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 L. LEE BRIGHTWELL

8
 9 **UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
 12 L. LEE BRIGHTWELL, an
 individual,

13 Plaintiff,

14 v.

15 THE MCMILLAN LAW FIRM, APC,
 a professional corporation, SCOTT A.
 16 MCMILLAN, an individual,
 17 MICHELLE D. VOLK, an individual,
 and DOES 1 through 25, inclusive,

18 Defendants.
 19

Case No. 16-CV-01696-W-MDD

FIRST AMENDED COMPLAINT FOR:

- 1. **BREACH OF CONTRACT;**
- 2. **FRAUD;**
- 3. **PROFESSIONAL NEGLIGENCE;**
- 4. **BREACH OF FIDUCIARY DUTY; AND**
- 5. **DECLARATORY RELIEF;**

1 Plaintiff L. LEE BRIGHTWELL (“Brightwell”) hereby alleges as follows:

2 **INTRODUCTION**

3 1. This case is about a law firm and two attorneys that agreed to
4 prosecute a case on behalf of Brightwell and were paid handsomely to do so. After
5 being paid over \$100,000 for just a few months’ work, defendants presented
6 Brightwell with a 74-page bill for another \$60,000! The bill stretched back several
7 months, included duplicative entries, and contained numerous fraudulent entries.
8 When Brightwell asked for time to review the lengthy the bill, defendants
9 immediately filed a motion to withdraw as counsel of record calculating that
10 Brightwell would capitulate so as not to jeopardize settlement negotiations in the
11 underlying case. When Brightwell refused to give in to defendants’ threats,
12 defendants withdrew forcing Brightwell to retain new counsel, incur thousands of
13 dollars in additional attorneys’ fees, and settle for less than she otherwise would
14 have. Defendants now contend that Brightwell not only owes them the original
15 disputed amount, but substantially more, including a contingency fee even though
16 defendants voluntarily withdrew from the case.

17 **PARTIES**

18 2. Brightwell is, and at all times mentioned herein was, an individual
19 residing in the State of Hawaii.

20 3. Defendant The McMillan Law Firm, APC (“McMillan Firm”) is, and
21 at all times mentioned herein was, a professional corporation licensed to do
22 business and doing business in the State of California, County of San Diego.

23 4. Defendant Scott A. McMillan (“McMillan”) is, and at all times
24 mentioned herein was, an individual residing in the State of California, County of
25 San Diego. Brightwell is informed and believes and based thereon alleges that
26 McMillan is the principal shareholder of the McMillan Firm.

27 5. Defendant Michelle D. Volk (“Volk”) is, and at all times mentioned
28 herein was, an individual residing in the State of California, County of San Diego.

1 **JURISDICTION AND VENUE**

2 6. The Court has jurisdiction over this counterclaim under 28 U.S.C. §
3 1332 because there is complete diversity of citizenship between the parties and the
4 amount in controversy exceeds \$75,000.

5 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1),
6 because all Defendants reside in this judicial district.

7 **BRIGHTWELL RETAINS DEFENDANTS**

8 8. On or about April 25, 2013, Brightwell filed a complaint in San Diego
9 Superior Court against Brian O’Donnell and RF Logistics, LLC, *Brightwell v.*
10 *O’Donnell, et al.*, Case No. 37-2013-00046163-CU-BC-CTL (“O’Donnell
11 Action”). Approximately a year and a half into the case, on September 29, 2014,
12 Brightwell retained Defendants to substitute in as her counsel in the O’Donnell
13 Action. A true and correct copy of the Engagement Agreement between
14 Defendants and Brightwell is attached hereto as Exhibit A.

15 9. By reason of the attorney-client relationship identified above,
16 Defendants owed fiduciary duties to Brightwell to adequately and professionally
17 handle the O’Donnell Action, to further and protect the interests of Brightwell, and
18 to charge Brightwell only honest and reasonable fees.

19 10. At the time Defendants substituted into the case, trial was set for
20 November 2014. In October 2014, the trial date was continued to March 2015.
21 Immediately after being retained by Brightwell, Defendants demanded that Ms.
22 Brightwell travel to San Diego to work on-site in their office to help prepare the
23 case for trial despite knowing that Brightwell lived in Hawaii. This demand was
24 not communicated to Ms. Brightwell prior to signing the Engagement Agreement.
25 Nonetheless, she traveled to San Diego at Defendants’ request, and worked in
26 Defendants’ office daily. In fact, Mr. McMillan strongly encouraged Ms.
27 Brightwell to live in Defendants’ office so she could be working on the case at all
28 times. Understandably, Ms. Brightwell declined to do so. After two weeks,

1 Brightwell intended to return home, but Defendants demanded that she stay in San
2 Diego longer. Brightwell acquiesced and stayed in San Diego an additional few
3 weeks helping Defendants prepare the case for trial. During this time, Defendants
4 told Brightwell she would be supervising their intern, an attorney from France that
5 was not licensed in California. Defendants told Brightwell she had to be on-site to
6 perform this work or they would stop all work on her case.

7 11. By December 6, 2014, Brightwell had returned home to Hawaii. By
8 that time, she had already given Defendants a retainer of \$10,000 and had paid
9 Defendants' invoices for October and November totaling \$30,000. Despite this, on
10 December 13, 2014, Defendants sent Brightwell a substitution of attorney form
11 asking that she sign it because she was no longer on-site in their office working on
12 the case full time. Ultimately, Brightwell did not sign it, but continued to pay
13 Defendants' invoices.

14 12. On January 6, 2015, Defendants sent Brightwell another substitution of
15 attorney form demanding that she sign it again because they wanted her to return to
16 their office to work on the O'Donnell Action and supervise their intern. Brightwell
17 did not sign it.

18 13. When the March 2015 trial date arose, no courtroom was available.
19 Subsequently, the trial date was continued to October 2, 2015.

20 14. On March 15, 2015, Defendants sent Brightwell an invoice totaling
21 \$23,446.91. By March 25, 2015, that invoice was fully paid.

22 15. On April 14, 2015, Brightwell voluntarily paid Defendants another
23 \$15,000 despite having not received an invoice since March 15, 2015. As of that
24 time, Brightwell had paid Defendants over \$115,000. A spreadsheet of invoices
25 and payments is attached hereto as Exhibit B.

26 16. While Defendants were racking up high legal bills, Defendants
27 continued demanding that Brightwell work onsite in Defendants' office to prepare
28 exhibits and perform other tasks to prepare for trial. Defendants claimed that this

1 was “part of the agreement,” even though it is not set forth in the Engagement
2 Agreement, and told Brightwell that her active participation would result in higher
3 quality legal work and lower costs. At Defendants’ insistence, between October 1,
4 2014 and April 30, 2015, Brightwell spent a total of four months working in
5 Defendants’ office.

6 17. During this time, Defendants provided Ms. Brightwell with access to
7 their entire computer network, telling her it would be more efficient if she had
8 access to their system and files so she could work on the O’Donnell Action.
9 Defendants lacked the competence to limit Ms. Brightwell’s access to only the files
10 for the O’Donnell Action. Consequently, Defendants gave her access to their entire
11 system such that she could access the files for all of Defendants’ cases and clients.
12 Defendants did not require Ms. Brightwell to sign a confidentiality agreement
13 before giving her access to their network.

14 18. Brightwell’s work onsite at Defendants’ office did not result in higher
15 quality legal work or lower costs. Instead, Brightwell had to forego several job
16 opportunities in Hawaii and incurred rent and other charges while living in San
17 Diego to work at Defendants’ office at their request. While at Defendants’ office,
18 Brightwell was subjected to being yelled at and harassed routinely by McMillan.
19 Brightwell witnessed McMillan berate, taunt, and humiliate his employees on a
20 daily basis. As a result of McMillan’s abusive behavior, she was able to see first-
21 hand the staff turnover and duplication of time and effort in Defendants’ office.
22 The constant turnover meant that new employees always had to spend time to get
23 up to speed on the O’Donnell Action and figure out where the prior attorney or staff
24 member left off. At times, work product was tossed aside and started anew when
25 an attorney or staff member left the firm due to unfavorable working conditions.
26 This happened numerous times in the 10 month period McMillan represented
27 Brightwell. Though Brightwell had already paid for that attorney’s research and
28 effort, she was consequently billed again when the next attorney or staff member

1 recreated the same document. This, of course, resulted in higher legal bills and
2 poorer quality of work.

3 19. Eventually, Brightwell learned of the reasons for McMillan's erratic
4 behavior. After working in Defendants' office for several weeks, McMillan
5 disclosed to Brightwell that he regularly takes lithium to "improve his memory", as
6 he would say. He even offered some to Ms. Brightwell, but she declined. Also,
7 while Brightwell was working in Defendants' office, she saw McMillan regularly
8 abuse controlled substances, such as prescription and non-prescription drugs. On
9 one occasion, McMillan told Ms. Brightwell that he took his son's ADHD medicine
10 to help him stay awake and work more. McMillan offered drugs to Ms. Brightwell
11 on several occasions and regularly offered drugs to his staff. While disturbed by
12 McMillan's conduct, Ms. Brightwell did not feel like she could change attorneys
13 again so close to trial in the O'Donnell Action. Ms. Brightwell is informed and
14 believes and based thereon alleges that Ms. Volk knew of McMillan's drug abuse
15 and failed to report it or notify Defendants' clients.

16 20. Furthermore, on the eve of trial in the O'Donnell Action, Ms.
17 Brightwell learned that two years prior, McMillan had been involved in a car
18 accident that caused him to suffer a traumatic brain injury ("TBI"). The TBI was so
19 severe, that McMillan had to effectively stop practicing law for several months, and
20 that others, including Ms. Volk, ran his practice for him while he was recovering.
21 On information and belief, McMillan never fully recovered from the TBI and
22 continues to have symptoms, such as mood swings, erratic behavior, and explosive
23 anger, today. Just a few days before trial in the O'Donnell Action was scheduled to
24 begin in March 2015, Defendants let slip that this was going to be the first trial
25 McMillan had done since the accident and that McMillan wasn't sure if he could
26 handle a trial at all, let alone a lengthy trial of a complex and emotional case such
27 as the O'Donnell Action. In fact, in the two weeks leading up to the March 2015
28 trial date, Defendants put great pressure on Brightwell to settle the O'Donnell

1 Action for far less than the amount Defendants originally told Brightwell the case
2 was worth. Cautious not to anger McMillan, Brightwell asked McMillan if he was
3 “trying to get out of taking the case to trial.” McMillan responded saying, “Are you
4 asking if I am wussing out?” Brightwell shrugged and McMillan told her maybe he
5 was but to be careful as “calling him out” could cause him to tank the case.

6 21. Additionally, on October 22, 2014, the Court in the O’Donnell Action
7 issued a protective order that allowed for sensitive information such as company
8 Quickbooks files, bank statements, credit card statements and employee payroll
9 details to be produced as “Attorneys’ Eyes Only,” meaning only the attorneys and
10 outside experts in the case and not the parties themselves could review the
11 documents. On October 30, 2014, just eight days later, Defendants intentionally
12 sent Ms. Brightwell information designated by O’Donnell as “Attorneys’ Eyes
13 Only” for her to review and analyze. Over two months later, Defendants asked Ms.
14 Brightwell to destroy any record she had of receiving such Attorneys’ Eyes Only
15 information and never disclosed to O’Donnell’s attorneys the violation of the
16 protective order. But, Defendants still demanded that Ms. Brightwell review every
17 exhibit marked for trial in the O’Donnell Action, including those marked
18 Attorneys’ Eyes Only.

19 22. On or about May 31, 2015, Defendants sent Brightwell an invoice for
20 \$59,689.27. This was the first invoice Defendants had sent her in nearly three
21 months! Just eleven days later, on June 11, 2015, Defendants sent Brightwell an
22 email demanding that she sign a substitution of attorney form because,
23 understandably, she had not yet paid the invoice. Almost immediately thereafter,
24 McMillan began threatening to file a motion to withdraw as counsel of record.
25 Using this threat as leverage to force Brightwell to pay, he told Brightwell filing
26 such a motion would almost certainly damage her position in the O’Donnell Action
27 and the settlement discussions that the parties were currently engaging in.
28

1 23. The Engagement Agreement states: “It is essential that you advise me
2 promptly of any questions you may have so that I may resolve any difficulties as
3 quickly as possible, and avoid any interference with our attorney-client relationship.
4 You agree that if you have not informed me of questions or objections within forty-
5 five calendar days after the date of a statement, that statement will be conclusively
6 regarded as accepted and approved by you, and that you will not be entitled
7 thereafter to object to that statement.” Nonetheless, on July 9, 2015, Defendants
8 filed a motion to be relieved as counsel in the O’Donnell Action, less than 45 days
9 after presenting Brightwell with the May 31 invoice.

10 24. While the motion for withdrawal was pending, the parties in the
11 O’Donnell Action continued settlement discussions. During those discussions,
12 Defendants continuously represented to Brightwell that they believed they could get
13 the O’Donnell defendants to increase their settlement offers, but would only do so
14 once Brightwell paid the outstanding invoice. In response, Brightwell instructed
15 Defendants to settle the case at the highest possible amount, but that she would
16 accept the O’Donnell defendants’ last best offer. She further instructed Defendants
17 that if they could not get the O’Donnell defendants to increase their offer prior to
18 the hearing on Defendants’ motion to withdraw as counsel of record, to accept the
19 O’Donnell defendants’ last best offer before the hearing.

20 25. Defendants refused to abide by Brightwell’s instructions.

21 26. Ms. Brightwell’s instructions to Defendants to accept the O’Donnell
22 defendants’ last best offer were the result of Defendants’ negligence and unlawful
23 conduct. Early in the O’Donnell Action, Ms. Brightwell’s expert estimated her
24 damages at approximately \$2 million. Defendants routinely told Ms. Brightwell
25 that they believed the O’Donnell defendants would pay nearly \$1 million to settle
26 the case. But, due to her observations working in Defendants’ office for four
27 months, witnessing McMillan’s drug abuse, and eventually learning of his TBI and
28 lack of confidence in his own trial abilities, her confidence in Defendants’ ability to

1 prosecute and potentially try the O'Donnell Action waned severely. By the time
2 the hearing on Defendants' motion to withdraw was near, Brightwell was afraid that
3 if she did not accept the O'Donnell defendants' last best offer, she would lose at
4 trial due to Defendants' incompetence.

5 27. On July 31, 2015, the court granted Defendants' motion to withdraw as
6 counsel of record in the O'Donnell Action. Within hours after the motion was
7 granted, McMillan told Brightwell that Defendants were willing to stay on as
8 counsel of record if Brightwell hired an attorney in Hawaii to supervise Defendants
9 to make sure they were not taking advantage of Brightwell or committing
10 malpractice. Of course, this arrangement was unacceptable to Brightwell.

11 28. On or about August 4, 2015, Brightwell retained the undersigned
12 counsel to represent her in the O'Donnell Action. On August 14, 2015, the parties
13 to the O'Donnell Action agreed to a settlement in principal, and on November 19,
14 2015, the parties to the O'Donnell Action executed a settlement agreement.

15 29. On or about August 28, 2015, Defendants sent their final invoice to
16 Brightwell claiming for \$64,922.59 in hourly attorneys' fees and costs plus an
17 additional \$87,000 for Defendants' purported contingency fee even though
18 Defendants voluntarily withdrew from the O'Donnell Action prior to settlement for
19 a total of \$151,922.59 purportedly due and owing.

20 30. A review of **all** of Defendants' invoices show numerous duplicative
21 and unsubstantiated billing entries during the course of the entire engagement. For
22 example, there is a billing entry dated July 24, 2015, for two hours of McMillan's
23 time drafting his motion to withdraw as counsel of record:

7/24/2015 SAM Draft/revise Draft/revise motion to withdraw.	2.00 225.00/hr	450.00
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24
25
26 But, Defendants' motion to withdraw had already been filed 2 weeks prior, on July
27 9, and Defendants' own invoice shows that they filed their reply brief the day
28 before, on July 23, 2015.

1 31. As another example, on June 30, 2015, McMillan made the following
2 time entries:

3	6/30/2015 SAM Communicat/CLI Call to client.	0.20 225.00/hr	45.00
4	SAM Communicat/MISC Call to Marion Miller. Left message re effort to contact Lee.	0.20 225.00/hr	45.00

6 This is clear double-billing. McMillan is charging Brightwell twice for the same
7 activity: once for attempting to contact Brightwell through a third party (Ms.
8 Miller) and then again claiming he actually spoke with Brightwell.

9 32. Similarly, on May 1, 2015, McMillan has two separate time entries for
10 one hour each simply saying "Discussion with client." Brightwell did not have two
11 separate one-hour conversations with McMillan on that date.

12 33. Another example is on February 24, 2015, Volk has two time entries
13 with the exact same description:

14	2/24/2015 MV Communicat/FIRM Meeting with Scott to discuss the need for the purchase and sale documents of the Esparanza property in Chula Vista. Discuss Brians arguments in cross complaint re: 15 same. Discuss the original plan that Brian would buy into 16 the house, but did not have funds. Prepare email to Lee re: request for sale documents.	0.20 200.00/hr	40.00
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17	2/24/2015		
18			
19			
20			
21	MV Communicat/FIRM Meeting with Scott to discuss the need for the purchase and sale documents of the Esparanza property in Chula Vista. Discuss Brians arguments in cross complaint re: 22 same. Discuss the original plan that Brian would buy into 23 the house, but did not have funds. Prepare email to Lee re: request for sale documents.	0.20 200.00/hr	40.00

24
25 34. Defendants also billed Brightwell for time they spent working on other
26 cases. Defendants further inflated their bills by having multiple attorneys perform
27 the same tasks, by failing to properly supervise young attorneys, and by charging
28 Brightwell for time spent by other attorneys and staff having to re-do work.

1 Defendants also concealed the amount of attorneys’ fees and costs they were billing
2 by failing to present Brightwell with a bill for two and a half months.

3 35. By inflating their bills, billing Brightwell for work unrelated to her
4 case, failing to follow Brightwell’s instructions regarding settlement, and inducing
5 Brightwell to work onsite in Defendants’ office, Defendants have breached the
6 Engagement Agreement, their fiduciary duties to Brightwell, and breached the duty
7 of care of a competent attorney.

8 36. Since the parties to the O’Donnell Action settled that case, Defendants
9 informed the undersigned counsel that they claim a right to \$151,922.59
10 (“Settlement Funds”) in attorneys’ fees and costs from the proceeds from the
11 settlement of the O’Donnell Action. Defendants have retained \$10,462.34 of
12 Brightwell’s funds in their trust account. The undersigned counsel, therefore, has
13 retained \$141,460.25 in their trust account and will continue to do so until this
14 matter is resolved. There now exists a dispute between Brightwell and Defendants
15 as to the rights to the Settlement Funds.

16 **FIRST CAUSE OF ACTION**

17 **(Breach of Contract Against All Defendants)**

18 37. Brightwell incorporates by reference the above allegations as though
19 fully set forth herein.

20 38. On or about September 29, 2014, Brightwell and Defendants entered
21 into the Engagement Agreement.

22 39. By entering into the Engagement Agreement, Defendants agreed to
23 adequately and professionally handle the O’Donnell Action, to further and protect
24 the interests of Brightwell, and to charge Brightwell only honest and reasonable
25 fees.

26 40. Brightwell has performed or, through Defendants’ conduct, has been
27 excused from performing all conditions, covenants, and promises required of her
28 under the Engagement Agreement.

1 41. As set forth above, Defendants have breached the Engagement
2 Agreement by, among other things, failing to perform their work with the requisite
3 work and skill of qualified attorneys, failing to abide by Brightwell's instructions
4 pertaining to settlement of the O'Donnell Action, and inflating time entries for
5 work performed, and double-charging Brightwell for tasks performed in the
6 O'Donnell Action.

7 42. As a proximate result of Defendants' conduct, Brightwell has been
8 damaged in an amount to be proven at trial.

9 **SECOND CAUSE OF ACTION**

10 **(Fraud Against All Defendants)**

11 43. Brightwell incorporates by reference the above allegations as though
12 fully set forth herein.

13 44. Prior to and after executing the Engagement Agreement, Defendants
14 represented to Brightwell that they would adequately and professionally handle the
15 O'Donnell Action, to further and protect the interests of Brightwell, and to charge
16 Brightwell only honest and reasonable fees. Prior to executing the Engagement
17 Agreement, Defendants failed to inform Brightwell of McMillan's drug abuse, TBI,
18 and lack of confidence in their ability to take the O'Donnell Action to trial. In fact,
19 to induce Brightwell to enter into the Engagement Agreement, Defendants
20 represented that they had the skill and confidence to try the O'Donnell Action.

21 45. During the course of representing Brightwell in the O'Donnell Action,
22 McMillan, on behalf of himself and all Defendants, represented to Brightwell that
23 she needed to move to San Diego to work in Defendants' office for several months,
24 and that doing so would result in higher quality legal work and lower costs.

25 46. In addition, Defendants knowingly supplied Brightwell with fraudulent
26 invoices. Specifically, Defendants' invoices included duplicative entries, entries
27 for work that was not performed, and/or entries in which time spent on tasks was
28 inflated beyond the amount of time they actually spent on those matters.

1 47. Defendants engaged in such fraudulent conduct so that they could (and
2 ultimately did) unjustly increase their profits at Brightwell's expense.

3 48. At the time Defendants made these representations and fraudulent
4 billing entries, Defendants knew them to be false and made them with the intention
5 to induce Brightwell to act in reliance on these representations and billing entries.

6 49. In reliance on Defendants' representations before and after entering
7 into the Engagement Agreement and in reliance on Defendants' billing entries,
8 Brightwell took several actions including entering into the Engagement Agreement,
9 moving to San Diego for several months and working at Defendants' office as well
10 as paying Defendants over \$115,000.

11 50. As a proximate result of Defendants' conduct, Brightwell has been
12 damaged in an amount to be proven at trial.

13 51. Defendants engaged in such fraudulent conduct so that they could (and
14 ultimately did) unjustly increase their profits at Brightwell's expense. This conduct
15 was despicable and carried out with a conscious disregard of the legal rights of
16 Brightwell. Defendants' conduct thus constituted malice, oppression, and/or fraud
17 under California Civil Code section 3294.

18 **THIRD CAUSE OF ACTION**

19 **(Professional Negligence Against All Defendants)**

20 52. Brightwell incorporates by reference the above allegations as though
21 fully set forth herein.

22 53. As alleged above, Defendants failed to exercise reasonable care and
23 skill in performing legal services for Brightwell.

24 54. Had Defendants exercised proper care and skill in the O'Donnell
25 Action, Brightwell would have obtained a greater settlement in the O'Donnell
26 Action and would not have had to incur additional attorneys' fees and costs to
27 retain new counsel to settle the O'Donnell Action. Brightwell also would have paid
28 Defendants less for their services in the O'Donnell Action because Defendants

1 would not have submitted duplicative, inflated, and fraudulent billing entries on
2 their invoices.

3 55. As a proximate result of Defendants' conduct, Brightwell has been
4 damaged in an amount to be proven at trial.

5 **FOURTH CAUSE OF ACTION**

6 **(Breach of Fiduciary Duty Against All Defendants)**

7 56. Brightwell incorporates by reference the above allegations as though
8 fully set forth herein.

9 57. A fiduciary duty is a duty of the highest character. Attorneys have a
10 duty of undivided loyalty to each of their clients, and must not put other interests,
11 including their own financial interests, ahead of the best interests of their clients.
12 This includes a fiduciary's duty to take such steps as are required to protect the
13 interests of the party to whom the fiduciary duty is owed.

14 58. At all times herein, Defendants owed a fiduciary duty to Brightwell.
15 Brightwell had reasonably placed her trust and confidence in Defendants' fidelity
16 and integrity. As alleged above, Defendants did not take reasonable steps to protect
17 the interests of Brightwell, to whom they owed a fiduciary duty, and in fact placed
18 their own interests and financial gain ahead of Brightwell's best interests.

19 59. By nature of the conduct described above, Defendants breached the
20 fiduciary duties owed to Brightwell.

21 60. As a direct and proximate result of the breach of fiduciary duty,
22 constructive fraud, actual fraud, and failure to follow Brightwell's instructions,
23 Brightwell has been damaged in an amount to be proven at trial.

24 61. The conduct of Defendants, as more fully described above and
25 incorporated by reference herein, was despicable and carried out with a conscious
26 disregard of the legal rights of Brightwell. The conduct of Defendants therefore
27 constituted malice, oppression, and/or fraud under California Civil Code section
28 3294.

FIFTH CAUSE OF ACTION

(Declaratory Relief Against All Defendants)

62. Brightwell incorporates by reference the above allegations as though fully set forth herein.

63. An actual controversy has arisen and now exists between Brightwell and Defendants concerning their respective rights to the Settlement Funds in that Defendants contend they are entitled to receive the entirety of the Settlement Funds, whereas Brightwell disputes these contentions and contends that she is entitled to receive the entirety of the Settlement Funds.

64. Brightwell desires a judicial determination of her rights to the Settlement Funds, and a declaration that she is entitled to receive the entirety of the Settlement Funds.

65. A judicial declaration is necessary and appropriate at this time under the circumstances in order that the parties may ascertain their rights to the Settlement Funds.

PRAYER FOR RELIEF

WHEREFORE, Brightwell prays for judgment as follows:

1. For general and special damages according to proof including, but not limited to, a refund of all amounts Brightwell paid to Defendants;
2. For a declaration that she is entitled to receive the entirety of the Settlement Funds totaling \$151,922.59;
3. For prejudgment interest;
4. For punitive damages in an amount sufficient to punish Defendants and to deter future willful misconduct by Defendants;
5. For costs of suit herein; and
6. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of any and all issues triable with right by a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED: December 7, 2016 DINSMORE & SHOHL, LLP

By: /s/ Joshua M. Heinlein
JOSHUA M. HEINLEIN (SBN 239236)
JOSEPH S. LEVENTHAL (SBN 221043)

Attorneys for Plaintiff
L. LEE BRIGHTWELL

EXHIBIT A

THE MCMILLAN LAW FIRM

Scott A. McMillan

A PROFESSIONAL CORPORATION
4670 Nebo Drive, Suite 200
La Mesa, CA 91941-5230

Tel: (619) 464-1500
Fax: (206) 600-5095

Lee Brightwell

September 29, 2014

Delivered by email

Re: *L. Lee Brightwell vs. RF Logistics, LLC, and Brian O'Donnell* - San Diego County Superior Court, Case No. Unassigned

Dear Ms. Brightwell:

I am pleased that I have been offered the opportunity to represent you, L. Lee Brightwell, in your efforts to quiet title and other claims arising from your relationship with Brian O'Donnell in the lawsuit titled *L. Lee Brightwell vs. RF Logistics, LLC, and Brian O'Donnell*. It has been my experience that a clear understanding of the terms of representation is essential to a good relationship between attorney and client, and Business and Professions Code section 6148 requires a written agreement in many circumstances. Accordingly, this letter will confirm the terms under which I have agreed to represent you. If these terms are acceptable, I ask that you indicate your agreement by signing and returning a copy of this letter.

SCOPE OF SERVICES TO BE PROVIDED

You have asked me to represent you in your pending action.

You agree that our representation of you, unless provided for in another agreement, will be strictly limited to the scope described above. Our efforts to successfully prosecute the claims, and/or defend against any counter-claims that the defendants may assert directly arising from the boundary of the property, may implicate other legal issues, such as matters of Family law, Tax law, Probate and Estate Planning matters, Personal Injury, Immigration law, or Workers Compensation law. We will provide no advice on these matters, and make no inquiry as to your rights or liabilities regarding those issues. Unless an additional fee agreement is drafted referencing such additional matters, You understand that we will take no responsibility for advising you or acting as your attorney as to those other matters.

I will be pleased to consider performing additional or other services at your request and, unless a new agreement is made, this fee agreement will apply to all matters I handle

Re: *L. Lee Brightwell vs. RF Logistics, LLC, and Brian O'Donnell*
September 29, 2014

Page 2

on your behalf or at your direction. I do, however, reserve the right to review and modify the fee arrangements whenever the scope of our engagement is changed, and I may require a new fee agreement if additional or other services are required.

REPORTING

I understand that, in rendering services in this matter, I should report primarily to You, until the resolution of this matter. If and when that changes you will so inform me. We understand that as to my representation in *L. Lee Brightwell vs. RF Logistics, LLC, and Brian O'Donnell* and related actions, you are authorized to instruct me on how to proceed.

I ask that you remain in close contact with me, and that you be available to consult with me as needed when developments occur. I also ask that you advise me immediately of any problems or developments of which you may become aware relating to this matter or our representation.

I will report regularly on the status of my work, and also will report significant developments as they occur. It is also our practice to provide the client copies of all pleadings and significant documents, letters and other materials that I generate or receive so long as the client maintains an electronic means of receiving such documents. Significant documents are electronically scanned, converted to a compatible format, and transmitted through the Internet to the client. Generally, and unless specifically requested, physical copies of documents are not made for the client. If you do request physical copies of documents, you will be charged \$.25 per page for each copy made. At present, we do not charge for electronic copies of documents, which may be delivered to you on CD Rom or by Internet.

WORK ASSIGNMENT

I, Scott McMillan, will be the attorney at the firm primarily responsible for this matter. I anticipate that most of the work in this matter will be done by me and my associates Michelle Volk and Sean Smith. However, where it is to your advantage to do so, I may also utilize the services of other lawyers, paralegals and law clerks. Work assignments will be made, whenever possible, in a way that maximizes our legal effectiveness and time efficiency, and minimizes your legal expenses. My goal is to provide you with high-quality legal services in a cost-effective way.

FEES AND COSTS

After the execution of this engagement letter, the minimum fee that will be charged is \$600. That amount is intended to compensate for administrative expenses

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incurred in initializing a new litigation matter. The minimum charge will only be assessed if actual fees billed are less than \$600.

By this letter I propose what will be considered a “blended partial contingency fee” contract for attorney services. Under either of the two scenarios I propose, You will be responsible for funding the expenses of the litigation apart from attorneys fees. The Firm will advance the fees associated with providing attorney services to you, with the expectation that the payment for the attorneys fees will be made from the proceeds of a settlement or judgment.

You agree by this letter to pay the legal fees of the Firm under the certain circumstances identified below. The presumptive rate is set forth below under column “Tier 2.” **Other than as set forth below under the heading CONTINGENCY FEE COVENANTS**, the Firm agrees to provide a discounted rate Tier 1 to you conditioned upon prompt payment of outstanding bills. You agree to pay us for our attorneys fees as they are incurred according to the schedule set forth below. Absent the participation in the case of your insurer, you will be charged “Tier 1” rates. In the event that you do not tender payment of the bill in full within 30 days of mailing or transmission, all additional work will be charged at “Tier 2” rates until the past due amounts are brought current and the deposit is replenished to the initial amount set forth in this letter.

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HOURLY RATE SCHEDULE

	Tier 1	Tier 2
Scott A. McMillan	\$ 225.00	\$ 375.00
Michelle D. Volk	\$ 200.00	\$ 300.00
Sean Smith	\$ 165.00	\$ 250.00
Bryan C. Rho (Contract)	\$ 210.00	\$ 275.00
Litigation Associate II (Lawyer with > 1 year in practice)	\$ 140.00	\$ 195.00
Litigation Associate Trainee (Newly licensed attorney)	\$ 120.00	\$ 156.00
Law Clerk (2nd year or higher of law school)	\$ 100.00	\$ 130.00
Paralegal (Cert)	\$ 95.00	\$ 123.50
Legal Assistant	\$ 75.00	\$ 91.00
Unclassified Support staff	\$ 40.00	\$ 60.00
Records and Case File Storage (Per Document Box / Each Month – Following resolution of the case.)	\$ 6.00	\$ 10.00

CONTINGENCY FEE COVENANTS

Scenario #1 – Rapid resolution by the defendants.

Specifically, at any time during the ninety days following the initial service of the complaint, which you will be notified of, you may elect to resolve the obligation to pay the Firm's fees payable under the contingency fee agreement set forth under scenario #2 by paying the amount of fees incurred and expenses advanced, according to the tiered schedule of rates set forth herein. The tier level to be determined will be based on your tender of the amount of fees due measured from the date of your election. Thereby, if the case resolves quickly, the attorneys fees associated with the litigation may be less than the contingency amount described below.

Scenario #2 Long litigation project.

Specifically, the Firm will receive 20% of the proceeds from the sale of the business (exclusive of marketing expenses) and 20% of any damages recovered through the

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lawsuit. By this agreement, under that circumstance, You agree that at the resolution of the dispute, you will the business through a business broker, and sell the business in an arms-length transaction with You bearing all the broker fees, commissions, and listing expenses without discount to the Firm's fee, and as part of your 80% remainder.

If the case resolves favorably to you by way of motion or trial, under this agreement myself and the other attorneys who will provide legal services to you are entitled to ask for an award of attorneys fees at the close of the case, and you agree that to the extent that we are awarded an attorney fee, we are entitled to keep those fees awarded and collected, minus the amount of fees you paid attributable to the hours for which the fees were awards. By way of explanation, if the Court finds that 100 of the 500 hour spent working on the case were entitled to a fee award at the lodestar rate, the Firm will be entitled to the difference between the fees you paid for those specific hours and the lodestar rate determined by the court and awarded for those hours.

Besides the sale of the business, in addition the "contingency amount" shall be that amount that is determined by a Jury verdict and/or a Judge order, setting the amount of damages, fines, penalties, and/or restitution amount. The contingency amount shall not include any separately awarded attorneys fees. In the event that the case settles, the "contingency amount" will be the gross settlement proceeds, before subtracting any liens, costs, or litigation related expenses.

Fees Due if the Case Resolves Through Settlement or Substitution

The Firm proposes that in the event of a settlement or the substitution of another attorney instead of and in place of Myself to continue the litigation or settlement discussion efforts, You agree by signing this letter that The McMillan Law Firm, APC will recover the greater of (1) 20% of the value of the business and any damages recovered through the lawsuit, or (2) the Firm's total attorneys fees based on the hourly tier 2 rates set forth above. The Firm may, but is not required to and does not suggest that it will, choose to decrease its claim for attorneys fees based on time spent by Myself or employees of the Firm.

Thus, to the extent that you may desire to resolve the claim by way of settlement in an amount that does not take into account the work expended by the attorneys of the Firm, you will be expected to provide the difference upon an accounting and demand, unless that demand is waived by the Firm **in writing.**

Fees due if the case is resolved on the merits by motion or trial.

The Firm proposes that in the event that the case is resolved in your favor on the merits, either by motion or by trial, You agree by signing this letter that The McMillan

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Law Firm, APC will recover 20% of the value of the business and any damages covered through the lawsuit.

Likewise, in the event that the matter is resolved in your favor by a ruling on the merits, **apart from the contingency fee, and as additional compensation due the Firm**, the Firm will ask the Court for an award of attorneys fees based on its services. In the event that an award is made for attorneys fees, the Firm will be entitled to the court awarded attorneys fees plus the applicable percentage of the contingency amount rendered by the Court and or Jury as damages, fines, penalties and/or restitution. In any event, any award of fees made to the Firm will not be counted or considered in determining the recovery, as You agree that such a fee award is strictly the property of the attorney that provided the services from which the award is based upon.

Case resolved as a result of your decision to abandon or discontinue the litigation.

The Firm proposes that in the event that you abandon the litigation efforts, You agree by signing this letter that The McMillan Law Firm, APC will recover the greater of (1) 20% of the value of the business and any damages recovered through the lawsuit, or (2) the Firm's total attorneys fees based on the tier 2 hourly rates set forth above. The Firm may, but is not required to and does not suggest that it will, choose to decrease its claim for attorneys fees based on time spent by Myself or employees of the Firm.

You made a deposit of \$10,000, into the lawyers trust account to be held in trust for you to pay for the costs associated with this litigation. No part of that money will be used to pay attorneys fees, unless and until the case is terminated through final judgment, settlement, abandonment, or termination of representation.

The \$10,000 refundable deposit will be made upon engagement and will be replenished regularly to remain at \$10,000, in order to be applied towards costs. Such costs will typically be spent on jury fees, filing fees, service fees, travel expenses, mileage charges, court reporters, fact and expert witness fees, postage or delivery expense in greater than \$10 charges, copy charges invoiced by third party providers, etc. The Firm may elect to advance costs, but is not obligated under this agreement to do so. Any costs incurred will be subject to the discretion of the Firm. To the extent that the Firm does advance costs, you agree that the advance will be considered a loan to you, and you will be expected to repay that loan. You agree that apart from the initial deposit for costs, which the Firm will be entitled to spend for the services or fees described above, on your behalf, the Firm may also advance funds on your behalf in \$500 increments without seeking prior approval.

To the extent that this case takes a typical course of litigation proceeding to trial, you should expect to invest by way of costs anywhere from \$30,000 or more.

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You understand that it is impossible to determine in advance the exact amount of fees or costs needed for a firm to complete the representation in any particular matter. The fees are computed on the basis of a reasonable charge for services rendered. The fees will be based upon our standard hourly rates, adjusted in accordance with the guidelines of the Rules of Professional Conduct of the State Bar of California.

The Firm's hourly rates for each attorney, paralegal and legal assistant are based on a variety of factors, including the experience and expertise of each individual. The rates are adjusted by the Firm from time to time, generally as of January 1 of each year. We will notify you of any changes in our rates. Our services in this matter will be billed to you at the hourly rate in effect for the period during which the services are rendered, in increments of 1/10th of an hour. The minimum increment that will be billed for each entry is 2/10th's of an hour. E-mail related time tracking is billed at a minimum increment of 1/10 of an hour.

With respect to the billing for the attorneys fees, You shall be billed for all time spent on your behalf. The services to be billed may include, but are not limited to research, writing letters, preparing documents and pleadings, reviewing documents and correspondence, telephone calls with you or on your behalf, conferences with you or with others on your behalf, and attendance at depositions, court hearings, arbitrations and trials. Time spent reading and responding to e-mails is also measured and billed.

In addition to hourly fees for professional services, you will be billed for expenses that will not be initially taken from the deposit for costs you submit. These charges include expenses incurred in work on this matter. Items that will be charged separately include messenger services, shipping, telecopies, computer assisted research and standardized charges for postage in amounts less than \$10 for a single mailing, copying that is performed in the office, and telephone charges. The Firm will charge \$.15 for all copies made on Firm copiers or laser printers. Charges are billed for copying, legal research and other services performed by law clerks and paralegals. In addition, the right to charge for secretarial and staff overtime when such overtime is necessitated by circumstances beyond our control, is reserved. Also, if significant costs to third-party providers will be incurred, i.e., in an amount over \$250, you may be required to make direct payment to the provider of those services.

Besides time spent in travel, the Firm expects reimbursement and will bill for mileage at the then current IRS mileage. In the event that overnight travel is required, the Firm bills at the greater of IRS per diem rate or actual expense incurred.

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DISCLAIMER OR GUARANTEE

We do not and have not promised or guaranteed the outcome of this matter. Any comments about the outcome of this matter are expressions of opinion only.

STATEMENTS

Statements for fees and costs ordinarily are delivered within approximately the first two weeks of each month for services and costs posted during the preceding month. Services and costs not posted as of the monthly closing date will appear on a subsequent statement. I recognize that most legal services are performed outside of the view of the client, and I therefore describe the services performed in some detail, so that you will understand fully the work done and the charges for that work.

If at any time more than thirty days have elapsed since you last received a statement, you may request an updated billing statement, which the firm will send to you within ten days after your request.

I will be pleased to discuss with you any questions about a statement, and to provide any additional explanation that you may require. It is essential that you advise me promptly of any questions you may have so that I may resolve any difficulties as quickly as possible, and avoid any interference with our attorney-client relationship. You agree that if you have not informed me of questions or objections within forty-five calendar days after the date of a statement, that statement will be conclusively regarded as accepted and approved by you, and that you will not be entitled thereafter to object to that statement.

DISPOSITION OF SETTLEMENT/JUDGMENT FUNDS

Any proceeds collected from a settlement or by collection upon a judgment shall be paid jointly to You and the McMillan Law Firm, APC, to be deposited in the McMillan Law Firm's IOLTA trust account.

GRANT OF LIEN

You grant the McMillan Law Firm, APC a security interest or lien in any recovery you achieve in this case. The McMillan Law Firm, APC attorney's lien will be for any sums owing to attorney for any unpaid costs, or attorneys' fees, at the conclusion of McMillan Law Firm, APC's services. The lien will attach to any such recovery you may obtain, whether by arbitration award, judgment, settlement, refinance, sale, or otherwise. The effect of such a lien is that the McMillan Law Firm, APC may be able to compel payment of fees and costs from any such recovery, whether through escrow, levy, lien or

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other, even if the McMillan Law Firm, APC has been discharged before the end of the case. Because a lien may affect your property rights, you have the right to seek the advice of independent counsel of your own choosing before agreeing to such a lien. By initialing this paragraph, you represent and agree that you have had a reasonable opportunity to consult with independent counsel, whether or not you chose to consult with independent counsel, and yet you still agree that the McMillan Law Firm, APC will have a lien as specified above.



(Client Initials)

TERMINATION OF REPRESENTATION

You have the right to determine at any time that you do not wish me to provide further services. If at any time you do wish to terminate our representation, you should so advise me in writing.

Similarly, I have the right to withdraw from the representation at any time for any reason consistent with the California Rules of Professional Conduct, including any dispute about or failure to honor this fee agreement. If I decide to withdraw from the representation, I will so advise you in writing, and you agree that you will execute any necessary substitutions of counsel or other pleadings consenting to our withdrawal from any pending action.

In the event that the representation is terminated by either of us, I will then render a final statement of our fees and costs.

ARBITRATION

I appreciate the opportunity to serve as your attorneys and look forward to a harmonious relationship. Should you become dissatisfied for any reason with the fees I have charged, I encourage you to bring that to our attention immediately. I will likewise bring to your attention any problem with fee payment. I believe that most problems can be resolved by good faith discussion between us. Should a fee dispute arise which cannot be resolved by discussion between us, I believe such disputes can be resolved more expeditiously and with less expense to all concerned by binding arbitration rather than by court action.

Arbitration is a process by which both parties to a dispute agree to submit the matter to a neutral party who has experience in the area, and agree to abide by the arbitrator's decision.

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In arbitration, there is no right to a trial by jury, and the arbitrator's legal and factual determinations are generally not subject to appellate review. Rules of evidence and procedure are often less formal and less rigid than in a court trial. Arbitration usually results in a decision much more quickly than proceedings in court, and attorneys' fees and other costs incurred by both sides are substantially less.

Please feel free to discuss the advisability of arbitration with us or your independent counsel or any of your other advisors and to ask any questions that you may have.

During the arbitration process, the parties shall be entitled to take discovery in accordance with the provisions of the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount and scope of such discovery and, in determining whether to do so, the arbitrator shall balance the need for this discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively. Any award resulting from such arbitration shall be binding upon the parties, and may be confirmed as a judgment of a court of competent jurisdiction in accordance with the laws of the State of California.

COLLECTION ACTION-VENUE

In the event you fail to pay an arbitration award, you agree that jurisdiction and venue respecting such action shall be in San Diego County, California.

BINDING AGREEMENT

The amount payable to an attorney by way of a contingency fee contract is not set by law in California. Rather, the terms of such a contract as this are negotiable. There are no fixed percentages. Indeed, preceding the tender of this contract in its present form, we have negotiated over the terms of the contract and I have made changes to the form and substance of this contract in comparison to what was originally proposed. This version of our agreement, in its present form, upon your signature below, will supercede any prior oral discussion or writing regarding the terms of Your engagement of myself and the Firm.

Although I have set out the terms of our representation in the form of a letter, please understand that the agreement set out in this letter is a binding legal contract. If this agreement meets with your approval and accurately sets out your understanding of the terms of our representation, please have the authorized persons sign and return the enclosed copy of this letter. This letter sets out our entire agreement, and no modification of the terms of this agreement will be effective unless made in writing and signed by both

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you and I.

If you have any questions concerning my fees and costs arrangement or procedures, or the scope of the legal services I will provide, please feel free to call me at any time. Again, I thank you for asking us to represent you. I appreciate your confidence and welcome the opportunity to be of service to you.

Very truly yours,

THE MCMILLAN LAW FIRM, A.P.C.

Dated:

Scott A. McMillan
for the Firm

ACCEPTANCE AND APPROVAL

I accept and approve of the foregoing fee agreement. As this agreement encompasses an extension of credit, I authorize the McMillan Law Firm to access my credit records in order to determine my worthiness for the extension of credit, and provide my social security number for that purpose.

Dated:

Client: L. Lee Brightwell

By: 261-73-8108
Social Security No.:
California Drivers License:

*** AUTHORIZATION TO DESTROY RECORDS ***

I hereby authorize the McMillan Law Firm, APC, to destroy all records of this case after three years of non-activity.

Dated: 9-29-14

Client: L. Lee Brightwell

By: [Signature]

EXHIBIT B

Schedule of Payments to McMillan Law Firm

Date	check #	Amount
09/29/14	wire transfer	\$10,000.00
10/30/14	2004	\$15,000.00
10/28/14	2003	\$15.00
12/01/14	2009	\$10,000.00
12/05/14	2011	\$5,000.00
01/16/15	2026	\$12,125.65
02/17/15	2037	\$4,326.25
02/20/15	wire transfer	\$5,000.00
03/06/15	2040	15,138.55
03/24/15	2047	10,000.00
03/25/15	2048	13,446.91
04/14/15		15,000.00
Total		\$115,052.36