Transaction #15837231 / Case #17LA000377
Purchased from re:SearchIL

**George Flynn**

**From:** Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
**Sent:** Friday, December 3, 2021 10:43 AM
**To:** George Flynn
**Cc:** Linda Walters
**Subject:** Re: Dulberg

Dear Mr. Flynn,
I have been instructed to proceed on the Motion To Compel.

Sincerely,
Alphonse A. Talarico

---

**From:** George Flynn <gflynn@karballaw.com>
**Sent:** Friday, December 3, 2021 9:20 AM
**To:** Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
**Cc:** Linda Walters <lwalters@karballaw.com>
**Subject:** FW: Dulberg

Mr. Talarico:

Please see my email below and Ms. Williams' response. Please confirm that your motion to compel will be withdrawn. I will wait until this afternoon to begin preparing a response. Again, it is our position that my client should not have to bear the expense in responding to the motion.

Regards,

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com
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**From:** Julia WIlliams <juliawilliams@clintonlaw.net>
**Sent:** Friday, December 3, 2021 9:14 AM
**To:** George Flynn <gflynn@karballaw.com>
**Cc:** Ed Clinton <ed@clintonlaw.net>
**Subject:** Re: Dulberg

Dear George,



Received 12-06-2021 02:49 PM / Circuit Clerk Accepted on 12-06-2021 02:55 PM / Transaction #15837231 / Case #1

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I agree with your representations.

I do recall that we issued new discovery after Mr. Gooch had previously issued discovery. I do not recall what exactly we agreed to or whether we formalized the withdraw of the original written discovery issued by Mr Gooch, but it was my assumption that your firm/your clients would answer the written discovery issued by our firm and we were not intending to enforce any requirement to answer the written discovery issued by Mr. Gooch or his office. Again, I thought we had confirmed in writing or with the court in an open hearing, but obviously we were unable to locate that. I am fairly certain that our office had agreed to withdraw those requests.

As for the "black" pages that originally appeared to be improper or unexplained redactions, I do recall that after court one day we met at Mr. Popovich's office to review the original documents that were tendered in response to our written discovery requests. Mr. Popovich was representing that the redactions were dividers or blank pages between the other pages. I did review Mr. Popovich's entire file and the blank, black, or redacted pages that appeared in the scanned documents were actually blank pages and not redactions. I personally reviewed the original physical file and was satisfied that everything in the file had been produced in your scanned copy tendered to us.

I hope this helps everyone resolve these issues.

Best regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

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> On Dec 2, 2021, at 3:14 PM, George Flynn <gflynn@karballaw.com> wrote:
>
> Julia:
>
> Further to our recent discussion, please see the attached motion to compel, filed more than 2.5 years after my clients answered the discovery propounded by your firm ("The Clinton Firm").
>
> I plan to respond in writing and represent to the court that we agreed that defendants would not answer the "Gooch discovery" and that is why you reported to the court that defendants had answered ["the Clinton"] discovery.
>
> Counsel also asserts that your description of the discovery documents as "First Set..." is erroneous. I believe that his assumption is erroneous.
>
> With respect to the so-called redacted documents, I explained the history to Mr. Talarico—that you suspected improper redactions—that we agreed to meet at Popovich's office where you inspected the original file materials and were satisfied after personal inspection that the "blank" pages in the production were from file dividers in the original file that were copied.



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You and I then moved on to oral fact discovery, and you deposed defendant Hans Mast. My position is that neither you nor I would have agreed to proceed with Mast's deposition if there were outstanding issues with defendants' written discovery responses. Moreover, this issue is totally distinct from defendants' decision to depose Dulberg and test his objections and claims of privilege, along with what we perceived to be improper and incomplete answers to discovery aimed at his alleged "discovery" of his malpractice claims and incurred damages in December 2016.

I would appreciate it if you would respond with your agreement to my representations here. As you and I discussed, I recall that we had an agreement that defendants would not answer the Gooch discovery. I thought we had confirmed this agreement in writing, but I have not been able to locate such written confirmation. However, I believe that it is clear from the court orders, transcripts, and our conduct in handling discovery, and my memory, that this was our agreement.

As always, thanks for your time and professionalism, Julia.

Best regards,

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
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Suite 1700
Chicago, IL 60606
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<3007617v1 - Plaintiff_s Motion to Compel Defendants to Answer Outstanding Written Discovery & to Extend Time for OUtstanding Written Discovery to be Completed.PDF>



Received 12-06-2021 02:49 PM / Circuit Clerk Accepted on 12-06-2021 02:55 PM / Transaction #15837231 / Case #17LA000377
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KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
12/07/2021 1:45 PM
McHenry County, Illinois
22nd Judicial Circuit

# CIRCUIT COURT FOR THE 22nd JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY of McHENRY )

CASE NUMBER 17LA377

☑ Jury ☐ Non-Jury**********

Paul Dulberg

vs. Law Office of Thomas Popovich and Hans Mast

Date December 7 Plaintiff's Attorney Alphonse A. Talarico Defendant's Attorney George K. Flynn

## ORDER

This matter coming on to be heard on Plaintiff's Motion to Compel Defendants to Answer Outstanding Written Discovery and to extend the time for Outstanding Written Discovery to be complete, this Honorable Court being apprised in the premises, it is hereby ordered:

1) Plaintiff is granted 14 days, up to and including December 21, 2021 to file and serve his Reply to Defendants response filed and served on December 6, 2021;

2) Plaintiff is allowed to file and serve as additional exhibits to his Reply all Discovery proponded by Plaintiff and all Responses to the aforesaid;

3) this matter is continued to January 4, 2022 at 10:00 a.m. before this Honorable Court for hearing.

12/7/2021

707 SKOKIE BLVD #600, NORTHBROOK/IL. 60062
LAWOFFICEOFALPHONSETALARICO.COM
ARDC #6184530
(312) 808-1410

Prepared by: Alphonse A. Talarico

Attorney for: Paul Dulberg Judge: Thomas A. Meyer

Thomas Meyer

Purchased from re:SearchIL

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

FILED * Env: 16048317
McHenry County, Illinois
17LA000377
Date: 12/22/2021 10:53 AM
Katherine M. Keefe
Clerk of the Circuit Court

| STATE OF ILLINOIS, CIRCUIT COURT<br>McHenry ☑ COUNTY | PROOF OF DELIVERY | For Court Use Only |
|---|---|---|

| Instructions ▾ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| Enter the name of the Defendants/ Respondents. | v. |
| Enter the Case Number given by the Circuit Clerk. | Hans Mast et al<br>**Defendants / Respondents** *(First, middle, last name, or business name)*<br>17 LA 000377<br>**Case Number** |

In **1**, enter the name of each court document you are sending.

**1. I am sending the following court document:** Reply to Defendants Response to Plaintiff's Motion to CompelDefendants to Answer Outstanding Written Discovery and to Exten

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
*First Middle Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
*Street, Apt # City State ZIP*

Email address: gflynn@kargallaw.com

In **1b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 12/20/2021 *Date* at: 12.01 *Time* ☐ a.m. ☑ p.m.



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In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

**2.** I am sending this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
*Date* *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

6184530
*Attorney # (if any)*

707 Skokie Blvd. #600
*Street Address*

Northbrook, Illinois, 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



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** FILED ** Env: 16048317
McHenry County, Illinois
17LA000377
Date: 12/22/2021 10:53 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | |
|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST<br><br>Defendants. | ) Case No. 17LA 377 |

**REPLY TO DEFENDANTS'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his REPLY to Defendants' Response to Plaintiff's Motion To Compel and for an Extension of Time to Complete outstanding written Discovery states as follows:

1) Plaintiff's Motion to Compel and Plaintiff's Reply to Defendants' Response has been made necessary by Defendants', cooperatively with Plaintiff's second attorneys' actions mislabeling discovery responses, agreeing to the withdrawal of late outstanding discovery without informing this Honorable Court or Plaintiff Paul Dulberg and by Plaintiff's former attorneys' failing to follow the requirements of Supreme Court Rule 201(m).



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2) Plaintiff's current attorney filed his Appearance on October 23, 2020 at which time a review of the court file reflected:

2a) Plaintiff's First set of Discovery (called herein The Gooch Discovery) with proper notice pursuant to Supreme Court Rule 201(m) filed on October 9, 2018 (please see Plaintiff's Exhibit A attached to Plaintiff's Motion to Compel);

2b) Defendants' Response to Plaintiff's [***FIRST***] Set of Discovery Responses filed on May 29, 2019 with Supreme Court Rule 201(m) notice erroneously titling The Clinton Discovery Plaintiff's [***FIRST***] (please see Plaintiff's Exhibit C attached to Plaintiff's Motion to Compel);

2c) Report of Proceedings November 13, 2018 where Defendants' attorney informed this Honorable Court that the Gooch Discovery was outstanding (please see Plaintiff's Exhibit B attached to Plaintiff's Motion to Compel);

2d) Report of Proceedings May 30, 2019 where Plaintiff's second attorneys notified this Honorable Court that "Written discovery's been issued and defendants have answered..." without informing this Honorable Court of the agreement to withdraw the Gooch Discovery, already many months overdue, and replace it without filing a Supreme Court Rule 201(m) notice and titling The Clinton Discovery Plaintiff's ***[FIRST]*** instead of the correct title Plaintiff's Second (please see Plaintiff's Exhibit D attached to Plaintiff's Motion to Compel);

2e) This Honorable Court had issued a standing order on May 11, 2020 that all outstanding written discovery filed on or before March 23, 2020 (The Gooch Discovery filed on October 9, 2018 and The Clinton Discovery not filed but answered on May 29,



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2019 and therefore by necessity it had to be served on or before May 29, 2019) shall be completed on or before June 29, 2020.

3) Written discovery has not yet been closed by this Honorable Court.

4) Supreme Court Rule 183. Extensions of Time The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time. Corrected February 16, 2011, effective immediately.

Therefore, based upon the Court file, Judge Thomas A. Meyer's Standing Order of May 11, 2020, the fact that the agreement to withdraw discovery and replace it was not clearly advanced to this Court, the fact that the discovery was mislabeled by Defendants, the fact that neither this Honorable Court nor Plaintiff Paul Dulberg knew of the switch pursuant to an undisclosed oral agreement between Defendants' and Plaintiff's withdrawing attorneys, that the requirements of Supreme court rule 201(m) were not followed, that a careful review of Defendants' nonresponses leaves Plaintiff to search 1455 documents for possible responses and the flexibility intended in Supreme Court Rule 183, Plaintiff's current Motion to Compel is not untimely. Accordingly, Plaintiff requests that this Honorable Court award any and all available relief under Supreme Court Rule 137.



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5) Defendants' attorney continues to ignore facts that disprove his position and mischaracterize communication received by him only.

5a) For the first time, in an e-mail dated November 14, 2021, Defendants' attorney advances his position that there was an agreement between Plaintiff's attorney Julia Williams prior to her withdrawing, acquiescing to all Defendants attorney's discovery actions. (Please see Defendants' Exhibit 3 attached to Defendants' Response To Plaintiff's Motion To Compel).

5b) On November 17, 2021 Plaintiff's current counsel attempted to confirm the allegations of Defendants' attorney agreement with Julia Williams by e-mailing her using her preferred current method of communication. (Please see Plaintiff's Exhibit I attached).

5c) On November 22, 2021 Defendants' attorney e-mailed Plaintiff's current attorney that he had spoken to Plaintiff's former attorney Julia Williams and that she acquiesced in all the Discovery activities as Defendants' attorney has described.(Please see Plaintiff's Exhibit II attached).

5d) On November 22, 2021 Plaintiff's current attorney responded by email to Defendants' attorney that " As you know, I emailed the pertinent questions to Julia Williams last week but as of today she has ignored my written questions and has not deemed me important enough to grace with the requested written answers.

I am surprised that she would talk to you but since there is no prohibition, I will just have to wait until she does answer me (now, more importantly than before -in written form)".(Please see Plaintiff's Exhibit III attached).



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5e) As of the writing of this Reply Plaintiff's withdrawn attorney Julia Williams has chosen to communicate with Defendants' attorney only.

5f) Defendants' attorney mischaracterizes the contents of an email sent to him after his verbal communications with Plaintiff's withdrawn attorney Julia Williams.

5g) In Defendants attorney's Response he states "• December 3, 2021 Julia Williams confirms [***ALL REPRESENTATIONS]*** made by Flynn in his December 2, 2021 email (Both attached as exhibit 4)" (Please see Defendants' Response Page 3 of 6)

5h) What Plaintiff's withdrawn attorney wrote is "Dear George,

I agree with your representations.

I do recall that we issued new discovery after Mr. Gooch had previously issued discovery. [***I DO NOT RECALL WHAT EXACTLY WE AGREED TO OR WHETHER WE FORMALIZED THE WITHDRAWAL OF THE ORIGINAL WRITTEN DISCOVERY ISSUED BY MR. GOOCH, BUT IT WAS MY ASSUMPTION THAT YOUR FIRM/YOUR CLIENTS WOULD ANSWER THE WRITTEN DISCOVERY ISSUED BY OUR FIRM AND WE WERE NOT INTENDING TO ENFORCE ANY REQUIREMENTS TO ANSWER THE WRITTEN DISCOVERY ISSUED BY MR. GOOCH OR HIS OFFICE, AGAIN, I THOUGHT WE HAD CONFIRMED IN WRITING OR WITH THE COURT IN AN OPEN HEARING , BUT OBVIOUSLY WE WERE UNABLE TO LOCATE THAT. I AM FAIRLY CERTAIN THAT OUR OFFICE HAD AGREED TO WITHDRAW THOSE REQUESTS]***". (Please see Defendants' Exhibit 4 attached to Defendants' Response To Plaintiff's Motion To Compel).

5i) " I do not recall what exactly we agreed to...But it was my assumption...I am fairly certain that..." does not confirm all representations made by Flynn.



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5j) Plaintiff's current Motion to Compel was brought promptly after discovery of these undisclosed issues (neither was this Honorable Court made aware, and in fact the language responding to Judge Meyers' question was all seeming, nor was the Plaintiff Paul Dulberg).

5k) "Tit for tat" reference by Defendants regarding this Motion by Plaintiff is based upon Defendants' complaint that the same response when Defendants' motion for discovery answers, that defendants had been given Discovery documents Dulberg 1-8708 that were therefore nonresponsive, is now being brought to this Honorable Court's attention as nonresponsive POP 1-001455 answers by Defendants. The more descriptive term is now "the shoe is on the other foot".

5l) Pursuant to the Court Order dated December 7, 2021 granting Plaintiff the ability to file Plaintiff's Discovery and Defendants' Responses Plaintiff attaches the following so that this Honorable Court become fully aware of alleged discovery nonresponses.

(Please see Plaintiff's Exhibit IV "The Gooch Discovery" PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit V "The Gooch Discovery" PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit VI "The Gooch Discovery" PLAINTIFF'S 213F (1),(2) & (3) INTERROGATORIES TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit VII "The Clinton Discovery" DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS attached)



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(Please see Plaintiff's Exhibit VIII "The Clinton Discovery" DEFENDANT HANS MAST'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS attached)

(Please see Plaintiff's Exhibit IX "The Clinton Discovery " DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit X "The Clinton Discovery" DEFENDANT HANS MAST'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS attached)

(Please see Plaintiff's Exhibit XI "The Clinton Discovery" DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.AND HANS MAST'S ANSWER TO PLAINTIFF'S RULE 213(F) INTERROGATORIES TO DEFENDANTS attached)

6. Defendants' complicity in their attempt to mask the true state of Discovery in this matter, Defendants ongoing attempt to manipulate the facts and mischaracterize statements to support Defendants' strained version of what Julia Clinton, Plaintiff's withdrawn attorney said in her communications, both oral and written, solely with defense counsel and Defendants' nonresponsive answers to previously filed and served Discovery should warrant an order to pay for the costs and fees incurred by Plaintiff in bringing this Motion to Compel and Replying pursuant to Illinois Supreme Court Rule 137.



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WHEREFORE Plaintiff Paul Dulberg respectfully prays that this Honorable Court enter an Order instructing Defendants to respond to all outstanding written discovery and Ordering Defendants to pay costs and fees associated with this motion and for any and all further relief deemed fair and proper.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com



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## Julia Williams contact

Alphonse Talarico <alphonsetalarico@yahoo.com>

Wed 11/17/2021 9:27 AM

To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>




EXHIBIT 1

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COMMERCIAL LITIGATION LEGAL MALPRACTICE BLOGS CONTACT US



**er litigation matters**

gal practice on business, consumer and commercial
e experience includes consumer matters such as
ervices, business contract disputes including settlement
tations to maintain their business relationship, and
t the individual shareholders of a corporation. Ms.
litigation, legal malpractice and attorney fees disputes.

Volunteer Legal Services, where she represents low-

## CONTACT THE CLINTON LAW FIRM

**FREE CASE REVIEW**
Please fill out the form below and click submit,
or if you prefer, call our office at
**312.357.1515**

Alphonse Talarico

contact@lawofficeofalphonsetalarico.com

3128081410

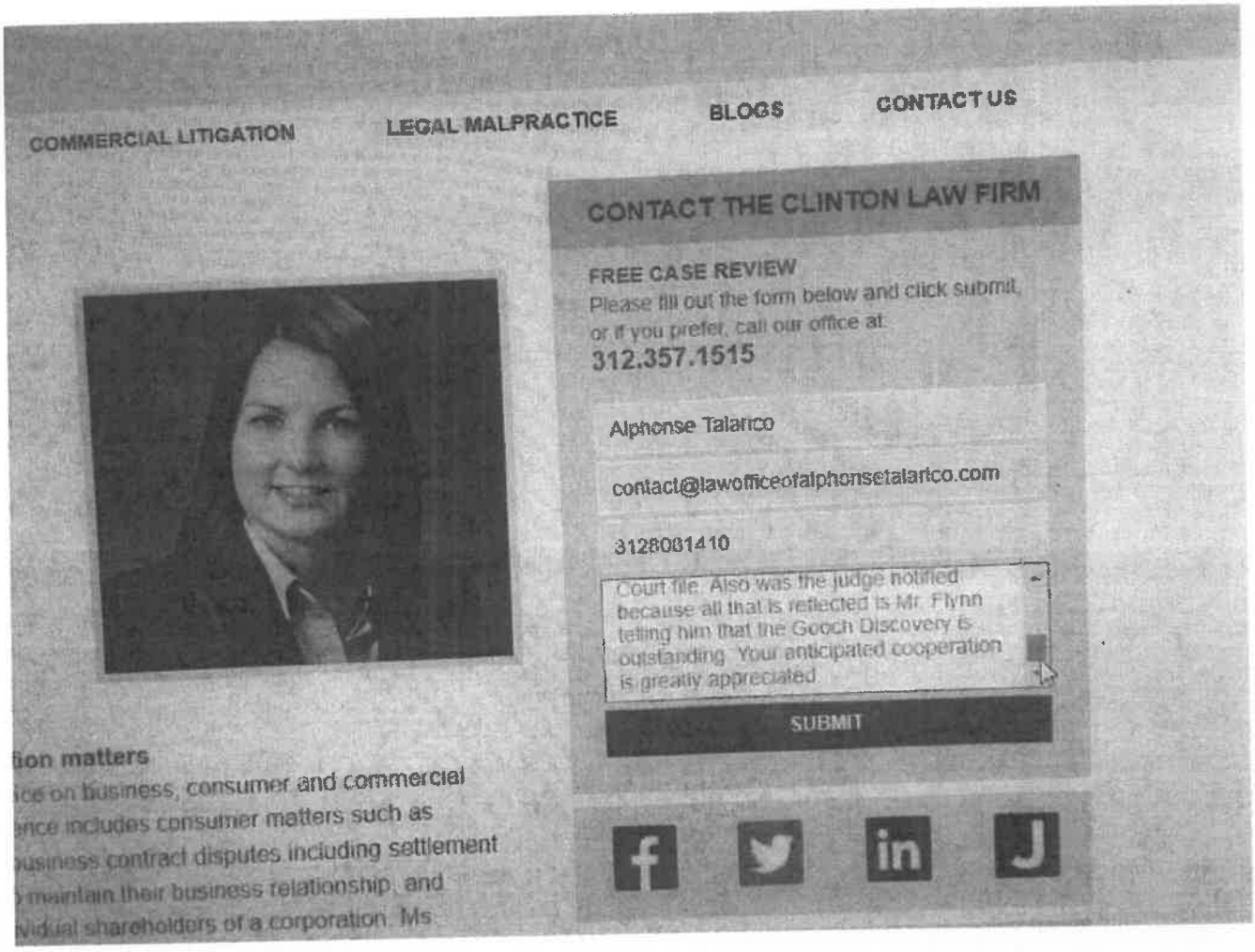
you agreed to this but I do not see any Notice to withdraw Discovery or Notice of filing your discovery on the McHenry Court file. Also was the judge notified because all that is reflected is Mr. Flynn

SUBMIT

## PRACTICE AREAS

BUSINESS LAW

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## RE: 201(K) telephone contact Tuesday in Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>
Mon 11/22/2021 9:22 AM
To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Mr. Talarico:

I am available at 10:00 a.m. on Tuesday.

Since you first advised of the issues you raised last week, I spoke with Julia Williams, and have obtained copies of several hearing transcripts addressing written discovery. In short, Julia and I had an agreement that she would issue discovery to be answered. We agreed that Defendants would not answer the discovery propounded by Gooch. When Popovich and Mast answered discovery, she informed the court that it had been answered. We then moved on and she deposed Mr. Mast.

Ms. Williams had no issues or objections to Mast'a and Popovich's responses, besides some questions she had with the document production. We then made arrangements for her to view the physical file at Popovich's office. I met her there, she reviewed the file and her inquiry was satisfied. Defendants relied on Williams' agreement and representations to the court that written discovery had been answered.

With respect to the manner in which Popovich and Mast responded to Williams' document requests, Williams had no objection, given the general nature of the requests. And again, she wrote to me with some issues that she did have, and we resolved the issues. She agreed with my assessment when we spoke last week.

With this background, I do not see what issues need to be resolved at this late date. I plan to ask the court to close f(1) discovery.

In any event, please call my cell phone number at 10:00 a.m. Tuesday. 773-341-8114.

Thank you

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**
150 S. Wacker Drive
Suite 1700
Chicago, IL 60606
P: (312) 431-3622
F: (312) 431-3670
E: gflynn@karballaw.com

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**From:** Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
**Sent:** Sunday, November 21, 2021 12:50 PM
**To:** George Flynn <gflynn@karballaw.com>
**Subject:** Re: 201(K) telephone contact Tuesday in Dulberg v. Popovich




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Dear Mr. Flynn,

Does Tuesday November 23, 2021 at 10:00 am work for you ?

If so, I will make the call so that we can try to find a mutually agreeable solution regarding discovery issues.

This email and our follow up telephone conversation(s) are pursuant to Supreme Court Rule 201(K).

Your anticipated cooperation is greatly appreciated,
Alphonse A. Talarico

---

**From:** George Flynn <gflynn@karballaw.com>
**Sent:** Wednesday, November 17, 2021 7:37 PM
**To:** Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
**Cc:** Linda Walters <lwalters@karballaw.com>
**Subject:** Re: 201(K) telephone contact tomorrow Dulberg v. Popovich

Mr. Talarico.

If you would still like to talk, please let me know a date and time next week that will work. I will be out of town the remainder of this week.

Thanks

**George Flynn**

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On Nov 15, 2021, at 10:02 AM, Alphonse Talarico <contact@lawofficeofalphonsetalarico.com> wrote:

Dear Mr Flynn,

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I am sure that additional communication is warranted but I will contact you to find a mutually agreeable date and time.

YOUR ANTICIPATED COOPERATION IS GREATLY APPRECIATED,
Alphonse A Talarico

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## Re: 201(K) telephone contact Tuesday in Dulberg v. Popovich

Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
Mon 11/22/2021 10:26 AM
To: George Flynn <gflynn@karballaw.com>

Dear Mr. Flynn,
I hope your out-of-town trip was concluded successfully and appreciate that you have responded so quickly to my continued Illinois Supreme Court Rule 201(k) communications.
As you know, I e-mailed the pertinent questions to Julia Williams last week but as of today she has ignored my written questions and has not deemed me important enough to grace with the requested written answers.
I am surprised that she would talk to you but since there is no prohibition, I will just have to wait until she does answer me (now, more importantly than before-in written form).
I am glad that you are available for a 201(K)-call tomorrow but that call must be delayed until I receive Julia Williams written reply.
I hope she responds in writing quickly so we can reschedule our call.

I am sure we can work out our discovery issues amicably and without court intervention.
I will contact you to reschedule our 201(K) call as soon as she responds in writing.

As always, your anticipated cooperation is greatly appreciated,
Alphonse A. Talarico




---

**From:** George Flynn <gflynn@karballaw.com>
**Sent:** Monday, November 22, 2021 9:22 AM
**To:** Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>
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**George Flynn**

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**THE UNITED STATES OF AMERICA**
**IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, | ) | Case No.: 2017 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| Defendants. | ) | |

---

## PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

NOW COMES Plaintiff, PAUL DULBERG ("DULBERG") by and through his attorneys THE GOOCH FIRM, and hereby respectfully moves that Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST (hereafter collectively referred to as "DEFENDANTS"), along with their attorneys and agents, produce at THE GOOCH FIRM, 209 South Main Street, Wauconda, Illinois 60084, within 28 days for inspection and copying the following:

### DEFINITIONS

The following Definitions are to be considered applicable with respect to each Request contained herein:

1. "Billings" or "bills" means the monthly bills charged **DULBERG** at any time regardless of whether full or partial payments were made.

2. "Billing records" also can mean records of time billed or recorded on behalf of other clients of **DEFENDANTS** by any time keeper during the relevant period on days when that time keeper performed tasks pursuant to the engagement letter for **DULBERG.**

EXHIBIT IV



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3. "Calendar" means the master calendar of **DEFENDANTS** and all individual calendars of any person involved in the underlying case during the relevant time period.

4. "Client file" means any documents gathered or received by **DEFENDANTS** during its representation of **DULBERG** in the underlying matter.

5. "Consultant[s]" means and refers to persons, whether retained as experts or as non-experts, contacted by you or on your behalf to provide information, opinions, and/or review of materials or tangible things relating or referring to the positions or potential positions taken by you in preparation of the prenuptial agreement.

6. "Document[s]" means any written, graphic or recorded matter any object or tangible thing of every kind of description, or any combination thereof, and without limitation, whether draft, revision or final; whether original or reproduction; however produced and reproduced; whether such object, record or communication is written, typewritten, printed by hand or recorded, and including without limitation, correspondence, contracts, memorandums of understanding, term sheets, proposals, quotes, notes, memoranda, letters, reports, minutes, resolutions, summaries, telegrams, publications, invoices, purchase orders, estimations, accounting records and work papers, accounts, accounts payables, cash flow statements, commission agreements and commission statements, conferences (including but not limited to reports and/or summaries thereof), annual or other periodic reports, applications, appointment books, appraisals, assignments, assignment of beneficial interest, audit reports, calendar entries or notations, calendars, checks, checkbooks, canceled checks, cards, cartridges, cash flow statements, cassettes certificates, change orders, charts, release orders, checks, registers, receipts, statements, financial statements, filings with any government agency (including but not limited to federal, state, local or foreign governments) inventories, investigations and summaries of investigations, periodicals, photographs, slides or negatives, photographs and negatives, pictures or other matter which is able to be seen or read without mechanical or electrical assistance, plans, plates, pleadings, policies, press releases, proformas, programs, projections, promissory notes, promotional literature and materials, proof, proof of claims, records, records of meetings (including but not limited to notes, reports and summaries of conferences or interviews, whether formal or informal), recordings or transcriptions (including but n limited to notes, reports, and summaries of conferences or interviews, whether formal or informal), communiques, contracts, agreement, amendment, addendums, modifications and cancellations to contracts, recordings, transcriptions of recordings, inspection reports, videotapes, audiotapes, e-mails, facsimiles, diaries, schedules, files, file folders, original or preliminary notes, outlines, papers, personal records, loan documents, manuals or excerpts therefrom, retainer agreements, statements of income and expense, statements or books of account, statistical or information accumulations or compilations, tax returns, handbooks, and business records and shall include, without limitation, originals, duplicates, all file copies, all other copies (with or without notes or changes thereon) no matter how prepared, drafts, data, disks, tapes, databases, back-up tapes, zip-drives and disks,



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compilations, computer files, directories and any other computerized data or information, working papers, routing slips and similar materials, and including all documents which relate to the subject matter of this action.

7. "Engagement letter" and/or "engagement agreement" means the letter or agreement between **DEFENDANTS** and/or his firm and **DULBERG**.

8. "Identify" and "describe" means and refer to:

a. Provide a detail of all facts and circumstances supporting your contentions, and/or the act, occurrence, statement, communication and/or conduct which is the subject of the interrogatory and provide the date of such act, occurrence, statement or communication, the persons present, persons involved, persons who witnessed and/or persons who have knowledge of such facts, circumstances, acts, occurrences, statements, and/or communications;

b. Provide the name, address and telephone number of all persons having knowledge of such facts and circumstances and/or of all persons present, involved and/or who witnessed the same;

c. Provide the title of any responsive documents relating to the subject of the interrogatory, the person who created such documents, the persons who were the recipients of such documents, the date such documents were created and the present location of the documents; and

d. Provide the name, address, and telephone number of any company which is the subject of the interrogatory.

9. "Objects" and "tangible things" means and refers to material items or assets capable of being perceived or capable of being appraised at an actual or approximate value.

10. "Person" or "person[s]" means and refer to any natural person, partnership, corporation, joint venture, business organization whether public or private, and/or other entity and including its officers, directors, partners, joint venturers, employees, consultants, representatives, and agents.

11. "Refer[ing]" or "relate[ing] to" means to be legally, factually and/or logically connected to.

12. "Relevant time period" means the time from **May 1, 2012 to the present.**



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13. "Task" means and refers to each discrete duty, assignment or job performed by you and/or any of your employees for which you are charging fees to **DULBERG**, as contained in the Engagement Agreement.

14. "Timekeeper" means any attorney employee of **DEFENDANTS** or non-attorney employee of **DEFENDANTS** who during the relevant time period performed any task on behalf of **DULBERG** in the underlying case.

15. "Timesheets" means and refers to the maintaining, tracking or keeping record of time for legal services performed by you and/or your consultants, whether such timesheets are kept contemporaneously or non-contemporaneously, typewritten or handwritten, and/or retained in or on pre-printed forms, calendars, logs, diaries, folders, files, computer-generated forms or forms contained within computer programs, including but not limited to software designed for and used by legal firms and/or accounting departments to track time for services such as time slips and/or Excel spreadsheets and print-outs of computer generated forms.

16. "Underlying matter" means and refers to **DEFENDANTS Client/Matter Case Number 2012 LA 178** and any and all other matters involving **DULBERG**.

17. "You," "your," and "yours" means and refers to, **DULBERG**, whether acting in this name or any alias names or surnames used by you, and/or including your agents, representatives, attorneys, accountants, employees, and/or anyone acting at your direction and/or on your behalf or at your request.

18. "Your counsel" means and refers to your attorneys representing you in this case, and/or your counsel's agents, representatives and/or anyone acting at their direction or their request on your behalf.

19. Whenever used herein, the singular shall include the plural and vice versa.

20. Whenever used herein, "and" may be understood to mean "or" and vice versa whenever such construction results in a broader request for information.

21. To the extent any paragraph is objected to, please set forth all reasons for your objection, specifically identifying the legal basis for any objection based upon a claim of work product or any common law or statutory privilege as required by S. Ct. Rule 201(n).

22. Duplicitous Request: It is not the intention of this production request to duplicate responses. If any request duplicates another request, only one response is required. Reference may be made to the previous response.



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## REQUESTS FOR PRODUCTION

1. Where a party has given a statement to some person or entity other than his attorney or insurer, said statement shall be produced by the person or entity to whom it was given or transferred.

**RESPONSE:**

2. All documents, memoranda, notes, correspondence, pleadings, settlement agreements, contracts, check, bills, invoices, or other documentary material in your possession or under your control identified in your answers to Plaintiff's First Set of Interrogatories.

**RESPONSE:**

3. A list giving the name, addresses and specialties of all expert witnesses other than purely consultant experts who are not to testify at the trial, omitting all persons already listed above.

**RESPONSE:**

4. Copies of the reports from all experts listed in paragraph 3.

**RESPONSE:**

5. All documents in your possession or under your control which relate in any way to **DULBERG**, as known to you on or before your last day of representation.

**RESPONSE:**

6. The entire client file maintained by you during your representation of **DULBERG** and following said representation not otherwise produced pursuant to Interrogatory No. 5.

**RESPONSE:**

7. All emails and/or text messages not otherwise produced which was sent between any member of Defendants law firm, employees and/or agents, relating to **DULBERG** or the underlying cause of action.

**RESPONSE:**



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8. Unless otherwise produced pursuant to requests set forth above, produce any other documents including work produce, which pertains in any way to the underlying case or this cause of action.

**RESPONSE:**

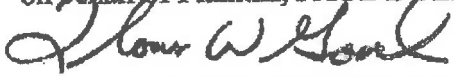
9. If privilege is claimed as to any document please produce the usual and customary privilege log.

**RESPONSE:**

10. Plaintiff further requests that each party and/or its attorneys furnish an affidavit stating whether the production is complete in accordance with this request for production.

**RESPONSE:**

Respectfully submitted by,
THE GOOCH FIRM,
on behalf of Plaintiff, PAUL DULBERG,



THOMAS W. GOOCH, III

THE GOOCH FIRM
209 South Main Street
Wauconda, IL 60084
847.526.0110
ARDC: 3123355
gooch@goochfirm.com
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**THE UNITED STATES OF AMERICA**
**IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, | ) | Case No.: 2017 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| Defendants. | ) | |

## PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

NOW COMES Plaintiff, PAUL DULBERG ("DULBERG") by and through his attorneys THE GOOCH FIRM, and hereby submits his First Set of Interrogatories pursuant to Illinois Supreme Court Rule 213 to Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST (hereafter collectively referred to as "DEFENDANTS"), along with Instructions and Definitions. Plaintiff requests a written response within twenty-eight (28) days of service.

### DEFINITIONS

The following Definitions are to be considered applicable with respect to each interrogatory contained herein:

1. "Billings" or "bills" means the monthly bills charged **DULBERG** at any time regardless of whether full or partial payments were made.

2. "Billing records" also can mean records of time billed or recorded on behalf of other clients of **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** by any time keeper during the relevant period on days when that time keeper performed tasks pursuant to the engagement letter for **DULBERG.**






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3. "Calendar" means the master calendar of **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** and all individual calendars of any person involved in the underlying case during the relevant time period.

4. "Client file" means any documents gathered or received by **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** during their representation of **DULBERG** in the underlying matter.

5. "Consultant[s]" means and refers to persons, whether retained as experts or as non-experts, contacted by you or on your behalf to provide information, opinions, and/or review of materials or tangible things relating or referring to the positions or potential positions taken by you in preparation of any documents, hearings, or settlement negotiations.

6. "Document[s]" means any written, graphic or recorded matter any object or tangible thing of every kind of description, or any combination thereof, and without limitation, whether draft, revision or final; whether original or reproduction; however produced and reproduced; whether such object, record or communication is written, typewritten, printed by hand or recorded, and including without limitation, correspondence, contracts, memorandums of understanding, term sheets, proposals, quotes, notes, memoranda, letters, reports, minutes, resolutions, summaries, telegrams, publications, invoices, purchase orders, estimations, accounting records and work papers, accounts, accounts payables, cash flow statements, commission agreements and commission statements, conferences (including but not limited to reports and/or summaries thereof), annual or other periodic reports, applications, appointment books, appraisals, assignments, assignment of beneficial interest, audit reports, calendar entries or notations, calendars, checks, checkbooks, canceled checks, cards, cartridges, cash flow statements, cassettes certificates, change orders, charts, release orders, checks, registers, receipts, statements, financial statements, filings with any government agency (including but not limited to federal, state, local or foreign governments) inventories, investigations and summaries of investigations, periodicals, photographs, slides or negatives, photographs and negatives, pictures or other matter which is able to be seen or read without mechanical or electrical assistance, plans, plates, pleadings, policies, press releases, proformas, programs, projections, promissory notes, promotional literature and materials, proof, proof of claims, records, records of meetings (including but not limited to notes, reports and summaries of conferences or interviews, whether formal or informal), recordings or transcriptions (including but n limited to notes, reports, and summaries of conferences or interviews, whether formal or informal), communiques, contracts, agreement, amendment, addendums, modifications and cancellations to contracts, recordings, transcriptions of recordings, inspection reports, videotapes, audiotapes, e-mails, facsimiles, diaries, schedules, files, file folders, original or preliminary notes, outlines, papers, personal records, loan documents, manuals or excerpts therefrom, retainer agreements, statements of income and expense, statements or books of account, statistical or information accumulations or compilations, tax returns, handbooks, and business records and shall include, without limitation,



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originals, duplicates, all file copies, all other copies (with or without notes or changes thereon) no matter how prepared, drafts, data, disks, tapes, databases, back-up tapes, zip-drives and disks, compilations, computer files, directories and any other computerized data or information, working papers, routing slips and similar materials, and including all documents which relate to the subject matter of this action.

7. "Engagement letter" and/or "engagement agreement" means the letter or agreement or retainer agreement between **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C.** and **HANS MAST** and **DULBERG.**

8. "Identify" and "describe" means and refer to:

a. Provide a detail of all facts and circumstances supporting your contentions, and/or the act, occurrence, statement, communication and/or conduct which is the subject of the interrogatory and provide the date of such act, occurrence, statement or communication, the persons present, persons involved, persons who witnessed and/or persons who have knowledge of such facts, circumstances, acts, occurrences, statements, and/or communications;

b. Provide the name, address and telephone number of all persons having knowledge of such facts and circumstances and/or of all persons present, involved and/or who witnessed the same;

c. Provide the title of any responsive documents relating to the subject of the interrogatory, the person who created such documents, the persons who were the recipients of such documents, the date such documents were created and the present location of the documents; and

d. Provide the name, address, and telephone number of any company which is the subject of the interrogatory.

9. "Objects" and "tangible things" means and refers to material items or assets capable of being perceived or capable of being appraised at an actual or approximate value.

10. "Person" or "person[s]" means and refer to any natural person, partnership, corporation, joint venture, business organization whether public or private, and/or other entity and including its officers, directors, partners, joint venturers, employees, consultants, representatives, and agents.

11. "Refer[ing]" or "relate[ing] to" means to be legally, factually and/or logically connected to.

12. "Relevant time period" means the time from **May 1, 2012 to the present.**



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13. "Task" means and refers to each discrete duty, assignment or job performed by you and/or any of your employees for which you are charging fees to **DULBERG**, as contained in the Engagement Agreement.

14. "Timekeeper" means any attorney employee of **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** or non-attorney employee of **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** who during the relevant time period performed any task on behalf of **DULBERG** in the underlying case.

15. "Timesheets" means and refers to the maintaining, tracking or keeping record of time for legal services performed by you and/or your consultants, whether such timesheets are kept contemporaneously or non-contemporaneously, typewritten or handwritten, and/or retained in or on pre-printed forms, calendars, logs, diaries, folders, files, computer-generated forms or forms contained within computer programs, including but not limited to software designed for and used by legal firms and/or accounting departments to track time for services such as time slips and/or Excel spreadsheets and print-outs of computer generated forms.

16. "Underlying matter" means and refers to **PAUL DULBERG** and any and all other matters involving **DULBERG**.

17. "You," "your," and "yours" means and refers to, **THE LAW OFFICE OF THOMAS J. POPOVICH, P.C. and HANS MAST** whether acting in this name or any alias names or surnames used by you, and/or including your agents, representatives, attorneys, accountants, employees, and/or anyone acting at your direction and/or on your behalf or at your request.

18. "Your counsel" means and refers to your attorneys representing you in this case, and/or your counsel's agents, representatives and/or anyone acting at their direction or their request on your behalf.

19. Whenever used herein, the singular shall include the plural and vice versa.

20. Whenever used herein, "and" may be understood to mean "or" and vice versa whenever such construction results in a broader request for information.

21. To the extent any paragraph is objected to, please set forth all reasons for your objection, specifically identifying the legal basis for any objection based upon a claim of work product or any common law or statutory privilege as required by S. Ct. Rule 201(n).

22. Duplicitous Request: It is not the intention of this production request to duplicate responses. If any request duplicates another request, only one response is required. Reference may be made to the previous response.



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## INTERROGATORIES

1. Please state your name and State Bar Number.

**ANSWER:**

2. With respect to your education, please identify each institution of higher learning that you ever attended, including the law school from which you graduated. Also, as to each institution, please set forth the following information specifically and in detail:

a. State each declared major/minor area of study.
b. Set forth each bar association of which you are a member.

**ANSWER:**

3. Do you maintain that you concentrate your practice in any particular type of area of the law? If so, please set forth the following information:

a. A description of the legal work, area of law, or type of matter in which your practice is concentrated
b. For how many years have you engaged in the practice of law concentrated in a particular area.

**ANSWER:**

4. Have you ever been suspended, censured, reprimanded or otherwise disciplined by the Illinois Supreme Court or the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court?

**ANSWER:**

5. Did you ever enter, at any time, into or establish an attorney-client relationship with the Plaintiff? If your answer is anything other than an unconditional "no," please set forth the following information specifically and in detail:

a. The date upon which the relationship was first established, and if the relationship was ever terminated, the date or dates of each such termination.
b. The nature and description of the legal services that you agreed to provide.
c. Please identify every contract, retainer agreement, letter of engagement or



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writing that relates to the establishment of your relationship with the Plaintiff by stating a brief summary of its contents. Alternatively, in lieu of your answer, please attach the document.

**ANSWER:**

6. Commencing from the date when the Plaintiff first contacted you through the date of your answers to these Interrogatories, state whether you are covered or were covered by a policy of professional liability insurance (i.e., malpractice insurance) which is providing coverage or which has denied or reserved coverage for the claim of the Plaintiff? If the answer is no, see 2(c). If the answer is yes, see 2(a)-2(b):

a. Please provide the name of the insurer and the policy number.
b. If coverage has been reserved or denied, describe the reasons of for the denial or reservation and attach any document you have received from the insurer relating to the reservation or denial.
c. If you are not covered by a policy of professional liability coverage, please state the last time you were insured.

**ANSWER:**

7. Do you have possession of Plaintiff's client file created during the time period you represented Plaintiff?

**ANSWER:**

8. Did you ever represent the Plaintiff with respect to any matters other than those which are the subject of this litigation?

**ANSWER:**

9. Set forth the name and title of each individual who participated in the preparation, investigation, evaluation, and analysis of any aspect of your representation of the Plaintiff, including but not limited to present and former attorneys, secretaries, paralegals, investigators, law clerks, student assistants, and other individuals who participated in the handling or preparation of the Plaintiff's matter.

**ANSWER:**

10. With respect to each meeting, telephone conversation, mailed letters or other



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correspondence, and email discussions you had with the Plaintiff, please set forth the following:

a. The mode of the communication, date/time of the communication and the substance of the communication.

b. Identify any/all correspondence that mentions or refers to the communication by stating its date and authors. Include a brief description of the contents of the correspondence or, alternatively, attach a copy of it to your answers to these Interrogatories.

**ANSWER:**

11. Did you ever refuse to communicate with the Plaintiff or act on his behalf

**ANSWER:**

12. Did you withdraw from representation of the Plaintiff?

**ANSWER:**

13. With respect to the pending action against you and the firm for legal malpractice and with respect to the Plaintiff, please identify each drafting of work that you engaged in on the Plaintiff's behalf, and with respect to each, please set forth the following information specifically and in detail:

a. A description of the work performed. The date that the work was performed, the approximate amount of time spent, and the amount charged to the Plaintiff for said work.

**ANSWER:**

14. State the name, title and telephone number of any employee of any Defendant during your period of representation of the Plaintiff.

**ANSWER:**

15. State the name of the person responsible for assembling monthly bills/invoices and sending them to the Plaintiff during the time period you represented Plaintiff.



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**ANSWER:**

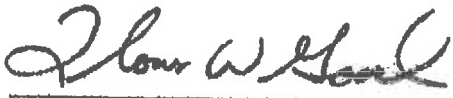
16. If any person listed in Interrogatory No. 15 is no longer employed by you, identify that person by name and providing telephone number.

**ANSWER:**

17. Describe all documents reviewed by anyone in the course of preparation of the responses to these interrogatories.

**ANSWER:**

Respectfully submitted,
THE GOOCH FIRM
on behalf of Plaintiff, PAUL DULBERG,



THOMAS W. GOOCH, III

THE GOOCH FIRM
209 South Main Street
Wauconda, IL 60084
(847) 526-0110
ARDC No. 3123355
gooch@goochfirm.com



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**THE UNITED STATES OF AMERICA**
**IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, | ) | Case No.: 2017 LA 377 |
| v. | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, | ) | |
| Defendants. | ) | |

**PLAINTIFF'S 213F (1), (2) & (3) INTERROGATORIES TO DEFENDANTS**

To: George Flynn (gflynn@clausen.com)
Clausen Miller, P.C.
10 South LaSalle Street, 16th Floor
Chicago IL 60603

NOW COMES your Plaintiff, PAUL DULBERG, by and through his attorneys THE GOOCH FIRM, and for his Supreme Court Rule 213(f) Interrogatories Propounded to the Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH and HANS MAST, states as follows:

1. Pursuant to Illinois Supreme Court Rule 213(f)(1), provide the following of each witness who will testify at Trial as a lay witness:

(a) his or her name, address, telephone number, occupation, and current employment;

(b) the subject matter of his or her expertise;

(c) his or her educational background, academic qualifications, employment history, employment experience, and any other matters which you contend qualify him or her as an expert;

(d) the identification of any and all statements, reports, letters, tape recordings, photographs, memoranda, or

EXHIBIT
VI



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documentation of any type furnished to or obtained by said expert or experts;

(e) the substance of all facts and opinions which he or she could testify, if called as a witness;

(f) the bases and grounds for each such opinion;

(g) the identification of all documents and other tangible evidence relied upon by the opinion witness as a basis for his or her opinion;

(h) the contractual agreement for his or her retention in this case, including the amount of his or her compensation, whether the compensation has already been paid, and whether any compensation is contingent on the outcome of this litigation;

(i) the identification of each book, article, paper, or public statement by the opinion witness which relates to the subject matter of his or her expertise; and

(j) the name and document number of each judicial, administrative or legislative proceeding which he or she has testified or otherwise (as by deposition or affidavit) given evidence within the last ten (10) years, plus the name of the court or other body before which the evidence was given.

**ANSWER:**

2. Pursuant to Illinois Supreme Court Rule 213(f)(2), provide the following of each witness who will testify at Trial as an independent expert witness:

(a) his or her name, address, telephone number, occupation, and current employment;

(b) the subject matter of his or her expertise;

(c) his or her educational background, academic qualifications, employment history, employment experience, and any other matters which you contend qualify him or her as an expert;

(d) the identification of any and all statements, reports, letters, tape recordings, photographs, memoranda, or



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documentation of any type furnished to or obtained by said expert or experts;

(e) the substance of all facts and opinions which he or she could testify, if called as a witness;

(f) the bases and grounds for each such opinion;

(g) the identification of all documents and other tangible evidence relied upon by the opinion witness as a basis for his or her opinion;

(h) the contractual agreement for his or her retention in this case, including the amount of his or her compensation, whether the compensation has already been paid, and whether any compensation is contingent on the outcome of this litigation;

(i) the identification of each book, article, paper, or public statement by the opinion witness which relates to the subject matter of his or her expertise; and

(j) the name and document number of each judicial, administrative or legislative proceeding which he or she has testified or otherwise (as by deposition or affidavit) given evidence within the last ten (10) years, plus the name of the court or other body before which the evidence was given.

**ANSWER:**

3. Pursuant to Illinois Supreme Court Rule 213(f)(3), provide the following of each witness who will testify at Trial as a controlled expert witness:

(a) his or her name, address, telephone number, occupation, and current employment;

(b) the subject matter of his or her expertise;

(c) his or her educational background, academic qualifications, employment history, employment experience, and any other matters which you contend qualify him or her as an expert;

(d) the identification of any and all statements, reports, letters, tape recordings, photographs, memoranda, or



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documentation of any type furnished to or obtained by said expert or experts;

(e) the substance of all facts and opinions which he or she could testify, if called as a witness;

(f) the bases and grounds for each such opinion;

(g) the identification of all documents and other tangible evidence relied upon by the opinion witness as a basis for his or her opinion;

(h) the contractual agreement for his or her retention in this case, including the amount of his or her compensation, whether the compensation has already been paid, and whether any compensation is contingent on the outcome of this litigation;

(i) the identification of each book, article, paper, or public statement by the opinion witness which relates to the subject matter of his or her expertise; and

(j) the name and document number of each judicial, administrative or legislative proceeding which he or she has testified or otherwise (as by deposition or affidavit) given evidence within the last ten (10) years, plus the name of the court or other body before which the evidence was given.

**ANSWER:**

Respectfully submitted by

THE GOOCH FIRM on behalf of Plaintiff,
PAUL DULBERG,



THOMAS W. GOOCH, III

THE GOOCH FIRM
209 S. Main Street
Wauconda, IL 60084
847-526-0110
gooch@goochfirm.com
office@goochfirm.com
ARDC No. 3123355



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, | ) | |
| vs. | ) | No. 17 LA 377 |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants. | ) | |

**DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS**

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. ("Popovich"), by and through its attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for its Response to Plaintiff's First Set of Document Requests, states as follows:

**DEFINITIONS**

1. The term "documents" is defined to include all written, typed, printed, transcribed, filed, or graphic matter of every kind and description, including originals, copies of originals or copies of copies, drafts, carbon copies, printouts, including, but not limited to, letters, reports, memoranda (including those of telephone or other conversations), emails, text messages, instant messaging (such as GChat or Facebook Messenger), minutes, communications, plans, specifications, blueprints, drawings, job site logs, shop drawings, agreements, working papers, financial statements and records, accounting data, property records, travel records, purchase orders, invoices, receipts, checks, checkbooks, bank accounts, legal documents, stenographic notes, photostats, photographs, microfilms, summaries, discs, reels, tapes, computer programs, computer printouts, films, or other forms of mechanical or electrical transcription of information, tables, diary entries, schedules, desk calendars or pads, or advertisements.

2. "And" as well as "or" are to be construed either disjunctively or conjunctively so as to bring within the scope of this request any matters which otherwise may be construed as outside its scope.

3. Whenever appropriate, the singular form of a word should additionally be interpreted in the plural and the plural form of a word should additionally be interpreted in the singular.






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4. The term "relating to in any way" means in any way logically or factually connected with the matter set forth.

5. The term "pertaining to" means. without limitation. embodying, mentioning, relating to. or concerning directly or indirectly, in whole or in part the subject matter identified.

6. The terms "refer to" or "relate to" mean the following inclusive: (i) constitute, (ii) contain, (iii) support, (iv) modify, (v) contradict, (vi) criticize, (vii) discuss, (viii) mention, (ix) describe, (x) evaluate, (xi) arise from, or (xii) make in connection with.

7. The term "person" shall include all natural persons and corporations, partnerships, limited partnerships, joint ventures, sole proprietorships, trusts, associations, firms, companies, business styles, clubs or other business or legal entities of any kind.

8. "In your possession, custody or control" includes all documents held or controlled by you in *any* capacity including, but not limited to, your capacity as officer, director, trustee. or agent for your own account or the account of others, and includes your present or former attorneys, accountants, officers, employees, directors, trustees, agents, or other persons purporting to act on your behalf in any capacity.

9. "Communication" means a transfer, attempted transfer, or request for a transfer of information by a person including, without limitation, transfers, attempted transfers, or requests for transfer of information between parts or divisions of a person other than a natural person, or any file thereof.

10. Plaintiff is not seeking any communications between Defendant and its counsel of record.

11. The term "Defendant" refers to Defendant Hans Mast, Defendant Law Offices of Thomas Popovich, and any attorneys, paralegals or staff persons who worked on their behalf or on the Dulberg Matter, as defined below.

12. The term "Dulberg Matter" refers to the case of Paul Dulberg v. David Gagnon, Caroline McGuire, and Bill McGuire, *12 LA 178*, filed in Circuit Court of the Twenty Second Judicial Circuit, McHenry County, and any ancillary legal representation of Paul Dulberg related to that filed case, the arbitration, and/or all legal services provided to Paul Dulberg regarding the facts alleged in the case that was filed.



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## DOCUMENTS AND COMMUNICATIONS FOR WHICH PRIVILEGE IS CLAIMED

If any document called for herein is not produced by you on the ground that it is privileged or otherwise protected against discovery by any rule of law, provide the following information in writing at the time and place specified for production of documents with respect to each such document:

1. Identify the document by stating the title of the document, the identity of the author(s) and recipient(s) of the document, the length of the document, and detailed description of the contents of the document;

2. Identify the present location and possessors of the original and each copy of the document and state the date or approximate date on which said recipient(s) received such original or copy;

3. Identify all other persons to whom the contents of the document have been disclosed, state the date such disclosure took place and the means of such disclosure, and identify all persons involved in the disclosure; and

4. State the privilege or other rule of law relied upon by you and the facts supporting your position with respect thereto.

## DOCUMENTS TO BE PRODUCED

1. All communications, correspondence, emails or text messages from between Plaintiffs and Defendants.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

2. A copy of Defendant's complete file for the Dulberg Case, including all pleadings, orders, discovery, settlement documents, billing records, arbitration pleadings, correspondence, emails, text messages, memoranda and notes whether in handwriting or transcribed.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

3. Any and all communications, correspondence, emails or text messages to any third-party witness, including expert witnesses, concerning the Dulberg Case.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

4. All drafts concerning the Dulberg Case, including any drafts of interrogatory answers or expert disclosures.



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**RESPONSE:** None other than those documents ultimately served or filed in the underlying matter.

5. All internal memoranda or notes concerning the Dulberg Case.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

6. All invoices concerning the Dulberg Case.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

7. All time entries concerning the Dulberg Case.

**RESPONSE:** None.

8. A copy of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy judgment.

**RESPONSE:** See declarations page, bates labeled POP 000001 through POP 000002. Note that premium and deductible information has been redacted.

9. A copy of any documents, electronically stored information, and tangible things that the Defendant may use to support any claim or defense.

**RESPONSE:** None other than those documents being produced herewith, bates labeled POP 000001 through POP 001455, including transcripts of the depositions from the underlying case in defendant's counsel's possession (Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, Michael McArtor). Investigation continues.

10. A copy of all documents identified in your response to the Complaint, 213 discovery responses, or other pleadings or discovery responses in the above captioned case.



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**RESPONSE:** None other than those produced herewith bates labeled POP 000001 through POP 001455.

Respectfully submitted,

*/s/ George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

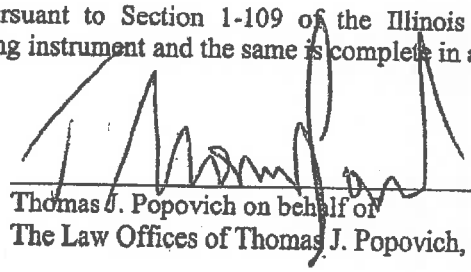
GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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**Verification**

Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that I have read the foregoing instrument and the same is complete in accordance with the request to the best of my knowledge.

By: 

Thomas J. Popovich on behalf of
The Law Offices of Thomas J. Popovich, P.C.



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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANT HANS MAST 'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS**

NOW COMES Defendant, Hans Mast ("Mast"), by and through his attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for his Response to Plaintiff's First Set of Document Requests, states as follows:

**DEFINITIONS**

1. The term "documents" is defined to include all written, typed, printed, transcribed, filed, or graphic matter of every kind and description, including originals, copies of originals or copies of copies, drafts, carbon copies, printouts, including, but not limited to, letters, reports, memoranda (including those of telephone or other conversations), emails, text messages, instant messaging (such as GChat or Facebook Messenger), minutes, communications, plans, specifications, blueprints, drawings, job site logs, shop drawings, agreements, working papers, financial statements and records, accounting data, property records, travel records, purchase orders, invoices, receipts, checks, checkbooks, bank accounts, legal documents, stenographic notes, photostats, photographs, microfilms, summaries, discs, reels, tapes, computer programs, computer printouts, films, or other forms of mechanical or electrical transcription of information, tables, diary entries, schedules, desk calendars or pads, or advertisements.

2. "And" as well as "or" are to be construed either disjunctively or conjunctively so as to bring within the scope of this request any matters which otherwise may be construed as outside its scope.

3. Whenever appropriate, the singular form of a word should additionally be interpreted in the plural and the plural form of a word should additionally be interpreted in the singular.






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4. The term "relating to in any way" means in any way logically or factually connected with the matter set forth.

5. The term "pertaining to" means. without limitation. embodying, mentioning, relating to. or concerning directly or indirectly, in whole or in part the subject matter identified.

6. The terms "refer to" or "relate to" mean the following inclusive: (i) constitute, (ii) contain, (iii) support, (iv) modify, (v) contradict, (vi) criticize, (vii) discuss, (viii) mention, (ix) describe, (x) evaluate, (xi) arise from, or (xii) make in connection with.

7. The term "person" shall include all natural persons and corporations, partnerships, limited partnerships, joint ventures, sole proprietorships, trusts, associations, firms, companies, business styles, clubs or other business or legal entities of any kind.

8. "In your possession, custody or control" includes all documents held or controlled by you in *any* capacity including, but not limited to, your capacity as officer, director, trustee. or agent for your own account or the account of others, and includes your present or former attorneys, accountants, officers, employees, directors, trustees, agents, or other persons purporting to act on your behalf in any capacity.

9. "Communication" means a transfer, attempted transfer, or request for a transfer of information by a person including, without limitation, transfers, attempted transfers, or requests for transfer of information between parts or divisions of a person other than a natural person, or any file thereof.

10. Plaintiff is not seeking any communications between Defendant and its counsel of record.

11. The term "Defendant" refers to Defendant Hans Mast, Defendant Law Offices of Thomas Popovich, and any attorneys, paralegals or staff persons who worked on their behalf or on the Dulberg Matter, as defined below.

12. The term "Dulberg Matter" refers to the case of Paul Dulberg v. David Gagnon, Caroline McGuire, and Bill McGuire, *12 LA 178*, filed in Circuit Court of the Twenty Second Judicial Circuit, McHenry County, and any ancillary legal representation of Paul Dulberg related to that filed case, the arbitration, and/or all legal services provided to Paul Dulberg regarding the facts alleged in the case that was filed.



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## DOCUMENTS AND COMMUNICATIONS FOR WHICH PRIVILEGE IS CLAIMED

If any document called for herein is not produced by you on the ground that it is privileged or otherwise protected against discovery by any rule of law, provide the following information in writing at the time and place specified for production of documents with respect to each such document:

1. Identify the document by stating the title of the document, the identity of the author(s) and recipient(s) of the document, the length of the document, and detailed description of the contents of the document;

2. Identify the present location and possessors of the original and each copy of the document and state the date or approximate date on which said recipient(s) received such original or copy;

3. Identify all other persons to whom the contents of the document have been disclosed, state the date such disclosure took place and the means of such disclosure, and identify all persons involved in the disclosure; and

4. State the privilege or other rule of law relied upon by you and the facts supporting your position with respect thereto.

## DOCUMENTS TO BE PRODUCED

1. All communications, correspondence, emails or text messages from between Plaintiffs and Defendants.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

2. A copy of Defendant's complete file for the Dulberg Case, including all pleadings, orders, discovery, settlement documents, billing records, arbitration pleadings, correspondence, emails, text messages, memoranda and notes whether in handwriting or transcribed.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

3. Any and all communications, correspondence, emails or text messages to any third-party witness, including expert witnesses, concerning the Dulberg Case.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

4. All drafts concerning the Dulberg Case, including any drafts of interrogatory answers or expert disclosures.



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**RESPONSE:** None other than those documents ultimately served or filed in the underlying matter.

5. All internal memoranda or notes concerning the Dulberg Case.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

6. All invoices concerning the Dulberg Case.

**RESPONSE:** See attached documents bates labeled POP 000001 through POP 001455.

7. All time entries concerning the Dulberg Case.

**RESPONSE:** None.

8. A copy of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy judgment.

**RESPONSE:** See declarations page, bates labeled POP 000001 through POP 000002. Note that premium and deductible information has been redacted.

9. A copy of any documents, electronically stored information, and tangible things that the Defendant may use to support any claim or defense.

**RESPONSE:** None other than those documents being produced herewith, bates labeled POP 000001 through POP 001455, including transcripts of the depositions from the underlying case in defendant's counsel's possession (Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, Michael McArtor). Investigation continues.

10. A copy of all documents identified in your response to the Complaint, 213 discovery responses, or other pleadings or discovery responses in the above captioned case.



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**RESPONSE:** None other than those produced herewith bates labeled POP 000001 through POP 001455.

Respectfully submitted,

*/s/ George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

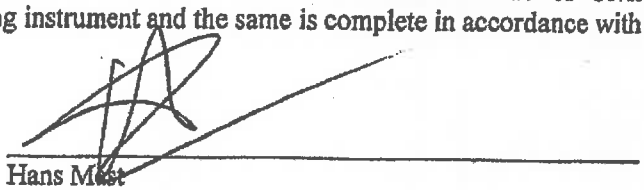
GEORGE K. FLYNN
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Attorneys for Defendants
gflynn@karballaw.com



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**Verification**

Under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that I have read the foregoing instrument and the same is complete in accordance with the request to the best of my knowledge.

By: 

Hans Mast



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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| PAUL DULBERG, Plaintiff, | ) | |
| vs. | ) | No. 17 LA 377 |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, Defendants. | ) | |

**DEFENDANT THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. 'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS**

NOW COMES Defendant, The Law Offices of Thomas J. Popovich, P.C. ( "Popovich"), by and through its attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for its Answer to Plaintiff's First Set of Interrogatories, states as follows:

**DEFINITIONS**

1. The term "Document" as used herein shall mean and refer to all written and graphic matters of any kind or description, however, produced, reproduced, or transcribed whether draft, revision or final, original or reproduction, and also tangible or intangible from which written or graphic matters may be generated, produced or transcribed, including, but not limited to, all advertisements, affidavits, agreements, announcements, appointment records, assignments, balance sheets, bills, books, books of account, bulletins, cable grams, catalogues, certificates, charters, charts, checks, communications, computations, computer printouts, computer tapes, discs or other data-storage devices, contracts, correspondence, data processing materials, delivery records, diaries, drafts, drawings, estimates, field notes, financial analysis, financial statements, interoffice and intraoffice communications, instructions, invoices, itemizations, jottings, journals, letters, licenses, lists, manuals, meeting reports, memoranda, memoranda of all conversations including telephone calls, microfilm, minutes, notes, notations, notices, opinions, pamphlets, papers, permits, photocopies, photographs, plans, proofs, publications, receipts, reportings, statements, statistical records, studies, summaries, tapes, telegrams, telex messages, transcripts, writing or work papers and all non-identical copies thereof which are in your possession, custody or control or which are in the possession, custody or control of your attorneys, accountants, or any of your agents or of which you have knowledge of current or former existence. The term "Document" also includes any copies of a Document if the copies are in any way whatsoever not identical copies of the original, by reason of additional writing notations or otherwise.



EXHIBIT
IX

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2. As used herein, one thing shall "Relate" or be "Related" to another if the former constitutes, contains, embodies, evidences, reflects, identifies, states or refers to, or is in any way legally, logically or factually relevant to, or connected with, the latter.

3. "Identify," as used herein with respect to a natural person, shall mean state such person's name, residence address, business address, employment and job title, both at the time of the events and at the present time.

4. "Identify," as used herein with respect to an entity, shall mean state the entity's name, address, principal place of business, and its legal structure (*i.e.,* corporation), registered agent and identify all individuals acting on its behalf.

5. "Identify" as used herein with respect to a communication, shall mean to state the date of that communication, the identity of the person who were parties to that communication, the identity of the person who were witnesses (other than the parties to the communication) to the communication; whether the communication was face-to-face and/or over the telephone or other telecommunications, and if face-to-face, the location of the communication, and the identity of any documents that pertain to that communication.

6. "Online" shall mean electronic information transmitted through telecommunications lines or networked lines, including but not limited to web pages, blogs, web postings, electronic mail systems, instant messenger systems, or twitter.

7. "You" shall mean Defendant Hans Mast, Defendant Law Offices of Thomas Popovich as well as any attorney, paralegal, staff, or other agent acting on his/her/its behalf. If an agent is acting on your behalf, identify the agent.

8. The term "Defendant" refers to Defendant Hans Mast, Defendant Law Offices of Thomas Popovich, and any attorneys, paralegals or staff persons who worked on their behalf or on the Dulberg Matter, as defined below.

9. The term "Dulberg Matter" refers to the case of Paul Dulberg v. David Gagnon, Caroline McGuire, and Bill McGuire, *12 LA 178*, filed in Circuit Court of the Twenty Second Judicial Circuit, McHenry County, and any ancillary legal representation of Paul Dulberg related to that filed case, the arbitration, and/or all legal services provided to Paul Dulberg regarding the facts alleged in the case that was filed.

## INSTRUCTIONS

1. In answering these Interrogatories, you are required to furnish all information that is available to you or subject to reasonable inquiry by you, including information in your possession, or in possession of your attorneys, experts or other person(s) directly or indirectly employed by, or connected with you or your attorneys, and anyone otherwise subject to you or your attorneys' control.

2. The singular shall include the plural and the plural shall include the singular.



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3. A masculine, feminine or neuter pronoun shall not exclude the other genders.

4. Separate answers are required to be given for each interrogatory, responses to separate interrogatories should not be joined together, nor should they be joined with Responses to Document Requests.

5. If any response calls for information that you claim is privileged or otherwise protected from disclosure, you shall comply with the requirements contained in Supreme Court Rule 213.

6. If you object to any interrogatory, you shall indicate which portion of the interrogatory is objected to and the basis of this objection, and answer the portion of the interrogatory that is not objectionable.

7. These interrogatories are continuing in nature with answers to be supplemented as you obtain or locate further information.

8. In accordance with Supreme Court Rule 213, attach an affidavit attesting to the completeness and accuracy of your answers.

9. Unless otherwise identified, the time frame for this request is April 1, 2012 to the present.

## INTERROGATORIES

1. Identify the person or agent of an entity responding to these interrogatories.

**ANSWER:** Thomas J. Popovich.

2. Identify any person or agent of an entity who assisted in answering any discovery requests in this case, including the specific request that was responded to and the information provided.

**ANSWER:** Thomas J. Popovich with assistance of counsel, George Flynn of Karbal, Cohen, Economou, Silk, & Dunne, LLC.

3. Identify any person or agent of an entity who provided information in responding to any pleading in this matter.

**ANSWER:** Hans Mast and Thomas J. Popovich.



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4. Identify any person or entity that has information related to the facts alleged in the complaint and/or affirmative defenses in this matter, along with the subject of the information.

**ANSWER:** It is likely that the plaintiff Paul Dulberg has information related to the facts alleged in the complaint, as well as both defendants, Hans Mast and Thomas J. Popovich.

5. Identify any person likely to have discoverable information that you may use to support any claims or defenses in this matter, along with the subject of the information.

**ANSWER:** As for the underlying matter, it is likely that the fact witnesses who were deposed, including Paul Dulberg, Bill McGuire, Carolyn McGuire, Michael McArtor, and David Gagnon likely have discoverable information relating to the claims or defenses in the matter. It is also likely that Dr. Marcus Talerico, Dr. Scott Sagerman, Dr. Apiwat Ford, and Dr. Kujawa possess information regarding Dulberg's injuries.

6. Describe in detail any legal services requested of you by Plaintiff.

**ANSWER:** Generally, Hans Mast of the Law Offices of Thomas J. Popovich, P.C. was primarily responsible for prosecuting personal injury claims on behalf of the plaintiff in connection with his alleged injury of June 28, 2011.

7. Describe in detail all legal services, including advice to settle, provided to Plaintiff and the basis for that advice.

**ANSWER:** Objection. Interrogatory is overly broad and unduly burdensome, and calls for a narrative response more appropriate for a deposition. Notwithstanding and without waiving said objections, and pursuant to Illinois Supreme Court Rule 213(e), please see all correspondence between Mast and Dulberg in connection with the underlying case, produced in response to Plaintiff's request for the production of documents.

8. Describe in detail all investigation conducted regarding the Dulberg Case.



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**ANSWER:** Written discovery was exchanged with the defendants in the underlying matter, and discovery depositions of all those witnesses identified in response to interrogatory no. 5, were conducted. Counsel for defendants has ordered and is possession of copies of the transcripts of Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, and Michael McArtor.

9. Describe in detail on[sic] discovery performed on this case.

**ANSWER:** See answer to interrogatory no. 8.

10. Describe in detail all communications, correspondence, and discussions with any expert retained by You or Plaintiff in this case.

**ANSWER:** None at this time. Defendants reserve the right to identify expert witnesses at the appropriate court mandated time.

11. Do you maintain any insurance policy or insurance agreement under which an insurance business may be liable to satisfy all or party of a possible judgment in this above captioned action or to indemnify or reimburse for payments made to satisfy the judgment? If yes, please identify the insurance business and policy limits.

**ANSWER:** Yes. See attached declaration page. Premium and Deductible information have been redacted.

12. Have you notified the insurance business which may be liable to satisfy all or party of a possible judgment in this above captioned action or to indemnify or reimburse for payments made to satisfy the judgment of the pending claims?

**ANSWER:** Yes.

Respectfully submitted,



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*/s/ George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

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KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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## Verification

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes them to be true.

By: _____

Thomas J. Popovich on behalf of
The Law Offices of Thomas J. Popovich, P.C.



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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

## DEFENDANT HANS MAST 'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS

NOW COMES Defendant, Hans Mast ( "Mast"), by and through its attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for his Answer to Plaintiff's First Set of Interrogatories, states as follows:

## DEFINITIONS

1. The term "Document" as used herein shall mean and refer to all written and graphic matters of any kind or description, however, produced, reproduced, or transcribed whether draft, revision or final, original or reproduction, and also tangible or intangible from which written or graphic matters may be generated, produced or transcribed, including, but not limited to, all advertisements, affidavits, agreements, announcements, appointment records, assignments, balance sheets, bills, books, books of account, bulletins, cable grams, catalogues, certificates, charters, charts, checks, communications, computations, computer printouts, computer tapes, discs or other data-storage devices, contracts, correspondence, data processing materials, delivery records, diaries, drafts, drawings, estimates, field notes, financial analysis, financial statements, interoffice and intraoffice communications, instructions, invoices, itemizations, jottings, journals, letters, licenses, lists, manuals, meeting reports, memoranda, memoranda of all conversations including telephone calls, microfilm, minutes, notes, notations, notices, opinions, pamphlets, papers, permits, photocopies, photographs, plans, proofs, publications, receipts, reportings, statements, statistical records, studies, summaries, tapes, telegrams, telex messages, transcripts, writing or work papers and all non-identical copies thereof which are in your possession, custody or control or which are in the possession, custody or control of your attorneys, accountants, or any of your agents or of which you have knowledge of current or former existence. The term "Document" also includes any copies of a Document if the copies are in any way whatsoever not identical copies of the original, by reason of additional writing notations or otherwise.






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2. As used herein, one thing shall "Relate" or be "Related" to another if the former constitutes, contains, embodies, evidences, reflects, identifies, states or refers to, or is in any way legally, logically or factually relevant to, or connected with, the latter.

3. "Identify," as used herein with respect to a natural person, shall mean state such person's name, residence address, business address, employment and job title, both at the time of the events and at the present time.

4. "Identify," as used herein with respect to an entity, shall mean state the entity's name, address, principal place of business, and its legal structure (*i.e.,* corporation), registered agent and identify all individuals acting on its behalf.

5. "Identify" as used herein with respect to a communication, shall mean to state the date of that communication, the identity of the person who were parties to that communication, the identity of the person who were witnesses (other than the parties to the communication) to the communication; whether the communication was face-to-face and/or over the telephone or other telecommunications, and if face-to-face, the location of the communication, and the identity of any documents that pertain to that communication.

6. "Online" shall mean electronic information transmitted through telecommunications lines or networked lines, including but not limited to web pages, blogs, web postings, electronic mail systems, instant messenger systems, or twitter.

7. "You" shall mean Defendant Hans Mast, Defendant Law Offices of Thomas Popovich as well as any attorney, paralegal, staff, or other agent acting on his/her/its behalf. If an agent is acting on your behalf, identify the agent.

8. The term "Defendant" refers to Defendant Hans Mast, Defendant Law Offices of Thomas Popovich, and any attorneys, paralegals or staff persons who worked on their behalf or on the Dulberg Matter, as defined below.

9. The term "Dulberg Matter" refers to the case of Paul Dulberg v. David Gagnon, Caroline McGuire, and Bill McGuire, *12 LA 178*, filed in Circuit Court of the Twenty Second Judicial Circuit, McHenry County, and any ancillary legal representation of Paul Dulberg related to that filed case, the arbitration, and/or all legal services provided to Paul Dulberg regarding the facts alleged in the case that was filed.

## INSTRUCTIONS

1. In answering these Interrogatories, you are required to furnish all information that is available to you or subject to reasonable inquiry by you, including information in your possession, or in possession of your attorneys, experts or other person(s) directly or indirectly employed by, or connected with you or your attorneys, and anyone otherwise subject to you or your attorneys' control.

2. The singular shall include the plural and the plural shall include the singular.



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3. A masculine, feminine or neuter pronoun shall not exclude the other genders.

4. Separate answers are required to be given for each interrogatory, responses to separate interrogatories should not be joined together, nor should they be joined with Responses to Document Requests.

5. If any response calls for information that you claim is privileged or otherwise protected from disclosure, you shall comply with the requirements contained in Supreme Court Rule 213.

6. If you object to any interrogatory, you shall indicate which portion of the interrogatory is objected to and the basis of this objection, and answer the portion of the interrogatory that is not objectionable.

7. These interrogatories are continuing in nature with answers to be supplemented as you obtain or locate further information.

8. In accordance with Supreme Court Rule 213, attach an affidavit attesting to the completeness and accuracy of your answers.

9. Unless otherwise identified, the time frame for this request is April 1, 2012 to the present.

## INTERROGATORIES

1. Identify the person or agent of an entity responding to these interrogatories.

**ANSWER:** Hans Mast.

2. Identify any person or agent of an entity who assisted in answering any discovery requests in this case, including the specific request that was responded to and the information provided.

**ANSWER:** Thomas J. Popovich with assistance of counsel, George Flynn of Karbal, Cohen, Economou, Silk, & Dunne, LLC.

3. Identify any person or agent of an entity who provided information in responding to any pleading in this matter.

**ANSWER:** Hans Mast and Thomas J. Popovich.



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4. Identify any person or entity that has information related to the facts alleged in the complaint and/or affirmative defenses in this matter, along with the subject of the information.

**ANSWER:** It is likely that the plaintiff Paul Dulberg has information related to the facts alleged in the complaint, as well as both defendants, Hans Mast and Thomas J. Popovich.

5. Identify any person likely to have discoverable information that you may use to support any claims or defenses in this matter, along with the subject of the information.

**ANSWER:** As for the underlying matter, it is likely that the fact witnesses who were deposed, including Paul Dulberg, Bill McGuire, Carolyn McGuire, Michael McArtor, and David Gagnon likely have discoverable information relating to the claims or defenses in the matter. It is also likely that Dr. Marcus Talerico, Dr. Scott Sagerman, Dr. Apiwat Ford, and Dr. Kujawa possess information regarding Dulberg's injuries.

6. Describe in detail any legal services requested of you by Plaintiff.

**ANSWER:** Generally, Hans Mast of the Law Offices of Thomas J. Popovich, P.C. was primarily responsible for prosecuting personal injury claims on behalf of the plaintiff in connection with his alleged injury of June 28, 2011.

7. Describe in detail all legal services, including advice to settle, provided to Plaintiff and the basis for that advice.

**ANSWER:** Objection. Interrogatory is overly broad and unduly burdensome, and calls for a narrative response more appropriate for a deposition. Notwithstanding and without waiving said objections, and pursuant to Illinois Supreme Court Rule 213(e), please see all correspondence between Mast and Dulberg in connection with the underlying case, produced in response to Plaintiff's request for the production of documents.

8. Describe in detail all investigation conducted regarding the Dulberg Case.



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**ANSWER:** Written discovery was exchanged with the defendants in the underlying matter, and discovery depositions of all those witnesses identified in response to interrogatory no. 5, were conducted. Counsel for defendants has ordered and is possession of copies of the transcripts of Paul Dulberg, David Gagnon, Carolyn McGuire, Bill McGuire, and Michael McArtor.

9. Describe in detail on[sic] discovery performed on this case.

**ANSWER:** See answer to interrogatory no. 8.

10. Describe in detail all communications, correspondence, and discussions with any expert retained by You or Plaintiff in this case.

**ANSWER:** None at this time. Defendants reserve the right to identify expert witnesses at the appropriate court mandated time.

11. Do you maintain any insurance policy or insurance agreement under which an insurance business may be liable to satisfy all or party of a possible judgment in this above captioned action or to indemnify or reimburse for payments made to satisfy the judgment? If yes, please identify the insurance business and policy limits.

**ANSWER:** Yes. See attached declaration page. Premium and Deductible information have been redacted.

12. Have you notified the insurance business which may be liable to satisfy all or party of a possible judgment in this above captioned action or to indemnify or reimburse for payments made to satisfy the judgment of the pending claims?

**ANSWER:** Yes.

Respectfully submitted,



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*/s/ George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
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## Verification

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes them to be true.

By: 

Hans Mast



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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S ANSWER TO PLAINTIFF'S RULE 213(F) INTERROGATORIES TO DEFENDANTS**

NOW COME Defendants, The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, KARBAL, COHEN, ECONOMOU, SILK & DUNNE LLC, and for their Answer to Plaintiff's Rule 213(f) Interrogatories to Defendants, state as follows:

1. Please identify the name, address, and telephone number of every individual "Lay Witness" who will testify at trial on behalf of the Plaintiff, and identify the subject matter of each witness' testimony.

**ANSWER:**

**A.** It is likely that Hans Mast will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the instant matter.

**B.** It is likely that Thomas Popovich will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v.*



EXHIBIT X1

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*Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the instant matter.

**C.** Paul Dulberg will be called as an adverse witness pursuant to 735 ILCS 5/2-1102 and IRE 611(c). It is likely that he will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

**D.** It is likely that Bill McGuire will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

**E.** It is likely that Carolyn McGuire will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that she will testify consistent with her testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

**F.** It is likely that Michael McArtor will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v.*



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*Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

**G.** It is likely that David Gagnon will testify regarding the facts and circumstances surrounding the underlying accident and injuries, the prosecution of the case of *Dulberg v. Gagnon, et. al.*, and regarding the nature, scope and representation of Dulberg by Popovich and Mast in the prosecution of the underlying case. It is expected that he will testify consistent with his testimony in the underlying case, and any deposition ultimately conducted in the instant matter.

**H.** Dr. Marcus Talerico is expected to testify concerning the facts, nature and scope of his treatment of Paul Dulberg's injuries allegedly sustained in the underlying accident, and consistent with his deposition testimony in the underlying case, and any future deposition in the instant case. To the extent that he may be considered a Rule 213 (f) (2) witness, defendants reserve the right to identify him as an independent expert witness at the appropriate time.

**I.** Dr. Scott Sagerman is expected to testify concerning the facts, nature and scope of his treatment of Paul Dulberg's injuries allegedly sustained in the underlying accident, and consistent with his deposition testimony in the underlying case, and any future deposition in the instant case. To the extent that he may be considered a Rule 213 (f) (2) witness, defendants reserve the right to identify him as an independent expert witness at the appropriate time.

**J.** Dr. Apiwat Ford is expected to testify concerning the facts, nature and scope of his treatment of Paul Dulberg's injuries allegedly sustained in the underlying accident, and consistent with his deposition testimony in the underlying case, and any future deposition in the



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instant case. To the extent that he may be considered a Rule 213 (f) (2) witness, defendants reserve the right to identify him as an independent expert witness at the appropriate time.

**K.** Dr. Kujawa is expected to testify concerning the facts, nature and scope of his treatment of Paul Dulberg's injuries allegedly sustained in the underlying accident, and consistent with his deposition testimony in the underlying case, and any future deposition in the instant case. To the extent that he may be considered a Rule 213 (f) (2) witness, defendants reserve the right to identify him as an independent expert witness at the appropriate time.

2. Please identify the name, address and telephone number of every independent Expert Witness who will testify at trial on behalf of the Plaintiff, and identify the subject matter of each witness' testimony.

**ANSWER:** Defendants have not identified all Illinois Supreme Court Rule 213(f)(2) witnesses, and will disclose same at the appropriate court mandated time.

3. Please identify the name, address, and telephone number of every Controlled Expert Witness who will testify at trial on behalf of Plaintiff, and for each Controlled Expert Witness, please identify:

1. the subject matter on which the witness will testify;
2. the conclusions and opinions of the witness and the bases therefor;
3. the qualifications of the witness; and
4. any reports prepared by the witness about the case.

**ANSWER:** Defendants have not identified Illinois Supreme Court Rule 213(f)(3) expert witnesses, and will disclose same at the appropriate mandated time.

Respectfully submitted,

*/s/ George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC



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Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**MOTION FOR AN EXTENSION OF TIME TO FILE REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED AND TO FILE PLAINTIFF'S REPLY TO DEFENDANTS' AFFIRMATIVE DEFENSE #4**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his MOTION FOR AN EXTENSION OF TIME TO FILE REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED AND TO FILE PLAINTIFF"S REPLY TO DEFENDANTS' AFFIRMATIVE DEFENSE #4 states as follows:

I) Regarding Plaintiff's compliance with Court Order dated December 7, 2021:



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1) Supreme Court Rule 183. Extensions of Time The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time. Corrected February 16, 2011, effective immediately;

2) Pursuant to an order dated December 7, 2021 this Honorable Court granted Plaintiff 14 days, up to and including December 21, 2021 to file his REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED;

3) on December 21, 2021 Plaintiff's attorney e-filing method was having technical problems. (Please see Plaintiff's Exhibit A attached);

4) On December 21, 2021 Plaintiff submitted his Reply as multiple filings under the same envelope number because a single "envelope" was not accepted. (Please see Plaintiff's Group Exhibit B attached);

5) On December 22, 2021 Plaintiff's filing was returned because it was not a single filing. (Please see Plaintiff's Group Exhibit C attached);

6) On December 22, 2021 Plaintiff re-submitted this filing without any changes to the contents. This filing was split into two filings with the same envelope number instead of three. (Please see Plaintiff's Group Exhibit D attached);

7) On December 22, 2021 the filing was accepted. (Please see Plaintiff's Group Exhibit E attached);

8) The McHenry Circuit Clerk published the day filed as December 22, 2021.



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II) Regarding Plaintiff's failure to Reply to Defendants' Affirmative Defense #4:

1) Please see Supreme Court Rule 183. above;

2) On March 11, 2019 Defendants filed their **DEFEDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT AT LAW.**

3) The Affirmative Defenses were as follows:

a. **FIRST AFFIRMATIVE DEFENSE: CONTRIBUTARY NEGLIGENCE** ;

b. **SECOND AFFIRMATIVE DEFENSE-STATUE OF LIMITATIONS** ;

c. **THIRD AFFIRMATIVE DEFENSE : PROXIMATE CAUSE** .

4) On April 8, 2019 Plaintiff filed his **PAUL DULBERG'S ANSWERS TO DEFENDANTS' AFFIRMATIVE DEFENSES.**

5) Nearly (8) eight months later, on November 4, 2019 (or 11 months after Plaintiff filed his second amended Complaint at Law) Defendants filed their **DEFENDANTS'THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES.** (Please see Plaintiff's Exhibit G attached)

6) Defendants specifically did not withdraw their previously filed ( and previously responded to by Plaintiff) (3) three Affirmative Defenses.

7) Defendants titled their defense **FOURTH AFFIRMATIVE DEFENSE (Judgmental Immunity/Lawyer's Judgement Rule).**

8) It appears that Defendants' errors in this document caused Plaintiff's former counsel, Julia C. Williams, to fail to Reply to the FOURTH AFFIRMATIVE DEFENSE.



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9) The errors made by Defendants were as follows:

a. Mislabeling/failing to include the fact that what was contained in Paragraphs 1. through 2(d) is not allegations of **"Judgmental Immunity /Lawyer's Judgement Rule"** but allegations of Defendants' FIRST AFFIRMATIVE DEFENSE: CONTRIBUTARY NEGLIGENCE.

b. Defendants' paragraph 1 through paragraph 2(d) of their FOURTH AFFIRMATIVE DEFENSE (Judgmental Immunity/Lawyer's Judgement Rule) is a precise copy of Defendants' paragraph 1 through paragraph 2(d) of their FIRST AFFIRMATIVE DEFENSE: CONTRIBUTARY NEGLIGENCE.

10) Plaintiff has previously replied to this portion and advances that his previously filed reply, if necessary, stand as Plaintiff's Reply to this portion of **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES.**

11) 735 ILCS 5/2-616 allows the amendment of pleadings at any time before final judgment on just and reasonable terms.

12) The filing of Plaintiff's amended Reply (to a portion of Defendant's Fourth Affirmative Defense will cause no unfair surprise, prejudice, or unreasonable delay in the case.

13) Plaintiff attaches as his Exhibit H a draft Reply to **DEFENDANTS'THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES.**



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WHEREFORE Plaintiff Paul Dulberg respectfully prays that this Honorable Court enter an Order allowing the Reply to DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO ANSWER OUTSTANDING WRITTEN DISCOVERY AND TO EXTEND THE TIME FOR OUTSTANDING WRITTEN DISCOVERY TO BE COMPLETED submitted on December 21, 2021 and accepted on December 22, 2021 to be considered timely filed and to allow Plaintiff to file his REPLY TO DEFENDANTS' AFFIRMATIVE DEFENSE #4 and all further relief deemed fair and proper.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com



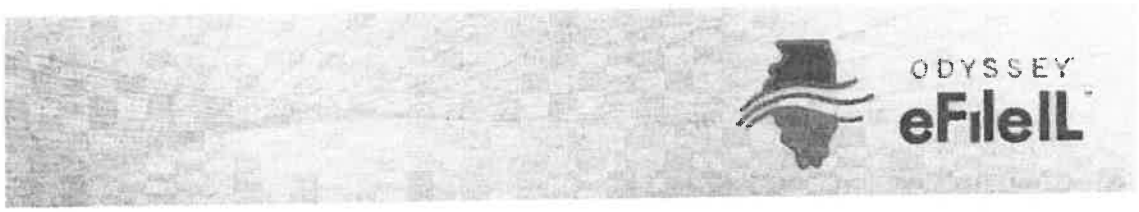
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| **Filing Description** | Proof of Delivery |
| **Type of Filing** | EFileAndServe |
| **Filed By** | Alphonse Talarico |
| **Filing Attorney** | Alphonse Talarico |

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EXHIBIT B

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| **Court** | File & Serve |
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| **Filing Type** | EFileAndServe |
| **Filing Description** | Reply to Defendants' Response and Exhibits I thru V |
| **Type of Filing** | EFileAndServe |
| **Filed By** | Alphonse Talarico |
| **Filing Attorney** | Alphonse Talarico |

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| **Filing Type** | EFileAndServe |
| **Filing Description** | Exhibits VI thru XI |
| **Type of Filing** | EFileAndServe |
| **Filed By** | Alphonse Talarico |
| **Filing Attorney** | Alphonse Talarico |

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| **Filing Description** | Reply to Defendants' Response and Exhibits I thru V |
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| **Filing Attorney** | Alphonse Talarico |

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| **Filing Attorney** | Alphonse Talarico |

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| **Filed By** | Alphonse Talarico |
| **Filing Attorney** | Alphonse Talarico |

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# 17LA000377

## DULBERG, PAUL VS MAST, HANS, ET AL

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McHenry County, Illinois
17LA000377
Date: 11/4/2019 1:37 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17 LA 377 |

**DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES**

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast plead the following amended affirmative defense in the alternative and without prejudice to Defendants' earlier denials and contentions:

**FOURTH AFFIRMATIVE DEFENSE**
**(Judgmental Immunity/Lawyer's Judgement Rule)**

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

EXHIBIT G



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(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. *Goldstein*, 154 Ill. App. 3d at 599-601; *O'Brien & Assocs., P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. *Goldstein*, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained in one of these scenarios does not suggest that any standard of care was breached. *Id.* Further, if the client must speculate as to how it would have been better off, there is no actionable harm. *O'Brien*, 274 Ill. App. 3d at 479-80.

WHEREFORE, Defendants, THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, respectfully request that judgment be entered on their behalf and against Plaintiff, Dulberg.

Respectfully submitted,

*/s/ George K. Flynn*



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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
ARDC No. 6239349
Attorneys for Defendants
gflynn@karballaw.com



2442287

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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | |
|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST<br><br>Defendants. | ) Case No. 17LA 377 |

**PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Reply states as follows:

FOURTH AFFIRMATIVE DEFENSE

(Judgmental Immunity/Lawyer's Judgement Rule)

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

**Reply**: Plaintiff has previously replied to this allegation and as such incorporates said reply as though fully stated here.



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2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than $100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

**Reply**: Plaintiff has previously replied to this allegation and as such incorporates said reply as though fully stated here.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. Goldstein, 154 Ill. App. 3d at 599-601; O'Brien & Assocs., P.C. v. Tim Thompson, Inc., 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. Goldstein, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained



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in one of these scenarios does not suggest that any standard of care was breached. Id. Further, if the client must speculate as to how it would have been better off, there is no actionable harm. O'Brien, 274 Ill. App. 3d at 479- 80.

**Reply**: Plaintiff denies the allegation of Paragraph #3 and states that Defendants' merely stating that Illinois recognizes the attorney judgement rule does not equate to Defendants submitting sufficient proof that they did not violate the required standard of care which is the burden of Defendants as they are advancing this theory.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com



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17LA000377
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**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry ☑ **COUNTY**

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| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| Enter the name of the Defendants/ Respondents. | v. |
| Enter the Case Number given by the Circuit Clerk. | Hans mast et al<br>**Defendants / Respondents** *(First, middle, last name, or business name)*<br>17 LA 000377<br>**Case Number** |

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*First* *Middle* *Last*

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*Street, Apt #* *City* *State* *ZIP*

Email address: gflynn@kargallaw.com

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  - ☐ The party's lawyer's office
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c. On: _____ at: _____ ☐ a.m. ☐ p.m.
*Date* *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

6184530
*Attorney # (if any)*

707 Skokie Blvd. #600
*Street Address*

Northbrook, Illinois, 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



Received 12-28-2021 08:27 AM / Circuit Clerk Accepted on 12-28-2021 08:47 AM / Transaction #16085666 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 16088637
McHenry County, Illinois
17LA000377
Date: 12/28/2021 10:05 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | |
|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>v.<br><br>THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST<br><br>Defendants. | ) Case No. 17LA 377 |

**NOTICE OF SERVICE OF PLAINTIFF PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT TO DEFENDANT HANS MAST**

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**150 So. Wacker Drive, Suite 1700**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**
**Linda Walters on behalf of George K. Flynn**
**lwalters@karballaw.com**

PLEASE TAKE NOTICE that on December 28, 2021 I served the parties by email:

- **PLAINTIFF PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT TO DEFENDANT HANS MAST**



Received 12-28-2021 10:32 AM / Circuit Clerk Accepted on 12-28-2021 11:40 AM / Transaction #16088637 / Case #17LA000377
Purchased from re:SearchIL

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on December 28, 2021, I caused to be served Plaintiff PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT TO DEFENDANT HANS MAST to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: December 28, 2021



Received 12-28-2021 10:32 AM / Circuit Clerk Accepted on 12-28-2021 11:40 AM / Transaction #16088637 / Case #17LA000377
Purchased from re:SearchIL

Pu

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

** FILED ** Env: 16197664
McHenry County, Illinois
17LA000377
Date: 1/6/2022 10:31 PM
Katherine M. Keefe
Clerk of the Circuit Court

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry ☑ **COUNTY**

# PROOF OF DELIVERY

*For Court Use Only*

| Instructions ▾ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| Enter the name of the Defendants/ Respondents. | v. |
| Enter the Case Number given by the Circuit Clerk. | Thomas Popovich and Hans Mast<br>**Defendants / Respondents** *(First, middle, last name, or business name)*<br>17LA000377<br>**Case Number** |

In **1**, enter the name of each court document you are sending.

**1. I am sending the following court document:** Plaintiff's Reply To Defendants The law Offices of Thomas J. Popovich, P.C. and Hans Mast's Amended Affirmative Defenses

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: Geopge K. Flynn
*First* *Middle* *Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
*Street, Apt #* *City* *State* *ZIP*

Email address: gflynn@kargallaw.com

In **1b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 01/06/2022 *Date* at: 2:29 *Time* ☐ a.m. ☑ p.m.



Received 01-07-2022 09:43 AM / Circuit Clerk Accepted on 01-07-2022 10:12 AM / Transaction #16197664 / Case #17LA000377
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Enter the Case Number given by the Circuit Clerk: 17LA000377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

**2.** I am sending this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
*Date* *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

61684530
*Attorney # (if any)*

707 Skokie Blvd.#600
*Street Address*

Northbrook, Illinois. 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



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** FILED ** Env: 16197664
McHenry County, Illinois
17LA000377
Date: 1/6/2022 10:31 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**PLAINTIFF'S REPLY TO DEFENDANTS THE LAW OFFICES OF THOMAS J POPOVICH, P C AND HANS MAST'S AMENDED AFFIRMATIVE DEFENSES**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A. Talarico, and for his Reply states as follows:

FOURTH AFFIRMATIVE DEFENSE

(Judgmental Immunity Lawyer's Judgement Rule)

1. Plaintiff filed a one count Complaint, sounding in negligence, alleging that Defendants failed to properly represent him in the prosecution of a personal injury case, as more fully stated in the Second Amended Complaint, which is incorporated herein.

**R** : Plaintiff has previously replied to this allegation and as such incorporates said reply as though fully stated here.



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C 789

2. Plaintiff's damages, if any, were due to Plaintiff's own fault. In the event Defendants are held liable, any damages awarded to Plaintiff must be reduced by Plaintiff's proximate share of liability. The Plaintiff was negligent and caused his injuries in the following ways:

(a) Failed to seek outside counsel if he was reluctant to settle the underlying case with the McGuires.

(b) Provided Mast and Popovich with authority to make a settlement demand against the McGuires for less than 100,000.

(c) Received a written settlement agreement from the McGuires, forwarded by U.S. Mail from Mast, examined it, deliberated upon it, accepted it, signed it, and mailed it back to Mast.

(d) Retained successor counsel after Mast and Popovich withdrew, and agreed to a "high-low" agreement at a binding mediation which limited Dulberg's potential recovery against the remaining Defendant, Gagnon.

**R** : Plaintiff has previously replied to this allegation and as such incorporates said reply as though fully stated here.

3. Alternatively, this suit is barred by the attorney judgment rule. Errors in attorney judgment do not constitute negligence. Goldstein, 154 Ill. App. 3d at 599-601; O'Brien & Assocs., P.C. v. Tim Thompson, Inc., 274 Ill. App. 3d 472, 479-480 (2nd Dist. 1995). Legal advice provided in areas "where there are no sure and definite answers" or where "future courses of action [cannot be determined] by precise mathematical equations" are areas where the attorney is afforded discretion in the exercise of judgment. Goldstein, 154 Ill. App. 3d at 600 (citation omitted). The fact that an unfavorable result is obtained



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in one of these scenarios does not suggest that any standard of care was breached. Id. Further, if the client must speculate as to how it would have been better off, there is no actionable harm. O'Brien, 274 Ill. App. 3d at 479- 80.

**R** : Plaintiff denies the allegation of Paragraph #3 and states that Defendants' merely stating that Illinois recogni es the attorney judgement rule does not equate to Defendants submitting sufficient proof that they did not violate the required standard of care which is the burden of Defendants as they are advancing this theory.

Respectfully submitted,

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com



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** FILED ** Env: 16414069
McHenry County, Illinois
17LA000377
Date: 1/24/2022 1:39 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | |
|---|---|
| PAUL DULBERG, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| | ) |
| v. | ) Case No. 17LA 377 |
| | ) |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) |
| | ) |
| | ) |
| Defendants. | ) |

**DEFENDANT HANS MAST'S ANSWER TO PLAINTIFF PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT**

Defendant, Hans Mast, by and through his attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for his Answer to Plaintiff's Request for Admission of Fact and the Genuineness of Document, states as follows:

**REQUEST FOR ADMISSION**

1. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of page 8 AFFIDAVIT of a Complaint titled PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants. 12LA178 filed on May 15, 2012.

**RESPONSE**: Defendant admits that Exhibit A is a true, accurate and genuine copy of a Rule 222 affidavit he executed and attached to the Complaint at the time of its filing.

2. Admit that Exhibit A attached hereto is a true, accurate, and genuine copy of page 8 AFFIDAVIT that you signed.

**RESPONSE**: Admit.

Respectfully submitted,

/s/ *George K. Flynn*

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC



Received 01-24-2022 01:57 PM / Circuit Clerk Accepted on 01-24-2022 01:59 PM / Transaction #16414069 / Case #17LA000377
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GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com



Received 01-24-2022 01:57 PM / Circuit Clerk Accepted on 01-24-2022 01:59 PM / Transaction #16414069 / Case #17LA000377
Page 2 of 3
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C 793

**Verification**

I, Hans Mast, state that I have read the foregoing Response to Plaintiff's Request for Admission of Fact and the Genuineness of Document, and under penalties provided by law pursuant to §1-109 of the Illinois Code of Civil Procedure, certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies that he verily believes same to be true.



By:_____
Hans Mast



Received 01-24-2022 01:57 PM / Circuit Clerk Accepted on 01-24-2022 01:59 PM / Transaction #16414069 / Case #17LA000377
Page 3 of 3
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** FILED ** Env: 16414069
McHenry County, Illinois
17LA000377
Date: 1/24/2022 1:39 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 17 LA 377 |
| | ) | |
| THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST, | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF FILING

**TO: All Attorneys of Record (See Attached Service List)**

PLEASE TAKE NOTICE that, on the 24th day of January 2022, we filed DEFENDANT HANS MAST'S ANSWER TO PLAINTIFF PAUL DULBERG'S REQUEST FOR THE ADMISSION OF FACT AND THE GENUINENESS OF DOCUMENT, with the Clerk of the 22nd Judicial Circuit Court of McHenry County, Illinois, a copy of which is attached hereto and hereby served upon you.

Dated at Chicago, Illinois, this 24th day of January 2022.

GEORGE K. FLYNN
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
ARDC No. 6239349
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
Attorneys for Defendants
gflynn@karballaw.com

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on January 24, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

Received 01-24-2022 01:57 PM / Circuit Clerk Accepted on 01-24-2022 01:59 PM / Transaction #16414069 / Case #17LA000377

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |



Received 01-24-2022 01:57 PM / Circuit Clerk Accepted on 01-24-2022 01:59 PM / Transaction #16414069 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 16530005
McHenry County, Illinois
17LA000377
Date: 2/1/2022 1:45 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**150 So. Wacker Drive, Suite 1700**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**
**Linda Walters on behalf of George K. Flynn**
**lwalters@karballaw.com**

PLEASE TAKE NOTICE that on February 1, 2022, I served the parties by email:

Plaintiff Paul Dulberg's:

●Court Ordered Additional Request To Produce

●Court Ordered Additional Interrogatories

Copies of which are attached hereto and herewith served upon you.



Received 02-01-2022 03:49 PM / Circuit Clerk Accepted on 02-01-2022 03:54 PM / Transaction #16530005 / Case #17LA000377
Purchased from re:SearchIL

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

**AFFIDAVIT OF SERVICE**

I , Alphonse A. Talarico, an attorney, certify that on February 1, 2022, I caused to be served the attached Plaintiff's Court Ordered Additional Request To Produce and Court Ordered Additional Interrogatories to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: February 1, 2022



Received 02-01-2022 03:49 PM / Circuit Clerk Accepted on 02-01-2022 03:54 PM / Transaction #16530005 / Case #17LA000377
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10

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

Plaintiff: Dufferd

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

vs

Defendant: MST

Case Number 17LA377

FILED
McHenry County, Illinois
FEB - 3 2022
KATHERINE M. KEEFE
Clerk of the Circuit Court

# ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☒ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 4/5, 2022 at 8:45 ~~PM~~ a.m. for STATUS #7.

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☐ **COURT FURTHER ORDERS:** _____

Date: _____

_____
Judge

CV-ORD13: Revised 10/01/08

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** FILED ** Env: 16933255
McHenry County, Illinois
17LA000377
Date: 3/3/2022 12:00 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17 LA 377 |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO: SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on the 3rd day of March 2022 we served the parties via email:

Defendant, The Law Offices of Thomas J. Popovich, P.C.'s:

- Response to Plaintiff's Court Ordered Additional Document Requests;
- Answer to Plaintiff's Court Ordered Additional Interrogatories; and

Defendant Hans Mast's:

- Response to Plaintiff's Court Ordered Additional Document Requests;
- Answer to Plaintiff's Court Ordered Additional Interrogatories;

copies of which are attached hereto and herewith served upon you.

Dated this 3rd day March 2022 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on March 3, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

Received 03-03-2022 02:14 PM / Circuit Clerk Accepted on 03-03-2022 03:16 PM / Transaction #16933255 / Case #17LA000377

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |



Received 03-03-2022 02:14 PM / Circuit Clerk Accepted on 03-03-2022 03:16 PM / Transaction #16933255 / Case #17LA000377
Purchased from re:SearchIL

# IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS )
) SS
COUNTY OF MCHENRY )

FILED
MAR 24 2022
KATHERINE M. KEEFE
MCHENRY CTY. CIR. CLK.

GEN. NO. 17 LA 377
☐ Jury ☐ Non-Jury

PAUL DULBERG
Plf

vs.

THE LAW OFFICES OF THOMAS J. POPOVICH PC and HANS MAST
Defts

Date: 3-24-22 Plaintiff's Attorney _____ Defendant's Attorney _____

## ORDER

LEAVE IS GRANTED TO AMEND THE SCRIVENER'S ERROR ON THE FACE OF THE TITLE PAGE OF THE FEBRUARY 10, 2021, TRANSCRIPT FILED ON FEBRUARY 26, 2021, TO REFLECT THE CORRECT DATE OF THE PROCEEDINGS.

Prepared by: _____

Attorney for: _____

Attorney Registration No.: _____ Judge: Thomas A Meyer

Purchased from re:SearchIL

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

15

Plaintiff Dulbus

vs

Defendant Mast

FILED
McHenry County, Illinois
APR - 5 2022
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Case Number 17CH377

# ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☒ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 4/27, 2022 at 10, ☐ m. for Hearing on Discovery Objections

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute.

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☒ **COURT FURTHER ORDERS:** 4/13/22 Date is Stricken

Date: _____

Judge

CV-ORD13: Revised 10/01/08

Purchased from re:SearchIL

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | |
|---|---|
| PAUL DULBERG, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| | ) |
| v. | ) Case No. 17LA 377 |
| | ) |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) |
| | ) |
| | ) |
| Defendants. | ) |

## NOTICE OF DEPOSITIONS FOR RECORDS ONLY

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**150 So. Wacker Drive, Suite 1700**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**
**Linda Walters on behalf of George K. Flynn**
**lwalters@karballaw.com**

***You are hereby notified*** that on April 28, 2022, at 10:00 A.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the depositions of: Paula Ann Erickson, 1405 Linden Court, Burlington, Wisconsin 53105; Margaret Maggie Orton, 475 E. Crystal Lake Avenue, Crystal Lake, Illinois 60014-6244; and Keeper Of Records, Bank of America, N.A., 1167 N. State St., Chicago, Illinois 60610, will be taken for discovery in this case.



Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377
Purchased from re:SearchIL

## THERE WILL BE NO INTERROGATION OF THE DEPONENTS

PLEASE TAKE NOTICE that on April 19, 2022, I served the parties by email:

- **SUBPOENA FOR DOCUMENTS to PAULA ANN ERICKSON;**
- **AFFIDAVIT OF SERVICE UPON PAULA ANN ERICKSON;**
- **SUBPOENA FOR DOCUMENTS to MARGARET MAGGIE ORTON;**
- **AFFIDAVIT OF SERVICE UPON MARGARET MAGGIE ORTON;**
- **SUBPOENA FOR DOCUMENTS to KEEPER OF RECORDS, BANK OF AMERICA N.A. ;**
- **AFFIDAVIT OF SERVICE UPON KEEPER OF RECORDS, BANK OF AMERICA N.A.**

Copies of which are attached hereto and herewith served upon you.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on April 19, 2022, I caused to be served the attached listed Notice Of Depositions For Records Only, Subpoenas and Affidavits of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).



Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377
Purchased from re:SearchIL

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: April 19, 2022



Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377
Purchased from re:SearchIL

Purchased from re:SearchIL

** FILED ** Env: 17550873
McHenry County, Illinois
17LA000377
Date: 4/19/2022 11:44 AM
Katherine M. Keefe
Clerk of the Circuit Court

**This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts**

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry **COUNTY**

# PROOF OF DELIVERY

*For Court Use Only*

| Instructions ▾ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| | v. |
| Enter the name of the Defendants/ Respondents. | |
| Enter the Case Number given by the Circuit Clerk. | Hans Mast and The Law Offices of Thomas Popovich, PC<br>**Defendants / Respondents** *(First, middle, last name, or business name)*<br>17LA000377<br>**Case Number** |

In **1**, enter the name of each court document you are sending.

**1. I am sending the following court document:** Notice of Depositions For Records Only

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
*First Middle Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
*Street, Apt # City State ZIP*

Email address: gflynn@kargallaw.com

In **1b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 04/19/2022 *Date* at: 4:00 *Time* ☐ a.m. ☑ p.m.



Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377

Page 1 of 2

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

**2.** I am sending this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
*Date* *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

61684530
*Attorney # (if any)*

707 Skokie Blvd. #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



Received 04-19-2022 03:08 PM / Circuit Clerk Accepted on 04-19-2022 03:49 PM / Transaction #17550873 / Case #17LA000377
Page 2 of 2
Purchased from re:SearchIL
C 808

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

KATHERINE M. KEEFE
Clerk of the Circuit Court
****** FILED ******
05/02/2022 8:10 AM
McHenry County, Illinois
22nd Judicial Circuit
**********

**ORDER**

**THIS CAUSE COMING TO BE HEARD** for status hearing, and hearing on discovery objections, due notice having been given, and the Court being fully advised in the premises:

**IT IS ORDERED:**

**As to Popovich's Answer to Dulberg's Additional Interrogatories, the court finds that:**

1) Popovich's Answer is responsive.

2) Popovich stipulates that Tom Popovich is the supervising partner referenced as "Popovich" in line of answer #2, and agrees to strike the reference to "See generally Hans Mast Deposition testimony.

3) Popovich stipulates and amends the objection to interrogatory #3 that the attorney/client privilege asserted is between Popovich and attorney George K. Flynn of the Karbal Cohen firm.

**As to Hans Mast's Answers to Plaintiff's Additional Interrogatories the court finds that:**

1) Mast Answer #1 is responsive.
2) Mast Answer #2 is responsive.
3) Mast is ordered to amend his answer to #3 to include responsive page numbers of his discovery deposition.
4) The first clause of Mast's answer to #4 is stricken and he will amend that answer.
5) Mast Answer to #5 is responsive. Mast will forward a copy of Exhibit 12 from his deposition to Plaintiff.
6) Mast Answer #6 is responsive.
7) Objection overruled. Mast's Answer to #7 must be amended to include page numbers of Dulberg's discovery deposition.

**As to Popovich's Responses to Court Additional Requests for Production, the court finds that:**

Purchased from re:SearchIL

1) Popovich's Response #1 is responsive.
2) Popovich's Response #2 is responsive.
3) Popovich is ordered to produce the front and back of the settlement check for $5,000 (POP 000658) if in its possession.
4) Popovich's Response to #4 is responsive.

**As to Mast's Responses to Additional Requests for Production, the court finds that:**

1) Mast's Response #1 is responsive.
2) Mast's Response #2 is responsive.
3) Mast's Response #3 is responsive.
4) Mast's Response #4 is responsive.
5) Mast's Response #5 is responsive.
6) Mast's Response #6 is responsive.

***Prepared by:***


**Atty. No.** **George K. Flynn ARDC #6239349**
**Name:** **Karbal, Cohen, Economou, Silk & Dunne, LLC**
**Attorney for:** **Defendants**
**Address:** **150 S. Wacker Drive, Suite 1700**
**City:** **Chicago, IL 60606**
**Telephone:** **(312) 431-3700**
**E-Mail:** **gflynn@karballaw.com**


5/2/2022
……., 2022
**ENTER:**

Thomas A. Meyer
……
**Judge** **Judge's No.**

Thomas Meyer
**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

3088362

Purchased from re:SearchIL

**ORDER**

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

*KATHERINE M. KEEFE*
Clerk of the Circuit Court
****** FILED ******
05/03/2022 8:50 AM
McHenry County, Illinois
22nd Judicial Circuit
**********

**ORDER**

**THIS CAUSE COMING TO BE HEARD** on April 27, 2022 for hearing on discovery objections, due notice having been given, and the Court being fully advised in the premises:

**IT IS ORDERED:**

This matter is set for status via Zoom on June 10, 2022 at 9:45 a.m. Zoom information for Room 201: Link: https://zoom.us/my/mchenrycourtroom201; Meeting ID: 272-959-8070; Personal Link Name: mchenrycourtroom201; Password: no password required

***Prepared by:***

**Atty. No.** George K. Flynn
ARDC #6239349
**Name:** Karbal, Cohen, Economou, Silk & Dunne, LLC
**Attorney for:** Defendants
**Address:** 150 S. Wacker Drive, Suite 1700
**City:** Chicago, IL 60606
**Telephone:** (312) 431-3700
**E-Mail:** gflynn@karballaw.com

5/3/2022
……., 2022
**ENTER:**

Thomas A. Meyer
……
**Judge** **Judge's No.**

Thomas Meyer

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

Purchased from re:SearchIL

** FILED ** Env: 17944673
McHenry County, Illinois
17LA000377
Date: 5/18/2022 11:06 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | No. 17 LA 377 |

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

**TO: SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on the 18th day of May 2022 we served the parties via email: DEFENDANT HANS MAST'S SUPPLEMENTAL ANSWERS TO PLAINTIFF'S COURT ORDERED ADDITIONAL INTERROGATORIES TO HANS MAST, a copy of which is attached hereto and herewith served upon you.

Dated this 18th day May 2022 in Chicago, Illinois.

KARBAL | COHEN | ECONOMOU | SILK | DUNNE | LLC

By: /s/ *George K. Flynn*
One of their Attorneys

GEORGE K. FLYNN (ARDC No. 6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
150 So. Wacker Drive, Suite 1700
Chicago, Illinois 60606
(312) 431-3700
gflynn@karballaw.com

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on May 18, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

Received 05-19-2022 09:56 AM / Circuit Clerk Accepted on 05-19-2022 12:09 PM / Transaction #17944673 / Case #17LA000377

Purchased from re:SearchIL

## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |



Received 05-19-2022 09:56 AM / Circuit Clerk Accepted on 05-19-2022 12:09 PM / Transaction #17944673 / Case #17LA000377
Page 2 of 2
Purchased from re:SearchIL
C 813

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts

FILED - Env: 18013031
McHenry County, Illinois
17LA000377
Date: 5/23/2022 5:55 PM
Katherine M. Keefe
Clerk of the Circuit Court

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry ☑ **COUNTY**

# PROOF OF DELIVERY

*For Court Use Only*

| Instructions ▾ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| Enter the name of the Defendants/ Respondents. | v. |
| Enter the Case Number given by the Circuit Clerk. | Hans Mast and The law Offices of Thomas Popovich, PC<br>**Defendants / Respondents** *(First, middle, last name, or business name)*<br>17 LA000377<br>**Case Number** |

In **1**, enter the name of each court document you are sending.

**1. I am sending the following court document:** Notice of Deposition For Records Only

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
*First Middle Last*

Address: 150 S. Wacker Dr. #1700 Chicago Illinois 60606
*Street, Apt # City State ZIP*

Email address: gflynn@karballaw.com

In **1b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 05/20/2022 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.



Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

Enter the Case Number given by the Circuit Clerk: 17 LA000377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

**2.** I am sending this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
*Date* *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

61684530
*Attorney # (if any)*

707 skokie Blvd. #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF DEPOSITIONS FOR RECORDS ONLY**

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**150 So. Wacker Drive, Suite 1700**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**
**Linda Walters on behalf of George K. Flynn**
**lwalters@karballaw.com**

***You are hereby notified*** that on June 9, 2022, at 10:00 A.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the deposition of Barbara G. Smith, 2302 Bluestone Bay Dr., New Lenox, Illinois 60451 will be taken for discovery in this case.

**THERE WILL BE NO INTERROGATION OF THE DEPONENT AND THE APPEARANCE AT THE DEPOSITION WILL BE EXCUSED IF SPECIFIED DOCUMENTS OR TANGIBLE THINGS ARE PRODUCED.**



Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

PLEASE TAKE NOTICE that on May 20, 2022, I served the parties by email:

**•SUBPOENA FOR DOCUMENTS to BARBARA G. GMITH;**

**•AFFIDAVIT OF SERVICE UPON BARBARA G. SMITH.**

Copies of which are attached hereto and herewith served upon you.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on May 20, 2022, I caused to be served the attached listed Notice Of Deposition For Records Only, Subpoena and Affidavit of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: May 20, 2022



Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Page 4 of 8
Purchased from re:SearchIL
C 817

**IN THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | CASE NO. 17 LA 377<br>JUDGE THOMAS A. MEYER |

**SUBPOENA FOR DOCUMENTS**
**(THIS SUBPOENA IS FOR RECORDS ONLY.)**

TO: Barbara G. Smith
2302 BLUESTONE BAY DR,
NEW LENOX, IL 60451

YOU ARE COMMANDED to produce responsive documents, electronically stored information (ESI), or objects in response to the requests below on June 9, 2022, at 10:00 a.m. at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062.

You are subpoenaed by the undersigned attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed. If you fail to respond to this subpoena, you may be in contempt of court.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to this subpoena, Barbara G Smith is requested to produce the following documents, electronically stored information (ESI), or objects

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
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in response to the requests by June 9, 2022, at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062:

1. TWENTY (20) CONTEMPORANEOUSLY DATED ORIGINAL/GENUINE SIGNATURES OF Barbara G Smith. The acceptable and required date range begins on January 1, 2020 and ends on December 31, 2020.

Instruction: If copies of checks are provided as exemplars, the checks have to be copied one per page and reproduced to the size/scale of the original check.

2. TWENTY (20) CONTEMPORANEOUSLY DATED ELECTRONIC SIGNATURES OF Barbara G Smith. The acceptable and required date range begins on January 1, 2020 and ends on December 31, 2020.

Instruction: If you used an electronic signature during the relevant time period, a list (containing all necessary contact information) of each and every person, organization and legal entity that was granted the use of said electronic signature.

3. The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes.

Please note that the appearance of the respondent is excused, and no deposition will be taken, if the documents specified above are produced on or before June 1, 2022

NOTE TO WITNESS: Please contact attorney Alphonse A, Talarico at (312) 808-1410 for information as to the reimbursement of additional charges for production incurred by the respondent.

NOTE TO WITNESS: Enclosed with this subpoena is a check for statutory witness fees and mileage reimbursement in the amount of $45.00 plus $25.00 for production costs. The total money forwarded is $70.00.



Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

Dated: May 12, 2022

By: Alphonse A. Talarico

Alphonse A. Talarico 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois, 60062
Tel: (312) 808-1410
contact@lawofficeofalphonsetalarico.com
Attorneys for Plaintiff Paul Dulberg



Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

# AFFIDAVIT OF SERVICE

| Case: | Court: | County: | Job: |
|---|---|---|---|
| 17 LA 377 | Circuit Court of the Twenty Second Judical Circuit | Mchenry, IL | 7093435 |
| **Plaintiff / Petitioner:** Paul Dulberg | | **Defendant / Respondent:** The Law Offices of Thomas J. Popivich, P.C., and Hans Mast | |
| **Received by:** Gazelle Process & Investigations PLLC. | | **For:** Alphonse A. Talarico | |
| **To be served upon:** Barbara G Smith | | | |

I, REX JONES, state on oath that I am at least 18 years old, not a party to this case/action, that I am authorized to perform service in Illinois, and am a registered sub-contractor of Gazelle Process & Investigations PLLC under Illinois Detective Agency License 117.001853

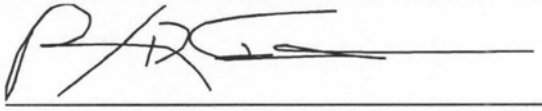
**Recipient Name / Address:** Barbara G Smith, HOME: 2302 Bluestone Bay Dr, New Lenox, IL 60451-9216

**Manner of Service:** Personal/Individual, May 18, 2022, 5:42 pm CDT

**Documents:** Witness Fee (Check VV018) (Received May 12, 2022 at 10:47am CDT), Subpoena (Received May 12, 2022 at 10:47am CDT)

**Additional Comments:**
1) Successful Attempt: May 18, 2022, 5:42 pm CDT at HOME: 2302 Bluestone Bay Dr, New Lenox, IL 60451-9216 received by Barbara G Smith. Age: 59; Ethnicity: Caucasian; Gender: Female; Weight: 160; Height: 5'8"; Hair: Brown;

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the above statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



05/20/2022

REX JONES
#117.001571

**Date**

Gazelle Process & Investigations PLLC.
518 S. IL HIGHWAY 31 Suite 325
MCHENRY, IL 60050-7464
847-752-4450

Received 05-24-2022 08:26 AM / Circuit Clerk Accepted on 05-24-2022 11:30 AM / Transaction #18013031 / Case #17LA000377
Purchased from re:SearchIL

** FILED ** Env: 18148418
McHenry County, Illinois
17LA000377
Date: 6/3/2022 10:32 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| Paul Dulberg, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Case No. 17 LA 000377 |
| | ) | Jury Demand |
| The Law Offices of Thomas J. Popovich, P.C., | ) | (Court Room 201) |
| And Hans Mast, | ) | |
| | ) | |
| Defendants. | ) | |

## NOTICE OF CHANGE OF ADDRESS

**TO: ALL ATTORNEYS OF RECORD (See Attached Service List)**

Counsel for DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., AND HANS MAST hereby notifies the Court and counsel of record of our firm's change of address, effective immediately as follows:

**KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC**
**200 S. Wacker Drive, Suite 2550**
**Chicago, IL 60606**

Our telephone and facsimile numbers and email addresses remain the same.

Dated at Chicago, Illinois, this 3rd day of June 2022.

George K. Flynn
KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC
200 S. Wacker Drive, Suite 2550
Chicago, IL 60606
(312) 431-3700
gflynn@karballaw.com
Firm ID No. 38100

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on June 3, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

3101374

Received 06-03-2022 02:17 PM / Circuit Clerk Accepted on 06-03-2022 02:33 PM / Transaction #18148418 / Case #17LA000377

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |

Received 06-03-2022 02:17 PM / Circuit Clerk Accepted on 06-03-2022 02:33 PM / Transaction #18148418 / Case #17LA000377

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IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

16

FILED
McHenry County, Illinois
JUN 10 2022
KATHERINE M. KEEFE
Clerk of the Circuit Court

Circuit Clerk Use Only
_____ ORD
_____ ORDJ
_____ ORDDWP

Dulberg
Plaintiff

vs

MAST
Defendant

Case Number 17LA377

# ORDER

☒ Plaintiff(s) appear in person/by attorney _____

☒ Defendant(s) appear in person/by attorney _____

☐ Summons not served; alias summons to issue; return date _____, 20____

☐ Summons has been properly served on Defendant(s) _____

☐ Defendant(s) appear and admit liability. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ Defendant(s), having failed to appear or otherwise respond to the summons, is found in default. Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____plus court costs.

☐ Case set for ☐ trial ☐ arbitration on _____, 20____ at _____ ___.m. in Courtroom _____

☐ Defendant(s) shall file an Appearance within _____ days of today's date, or without further Notice to Defendant(s), the trial date will be stricken and a judgment by default will be entered against Defendant(s) and in favor of Plaintiff(s).

**NOTICE TO DEFENDANT(S): THIS IS THE ONLY NOTICE YOU WILL RECEIVE OF THE TRIAL, OR ARBITRATION DATE AND YOUR OBLIGATION TO FILE AN APPEARANCE.**

☐ Defendant(s) shall file an answer or other pleading within _____ days of today's date.

☐ This case is continued on Motion of ☐ Plaintiff; ☐ Defendant; ☐ By Agreement; ☐ Court; to 7/11, 2022 at ~~9:15~~ 9:45 a.m. for STATUS on Defendants

☐ Case called, Plaintiff(s) fail to appear. Case dismissed for Plaintiff's failure to prosecute. Motion to Close F1

☐ Case dismissed with/without prejudice on Plaintiff's motion.

☐ After trial of this case, the Court enters a Judgment for Plaintiff(s) against Defendant(s) for $_____, plus interest of $_____ plus attorney fees of $_____ for a total of $_____ plus court costs.

☐ After trial of this case, the Court enters a Judgment for Defendant(s) against Plaintiff(s).

☐ **COURT FURTHER ORDERS:** _____

Date: _____

Judge

CV-ORD13: Revised 10/01/08

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KATHERINE M. KEEFE
Clerk of the Circuit Court
22nd JUDICIAL CIRCUIT McHENRY COUNTY
2200 N. Seminary Avenue
Woodstock, IL 60098
www.mchenrycircuitclerk.org

Civil Division
815.334.4310

Criminal/Traffic/
Juvenile Division
815.334.4190

FILED
McHenry County, Illinois
JUN 16 2022
KATHERINE M. KEEFE
Clerk of the Circuit Court

June 16, 2022

Alphonse A. Talarico
Law Office of Alphonse A. Talarico
707 Skokie Boulevard, Suite 600
Northbrook, IL 60062

Re: Subpoena for Documents – 17LA377 - DULBERG, PAUL VS MAST, HANS, ET AL

Dear Mr. Talarico:

In response to your *Subpoena for Documents* dated May 31, 2022, served on our office on June 14, 2022, the McHenry County Circuit Clerk's office no longer maintains the physical paper court file from 12LA000178 - DULBERG, PAUL VS GAGNON, DAVID, ET AL. The physical files from the 2012 Law cases were destroyed by our office in June of 2020 pursuant to the Illinois Supreme Court's policy which allows the physical paper files which are scanned and maintained electronically in our case management system to be destroyed.

As per our phone conversation today, we can produce a copy of the electronic file, which contains all the scanned documents, but it is the same record which can be viewed on the *Attorney Access Portal*. It was determined that reproduction of the electronic court file was not necessary, as a result I am returning your check #VV036 for $138.80 for witness fees and production costs. Please let me know if you need anything additional.

Sincerely,

Katherine M. Keefe
Clerk of the Circuit Court
McHenry County, IL

Enclosure – check #VV036, payable to Katherine M. Keefe, $138.80

Purchased from re:SearchIL

**IN THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG,<br><br>Plaintiff,<br><br>vs.<br><br>THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,<br><br>Defendants. | ) | CASE NO. 17 LA 377<br>JUDGE THOMAS A. MEYER |

**SUBPOENA FOR DOCUMENTS**
**(THIS SUBPOENA IS FOR RECORDS ONLY.)**

TO: Katherine M. Keefe
McHenry County Circuit Court Clerk
2200 N. Seminary Avenue
Woodstock, Illinois 60098
Room 136 Civil Division

YOU ARE COMMANDED to produce responsive documents or objects in response to the requests below on June 28, 2022, at 10:00 a.m. at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062.

You are subpoenaed by the undersigned attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed. If you fail to respond to this subpoena, you may be in contempt of court.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to this subpoena, Katherine M. Keefe McHenry County Circuit Court Clerk is requested to produce the following documents or

Purchased from re:SearchIL

objects in response to the requests by June 28, 2022, at the Law Office of Alphonse A. Talarico, 707 Skokie Boulevard Suite 600, Northbrook, Illinois 60062:

1. The entire physical paper file(s) and file jacket(s) with all notes within the file(s) or written upon the outside file jacket(s) for the case identified as PAUL DULBERG, Plaintiff vs. DAVID GAGNON, Individually, and as Agent of CAROLINE (a/k/a CAROLYN) McGuire and BILL McGuire and CAROLINE (a/k/a CAROLYN) McGuire and BILL McGuire, Individually, Defendants. 12LA000178

***Please note that the appearance of the respondent is excused, and no deposition will be taken, if the documents specified above are produced on or before June 20, 2022***

NOTE TO WITNESS: Please contact attorney Alphonse A, Talarico at (312) 808-1410 for information as to the reimbursement of additional charges for production incurred by the respondent.

NOTE TO WITNESS: Enclosed with this subpoena is a check for statutory witness fees and mileage reimbursement in the amount of $38.80 plus $100.00 for production costs. The total money forwarded is $ 138.80.



Purchased from re:SearchIL

Dated: May 31, 2022

By: Alphonse A. Talarico

Alphonse A. Talarico 6184530
Law Office of Alphonse A. Talarico
707 Skokie Boulevard #600
Northbrook, Illinois, 60062
Tel: (312) 808-1410
contact@lawofficeofalphonsetalarico.com
Attorneys for Plaintiff Paul Dulberg



Purchased from re:SearchIL

**PROOF OF SERVICE**

Gazelle Process & Investigations PLLC #117-001853 on oath states:

I am over the age of 18 and not a party to this case.

I served the foregoing Subpoena for Documents on Katherine M. Keefe, McHenry County Circuit Court Clerk as follows:

By leaving a copy of the Subpoena for Documents with _____

personally at _____ on _____, 2022

at the hour of _____.m.

I also enclosed a check for $138.80 for the witness and mileage fees plus production costs.

Pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the signer verily believes the same to be true.

_____

Gazelle Process & Investigations PLLC #117-001853



Purchased from re:SearchIL

** FILED ** Env: 18587480
McHenry County, Illinois
2017LA000377
Date: 7/7/2022 5:56 PM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF DEPOSITIONS FOR RECORDS ONLY**

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**200 S. Wacker Drive, Suite 2550**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**
**Linda Walters on behalf of George K. Flynn**
**lwalters@karballaw.com**

***You are hereby notified*** that on June 28, 2022, at 10:00 A.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the deposition of Katherine M. Keefe, 2200 N. Seminary Avenue, Woodstock, Illinois 60098 will be taken for discovery in this case.

**THERE WILL BE NO INTERROGATION OF THE DEPONENT AND THE APPEARANCE AT THE DEPOSITION WILL BE EXCUSED IF SPECIFIED DOCUMENTS OR TANGIBLE THINGS ARE PRODUCED.**



Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
Purchased from re:SearchIL

C 830

PLEASE TAKE NOTICE that on July 7, 2022, I served the parties by email:

●**SUBPOENA FOR DOCUMENTS to KATHERINE M. KEEFE;**

●**AFFIDAVIT OF SERVICE UPON KATHERINE M. KEEFE**

Copies of which are attached hereto and herewith served upon you.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on July 7, 2022, I caused to be served the attached listed Notice Of Deposition For Records Only, Subpoena and Affidavit of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: July 7, 2022



Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
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Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
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** FILED ** Env: 18587480
McHenry County, Illinois
2017LA000377
Date: 7/7/2022 5:56 PM
Katherine M. Keefe
Clerk of the Circuit Court

**This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.**

| **STATE OF ILLINOIS, CIRCUIT COURT**<br>McHenry **COUNTY** | **PROOF OF DELIVERY** | *For Court Use Only* |
|---|---|---|

| **Instructions** | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| Enter the name of the Defendants/ Respondents. | v. |
| Enter the Case Number given by the Circuit Clerk. | Hans Mast & The law Offices of Thomas J. Popovich P.C<br>**Defendants / Respondents** *(First, middle, last name, or business name)*<br>17 LA 377<br>**Case Number** |

In **1**, enter the name of each court document you are sending.

**1. I am sending the following court document:** supplemental responses to Records Subpoena only served on Barbara G. Smith flash drive certified mail 70200090000205334340

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
*First* *Middle* *Last*

Address: 200 S. Wacker Drive, Suite 2550 Chicago Illinois 60606
*Street, Apt #* *City* *State* *ZIP*

Email address: gflynn@karballaw.com

In **1b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☐ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☑ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 07/07/2022 *Date* at: 10:00 *Time* ☑ a.m. ☐ p.m.



Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
Page 1 of 2

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **2b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the

In **c**, fill in the date and time that you are sending the document.

If you are sending your document to more than 2 parties or lawyers, check the box and file the *Additional Proof of Delivery* with this form.

**2.** I am sending this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:

☐ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

☐ Personal hand delivery to:

- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: _____ at: _____ ☐ a.m. ☐ p.m.
*Date* *Time*

☐ I have completed an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Enter your complete address, telephone number, and email address, if you have one.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

61684530
*Attorney # (if any)*

707 skokie Blvd. #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
Page 2 of 2
Purchased from re:SearchIL
C 834

C 835
Purchased from re:SearchIL

** FILED ** Env: 18587480
McHenry County, Illinois
2017LA000377
Date: 7/7/2022 5:56 PM
Katherine M. Keefe
Clerk of the Circuit Court

**This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.**

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry **COUNTY**

# PROOF OF DELIVERY

*For Court Use Only*

| Instructions ▾ | |
|---|---|
| Directly above, enter the name of the county where the case was filed. | |
| Enter the name of the person or company that filed this case as Plaintiff/Petitioner. | Paul Dulberg<br>**Plaintiff / Petitioner** *(First, middle, last name or Company)* |
| | v. |
| Enter the name of the Defendants/ Respondents. | Hans Mast & The Law Offices of Thomas J Popovich PC.<br>**Defendants / Respondents** *(First, middle, last name, or business name)* |
| Enter the Case Number given by the Circuit Clerk. | 17 LA 377<br>**Case Number** |

In **1**, enter the name of each court document you are sending.

**1. I am sending the following court document:** N otice of Deposition For Records only

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

a. To:

Name: George K. Flynn
*First Middle Last*

Address: 200 S. Wacker Drive, suite 2550 Chicago Illinois 60606
*Street, Apt # City State ZIP*

Email address: gflynn@karballaw.com

In **1b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

- ☐ Personal hand delivery to:
  - ☐ The party
  - ☐ The party's family member who is 13 or older, at the party's residence
  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

In **c**, fill in the date and time that you are sending the document.

c. On: 07/07/2022 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.



Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377

Page 1 of 2

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

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**2.** I am sending this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:

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*Date* *Time*

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Enter your complete address, telephone number, and email address, if you have one.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

61684530
*Attorney # (if any)*

707 Skokie Blvd. #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



Received 07-08-2022 10:42 AM / Circuit Clerk Accepted on 07-08-2022 10:43 AM / Transaction #18587480 / Case #2017LA000377
Page 2 of 2
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C 836

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| **PAUL DULBERG,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 17 LA 377** |
| | ) | |
| **THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

*KATHERINE M. KEEFE*
Clerk of the Circuit Court
****** FILED ******
07/11/2022 3:22 PM
McHenry County, Illinois
22nd Judicial Circuit
**********

**ORDER**

**THIS CAUSE COMING TO BE HEARD** for Status, due notice having been given, and the Court being fully advised in the premises:

**IT IS ORDERED:**

1. On the Court's motion, F(1) discovery is closed;

2. Plaintiff is granted leave to issue a subpoena to The Clinton Law Firm; and

3. A status hearing is set for **September 16, 2022** at **9:30 a.m.** per the Court's order.

   **Zoom information for Room 201**:
   Link: https://zoom.us/my/mchenrycourtroom201;
   Meeting ID: 272-959-8070
   Personal Link Name: mchenrycourtroom201;
   Password: no password required

***Prepared by:***

Atty. No. George K. Flynn/ARDC No. 6239349
Name: Karbal, Cohen, Economou, Silk & Dunne, LLC
Attorney for: Defendants
Address: 200 S. Wacker Drive, Suite 2550
City: Chicago, IL 60606
Telephone: (312) 431-3700
E-Mail: gfynn@karballaw.com

7/11/2022

…….., 2022

ENTER:

Thomas A. Meyer
……
Judge Judge's No.

Thomas Meyer

**CLERK OF CIRCUIT COURT OF MCHENRY COUNTY**

Purchased from re:SearchIL

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

FILED - Env: 18999306
McHenry County, Illinois
2017LA000377
Date: 8/8/2022 4:20 PM
Katherine M. Keefe
Clerk of the Circuit Court

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry ☑ **COUNTY**

# PROOF OF DELIVERY

*For Court Use Only*

**Instructions**

Directly above, enter the name of the county where the case was filed.

Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendants/ Respondents.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
**Plaintiff / Petitioner** *(First, middle, last name or Company)*

v.

Hans Mast & Law Offices of Thomas J. Popovich, P. C.
**Defendants / Respondents** *(First, middle, last name, or business name)*

17 LA 377
**Case Number**

In **1**, enter the name of each court document you are sending.

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **1b**, check the box to show how you are sending the document.

**CAUTION:** If you and the person you are sending the document to have an email address, you **must** use one of the first two options. Otherwise, you may use one of the other options.

In **c**, fill in the date and time that you are sending the document.

**1. I am sending the following court document:** Notice of Deposition For Records Only

Julia C. Williams & Williams Law,LLC

a. To:

Name: George K. Flynn
*First Middle Last*

Address: 200 S. Wacker Drive, Suite 2550 Chicago, Illinois 60606
*Street, Apt # City State ZIP*

Email address: gflynn@karballaw.com

b. By:

☑ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

*Only use one of the methods below if you do not have an email address, or the person you are sending the document to does not have an email address.*

☐ Personal hand delivery to:
- ☐ The party
- ☐ The party's family member who is 13 or older, at the party's residence
- ☐ The party's lawyer
- ☐ The party's lawyer's office

☐ Mail or third-party carrier

c. On: 08/08/2022 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.



Received 08-09-2022 08:18 AM / Circuit Clerk Accepted on 08-09-2022 09:37 AM / Transaction #18999306 / Case #2017LA000377
Purchased from re:SearchIL

Enter the Case Number given by the Circuit Clerk: 17 LA 377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

In **2a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

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**2.** I am sending this document:

a. To:

Name: _____
*First* *Middle* *Last*

Address: _____
*Street, Apt #* *City* *State* *ZIP*

Email address: _____

b. By:

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*Date* *Time*

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Enter your complete address, telephone number, and email address, if you have one.

**I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/ Alphonse A. Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

61684530
*Attorney # (if any)*

707 Skokie Blvd. #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

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Received 08-09-2022 08:18 AM / Circuit Clerk Accepted on 08-09-2022 09:37 AM / Transaction #18999306 / Case #2017LA000377
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**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

**NOTICE OF DEPOSITIONS FOR RECORDS ONLY**

**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**200 So. Wacker Drive, Suite 2550**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**
**Linda Walters on behalf of George K. Flynn**
**lwalters@karballaw.com**

***You are hereby notified*** that on August 31, 2022, at 10:00 A.M. at 707 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 the depositions of: Julia Christine Williams, Individually and as manager of Williams Law, LLC, 111 West Washington Street Suite 1437, Chicago, Illinois 60602-2708 will be taken for discovery in this case.

**THERE WILL BE NO INTERROGATION OF THE DEPONENTS**



Received 08-09-2022 08:18 AM / Circuit Clerk Accepted on 08-09-2022 09:37 AM / Transaction #18999306 / Case #2017LA000377
Purchased from re:SearchIL

PLEASE TAKE NOTICE that on August 8, 2022, I served the parties by email:

- **SUBPOENA FOR DOCUMENTS to Julia Christine Williams, Individually and as manager of Williams Law, LLC;**
- **AFFIDAVIT OF SERVICE UPON Julia Christine Williams, Individually and as manager of Williams Law, LLC.**

Copies of which are attached hereto and herewith served upon you.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF SERVICE

I , Alphonse A. Talarico, an attorney, certify that on August 8, 2022, I caused to be served the attached listed Notice Of Deposition For Records Only, Subpoena and Affidavit of Service to the above-listed person(s) by sending it to the named person(s)' email in accordance with Ill.S.Ct.R. 11(b) and Ill.S.Ct.R. 201(m).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: August 8, 2022



Received 08-09-2022 08:18 AM / Circuit Clerk Accepted on 08-09-2022 09:37 AM / Transaction #18999306 / Case #2017LA000377
Purchased from re:SearchIL

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

FILED - Env: 18999306
McHenry County, Illinois
2017LA000377
Date: 8/8/2022 4:20 PM
Katherine M. Keefe
Clerk of the Circuit Court

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry ☑ **COUNTY**

# PROOF OF DELIVERY

*For Court Use Only*

**Instructions**

Directly above, enter the name of the county where the case was filed.

Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendants/ Respondents.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
**Plaintiff / Petitioner** *(First, middle, last name or Company)*

v.

Hans Mast & Law Offices of Thomas J. Popovich, P. C.
**Defendants / Respondents** *(First, middle, last name, or business name)*

17 LA 377
**Case Number**

In **1**, enter the name of each court document you are sending.

In **1a**, enter the name, mailing address, and email address of the party you are sending the document to. If they have a lawyer, you **must** enter the lawyer's information.

In **1b**, check the box to show how you are sending the document.

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In **c**, fill in the date and time that you are sending the document.

**1. I am sending the following court document:** Notice of Deposition For Records Only

Edward X. Clinton & Clinton Law Firm, LLC

a. To:

Name: George K. Flynn
*First* *Middle* *Last*

Address: 200 S. Wacker Drive, Suite 2550 Chicago, Illinois 60606
*Street, Apt #* *City* *State* *ZIP*

Email address: gflynn@karballaw.com

b. By:

☑ An approved electronic filing service provider (EFSP)

☐ Email *(not through an EFSP)*

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c. On: 08/08/2022 *Date* at: 4:30 *Time* ☐ a.m. ☑ p.m.



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Purchased from re:SearchIL

Enter the Case Number given by the Circuit Clerk: 17 LA 377

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*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

61684530
*Attorney # (if any)*

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Page 2 of 4
Purchased from re:SearchIL

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**McHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| PAUL DULBERG, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. 17LA 377 |
| | ) | |
| THE LAW OFFICE OF THOMAS J. POPOVICH, P.C., and HANS MAST | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

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**TO: GEORGE K. FLYNN**
**KARBAL COHEN ECONOMOU SILK DUNNE, LLC**
**ARDC No. 6239349**
**200 So. Wacker Drive, Suite 2550**
**Chicago, Illinois 60606**
**(312) 431-3700 Attorneys for Defendants**
**gflynn@karballaw.com**
**Linda Walters on behalf of George K. Flynn**
**lwalters@karballaw.com**

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- **AFFIDAVIT OF SERVICE UPON Julia Christine Williams, Individually and as manager of Williams Law, LLC.**

Copies of which are attached hereto and herewith served upon you.

*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

By: Alphonse A. Talarico
Plaintiff's attorney
707 Skokie Boulevard Suite 600
Northbrook, Illinois 60022
(312) 808-1410
ARDC No. 6184530
contact@lawofficeofalphonsetalarico.com
alphonsetalarico@gmail.com

## AFFIDAVIT OF SERVICE

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*/s/ Alphonse A. Talarico*
Alphonse A. Talarico

Date: August 8, 2022



Received 08-09-2022 08:18 AM / Circuit Clerk Accepted on 08-09-2022 09:37 AM / Transaction #18999306 / Case #2017LA000377
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C 846
Purchased from re:SearchIL

** FILED ** Env: 19487903
McHenry County, Illinois
2017LA000377
Date: 9/14/2022 12:14 PM
Katherine M. Keefe
Clerk of the Circuit Court

**This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.**

**STATE OF ILLINOIS, CIRCUIT COURT**

McHenry **COUNTY**

# PROOF OF DELIVERY

*For Court Use Only*

**Instructions**

Directly above, enter the name of the county where the case was filed.

Enter the name of the person or company that filed this case as Plaintiff/Petitioner.

Enter the name of the Defendants/ Respondents.

Enter the Case Number given by the Circuit Clerk.

Paul Dulberg
**Plaintiff / Petitioner** *(First, middle, last name or Company)*

v.

Hans Mast & Law Offices of Thomas J. Popovich, P.C.
**Defendants / Respondents** *(First, middle, last name, or business name)*

17 LA 377
**Case Number**

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In **c**, fill in the date and time that you are sending the document.

**1. I am sending the following court document:** Dulberg's Amended Answers to the Law Offices of Thomas J. Popovivh P.C. Interrogatories to Plaintiff.

a. To:

Name: George K. Flynn
*First Middle Last*

Address: 200 S. Wacker Drive, Suite 2550 Chicago Illinois 60606
*Street, Apt # City State ZIP*

Email address: gflynn@karballaw.com

b. By:

- ☑ An approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFSP)*

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  - ☐ The party's lawyer
  - ☐ The party's lawyer's office
- ☐ Mail or third-party carrier

c. On: 09/14/2022 *Date* at: 4:00 *Time* ☐ a.m. ☑ p.m.



Received 09-14-2022 04:09 PM / Circuit Clerk Accepted on 09-14-2022 04:11 PM / Transaction #19487903 / Case #2017LA000377

In **2**, if you are sending the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

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**2.** I am sending this document:

a. To:

Name: _____
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/s/ Alphonse A, Talarico
*Your Signature*

Alphonse A. Talarico
*Print Your Name*

(312) 808-1410
*Telephone*

61684530
*Attorney # (if any)*

707 Skokie Blvd. #600
*Street Address*

Northbrook, Illinois 60062
*City, State, ZIP*

contact@lawofficeofalphonsetalarico.com
*Email*

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.



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** FILED ** Env: 19502183
McHenry County, Illinois
2017LA000377
Date: 9/15/2022 10:18 AM
Katherine M. Keefe
Clerk of the Circuit Court

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**
**MCHENRY COUNTY, ILLINOIS**

| | | |
|---|---|---|
| Paul Dulberg,<br><br>Plaintiff,<br><br>v.<br><br>The Law Offices of Thomas J. Popovich, P.C., And Hans Mast,<br><br>Defendants. | ) | Case No. 17 LA 000377<br>Jury Demand<br>(Court Room 201) |

## NOTICE OF MOTION

**TO: ALL ATTORNEYS OF RECORD – See Attached Service List**

PLEASE TAKE NOTICE that on the **16th day of September 2022 at 9:30 a.m.** or as soon thereafter as this motion may be heard, we shall appear before the Honorable Judge Thomas A. Meyer or any Judge sitting in his place or stead, in Room 201, at McHenry County Government Center, 2200 N. Seminary Avenue (Route 47), Woodstock, IL 60098, and shall then and there present DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION/MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT, a copy of which is attached hereto and herewith served upon you.

Dated this 15th day of September 2022 in Chicago, Illinois.

George K. Flynn (ARDC #6239349)
KARBAL COHEN ECONOMOU SILK DUNNE, LLC
200 So. Wacker Drive, Suite 2550
Chicago, Illinois 60606
Tel: (312) 431-3700
gflynn@karballaw.com

## AFFIDAVIT OF SERVICE

I, the undersigned, a non-attorney, certify that this Notice was served to all parties listed as service contacts in the Odyssey eFileIL system, and by email to the attached service list on September 15, 2022.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

*/s/ Linda Walters*
Linda Walters

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## SERVICE LIST

| **Plaintiff's Attorney** | |
|---|---|
| Alphonse A. Talarico<br>Law Office of Alphonse A. Talarico<br>707 Skokie Blvd 6th Floor Suite<br>Northbrook, IL 60062-2841<br>contact@lawofficeofalphonsetalarico.com<br>(312) 808-1410 | |

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