

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CIVIL NO. 9:14-cv-81046**

OCWEN LOAN SERVICING, L.L.C.,

Plaintiff,

v.

CONNOLLY, GEANEY, ABLITT & WILLARD,
P.C., a Rhode Island professional corporation, f/k/a
ABLITT SCOFIELD P.C., JOHN CONNOLLY,
JR., an individual, KEVIN GEANEY, an
individual, STEVEN ABLITT, an individual,
RACHELLE WILLARD, an individual, ROBERT
FEIGE, an individual, LAWRENCE SCOFIELD,
an individual, DURHAM COMMERCIAL
CAPITAL CORP., a New York corporation,

Defendants.

AMENDED COMPLAINT

Plaintiff Ocwen Loan Servicing, LLC, by and through its undersigned counsel, hereby brings this amended complaint against Defendant Connolly, Geaney, Ablitt and Willard, P.C., a Rhode Island corporation formerly known as Ablitt Scofield, P.C., Defendants John Connolly, Kevin Geaney, Steven Ablitt, Rachelle Willard, Robert Feige, Lawrence Scofield, as individuals, and Defendant Durham Commercial Capital Corp., a New York corporation, and as grounds therefore alleges as follows:

INTRODUCTION

1. Ocwen Loan Servicing, LLC ("**Ocwen**") brings this amended action against its former attorneys, John Connolly ("**Connolly**"), Kevin Geaney ("**Geaney**"), Steven Ablitt ("**Ablitt**"), Rachelle Willard ("**Willard**"), and Lawrence Scofield ("**Scofield**") (collectively, the

“**Law Partners**”), their law firm Connolly, Geaney, Ablitt and Willard, P.C., formerly known as Ablitt Scofield, P.C. (“**CGAW**” or the “**Law Firm**”), the Firm’s Chief Operating and Financial Officer, Robert Feige (“**Feige**”) and an investment firm that claims it has a right to collect legal fees from Ocwen. During the course of Ocwen’s representation by CGAW, the Law Firm and/or the Law Partners committed malpractice and engaged in conduct that was unethical, wrongful, negligent, and fraudulent. CGAW, and the Law Partners, regularly placed their interests above Ocwen’s interests. CGAW, the Law Partners and Feige mismanaged trust accounts containing funds belonging to Ocwen resulting in the misappropriation of at least \$1.6 million of Ocwen’s money. Rather than disclose their mismanagement and wrongful conduct, however, CGAW, Feige and/or the Law Partners failed to communicate with Ocwen, made overt misrepresentations to Ocwen, and did not make any meaningful disclosures of pertinent information to Ocwen until after they purported to abandon their law practice.

2. In this action, Ocwen seeks to recover the funds that CGAW, Feige and the Law Partners mismanaged and misappropriated. In addition, Ocwen seeks a declaration establishing its rights under the June 11, 2012 Local Counsel Agreement (the “**LCA**”), between Ocwen and CGAW. Ocwen seeks to establish that any legal fees currently being claimed by the Defendants are offset by the Defendants’ misconduct and, in any case, such fees are improper, unreasonable and unconscionable. Ocwen further seeks to establish that, because of the breach of CGAW and the Law Partners’ ethical, fiduciary, and statutory obligations to Ocwen, CGAW should be required to disgorge and forfeit CGAW’s right to any fees.

3. As set forth in more detail below, Ocwen alleges the following causes of action against CGAW: (a) malpractice; (b) breach of fiduciary duty; (c) breach of contract; (d) indemnity; (e) declaratory relief; (f) unfair and deceptive acts and practices; (g) conversion;

(h) action for accounting (i) fraud/misrepresentation; (j) fraud by suppression; (k) negligence; and (l) breach of implied covenant of good faith and fair dealing. Ocwen seeks to recover any and all damages, including compensatory damages and costs incurred by Ocwen due to the Defendants' misconduct as well as attorneys' fees and punitive damages for CGAW's, Feige's and the Law Partners wanton and willful violation of law.

4. As set forth in more detail below, Ocwen also alleges that Feige and each of the Law Partners disregarded corporate formalities, intermingled business and personal assets, were insolvent at the time they engaged in the misconduct, used the corporation to promote their fraudulent activities, failed to maintain corporate records, were thinly capitalized and Feige and each of the Law Partners failed to play a functioning role with respect to the operations of CGAW. Additionally, and as further alleged herein, Feige and each of the Law Partners benefitted personally from the wrongful conduct alleged herein, including using misappropriated funds to pay for their salaries and bonuses. As such, Ocwen alleges the following causes of action against Feige and each of the Law Partners, individually: (a) malpractice; (b) breach of fiduciary duty; (c) indemnity; (d) unfair and deceptive acts and practices; (e) conversion; (f) action for accounting; (g) fraud/misrepresentation; (h) fraud by suppression; and (i) negligence. Ocwen seeks to recover any and all damages, including compensatory damages and costs incurred by Ocwen, due to Feige's and/or the Law Partners' misconduct, as well as attorneys' fees and punitive damages for Feige's and/or the Law Partners' wanton and willful violation of law.

5. Ocwen also brings this action against Defendant Durham Commercial Capital Corp. ("**Durham Capital**") as result of Durham Capital's misconduct, including Durham Capital's claim that it is entitled to collect legal fees from Ocwen pursuant to a November 7,

2012 Nonrecourse Receivables Purchase Contract and Security Agreement (the “Factoring Agreement”) between Durham Capital and CGAW to which Ocwen was not a party. The Factoring Agreement purports to assign CGAW’s accounts receivable to Durham Capital. The Factoring Agreement also gives Durham Capital the right to inspect, audit, and make copies of books, records, correspondence, and other data, including confidential attorney-client information of Ocwen and other clients, and grants Durham Capital power of attorney-in-fact, effectively allowing Durham Capital, a non-lawyer, to control CGAW.

6. Durham Capital wrongfully relies on the Factoring Agreement to claim that any invoice that Ocwen paid directly to CGAW was in derogation of Durham Capital’s rights. Durham Capital also contends that Ocwen is obligated to pay to Durham Capital all amounts that Ocwen paid to CGAW on prior invoices and that any amounts CGAW presently claims Ocwen owes CGAW are actually owed to Durham Capital. As set forth in more detail below, Ocwen alleges the following cause of action against Durham Capital: declaratory judgment.

PARTIES

7. Ocwen is a Delaware limited liability company with its principal place of business at 1661 Worthington Road, Suite 100, West Palm Beach, Florida.

8. Durham Capital is a New York corporation with its principal place of business at 101 Sullys Trail, Building 20, Pittsford, Monroe County, New York 14534.

9. CGAW is a Rhode Island professional corporation engaged in the practice of law with a principal office at 304 Cambridge Road, Woburn, Middlesex County, Massachusetts 01801. CGAW is also a foreign corporation registered to do business in Florida, with offices in Florida, located at 100 South Dixie Highway, Suite 200, West Palm Beach, FL 33401.

10. Connolly, an individual, is a citizen and resident of Massachusetts. Connolly is the President and a Director of CGAW, as listed on the Florida Secretary of State website.

11. Geaney, an individual, is a citizen and resident of Massachusetts. Geaney is Vice President and a Director of CGAW, as listed on the Florida Secretary of State website.

12. Ablitt, an individual, is a citizen and resident of Massachusetts. Ablitt was a named partner with CGAW.

13. Willard, an individual, is a citizen and resident of Massachusetts. Willard is Treasurer, Secretary and a Director of CGAW, as listed on the Florida Secretary of State website.

14. Scofield, an individual, is a citizen and resident of Massachusetts. Scofield is a former partner of CGAW and was a partner during the time the actions complained of herein occurred.

15. Feige, an individual, is a citizen and resident of Massachusetts. Feige is the Chief Financial Operator and Chief Operating Officer of CGAW, as listed on the Florida Secretary of State website.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(2), because the amount in controversy exceeds the value and sum of \$75,000.00, exclusive of interest and costs, and because the controversy is between citizens of different states.

17. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) because, upon information and belief, Defendant CGAW has an office in West Palm Beach, Florida and, upon information and belief, the Defendants engaged in systematic and not isolated business in this District.

18. Venue is also proper in this Judicial District pursuant to the LCA, which provides that the State of Florida is “the exclusive venue for the litigation of any and all disputes arising from, or related to, any of the rights or obligations of any parties to this Agreement.”¹

19. Venue is proper in this Judicial District because CGAW is registered to do business in Florida and each of CGAW’s principals, Connolly, Geaney, Willard and Ablitt, are registered officers and directors of CGAW.

20. Venue is proper in this Judicial District because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in West Palm Beach, Florida, including Ocwen’s execution of the LCA; the referral of default services legal matters to be handled by the Law Firm under the LCA and Ocwen’s payments and processing of invoices from the Law Firm for services rendered by the Law Firm under the LCA.

CONDITIONS PRECEDENT

21. All conditions precedent to this action have occurred, have been waived, have been otherwise excused or have been averred specifically in this Amended Complaint.

FACTUAL ALLEGATIONS

22. Ocwen retained CGAW and the Law Partners to conduct residential foreclosures and other default related legal services in Florida, Massachusetts, Rhode Island, New Hampshire and Puerto Rico for a number of years.

¹ Ocwen’s LCA with the Firm is protected by the attorney-client privilege and is considered to contain confidential, proprietary and trade secret information of Ocwen. As such, Ocwen is not attaching the LCA at issue to its Complaint but will provide same to CGAW or any of the individual defendants upon request and pursuant to a protective order. Ocwen will also provide the LCA either *in camera* or under seal at the Court’s request.

23. In connection with the legal services that CGAW and the Law Partners provided to Ocwen, CGAW would send invoices to Ocwen for services rendered and Ocwen would pay CGAW directly.

24. Ocwen relied on updates and advice from CGAW and the Law Partners, in making business and legal decisions relating to: (a) the defaults, foreclosures, bankruptcies or evictions handled by CGAW, (b) the amounts and safekeeping of proceeds collected on any of those files, and (c) decisions relating to whether to continue to retain CGAW to handle those files.

The June 11, 2012 Local Counsel Agreement Between Ocwen and CGAW

25. On June 11, 2012, Ocwen and CGAW entered into the LCA whereby Ocwen retained CGAW to provide default related services in connection with the processing of foreclosure, bankruptcy and/or eviction actions in the states of Florida, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico.

26. Under the LCA, CGAW is required to provide legal services in accordance with the terms of the LCA and to comply with its duties under applicable law. (LCA, ¶3)

27. Under the LCA, CGAW is required to perform all services competently and perform all services in accordance with applicable federal, state and local law and practice, in all states in which they were providing legal services to Ocwen. (LCA, ¶2, subsection A)

28. Under the LCA, CGAW is required to identify any actual or potential conflicts of interest and to disclose all conflicts of interest to Ocwen. (LCA, ¶2, subsection B).

29. Under the LCA, CGAW is required to perform all services in a timely manner. (LCA, ¶2, subsection C).

30. Under the LCA, CGAW is required to maintain current and accurate files and ensure that these files are available to Ocwen at all times. (LCA, ¶2, subsection E).

31. Under the LCA, CGAW is required to provide Ocwen with prompt notice of any issue or update, which may have important legal, public relations or policy implications for Ocwen. (LCA, ¶2, subsection G).

32. Under the LCA, CGAW is required to take steps to ensure that it will implement and maintain safeguards to protect any non-public personal information it may acquire in the course of representation. (LCA, ¶2, subsection H)

33. Under the LCA, CGAW is required to invoice Ocwen electronically through Ocwen's processing system. (LCA, ¶2, subsection K).

34. Under the LCA, CGAW is required to escalate any important issue and communicate with Ocwen regarding any important issue that arises during representation. (LCA, ¶2, subsection N).

35. Under the LCA, CGAW is also required and covenants, represents and warrants that CGAW will not assign the LCA, or any obligation, right or benefit under the LCA, to any third party, without prior written consent of Ocwen. (LCA, ¶11).

36. In the event that CGAW does not perform according to the terms of the LCA or applicable law, or breaches the covenants set forth above, Ocwen expressly reserved various rights under the LCA, including but not limited to, the removal of Ocwen's files, discontinuing referrals, reducing or denying payment, and the pursuit of "all other remedies that are available." (LCA, ¶3)

Mismanagement of Ocwen Funds by CGAW and the Law Partners

37. In relation to the legal services that CGAW and the Law Partners provided to Ocwen under the LCA, CGAW collected proceeds belonging to Ocwen (*e.g.*, from the sale of foreclosed properties) and deposited those proceeds in interest bearing accounts, known as Interest On Lawyer Trust Accounts (IOLTA) or client trust accounts.

38. On June 10, 2014, Ocwen held a customary on-site review of CGAW. During that review, CGAW was unprepared and could not provide the requested documentation or information to the reviewers. Shortly after the review, CGAW notified Ocwen that CGAW would be suspending its operations because of financial difficulties.

39. On or about July 14, 2014, Ocwen learned for the first time that CGAW had been unable to pay its employees or cover the operating costs of the Law Firm. Ocwen further learned that since 2012, CGAW had been operating on the verge of insolvency and had been using Ocwen's IOLTA proceeds to fund the day to day operations of the Law Firm.

40. Upon information and belief, during the time that CGAW was operating in the zone of insolvency, Feige and the Law Partners disregarded corporate formalities, including allowing a third party, Durham Capital, to act as an attorney-in-fact, and de-factor controller, of CGAW's finances.

41. Upon information and belief, CGAW was insolvent at the time that the Law Firm, Feige and/or the Law Partners misappropriated IOLTA funds, and therefore used these funds to continue the operation of CGAW. This allowed Feige and the Law Partners to utilize the corporate structure to promote their fraudulent activities, including misappropriating the funds for personal use.

42. Upon information and belief, Feige and the Law Partners paid themselves large bonuses and salaries with funds belonging to Ocwen, at a time when CGAW was insolvent and/or having financial difficulties.

43. Upon information and belief, CGAW was thinly capitalized and the Law Partners used funds entrusted to them by their clients to provide the capital necessary to support the operating expenses of the Law Firm.

44. Upon information and belief, Feige and/or the Law Partners co-mingled their own personal accounts with the Law Firm's business accounts, including using personal funds to pay client IOLTA funds when pressured by clients to turnover amounts due.

45. Upon information and belief, the Law Partners disregarded their corporate positions, as evidenced by their failure to supervise CGAW's operations.

46. The misuse of client funds and misappropriation of property belonging to a client is in direct violation of each of the applicable state's rules of professional conduct. Likewise, each of the Law Partners violated their duty to avoid any conflict of interest (*i.e.* the lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to act imprudently.), as well as the covenants contained in the LCA.

47. Ocwen is aware of funds, in excess of \$1,602,528.69 belonging to Ocwen, which are missing from two of CGAW's IOLTA accounts as a direct result of CGAW's, Feige's and the Law Partners' mismanagement and misappropriation. Upon information and belief, these funds were used to pay Feige's and the Law Partners' salaries, bonuses and other expenditures directly benefiting the Law Partners. Attached hereto as Exhibit "1", is a document entitled "IOLTA Liability" provided to Ocwen by CGAW.

48. Upon information and belief, Feige and each of the Law Partners were aware of the mismanagement and misappropriation of the IOLTA funds. When confronted, Connolly, Geaney, and Willard asserted that they first discovered the misappropriation of Ocwen's funds on August 28, 2013, that they immediately opened a replacement IOLTA account, and that the replacement IOLTA account was maintained properly since August 2013.

49. Despite allegedly becoming aware of the misappropriation in 2013, CGAW, Feige and the Law Partners failed to inform, communicate, advise or disclose to Ocwen that over \$1.6 million in funds belonging to Ocwen were missing from CGAW's IOLTA accounts or that the IOLTA funds were used by CGAW to fund CGAW's operations and the salaries and bonuses of its employees, including those of Feige and the Law Partners, through July 2014.

50. This failure to advise Ocwen of the misappropriation of Ocwen's funds on or after August 28, 2013 is in direct violation of each state bar's rules of professional conduct as well as the covenants contained in the LCA. There was no justification in concealing this information from Ocwen for almost a year until specifically confronted. Likewise, the failure to advise Ocwen of the Law Firm's distressed financial condition and concealing that information for more than two years is a breach of the applicable state bar's rules of professional conduct as well as the covenants contained in the LCA.

51. To date, CGAW, Feige and the Law Partners have failed to compensate or otherwise repay the misappropriated funds to Ocwen.

The Factoring Agreement Between Durham Capital and CGAW

52. Durham Capital claims that on November 7, 2012, it entered into a factoring agreement with CGAW pursuant to which CGAW sold or purported to assign to Durham Capital

certain accounts receivable owed by its clients at a discounted price, entitling Durham Capital to receive any payments made with respect to the assigned invoices.

53. Durham Capital claims that on December 21, 2012, September 10, 2013, and January 7, 2014, it sent Ocwen a notice of the assignment of CGAW's accounts receivable owed by Ocwen. Copies of the three notices are annexed hereto as Exhibit "2" (the "Notices of Assignment").

54. The Notices of Assignment requested Ocwen's agreement and acceptance.

55. Ocwen never agreed or consented either orally or in writing to the assignment to Durham Capital of CGAW's rights to payment from Ocwen.

56. CGAW's purported assignment of the accounts receivable to Durham Capital violates the LCA and the applicable rules of professional conduct and is therefore void and unenforceable. In addition, the purported assignment was unlawful, against public policy, and beyond the authority of CGAW to grant.

57. More specifically, the assignment of accounts receivable owing by Ocwen violates CGAW's duties to maintain the confidentiality of its dealings with its client, results in the unauthorized disclosure of privileged communications and information, constitutes self-dealing by CGAW, which was not in Ocwen's best interests as its client, and constitutes an unauthorized fee sharing agreement between an attorney and a non-lawyer.

58. CGAW and the Law Partners provided legal services to Ocwen in several states, including Massachusetts. CGAW and the Law Partners are subject to the rules of professional conduct governing the conduct of attorneys in every state in which they are licensed or provided legal services. The Massachusetts Bar Association has issued an ethics opinion, Ethics Opinion

82-3, which states that “[a] lawyer may sell an account receivable due from a client for unpaid legal fees only with the client’s consent after full disclosure.”

59. The Massachusetts Bar Association’s opinion is consistent with ethics opinions in other jurisdictions, including those jurisdictions in which CGAW had offices and practiced law, operating under the Model Rules of Professional Conduct on which the Massachusetts rules are based. See for example:

Arizona Ethical Opinion 98-05

“It is unethical for a lawyer to sell his client accounts receivable to a factor, even with the consent of each client involved after consultation, because the client cannot have received from the lawyer sufficient information regarding the effects of disclosure.” Relying on Rule 1.7.

“It is unethical for a lawyer to enter into a factoring agreement that permits the factor to directly contact each client to request and demand payment because the factor could rely on otherwise confidential and privileged information in enforcing payment of the client accounts receivable.” Relying on Rule 1.6.

“It is unethical for a lawyer to enter into a factoring agreement calling for the outright sale of client accounts receivable because the agreement constitutes a sharing of legal fees by a lawyer with a non-lawyer.” Relying on Rules 1.8 and 5.4.

Kansas Ethics Opinion 94-08

“The proposal to assign client accounts to a bank in return for a discounted loan may be permissible but amounts to self-dealing for the attorney and is not permissible under the Model Rules unless there is consent, after full disclosure, by the client, which under Kansas case law may require independent advice of counsel. We feel such an assignment, if undertaken, should be restricted to clients for whom the legal work is complete, the fee is reasonable, the attorney has a right to collect the fee, the balance due is undisputed, and the information to be conveyed to the bank is limited to name, address and the amount due.” Relying on Rules 1.5, 1.6 and 5.4.

District of Columbia Bar Ethics Opinion 298

“Thus, there may be types of assignments of accounts receivable that can be made consistent with a lawyer’s ethical obligations.

The key consideration is whether the lawyer retains sufficient control over the collection process (including any fee litigation that may arise) to satisfy her ethical responsibilities. . . Sufficient control would require, at a minimum, that the lawyer remain informed about efforts to collect the debt, and be able to veto activities that are inconsistent with the lawyer's legal or ethical requirements. In addition, disclosure of the assignment should be made to the client to avoid confusion. These issues must be addressed in each case of assignments of accounts receivable." Relying on Rules 1.5, 1.6, 5.3 and 5.4.

See also **ABA/BNA Lawyers' Manual on Prof. Conduct 41:2010 (Sale or Assignment of Claim); Texas Ethics Opinion 464; Iowa Ethics Opinion 81-37; Maine Ethics Opinion 152; Illinois Advisory Opinion 93-4.**

60. Durham Capital claims that, following the delivery of the Notice of Assignment to Ocwen, Ocwen failed to direct payment to Durham Capital and instead paid CGAW directly.

61. Durham Capital claims that under Section 9-406 of the Uniform Commercial Code, it is entitled to recover from Ocwen all amounts paid by Ocwen to CGAW following the delivery of the Notice of Assignment to Ocwen.

62. Despite requests from Ocwen to provide documents showing that the assignment had been made under 9-406, to date Durham Capital has failed to provide such documentation to Ocwen.

63. In a July 8, 2014 demand letter to Ocwen, Durham Capital claimed that Ocwen owes it \$40,535.00 in fees previously paid by Ocwen to CGAW and the additional amount of \$265,454.46 in fees currently owed to CGAW for a total of \$305,989.46. A copy of the July 8, 2014 demand letter is attached hereto as Exhibit "3".

64. Upon information and belief, Durham Capital also asserted itself as a "creditor in possession" of CGAW. As a "creditor in possession," Durham Capital allegedly controlled and operated CGAW for at least several weeks before CGAW announced that it was suspending operations.

65. CGAW's alleged assignment of accounts receivable to Durham Capital and Durham Capital's alleged control and operation of CGAW are unethical, illegal and void and the application of UCC § 9-406 under the circumstances is against public policy. In addition, any purported assignment of its accounts receivable by CGAW was *ultra vires* and unauthorized. As a result, Ocwen has no liability to Durham Capital.

66. Upon information and belief, some or all of the amounts paid by Ocwen to CGAW for legal services rendered were thereafter used by CGAW to pay Durham Capital and hence Durham Capital already received the payments it is claiming are owed by Ocwen.

67. As a result, Ocwen rejects the assertion that it owes Durham Capital any amounts for legal fees previously paid to CGAW. Ocwen further asserts that any amounts owed to CGAW for legal services have been extinguished as a result of their being set off against the damages CGAW has caused Ocwen as a result of CGAW's acts and omissions.

68. Ocwen spent multiple man hours and substantial expense to retrieve its files from CGAW's offices in Massachusetts and Puerto Rico. Ocwen asserts that any and all amounts incurred as a result of the transfer of files should be borne by CGAW and applied as a set off to any amounts owed to CGAW for legal services.

FIRST CAUSE OF ACTION
**(AGAINST CGAW FOR LEGAL MALPRACTICE,
BREACH OF LEGAL DUTY AND ETHICAL VIOLATIONS
AGAINST CGAW AND THE LAW PARTNERS)**

69. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

70. At all times pertinent herein, Ocwen retained CGAW and the Law Partners as counsel pursuant to the LCA, and relied on CGAW and the Law Partners for legal advice and counsel. CGAW and the Law Partners were obligated by the attorney-client relationship to fully,

fairly and competently represent Ocwen in all respects. At all times herein, Ocwen believed that it could rely on CGAW and the Law Partners for legal advice. Indeed, CGAW attorneys, including the Law Partners, held themselves out as experts in the legal matters for which they represented Ocwen.

71. At all times during the period of Ocwen's representation by CGAW and the Law Partners, CGAW attorneys, including the Law Partners, were obligated by the attorney-client relationship to deal fairly, justly, and honestly with Ocwen and to place Ocwen's interests before their own interests. The duty of honesty required CGAW and the Law Partners to not only avoid making untrue or misleading statements, but to disclose all information reasonably necessary for Ocwen to make informed decisions. CGAW and the Law Partners were further bound by the Rules of Professional Conduct, as well as the unfair trade practices statutes and the statutes regulating and controlling the conduct of lawyers, in all states in which they provided legal services or were licensed.

72. During the period of representation, CGAW and the Law Partners failed to exercise reasonable care, skill, and diligence in performing legal services for Ocwen and were negligent in their management of the trust accounts that held Ocwen's funds. CGAW and the Law Partners failed to segregate client funds, co-mingled client funds and operating accounts of CGAW, used client funds to pay salaries, bonuses, and other remuneration of the Law Partners.

73. Additionally, during the period of representation, CGAW and the Law Partners breached their attorney-client and ethical duties to Ocwen by failing to communicate, failing to supervise, and failing to report misconduct when discovered. CGAW and the Law Partners also made affirmative misrepresentations and fraudulent statements to Ocwen, failed to disclose and

purposefully withheld material information from Ocwen, and placed their own interests before those of Ocwen.

74. By virtue of the Factoring Agreement, CGAW and the Law Partners violated their ethical obligations by directly and indirectly sharing legal fees with a non-lawyer party, Durham Capital, and by disclosing attorney-client privileged information to a third party.

75. CGAW and the Law Partners also violated their obligation to avoid any conflict of interest, including the conflict created by virtue of the Law Partners' imprudent decision to continue operating CGAW while on the threshold of insolvency.

76. CGAW and the Law Partners' conduct as set forth above was a proximate cause of substantial and actual economic loss and damage to Ocwen, including the loss of Ocwen's funds from CGAW's IOLTA accounts.

SECOND CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY
AGAINST CGAW AND THE LAW PARTNERS)

77. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

78. At all times pertinent herein, Ocwen retained CGAW and the Law Partners as counsel pursuant to the LCA, and relied on CGAW and the Law Partners to act in the best interest of Ocwen. CGAW and the Law Partners were obligated by the fiduciary relationship to fully, fairly and competently represent Ocwen in all respects. At all times herein, Ocwen believed that it could trust and rely on CGAW and that CGAW and its Law Partners would exercise their expertise and discretion to act on Ocwen's behalf.

79. At all times during the period of Ocwen's representation by CGAW and the Law Partners, a fiduciary relationship existed between them. CGAW and the Law Partners were

obligated by the fiduciary relationship to deal fairly, justly, and honestly with Ocwen and to place Ocwen's interests before their own interests. The duty of honesty required CGAW and the Law Partners to not only avoid making untrue or misleading statements, but to disclose all information reasonably necessary for Ocwen to make informed decisions.

80. During the period of representation, CGAW and the Law Partners failed to exercise reasonable care, skill, and diligence in performing legal services for Ocwen and were negligent in their management and misappropriation of the trust accounts that held Ocwen's funds.

81. Additionally, during the period of representation, CGAW and its attorneys breached their fiduciary and ethical duties to Ocwen, made affirmative misrepresentations and fraudulent statements to Ocwen, failed to disclose and purposefully withheld material information from Ocwen, and placed their own interests before those of Ocwen.

82. CGAW and the Law Partners' conduct as set forth above was a proximate cause of substantial and actual economic loss and damage to Ocwen, including the loss of Ocwen's funds from CGAW's IOLTA accounts.

THIRD CAUSE OF ACTION
(BREACH OF CONTRACT AGAINST CGAW)

83. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

84. On June 11, 2012, Ocwen and CGAW entered into the LCA, which governed the default related legal services that CGAW provided to Ocwen.

85. Under the LCA, CGAW agreed, in pertinent part, to the following covenants, representations and warranties: to perform services competently, disclose any conflicts of interest, perform services timely, maintain all files, apprise client of any issues or updates which

may have legal, public relations or policy implications, to safeguard and protect any non-public personal information from disclosure to third parties, to submit all invoices electronically through Ocwen's processing system, and to escalate important issues to Ocwen within a timely manner.

86. Under the LCA, CGAW agreed to a covenant not to assign the LCA, or any rights, obligations or benefits thereunder, to third parties, without the written consent of Ocwen.

87. Without limitation, CGAW has breached the LCA, and violated each of the covenants, representations and warranties listed above by, among other things,

- (a) by virtue of CGAW's mismanagement and misappropriation of at least \$1.6 million in funds owed to Ocwen, including using such funds held in a client IOLTA account to pay for the day to day operating expenses of CGAW;
- (b) by failing to disclose and purposefully withholding material information from Ocwen and failing to apprise Ocwen of issues that have legal, public relations, and policy implications;
- (c) by assigning rights, obligations or benefits between Ocwen and CGAW to a third party, Durham Capital, without the written consent of Ocwen;
- (d) by failing to safeguard and protect non-public personal information of Ocwen's borrowers by virtue of the assignment of rights, obligations and benefits to Durham Capital, through the Factoring Agreement;
- (e) by failing to escalate important issues, such as the missing funds, financial difficulties and that the firm was on the brink of insolvency since 2012, to Ocwen in a timely manner;
- (f) by failing to submit all invoices to Ocwen electronically as required under the LCA, and instead, assigning the right to collect on these invoices to Durham Capital;
- (g) by failing to maintain possession, custody and control of all of Ocwen's files;
- (h) by failing to disclose conflicts of interests that arose by virtue of the financial difficulties experienced by CGAW and its operation on the verge of insolvency;

- (i) by violating the attorney-client privilege and professional responsibilities under each state's applicable rules of professional conduct; and
- (j) by violating state and federal law, ethical requirements, and other regulations including misappropriating property belonging to Ocwen.

88. Ocwen has incurred damages and will continue to incur damages as a result of the breach.

89. Pursuant to the LCA, CGAW agreed to pay all reasonable attorneys' fees and costs for any loss, damage, expense, harm or injury incurred by Ocwen, arising out of CGAW's acts or omissions under the LCA or pursuant to CGAW's services on behalf of Ocwen.

FOURTH CAUSE OF ACTION
(INDEMNITY AGAINST CGAW, FEIGE AND THE LAW PARTNERS)

90. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

91. Under the LCA, CGAW agreed to hold harmless and indemnify Ocwen for any and all loss, cost, expense (including reasonable attorneys' fees and expenses) related to any act or omission of CGAW under the LCA or in connection with any services provided on behalf of Ocwen. Ocwen has and will incur loss, cost, and expense by virtue of CGAW's acts and omissions under the LCA and pursuant to their representation of Ocwen.

92. Further, pursuant to equitable principals of indemnity, if this Court finds that the Factoring Agreement of CGAW's accounts receivable without Ocwen's explicit informed consent is enforceable, Ocwen seeks a judgment against CGAW, Feige, and the Law Partners, as joint and severable parties, in an amount equal to all amounts Ocwen paid CGAW, which Durham Capital alleges Ocwen is also obligated to pay to Durham Capital pursuant to the assignment of accounts receivable.

93. If this Court finds that the Factoring Agreement of CGAW's accounts receivable without Ocwen's explicit informed consent is enforceable, Ocwen also seeks a judgment against CGAW, Feige and the Law Partners, as joint and severable parties, and a set-off against any fee amounts owed to CGAW and assigned to Durham Capital, in an amount equal to the amount of funds CGAW misappropriated from Ocwen.

FIFTH CAUSE OF ACTION
ACTION FOR DECLARATORY JUDGMENT AGAINST
CGAW AND DURHAM CAPITAL

94. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

95. An actual and justiciable controversy exists between the parties as to their respective obligations with regard to the payment of legal fees resulting from CGAW's representation of Ocwen. Specifically, a controversy exists between CGAW and Ocwen in that Ocwen has demanded that its \$1.6 million in funds owed to Ocwen be returned and CGAW has failed to return or repay those funds. Likewise, Durham Capital has made a demand for \$305,989.46 to Ocwen for alleged unpaid accounts to CGAW, and has filed a crossclaim for breach of the statutory duty to pay on those accounts. Ocwen disputes that it owes any money to Durham Capital.

96. Ocwen has invoked ¶3 of the LCA, which grants Ocwen the right to deny payment to CGAW due to CGAW's breach of the LCA, and violation of each of the covenants, representations and warranties including, among other things,

- (a) by virtue of CGAW's mismanagement and misappropriation of at least \$1.6 million in funds owed to Ocwen, including using such funds held in a client IOLTA account to pay for the day to day operating expenses of CGAW;

- (b) by failing to disclose and purposefully withholding material information from Ocwen and failing to apprise Ocwen of issues that have legal, public relations, and policy implications;
- (c) by assigning rights, obligations or benefits between Ocwen and CGAW to a third party, Durham Capital, without the written consent of Ocwen;
- (d) by failing to safeguard and protect non-public personal information of Ocwen's borrowers by virtue of the assignment of rights, obligations and benefits to Durham Capital, through the Factoring Agreement;
- (e) by failing to escalate important issues, such as the missing funds, financial difficulties and that the firm was on the brink of insolvency since 2012, to Ocwen in a timely manner;
- (f) by failing to submit all invoices to Ocwen electronically as required under the LCA, and instead, assigning the right to collect on these invoices to Durham Capital;
- (g) by failing to maintain possession, custody and control of all of Ocwen's files;
- (h) by failing to disclose conflicts of interests that arose by virtue of the financial difficulties experienced by CGAW and its operation on the verge of insolvency;
- (i) by violating the attorney-client privilege and professional responsibilities under each state's applicable rules of professional conduct; and
- (j) by violating state and federal law, ethical requirements, and other regulations including misappropriating property belonging to Ocwen;

97. Accordingly, Ocwen seeks a declaratory judgment that no payment is due and owing to CGAW pursuant to its breach of contract. Likewise, Ocwen seeks a declaratory judgment that any assignment of rights to Durham Capital does not include invoices or alleged accounts owed by Ocwen, as any obligation to pay CGAW, and likewise to Durham Capital, has been rendered void by virtue of Ocwen's rights to refuse payment to CGAW due to its breach of the LCA.

98. Durham Capital, as an alleged assignee, steps into the shoes of CGAW, and is granted the same rights as CGAW, and nothing more. Likewise, Durham Capital is subject to any and all defenses Ocwen has against CGAW attempting to collect the same alleged debt.

99. In this action, Ocwen seeks a declaratory judgment declaring the rights and obligations of the parties, including a declaration that the factoring of CGAW's accounts receivable without its explicit informed consent violates each applicable state's rules of professional conduct and is therefore illegal and unenforceable against all of CGAW's clients, including Ocwen, that Ocwen never consented to this arrangement and that as a result the alleged factoring agreement between CGAW and Durham Capital is void and unenforceable as against Ocwen and all of CGAW's clients.

100. Ocwen further seeks a declaratory judgment declaring that CGAW could not grant a security interest in its accounts receivable and that Durham Capital's UCC-1 and UCC-3 filing and security interest are void, illegal, and unenforceable.

SIXTH CAUSE OF ACTION
(UNFAIR AND DECEPTIVE ACTS AND PRACTICES AGAINST
CGAW AND THE LAW PARTNERS)

101. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

102. Ocwen, Durham Capital, the Law Partners and CGAW are all engaged in a trade or business.

103. Upon information and belief, at the time they entered into the Factoring Agreement the Law Partners, CGAW and Durham Capital knew or should have known that the assignment of accounts receivable due to an attorney by its client was unethical and in violation of the rules of professional conduct absent, *inter alia*, the client's informed consent.

104. In spite of this, Durham Capital and CGAW, through its Law Partners, entered into a factoring agreement with regard to accounts receivable owing from Ocwen to CGAW.

105. Also in spite of this, Durham Capital sought to cause Ocwen to pay to Durham Capital amounts Ocwen already paid to CGAW on account of invoices for legal services rendered by CGAW for Ocwen.

106. Further, CGAW and the Law Partners knowing that they had assigned to Durham Capital the accounts owing to it from Ocwen, retained payments they received from Ocwen, without forwarding them to Durham Capital. Upon information and belief, the Law Partners used those funds to pay their own salaries and bonuses.

107. In the course of this business relationship, Durham Capital and CGAW, through its Law Partners, unlawfully conspired to, and in fact did, violate CGAW and the Law Partners' duty to maintain the confidentiality of their dealings with Ocwen.

108. In the course of this business relationship, Durham Capital and CGAW, through its Law Partners, unlawfully conspired to, and in fact did, make unauthorized disclosures of Ocwen's privileged communications and information.

109. In the course of this business relationship, Durham Capital and CGAW, through its Law Partners, unlawfully conspired to, and in fact did, enable CGAW to engage in self-dealing which was not in Ocwen's best interests as a client of CGAW.

110. In the course of this business relationship, Durham Capital and CGAW, through its Law Partners, unlawfully conspired to, and in fact did, implement a scheme resulting in an unauthorized fee sharing agreement between an attorney and a non-lawyer with respect to legal fees paid by Ocwen.

111. The conduct of the Law Partners and CGAW constitutes violations of professional conduct, as outlined above, of each of the applicable state's rules of professional conduct.

112. The conduct by Durham Capital, the Law Partners and CGAW constitutes unfair and deceptive acts and practices in violation of Chapter 93A of the Massachusetts General Laws, and any other applicable state or federal law.

113. Among other damages, Ocwen is entitled to recover its attorneys' fees and costs for the Defendants' unfair and deceptive acts and practices.

SEVENTH CAUSE OF ACTION
(UNJUST ENRICHMENT
AGAINST CGAW AND THE LAW PARTNERS)

114. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

115. As a result of the conduct described above, Durham Capital, CGAW and the Law Partners have or will be unjustly enriched at the expense of Ocwen.

116. Durham Capital alleges that it is owed fees due to CGAW as a result of a factoring arrangement. Durham Capital has filed suit against CGAW seeking payments made by Ocwen to CGAW under invoices for services rendered. Durham Capital also seeks those same fees directly from Ocwen. As a result, Durham Capital has received or will receive money, a portion of which is due and owing to Ocwen by virtue of Ocwen's rights under the LCA to reduce or refuse payment to CGAW.

117. The fee amounts that Durham Capital seeks are on behalf of CGAW that has failed to render competent services, whose Law Partners have taken over \$1.6 million in funds from Ocwen for their own personal use, and CGAW and the Law Partners have breached their

ethical and contractual obligations to Ocwen. Any funds that Durham Capital has or will receive under the Factoring Agreement are derived from an illegal, unenforceable, and void contract and any funds received were, or will be, obtained unjustly.

118. Durham Capital's retention of funds under the Factoring Agreement, which is illegal and unenforceable, would be inequitable and constitute unjust enrichment.

119. Durham Capital, CGAW and the Law Partners should be required to disgorge all monies, profits and gains which they have obtained or will unjustly obtain in the future at the expense of Ocwen, and a constructive trust should be imposed thereon for the benefit of Ocwen.

EIGHTH CAUSE OF ACTION
CONVERSION
(AGAINST CGAW, FEIGE AND THE LAW PARTNERS)

120. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

121. At all times material hereto, CGAW, Feige and the Law Partners knowingly converted money from Ocwen by transferring and utilizing funds in Ocwen's IOLTA account to pay for expenses of CGAW, Feige and the Law Partners.

122. CGAW converted Ocwen's property with the intent to either temporarily or permanently deprive Ocwen of a right to the property and CGAW, Feige and the Law Partners appropriated the property to their own use.

123. CGAW, Feige and the Law Partners wrongfully asserted dominion over Ocwen's property, which was illegal and inconsistent with Ocwen's possessory rights in the property.

124. As a direct and proximate result of CGAW, Feige and the Law Partners' activities, Ocwen has been injured.

NINTH CAUSE OF ACTION
(ACTION FOR ACCOUNTING
AGAINST CGAW, FEIGE AND THE LAW PARTNERS)

125. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

126. The amount of money due from CGAW and the Law Partners to Ocwen is unknown to Ocwen and cannot be ascertained without an accounting of the receipts, invoices, disbursements, IOLTA account statements and accounting of funds collected on behalf of Ocwen. Ocwen herein also requests that CGAW, Feige and the Law Partners provide an accounting, performed by an independent third party, and turn over all documents for an accounting of firm accounts, including all of its operating accounts and the IOLTA accounts relating to Ocwen.

127. The full amount of funds misappropriated by CGAW, Feige and the Law Partners cannot be ascertained without an accounting of the receipts, invoices, disbursements, IOLTA account statements and accounting of funds collected on behalf of Ocwen. Ocwen herein also requests that CGAW, Feige and the Law Partners provide an accounting of all firm accounts, including all of its operating accounts and the IOLTA accounts relating to Ocwen.

TENTH CAUSE OF ACTION
(FRAUD AND MISREPRESENTATION
AGAINST CGAW FEIGE AND THE LAW PARTNERS)

128. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

129. This is an action for damages for common law fraud.

130. CGAW, Feige, and each of the Law Partners, played an active role in the fraud as alleged below.

131. At all times material hereto, CGAW, Feige, and the Law Partners, knowingly took funds belonging to Ocwen out of two IOLTA accounts and used those funds to fund the day to day operating expenses of CGAW.

132. CGAW pursued courses of conduct, resulting in injury to Ocwen, including using IOLTA funds to fund CGAW's day to day operating expenses and partner bonuses despite knowledge that CGAW was experiencing financial difficulties and would be unable to replenish the IOLTA accounts.

133. Between June 2012 and August 2014, through multiple correspondences between Ocwen and its counsel, CGAW, Feige and the Law Partners misrepresented a material fact, namely that CGAW had possession of and was safeguarding Ocwen's IOLTA funds. CGAW, Feige and the Law Partners knew, or should have known, that this was a false statement.

134. CGAW, Feige and the Law Partners intended to induce Ocwen and Ocwen justifiably relied on CGAW's representations, to continue its relationship with CGAW by virtue of CGAW and the Law Partners' misappropriation of IOLTA funds.

135. As a direct and proximate result of CGAW's activities, Ocwen has suffered damages in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION
(FRAUD BY SUPPRESSION
AGAINST CGAW, FEIGE AND THE LAW PARTNERS)

136. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

137. This is an action for damages for fraud by suppression.

138. CGAW, Feige and the Law Partners played an active role in the fraud as alleged below.

139. At all times material hereto, CGAW, Feige and the Law Partners owed a duty of candor as a result of the fiduciary relationship between lawyer and client. Despite this duty, CGAW, Feige and the Law Partners concealed material facts, including the misappropriation of IOLTA funds during the years of 2012 and 2013.

140. CGAW, Feige and the Law Partners suppressed a material fact, namely that CGAW was using Ocwen's IOLTA funds to operate an insolvent law business, Ocwen's IOLTA funds were being used to pay Feige and the Law Partners' salaries and bonuses, and that from 2012 CGAW was operating under extreme financial duress.

141. CGAW, Feige and the Law Partners pursued courses of conduct, resulting in injury to Ocwen, including using IOLTA funds to fund CGAW's day to day operating expenses and partner bonuses despite knowledge that CGAW was experiencing financial difficulties and would be unable to replenish the IOLTA accounts.

142. Further, CGAW, Feige and the Law Partners intentionally and with wanton disregard for its client's interest, concealed and failed to disclose a material fact essential to Ocwen's decision making in the two years prior to this lawsuit, including the concealment and failure to disclose the misappropriated and missing IOLTA funds.

143. CGAW, Feige and the Law Partners concealed and failed to disclose this material fact with knowledge of the effect and harm to Ocwen the concealment of this material fact would cause.

144. CGAW, Feige and the Law Partners intended to induce Ocwen and Ocwen justifiably relied on CGAW's representations, to continue its relationship with CGAW by virtue of CGAW's concealing and failing to disclose the misappropriation of IOLTA funds.

145. As a direct and proximate result of CGAW's, Feige's and the Law Partners' activities, Ocwen has suffered damages in an amount to be determined at trial.

TWELFTH CAUSE OF ACTION
(NEGLIGENCE
AGAINST CGAW, FEIGE AND THE LAW PARTNERS)

146. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

147. At all times material hereto, CGAW, Feige and the Law Partners owed a fiduciary duty and a duty of due care pursuant to the attorney client relationship.

148. Despite this duty, CGAW, Feige and the Law Partners misappropriated and mismanaged IOTA funds, concealed material facts, provided third parties with confidential information of Ocwen, failed to inform Ocwen of important issues, failing to disclose conflicts of interests that arose by virtue of the financial difficulties experienced by CGAW and its operation on the verge of insolvency, failing to safeguard Ocwen's property, files and information, and failing to disclose and purposefully withholding material information from Ocwen and failing to apprise Ocwen of issues that have legal, public relations, and policy implications. These acts and omissions are not compatible with the standard of care exercised by law firms or their partners.

149. The acts and omissions listed above were the proximate and actual cause of damage of Ocwen, including the loss of more than \$1.6 million in IOLTA funds.

150. Ocwen has been damaged in an amount to be proven at trial.

THIRTEENTH CAUSE OF ACTION
(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
AGAINST CGAW)

151. Ocwen repeats and realleges the allegations of the previous paragraphs of the Complaint as if fully restated herein.

152. By virtue of the actions and inactions described herein, including CGAW misappropriating and mismanaging IOTA funds, concealing material facts, providing third parties with confidential information of Ocwen, failing to inform Ocwen of important issues, failing to disclose conflicts of interests that arose by virtue of the financial difficulties experienced by CGAW and its operation on the verge of insolvency, failing to safeguard Ocwen's property, files and information, and failing to disclose and purposefully withholding material information from Ocwen and failing to apprise Ocwen of issues that have legal, public relations, and policy implications, CGAW has deprived Ocwen of the benefits of the LCA and has failed to deal fairly or in good faith.

153. CGAW has engaged in misconduct rendering performance of the LCA impossible. CGAW has interfered with and failed to perform under the LCA.

154. Ocwen has been damaged in an amount to be proven at trial.

WHEREFORE Ocwen prays that:

1. This Court enter Judgment in its favor declaring the assignment of accounts receivable due to Connolly, Geaney, Ablitt and Willard, a Professional Corporation to Durham Commercial Capital Corp. to be void and unenforceable.
2. This Court enter Judgment in its favor declaring the security interest in the accounts receivable due to Connolly, Geaney, Ablitt and Willard, a Professional Corporation to Durham Commercial Capital Corp. to be void and unenforceable.
3. If appropriate, this Court enter a judgment of indemnity in favor of Ocwen against Connolly, Geaney, Ablitt and Willard, a Professional Corporation for all amounts owed by Ocwen to Durham Commercial Capital Corp.
4. It be awarded up to treble damages and attorneys' fees against the Law Partners and Connolly, Geaney, Ablitt and Willard, a Professional Corporation for any unfair and deceptive acts and practices they committed against Ocwen.

5. It be awarded compensatory and punitive damages in an amount to be proved at trial.
6. It be awarded an accounting against Connolly, Geaney, Ablitt and Willard, a Professional Corporation.
7. It be awarded attorneys fees and costs against Connolly, Geaney, Ablitt and Willard, a Professional Corporation for breach of the Local Counsel Agreement and for the Defendants' unfair and deceptive trade practices;
8. It be awarded an amount of compensatory damages equal to the amount of funds misappropriated from the IOLTA accounts; and
9. An award of such further and other relief as this Court deems just and appropriate.

JURY DEMAND

Ocwen hereby requests a trial by jury on all issues triable by jury.

DATED this 2nd day of October, 2014

Respectfully submitted,

s/D. Brian O'Dell

D. Brian O'Dell (Florida Bar No. 0659665)

Hope T. Cannon (Florida Bar No. 95542)

Jason R. Bushby (Florida Bar No. 0088574)

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ATTORNEYS for PLAINTIFF

OCWEN LOAN SERVICING, LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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michael.ullman@uulaw.net

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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s/D. Brian O'Dell

D. Brian O'Dell