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# 429-01788-2017 **CAUSE NO.**

JAMAL LONE,	§	IN THE DISTRICT COURT
	§	*
Plaintiff,	§	
	§	
v.	§	
	§	
ASCENTIUM CAPITAL, LLC,	§	
ACCOUNTABLE PRACTICE	§	JUDICIAL DISTRICT
MGMT., INC., AMERICA'S MHT,	§	
INC. D/B/A MEDICAL HOME TEAM,	§	
OUR MEDICAL HOME TEAM,	§	
L.L.C., CLIFF MCKENZIE, SCOTT	§	
M. POSTLE, AND JUDY POSTLE,	§	
	§	
Defendants.	§	COLLIN COUNTY, TEXAS

# PLAINTIFF JAMAL LONE'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

Plaintiff, Jamal Lone, MD, ("Plaintiff"), pursuant to Rules 46-47 and 78-79 of the Texas Rules of Civil Procedure, files this original petition complaining of Ascentium Capital, LLC, Accountable Practice Mgmt., Inc., America's MHT, Inc. d/b/a Medical Home Team, Our Medical Home Team, L.L.C., Cliff McKenzie, Scott M. Postle, and Judy Postle (collectively, "Defendants").

#### I. DISCOVERY CONTROL PLAN AND STATEMENT OF RELIEF

- 1. Plaintiff proposes to conduct discovery pursuant to Level 2 of TEX. R. CIV. P. 190.3.
- 2. Pursuant to Tex. R. Civ. P. 47, Plaintiff seeks monetary relief in an amount exceeding \$200,000 but less than \$1,000,000.00. As stated in the comment to the 2013 amendment to Tex. R. Civ. P. 47, this statement is made solely for the purpose of providing information on the nature of this case, does not affect Plaintiff's substantive rights, and is made subject to Plaintiff's right to amend.

## II. PARTIES, JURISDICTION, AND VENUE

- 3. Plaintiff is a citizen of Texas and resides in Collin County, Texas.
- 4. Defendant Ascentium Capital LLC ("Ascentium") is a Delaware limited liability company with its principal place of business in Kingwood, Harris County, Texas, and may be served through its registered agent: CT Corp. System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.
- 5. Defendant Accountable Practice Mgmt., Inc. ("APM") is a Texas corporation with its principal place of business in McKinney, Collin County, Texas, and may be served through its registered agent: Shelley Molge, at 1575 Heritage Drive, Suite 205, McKinney, Texas 75069.
- 6. Defendant America's MHT Inc. ("MHT") is a Texas corporation with its principal place of business in McKinney, Collin County, Texas, and may be served through its registered agent: Shelley Molge, at 1575 Heritage Drive, Suite 205, McKinney, Texas 75069.
- 7. Defendant Our Medical Home Team, L.L.C. ("OMHT"), is a Texas limited liability company, and may be served through its registered agent Shelley Molge, at 1575 Heritage Drive, Suite 200, McKinney, Texas 75069.
- 8. Defendant Cliff McKenzie ("McKenzie") is an individual residing in Collin County, Texas, and may be served personally at 1912 Rising Star Drive, Allen, Texas 75013, or wherever he may be found.
- 9. Defendant Scott M. Postle ("Scott Postle") is an individual residing in Collin County, Texas and may be personally served at 217 Dowdy Road, McKinney, Texas 75069 or wherever else he may be found.

- 10. Defendant Judy Postle ("Judy Postle") is an individual residing in Collin County, Texas, and may be personally served at 217 Dowdy Road, McKinney, Texas 75069 or wherever else she may be found
- 11. This Court has jurisdiction over the subject matter of this dispute pursuant to ArticleV of the Texas Constitution because the amount in controversy exceeds \$500.
- 12. This Court has jurisdiction over the parties because all parties are (i) domestic entities, (ii) individual residents of Texas, or (iii) are doing business in Texas.
- 13. Venue in Collin County is proper because all or a substantial part of the events and transactions giving rise to the causes of action stated herein occurred in Collin County, Texas, making venue proper in Collin County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1). Venue in Collin County is also proper because the Defendants APM, MHT, OMHT, McKenzie, Scott Postle, and Judy Postle, all reside or are located in Collin County, and thus venue is proper as to all Defendants in Collin County, pursuant to Tex. Civ. Prac. & Rem. Code § 15.005.

#### V. FACTUAL BACKGROUND

- 14. Plaintiff is a medical doctor practicing in North Texas.
- 15. MHT, by and through its employees or agents, including Scott Postle, Dr. Nhue Ho, Bradley Leire, David A. Fronk, Scott Hensley, Debra Wertzberger, and/or Bobby James Vasquez (collectively with MHT, "MHT Co-Conspirators"), approached and recruited physicians, including Plaintiff, to establish an independent medical practice focusing on in-home patient care or "home healthcare." MHT referred to this package of services as the Medical Home Team Services Program ("Program").
- 16. Unfortunately, unbeknownst to the physicians, including Plaintiff, the Program was nothing more than a "Ponzi" or "pyramid" scheme fashioned by the MHT Co-Conspirators that

survived only on the sale of "practices" to the physicians, who were encouraged, through referral "bonuses," to enlist other physicians to purchase more "practices." As of the date of this filing, Plaintiff believes hundreds of doctors participated in the Program ("Physicians") and are victims of Defendants' fraudulent actions.

- 17. MHT represented the Physicians would supervise the nurse practitioners and others providing home patient care in return for a substantial portion of profits related to such services. The MHT Co-Conspirators represented that under each practice ("Program Practice") the Physicians would earn between \$102,000.00 and \$186,000.00 per year.
- 18. These Program Practices were supposed to consist of the physician, a nurse practitioner, and a billing coordinator ("Team") working for a limited liability company ("Plaintiff LLC") created by MHT with APM² acting as the managing member and the physician allegedly being a member.³ Under a Program Practice, the Physicians' role was to review at least ten percent (10%) of the nurse practitioners' notes and patient files. On the other hand, APM was represented as being a medical management company that would be responsible for hiring the nurse practitioners, staff and other personnel; as well as, performing billings and collections services and purportedly establishing a bank account for the Plaintiff LLC "LLC Bank Account").
- 19. The MHT Co-Conspirators induced the Physicians, including Plaintiff, as an officer of the Plaintiff LLC, to execute a Management Services Agreement ("MSA") with MHT. Under the MSA, MHT was required to provide the Plaintiff LLC and Plaintiff management services, billing support, and other services necessary to establish the Program Practice. In exchange, MHT

Indeed, several cases are progressing in Texas, Louisiana, and Pennsylvania regarding Defendants' misrepresentations and the Program, generally.

<sup>&</sup>lt;sup>2</sup> Ironically, APM is owned by Scott Postle and listed as its Vice President.

<sup>&</sup>lt;sup>3</sup> Each limited liability company is Physician specific. Therefore, each Physician, including Plaintiff, had his or her own company related to their specific Team.

would receive 17% of the Plaintiff LLC's revenue as compensation. Notably, the MSA provided MHT would fund any deficit (after payment of all expenses attributable to the provision of services) suffered by Plaintiff LLC.

- 20. Pursuant to the MSA, MHT was to provide "[a]ccess to (an[d] applicable training in the use of) that certain MHT-EHR System, a proprietary mobile electronic health record and mobile practice management software system (and applicable hardware) ...pursuant to a license agreement (the 'License Agreement')." The purported purpose of the hardware and proprietary software ("MHT Software") was to "address the documentation, communication and process requirements for the MHTS Program."
- 21. Contrary to the terms of the MSA, Plaintiff never executed or received a License Agreement but only an iPad with preloaded software,<sup>4</sup> with a fair market value of less than \$1,000.00.<sup>5</sup> Nonetheless, the MHT Co-conspirators required the Plaintiff LLC to enter into two Installment Payment Agreements (each an "IPA") with Ascentium. The IPAs included personal guaranties by Plaintiff. The IPA recited Plaintiff LLC had "entered into an agreement ('License Agreement') in connection with the licensing of certain software products," and the IPA payment schedule provided for "60@\$3,734.00." The IPA made no express reference to any hardware but the IPA payment schedule also provided for "6@\$198.00." Thus, by the terms of each IPA, Plaintiff purportedly incurred a total repayment obligation to Ascentium of \$225,228.00.
- 22. Contrary to the terms of the IPA, the MHT Co-Conspirators represented to the Physicians, including Plaintiff, the IPA was a line of credit and would only be utilized to fund the LLC Bank Account and for initial expenses. The MHT Co-Conspirators explained to Plaintiff

<sup>&</sup>lt;sup>4</sup> It is thus unclear what intellectual property, if any, was actually licensed to Plaintiff or Plaintiff LLC under any purported License Agreement.

Of course, Plaintiff stands ready, willing and able to return the iPad, and hereby offers to tender said iPad upon rescission of the subject transaction(s).

financing was required to comply with federal anti-kickback regulations and was simply a formality. The MHT Co-Conspirators repeatedly assured the Physicians, including Plaintiff, the terms of the IPA did not impose additional obligations on the Physicians other than those to which they had already previously agreed, and in no way would the Physicians ever be responsible for repayment to Ascentium.

- 23. The MHT Co-Conspirators also represented the Physicians, including Plaintiff, could leave the Program at any time upon written notice to MHT. Furthermore, the MHT Co-Conspirators assured Plaintiff and the other Physicians the Program Practices were in great demand; and, therefore, MHT would either repurchase the Program Practice or Plaintiff could sell the Program Practice to another physician if Plaintiff wished to terminate his relationship with MHT.
- 24. Defendants failed to disclose the entire proceeds of the financing under the IPA were to be paid to MHT immediately upon execution of the IPA. Such payments to MHT were not only contrary to the representations made to the Physicians, including Plaintiff, by the MHT Co-Conspirators, such payments were contrary to Ascentium's IPA. As noted above, the IPA payment schedule provided for six (6) payments at \$198.00, and sixty (60) payments at \$3,734.00.
- 25. Upon information and belief, Ascentium, acting by and through its employee, McKenzie, created a custom financing program for MHT to mislead the Physicians, including Plaintiff, and to conceal essential terms of financing.
- 26. Upon information and belief, MHT provided office space to McKenzie and directly paid McKenzie "bonuses" while he was still an employee of Ascentium. Upon further information and belief, MHT paid McKenzie these "bonuses" to incentivize McKenzie to quickly close the loans without regard to financial viability of the transaction.

- 27. The MHT Co-Conspirators repeatedly pressured Plaintiff to establish multiple Program Practices. The MHT Co-Conspirators represented Plaintiff could not establish only one Program Practice, but rather had to establish a minimum of four Program Practices and assured Plaintiff he would have no financial liability under the MHT Program. The MHT Co-Conspirators represented to Plaintiff only one Program Practice would be activated initially and once a Team had reached capacity of 150 patients an additional Program Practice would be activated for another Team under Plaintiff.
- 28. In reliance upon the misrepresentations of Defendants, or certain of them, Plaintiff agreed to establish four Program Practices.
- 29. Despite the MHT Co-Conspirators' assurances only one Program Practice would be initially activated, upon the purported execution of the License Agreements, MHT allegedly obtained loans from Ascentium for all of the purported License Agreements. As a result, Plaintiff purportedly became indebted to Ascentium for the sum of \$225,228.00 under each IPA.
- 30. Because Plaintiff was never given access to, or provided statements for, the LLC Bank Account, it is unknown whether Ascentium transferred any funds to Plaintiff LLC.
- 31. Since executing the MSA, however, MHT has provided little to no services to Plaintiff, and has otherwise failed to provide services as set forth in the MSA. Indeed, assuming the proceeds of the financing under the IPA were paid to MHT, the license fees were essentially stripped out and there were no funds available for operation of a home health care practice.
- 32. In late 2016, the Physicians (including Plaintiff) began receiving notices from Ascentium informing them their affiliated limited liability companies were behind on loan payments and the Physicians were required to make payments in their capacities as guarantors to bring the loans current. Prior to receiving these notices, the Physicians, including Plaintiff, did not

know their affiliated limited liability companies were in default. APM would not provide any information to the Physicians, including Plaintiff, regarding any deficiencies, ostensibly because APM was not making the payments.

- 33. MHT, however, reassured the Physicians, including Plaintiff, MHT would make the payments and instructed Plaintiff not to make payments to Ascentium.
- 34. MHT's reassurance were intended and had the effect of hiding the fraud perpetrated by the Defendants on Plaintiff.
- 35. To date, the loan to Plaintiff LLC purportedly remains outstanding, and Ascentium has made demand upon Plaintiff to make payment under his purported personal guaranty.
- 36. Upon information and belief, on or about November 9, 2016, at a time when MHT was not servicing the alleged Ascentium debt, OMHT transferred approximately 38 acres of land in Collin County, Texas to Scott Postle and Judy Postle. Upon further information and belief, this land was purchased in 2015 with funds transferred from MHT to OMHT.

#### VI. <u>CONDITIONS PRECEDENT</u>

37. All conditions precedent have been performed or have occurred.

#### VII. CAUSES OF ACTION

#### A. Common-law Fraud

- 38. Plaintiff hereby incorporates the factual representations set forth in Section V above.
- 39. The MHT Co-conspirators represented to Plaintiff that (1) MHT would provide management services and a turnkey operation to Plaintiff to facilitate the establishment of the Plaintiff's home healthcare practice; (2) Plaintiff would not be financially liable to Ascentium for any sums due to his involvement with MHT; (3) Plaintiff could easily terminate his affiliation with

MHT without bearing any financial liability to MHT or Ascentium by providing a termination notice to MHT; (4) the financing through Ascentium was a line of credit and would only be accessed on an as-needed basis; (5) there was a greater demand for MHT Program Practices than there were Program Practices available; (6) only one Program Practice would be "activated" initially; (7) additional Program Practices would be "activated" only after Plaintiff's initial Program Practice reached capacity of 150 patients; (8) Plaintiff would receive regular financial reports of their Program Practices' performance; and (9) the only reason the Plaintiff was required to execute the IPA was to comply with federal healthcare anti-kickback and self-referral laws. Ascentium, through a document entitled "Vendor Relationship Acknowledgment," specifically misrepresented it had no relationship with MHT and had received no compensation from MHT.

- 40. Defendants' representations to Plaintiff were material because each representation presented important factors that Plaintiff considered and relied upon in making his decision to enter MHT's and Ascentium's scheme. The representations concerned the financial aspects of joining the MHT scheme, the benefits of establishing a Program Practice, the alleged reason behind the financing scheme with Ascentium, the ease with which Plaintiff could terminate his relationship with MHT, and how many Program Practices Plaintiff would be activated. These factors were important and would induce a reasonable person to act upon the information provided.
- 41. Defendants' representations to Plaintiff were false statements of fact and a false promise of future performance. The MHT Co-conspirators had no intention of providing (and no ability to provide) the services described in the MSA Agreements executed by Plaintiff. The IPAs with Ascentium were not for lines of credit but rather, loans that Ascentium purportedly funded. Under the terms of the agreements the MHT Co-conspirators required Plaintiff to sign, Plaintiff is (allegedly) financially liable to Ascentium.

- 42. As described above, Defendants made false representations knowing such representations were false and intended for Plaintiff to act in reliance on the false representations. Plaintiff would not have participated in MHT's program had he known he would become personally liable for hundreds of thousands of dollars almost immediately after executing the documents provided by MHT and Ascentium.
- 43. Plaintiff justifiably relied on Defendants' false representations. Defendants represented the MHT Program as a great opportunity and touted its benefits to patients and profitability to physicians, and Bradley Leire and Scott Postle represented the Program was backed by Paul Allen (a famous businessman associated with Microsoft, Inc.). Moreover, the MHT Coconspirators assured Plaintiff repeatedly the documents he was signing were just a formality and included the terms that were verbally presented to Plaintiff.
- 44. Defendants' false representations directly and proximately caused injury to Plaintiff, which resulted in Plaintiff purportedly owing Ascentium over \$450,000.00.
- 45. Plaintiff seeks rescission of the MSA, any purported License Agreements, the IPA and all guaranties of any amounts financed under the IPA, and damages within the jurisdictional limits of this Court.
- 46. Plaintiff's injuries resulted from Defendants' actual fraud, gross negligence, or malice, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### B. Fraud by Nondisclosure

47. Plaintiff hereby incorporates the factual representations set forth in Section V above.

- 48. Defendants committed fraud by nondisclosure. Defendants concealed from Plaintiff material facts related to the Ascentium financing transaction.
- 49. Defendants had a duty to disclose the nature of the financing arrangement with Ascentium, specifically that (1) it was a term loan and not a line of credit; (2) a loan in the principal amount of \$75,000 would be funded up front for each IPA signed by Plaintiff; (3) the loan amount would bear interest at 24% per annum; (4) the Program that was the subject of the financing was a pyramid promotional scheme; and (5) there was a financial arrangement between MHT and Ascentium's employee, McKenzie.
- 50. The undisclosed information was material because it directly pertained to the terms Plaintiff was agreeing to by signing the MSA, the IPA and related agreements.
- 51. Defendants knew Plaintiff was ignorant of the information and did not have an equal opportunity to discover the truth. The IPA does not clearly state a loan amount, provide an interest rate, or conspicuously disclose that it includes a personal guaranty.
- 52. Defendants' nondisclosure directly and proximately caused injury to Plaintiff, which resulted in Plaintiff purportedly owing Ascentium over \$450,000.00.
- 53. Plaintiff seeks rescission of the MSA, any purported License Agreements, the IPA and all guaranties of any amounts financed under the IPA, and damages within the jurisdictional limits of this Court.
- 54. Plaintiff's injuries resulted from Defendants' actual fraud, gross negligence, or malice, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).
- C. Texas Deceptive Trade Practices Consumer Protection Act

- 55. Plaintiff hereby incorporates the factual representations set forth in Section V above.
- 56. Plaintiff asserts its claim against Defendants for violations of the Texas Deceptive Trade Practices Act.
- 57. Plaintiff is a business consumer within the meaning of the Texas Deceptive Trade Practices—Consumer Protection Act ("D.T.P.A."), V.T.C.A., Texas Business & Commerce Code, §17.41, et seq.
- 58. Defendants engaged in one or more false, misleading, and/or deceptive acts within the meaning of Section 17.46 of D.T.P.A., including, without limitation: (i) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not; (ii) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; (iii) failing to disclose information concerning goods or services which was known at the time of the transaction with intent to induce a consumer into a transaction into which the consumer would not have entered had the information been disclosed; and (iv) promoting a pyramid promotional scheme.
- 59. Plaintiff relied to its detriment on the false, misleading, and deceptive acts of Defendants in connection with Plaintiff's decision to Invest in the Program.
- 60. Plaintiff is entitled to rescission and restoration of all consideration paid or otherwise purportedly required to be paid due to Defendants' false, misleading, and deceptive acts or, in the alternative, to recover the economic damages Plaintiff has incurred.
- 61. Because Defendants' false, misleading, and deceptive acts, regarding the Program were committed knowingly, Plaintiff is entitled to an award of up to three times his economic damages.

- 62. Pursuant to Section 17.50(d) of the D.T.P.A., Plaintiff is entitled to recover its reasonable and necessary attorneys' fees incurred in connection with the prosecution of its DTPA claims.
- 63. All conditions precedent to this claim either have been satisfied, have occurred, or have been excused.

# D. Breach of Fiduciary Duty

- 64. Plaintiff hereby incorporates the factual representations set forth in Section V
- 65. The Plaintiff LLC and Plaintiff had a fiduciary relationship with Defendant Accountable Practice Mgmt., Inc. ("APM") resulting from APM's role as the manager of the Plaintiff LLC.
- 66. APM breached its duty to the Plaintiff LLC and its member, Plaintiff, by failing to serve the interests of the Plaintiff LLC. Instead, APM served the interests of MHT.
- 67. APM's breach of its fiduciary duty injured Plaintiff by mismanaging the funds of the Plaintiff LLC and failing to make timely payments on the IPA, which resulted in Ascentium invoking the guaranties executed by the Plaintiff LLC and Plaintiff.
- 68. Plaintiff's injuries resulted from APM's malice, fraud, or gross negligence, which entitles Plaintiff's to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### E. Civil Conspiracy

69. Plaintiff hereby incorporates the factual representations set forth in Section V above.

- 70. Defendants conspired to promote a pyramid promotional scheme and defraud Plaintiff to enjoy the benefits of the amount of the loans purportedly issued for the License Agreements, interest income, and other fees charged in connection with the MHT Program.
- 71. Defendants, acting through their employees and agents, conspired together to render Plaintiff personally responsible for the loans purportedly issued to the Plaintiff LLC, without providing the promised consideration, or any consideration for the same.
- 72. Plaintiff seeks rescission of the MSAs, any purported License Agreements, the IPAs and all purported guaranties of any amounts financed under the IPAs, and damages within the jurisdictional limits of this Court.

# F. Declaration of Unenforceability of Contracts

- 73. Plaintiff hereby incorporates the factual representations set forth in Section V above.
- 74. Between Plaintiff and MHT and Ascentium there was no (1) acceptance of an offer, (2) mutual assent, (3) execution of a contract with the intent that it be mutual and binding, and (4) consideration supporting the contract. Since the terms of the offer that was presented to Plaintiff differed materially from what was included in the contracts, there was no meeting of the minds and, accordingly, no enforceable contracts. Moreover, essential terms were excluded from the IPA and the guaranty signed in connection with the IPA, resulting in a lack of mutual assent between the parties.
- 75. Plaintiff did not receive any consideration from Ascentium or, in the alternative, there has been a failure of consideration. Therefore, the IPA is unenforceable.

76. Plaintiff seeks a declaration by this Court that he is not and cannot be held responsible, as guarantor or under any other legal theory or cause of action, for the alleged loans provided by Ascentium to the Plaintiff LLC.

#### G. Declaration of Unconscionability

- 77. Plaintiff hereby incorporates the factual representations set forth in Section V above.
- 78. The IPA is procedurally and substantively unconscionable. Plaintiff had not received the essential terms of the financing arrangement under the IPA when Plaintiff was pressured to sign the IPA and its related guaranties. Had Plaintiff known Plaintiff was agreeing to term loans in principal amounts of hundreds of thousands of dollars to fund a pyramid promotional scheme and was being charged the exorbitant interest rate of 24%, then Plaintiff would not have agreed to such terms.
- 79. Any purported License Agreements are procedurally and substantively unconscionable because Plaintiff was not informed that upon the purported execution of such purported License Agreements, MHT would obtain loans from Ascentium for all such purported License Agreements. To the contrary, the MHT Co-conspirators provided assurances that only one Program Practice would be initially activated.
- 80. Plaintiff seeks a judgment declaring the MSA, purported License Agreements, IPA and any other related agreement as unconscionable and unenforceable.

# H. Request for Temporary Injunction

81. Plaintiff hereby incorporates the factual representations set forth in Section V above.

- 82. There is substantial likelihood that Plaintiff will prevail on the merits of Plaintiff's claims for, among other things, fraud, fraud by non-disclosure, violation of the D.T.P.A., breach of fiduciary duty, conspiracy, and declaratory judgment.
- 83. As set forth above, while Plaintiff is a member of the Plaintiff LLC and purportedly the guarantor of the alleged indebtedness of the Plaintiff LLC to Ascentium, Plaintiff was never given access to, or provided statements for, the LLC Bank Account. Accordingly, any funds in the LLC Bank Account, and any documents relating to the LLC Bank Account, including the LLC Bank Account records, correspondence between any between the parties to this suit, correspondence with any third parties related to the claims alleged in this suit, and any agreements purportedly executed by and between or among the parties to this lawsuit, are outside the custody and control of Plaintiff. While the LLC Bank Account, and any documents relating to the LLC Bank Account, are outside the custody and control of Plaintiff. Ascentium has made demand that Plaintiff make payments to bring the alleged loan current.
- 84. Plaintiff requests this Court issue an order directing Ascentium, MHT and APM to appear at a temporary injunction hearing and show cause, if any exists, as to why the Court should not enter a temporary injunction to fully protect Plaintiff's rights during the pendency of the lawsuit. Specifically, Plaintiff seeks an injunction restraining Ascentium, MHT and APM, along with their officers, agents, servants, employees, representatives, assigns, and/or any other persons or entities acting on behalf of Ascentium, MHT, or APM, or in participation with Ascentium, MHT, or APM from directly or indirectly doing any of the following during the pendency of this lawsuit:
  - Depositing, withdrawing, or transferring any funds to or from the LLC Bank
     Account;

- b. Destroying, removing, concealing, or secreting any documents or records in any medium, including any electronic medium, related to any cause of action claimed herein, including the LLC Bank Account records, correspondence between any between the parties to this suit, correspondence with any third parties related to the claims alleged in this suit, and any agreements purportedly executed by and between or among the parties to this lawsuit; and
- c. Reporting to any credit bureau, including TransUnion, Equifax, and Experian, any detrimental information related to or resulting from any nonpayment or delinquent payment to Ascentium for loans allegedly provided to the Plaintiff LLC and purportedly guaranteed by Plaintiff.
- 85. The temporary injunction shall maintain the status quo of the parties during the pendency of this lawsuit.
- 86. If injunctive relief is not granted, Plaintiffs will suffer immediate and irreparable harm as a result of the actions of Ascentium, MHT and APM, along with their officers, agents, servants, employees, representatives, assigns, and/or any other persons or entities acting on behalf of Ascentium, MHT, or APM, or in participation with Ascentium, MHT, or APM. Access to the LLC Bank Account, and any documents relating to the LLC Bank Account, is essential to managing the affairs of the Plaintiff LLC, including responding to demands by Ascentium for payment of alleged indebtedness.
- 87. Plaintiff has no adequate remedy at law. The documents relating to the Plaintiff LLC, including the LLC Bank Account records, correspondence between any between the parties to this suit, correspondence with any third parties related to the claims alleged in this suit, and any agreements purportedly executed by and between or among the parties to this lawsuit, are unique

property interests, and no damages can compensate Plaintiff for the delay in, and loss of, the use of such information.

- 88. Injunctive relief as prayed for herein will serve the public interest by, among other things, allowing Plaintiff LLC to manage its affairs, including responding to demands by Ascentium for payment of the alleged indebtedness.
  - 89. Plaintiff has joined all indispensable parties under Tex. R. Civ. P. 39.

## VIII. <u>JURY DEMAND</u>

90. Plaintiff demands a jury trial and tenders the appropriate fee with this Petition.

#### IX. REQUEST FOR DISCLOSURE

91. Plaintiff requests Defendants disclose, within 30 days of the service of this request, the information or material described in Tex. R. Civ. P. 194.2.

#### X. PRAYER

- 92. For these reasons, Plaintiff respectfully requests that Plaintiff be awarded the following relief:
  - a. A temporary injunction to maintain the status quo during the pendency of this lawsuit:
  - b. Actual damages;
  - c. Exemplary damages;
  - d. Rescission and restoration of all consideration paid or otherwise purportedly required to be paid under the Texas Deceptive Trade Practices Act;
  - e. Statutory damages under the Texas Deceptive Trade Practices Act;
  - f. Attorneys' Fees;

- g. Declaratory relief rescinding the MSA, any purported License Agreements, the IPA, and the related guaranty;
- h. Declaratory relief declaring the MSAs, any purported License Agreements, the IPA, and the related guaranty to be unenforceable;
- i. Pre- and post-judgment interest;
- j. Court costs; and
- k. Any and all other relief, whether in law or in equity, to which Plaintiff shows

  Plaintiff to be entitled.

Date: April 17, 2017

Respectfully submitted,

#### FERGUSON BRASWELL FRASER KUBASTA PC

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#### /s/ Ryan M.T. Allen

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