

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

AVRA JAIN,

CASE NUMBER: 2017-026857-CA-01

Plaintiff,

v.

BUCHANAN INGERSOLL & ROONEY PC,
a foreign profit corporation, and RICHARD A.
MORGAN, an individual,

Defendants.

**DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

Defendants Buchanan Ingersoll & Rooney PC (“Buchanan Ingersoll”), and Richard A. Morgan (“Morgan”), by and through their undersigned counsel, hereby answer the Complaint filed by Plaintiff Avra Jain, as follows:

PRELIMINARY STATEMENT

Avra Jain is a sophisticated real estate developer who made millions of dollars investing in undervalued and run-down properties in Miami, renovating those properties over time and then selling them for a handsome profit. In 2006 – at the height of South Florida’s real estate investment frenzy – Jain decided to enter the speculative world of condominium development. Along with a partner, Jain sought out an opportunity to invest in a large condominium project in Doral known as “Blueview.” Following a brief negotiation, Jain acquired a 25% interest in the Blueview project, which was in its development infancy and where construction had not yet commenced. Through this new venture, Jain was knowingly taking big risks in hopes of reaping big financial rewards.

Abraham Cohen (“Cohen”), one of the original developers of Blueview, expressed a desire in the summer of 2007 to exit the Blueview project because he was obligated to pay for his sister-in-law’s experimental cancer treatment. When Cohen asked Jain to buy out his 20% interest in the Blueview Project, she seized on this opportunity because Jain projected sales of the Blueview project to likely exceed \$100 million. To effectuate transfer of Cohen’s 20% interest to Jain, a company owned by Jain and other investors agreed to pay Cohen \$5 million as follows: (1) Jain’s company would make an initial down payment of \$500,000 to Cohen at closing in June, 2007; (2) it would make 10 monthly payments of \$50,000 to Cohen on the first day of every month from August, 2007 until May, 2008; and (3) it would make a final balloon payment of \$4,000,000 plus interest to Cohen on June 2, 2008. Jain personally guaranteed these payment obligations.

Unfortunately for Jain, however – and like most real estate investors in Miami in 2007-2008 – her plans for huge profits at Blueview were dashed when the global financial crisis hit and the Blueview condominium project went bust. Although Jain’s company had already made the initial down payment of \$500,000 to Cohen and the first nine monthly payments of \$50,000, it refused to pay the final \$50,000 monthly payment or the \$4,000,000 balloon payment when due. Jain also refused to honor her personal guaranty.

When Cohen sued Jain and her company to force them to pay the remaining \$4,050,000, plus interest they owed him, Jain hired Morgan and Buchanan Ingersoll to defend her in that lawsuit, which they did aggressively for many years. When Buchanan Ingersoll believed it had maximized Jain’s leverage – which led to Cohen expressing interest in settling the case and Buchanan Ingersoll counseling Jain to consider settlement – Jain was furious. She refused to entertain settlement and insisted instead on rolling the dice at trial, where the trial judge

ultimately issued a directed verdict in favor of Cohen. The appellate court affirmed this decision. As a result, Jain was required to pay Cohen almost \$9 million, which included interest and other costs.

Throughout the Cohen Lawsuit, Jain never raised any concern with Buchanan Ingersoll's work. To the contrary, Jain frequently praised Buchanan Ingersoll's attorneys for their "valuable" experience and expressed how "grateful" she was for their assistance. But when Buchanan Ingersoll approached Jain for payment of outstanding legal bills that exceeded \$1 million, she refused to pay her bill and alleged for the first time that Buchanan Ingersoll had committed malpractice.

A review of the public records of Miami-Dade County courts reveals Jain's refusal to pay her debts to Cohen and Buchanan Ingersoll is nothing unique, as she and her companies are defendants in a number of lawsuits brought by financial institutions seeking payment of debts. Here, Jain not only attempts to avoid paying the attorney's fees she agreed to pay Buchanan Ingersoll, but also attempts to shift to Buchanan Ingersoll the financial obligations she owed to Cohen.

The attorneys filing this lawsuit – Bruce A. Weil, Steven W. Davis and Boies, Schiller & Flexner LLP – were co-counsel to Buchanan Ingersoll in the underlying case and this conflict of interest prohibits them from participating as counsel here.

PARTIES, JURISDICTION, AND VENUE

1. Deny the allegations contained in paragraph 1, except admit that this purports to be an action: (1) for legal malpractice and breach of fiduciary duty; and (2) seeking damages in excess of \$750,000, exclusive of interest, costs, and attorney's fees.
2. Admit the allegations contained in paragraph 2.

3. Admit the allegations contained in paragraph 3.

4. Admit that Morgan is a lawyer practicing law in Miami-Dade County, Florida, and was a shareholder of Buchanan Ingersoll & Rooney PC at all times material to this lawsuit, and so answer paragraph 4.

5. Deny with respect to the allegation that Defendants committed legal malpractice. Paragraph 5 otherwise contains legal argument and conclusions, to which no response is required. To the extent a response to paragraph 5 is required, Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5.

GENERAL ALLEGATIONS

6. Admit that Plaintiff is a real estate investor and developer in Miami-Dade County. Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Admit the allegations contained in paragraph 11, but state that the promissory note signed by H-H Investments, LLC in favor of Cohen (the "Note") and the personal guaranty

signed by Jain in favor of Cohen (the “Guaranty”) speak for themselves and Defendants direct the Court to the Note and to the Guaranty for a full statement of their contents and terms.

12. Deny the allegations in paragraph 12. The Note speaks for itself and Defendants direct the Court to the Note for a full statement of its contents and terms.

13. Deny the allegations in paragraph 13. The Note speaks for itself and Defendants direct the Court to the Note for a full statement of its contents and terms.

14. Admit only that H-H Investments, LLC ceased making payments on the Note in 2008. Defendants deny all other allegations in paragraph 14.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15.

16. Deny the allegations contained in paragraph 16.

17. Deny the allegations contained in paragraph 17, except admit that Cohen commenced an action against Plaintiff, Paul Cashman Murphy, and H-H Investments, LLC styled *Abraham Cohen v. Avra Jain, Paul Cashman Murphy, and H-H Investments, LLC*, Case No. 09-14497 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County (the “Cohen Lawsuit”).

JAIN RETAINS COUNSEL

18. Admit that Defendants were retained to represent Plaintiff, Paul Cashman Murphy, and H-H Investments, LLC in the Cohen Lawsuit, and so answer paragraph 18.

19. Admit the allegations contained in paragraph 19.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

COUNT I AGAINST DEFENDANTS
LEGAL MALPRACTICE

Defendants answer the unnumbered paragraph immediately preceding paragraph 21 of the Complaint by re-alleging and incorporating by reference the responses to paragraphs 1 through 20 of the Complaint.

21. Admit the allegations in paragraph 21.

22. Admit the allegations in paragraph 22.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24.

25. Deny the allegations in paragraph 25.

26. Paragraph 26 contains impermissible legal argument and conclusions, to which no response is required. To the extent a response to paragraph 26 is required, Defendants deny the allegations in paragraph 26.

27. Paragraph 27 contains impermissible legal argument and conclusions, to which no response is required. To the extent a response to paragraph 27 is required, Defendants deny the allegations in paragraph 27.

28. Admit the allegations in paragraph 28.

29. Admit the allegations in paragraph 29.

30. Admit the allegations in paragraph 30.

31. Admit the allegations in paragraph 31.

32. Admit only that the trial court entered directed verdict against Defendants in the Cohen Lawsuit, that final judgment was entered on January 27, 2016, and that the Third District

Court of Appeal affirmed the trial court's final judgment in 2017. Defendants deny the remaining allegations in paragraph 32.

33. Admit the allegations in paragraph 33.

34. Admit the allegations in paragraph 34.

35. Admit the allegations in paragraph 35.

36. Admit the allegations in paragraph 36.

37. Admit that the trial court denied the 1.540 Motion, but deny that paragraph 37 contains an accurate summary of the Court's ruling; Defendants direct the Court to the trial court's order denying the 1.540 Motion for a full statement of its contents.

38. Paragraph 38 contains impermissible legal argument and conclusions, to which no response is required. To the extent a response to paragraph 38 is required, Defendants deny the allegations in paragraph 38.

39. Paragraph 39 and subparts (a)-(f) contain impermissible legal argument and conclusions, to which no response is required. To the extent a response to paragraph 39 is required, Defendants deny the allegations in paragraph 39, including subparts (a)-(f).

40. Deny the allegations in paragraph 40.

Defendants deny that Plaintiff is entitled to recover the relief sought in its Prayer for Relief. Plaintiff's Prayer for Relief should be denied in its entirety and with prejudice, and Plaintiff should take nothing from Defendants.

COUNT II
BREACH OF FIDUCIARY DUTY AGAINST DEFENDANTS

Defendants answer the unnumbered paragraph immediately preceding paragraph 41 of the Complaint by re-alleging and incorporating by reference the responses to paragraphs 1 through 40 of the Complaint.

41. Paragraph 41 contains impermissible legal argument and conclusions, to which no response is required. To the extent a response to paragraph 41 is required, Defendants deny the allegations in paragraph 41.

42. Paragraph 42 contains impermissible legal argument and conclusions, to which no response is required. To the extent a response to paragraph 42 is required, Defendants deny the allegations in paragraph 42.

43. Deny the allegations in paragraph 43.

Defendants deny that Plaintiff is entitled to recover the relief sought in its Prayer for Relief. Plaintiff's Prayer for Relief should be denied in its entirety with prejudice, and Plaintiff should take nothing from Defendants.

GENERAL DENIAL

Defendants deny each and every allegation and legal conclusion contained in the Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

As for their Affirmative Defenses, Defendants allege as follows:

First Affirmative Defense

1. Defendants, to the extent they had legal duties to Plaintiff, performed all such duties: (a) within the scope of their representation of Plaintiff, and (b) with the requisite standard of care for attorneys.

Second Affirmative Defense

2. Defendants' purported failure to timely raise arguments regarding the original Note did not cause prejudice to Plaintiff and was not the cause of Plaintiff's damages. As set forth in the rulings by the trial judge in the Cohen Lawsuit, the authenticity and validity of the Note was never in doubt. Plaintiff admitted that the Note was valid and made several payments on the Note before she stopped paying.

Third Affirmative Defense

3. Defendants' purported failure to timely raise arguments regarding the original Note did not cause prejudice to Plaintiff and was not the cause of Plaintiff's damages. As set forth in the rulings by the trial judge in the Cohen Lawsuit, the Note was no longer collectable and had expired, the statute of limitations had run, and Cohen agreed to satisfy statutory requirements by indemnifying Plaintiff against any claimants. Thus, the requirements of section 673.3091, Fla. Stat., could be satisfied post-judgment without vacating the final judgment.

Fourth Affirmative Defense

4. Defendants' purported failure to timely raise arguments regarding the original Note did not cause prejudice to Plaintiff and was not the cause of Plaintiff's damages. Under Florida law, if Defendants had raised the original Note issue during trial, the trial judge in the Cohen Lawsuit could have allowed Cohen to amend his pleading to reestablish the Note. And, if Defendants had raised the original Note issue after trial and prior to entry of final judgment, the trial judge in the Cohen Lawsuit could have allowed Cohen to amend his pleadings to conform to the evidence.

Fifth Affirmative Defense

5. The exclusion of documents related to Plaintiff's counterclaim caused no prejudice to Plaintiff and was not the cause of Plaintiff's damages. The documents were excluded for multiple reasons and had minimal evidentiary value. Therefore, their exclusion did not impact the court's ruling on Plaintiff's counterclaim.

Sixth Affirmative Defense

6. Plaintiff's claims are barred, in whole or in part, on the basis of judgmental immunity because all alleged actions by Defendants in the Cohen Lawsuit constituted good faith tactical decisions that were made on issues of legal interpretation in the course of their representation of Plaintiff.

Seventh Affirmative Defense

7. The damages sought by Plaintiff are the direct and proximate cause of her own actions and the actions of her agents during the Cohen Lawsuit including, without limitation, Carolyn Zeeger, Esq. and those actions included, among others: Plaintiff's failure to advise Defendants in a timely manner of the existence of documents that would allegedly have supported her counterclaim in the Cohen Lawsuit, as alleged in paragraph 39(d) of the Complaint; Plaintiff's refusal to consider settlement or participate in settlement discussions during the Cohen Lawsuit; Plaintiff's trial testimony during the Cohen Lawsuit that the Note was valid and that she had made multiple payments on the Note; Plaintiff's agreement with Defendants' trial strategy during the Cohen Lawsuit, including the timing of Rule 1.540 Motion; Plaintiff's decision to have Steven W. Davis of Boies, Schiller & Flexner LLP argue the Rule 1.540 Motion at the hearing held on May 5, 2016; and Plaintiff's decision to obtain and collateralize a supersedeas bond following entry of Final Judgment in the Cohen Lawsuit.

Accordingly, Plaintiff is comparatively negligent and any liability of Defendants should be reduced in accordance with the percentage of Plaintiff's fault.

Eighth Affirmative Defense

8. Under the *Fabre* doctrine, Plaintiff's claims against Defendants are barred, or reduced in whole or in part, by the negligence of other parties including, but not limited to, Plaintiff's agents (and Defendants' co-counsel) Bruce Weil, Steven Davis, and Boies, Schiller & Flexner LLP who, among other acts of negligence, argued the unsuccessful Rule 1.540 Motion on May 5, 2016 in the Cohen Lawsuit regarding the original Note, assisted Jain in obtaining and collateralizing a supersedeas bond in the amount of \$8,967,020.74 to stay collection on the final judgment pending appeal of the Cohen Lawsuit, assisted in defending collection proceedings against Jain and otherwise counseled and advised Plaintiff in a manner that caused the alleged damages that she now seeks against Defendants.

Ninth Affirmative Defense

9. There are superseding and/or intervening causes for the damages, if any, incurred by Plaintiff that bar recovery against Defendants including, without limitation, the actions of Plaintiff's agents (and Defendants' co-counsel) Bruce Weil, Steven Davis, and Boies, Schiller & Flexner LLP who, among other acts of negligence, argued the unsuccessful Rule 1.540 Motion on May 5, 2016, in the Cohen Lawsuit regarding the original Note, assisted Jain in obtaining and collateralizing a supersedeas bond in the amount of \$8,967,020.74 to stay collection on the final judgment pending appeal of the Cohen Lawsuit, assisted in defending collection proceedings against Jain and otherwise counseled and advised Plaintiff in a manner that caused the alleged damages that she now seeks against Defendants.

Tenth Affirmative Defense

10. Plaintiff's claims are barred, in whole or in part, because any alleged act of Defendants, or failure to act by them, was not the proximate cause of Plaintiff's damages.

Eleventh Affirmative Defense

11. Plaintiff is precluded from maintaining this action because Plaintiff has suffered no cognizable damages as a proximate cause of the claims made in the Complaint.

Twelfth Affirmative Defense

12. Plaintiff has failed to mitigate or avoid all or a portion of Plaintiff's damages – thus compromising Plaintiff's claim – by, among other things, refusing to entertain settlement discussions with Cohen during the Cohen Lawsuit.

Thirteenth Affirmative Defense

13. Any damage, loss, or injury sustained by Plaintiff is speculative and cannot be determined with reasonable certainty.

Fourteenth Affirmative Defense

14. Plaintiff is barred from seeking any relief from Defendants because the Guaranty signed by Plaintiff was a payment guaranty and permitted Cohen to sue and collect damages on the Guaranty without pursuing a claim on the Note.

Fifteenth Affirmative Defense

15. Plaintiff's claims are barred, in whole or in part, by the doctrine of equitable estoppel because, among other things, Plaintiff participated in and agreed with the actions described in the Complaint, including the decision not to raise the issue of the original Note during trial. Plaintiff has thusly made representations and took positions regarding these matters in the Cohen Lawsuit, which are now contrary to the positions asserted by Plaintiff in this

lawsuit; Defendants relied on Plaintiff's prior representations during their representation of Plaintiff in the Cohen Lawsuit; and Defendants changed their position in reliance on Plaintiff's prior representations and took action in the Cohen Lawsuit including, without limitation, the decision not to raise the issue of the original Note during trial. Plaintiff is further estopped from imposing obligations on Defendants that do not exist under Florida law regarding the tender of an original promissory note. Under long-standing Florida law, the holder of a note (such as Cohen) is required to tender the original promissory note in exchange for a final judgment, and a trial court is required to receive the note prior to entry of a final judgment. The failure of these requirements in the Cohen Lawsuit was not the result of any legal obligation of Defendants and Plaintiff is estopped from alleging otherwise.

Sixteenth Affirmative Defense

16. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver because, among other things, Plaintiff participated in and agreed with the actions described in the Complaint that occurred during the Cohen Lawsuit, including the decision not to raise the issue of the original Note during trial. By participating in the Cohen Lawsuit in this manner, Plaintiff intentionally relinquished any right she may have had to claim that Defendants committed malpractice or breached any fiduciary duty owed to Plaintiff.

Seventeenth Affirmative Defense

17. The Complaint fails to state a cause of action for legal malpractice against the Defendants because Plaintiff fails to allege, and cannot establish, the essential elements for legal malpractice.

Eighteenth Affirmative Defense

18. The Complaint fails to state a cause of action for breach of fiduciary duty against the Defendants because Plaintiff fails to allege, and cannot establish, the essential elements for breach of fiduciary duty.

Defendants reserve the right to amend this Answer to assert any additional affirmative defenses arising from any applicable law or facts that may be revealed during discovery.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants Buchanan Ingersoll & Rooney PC, and Richard A. Morgan demand that this action be dismissed, with prejudice, that the Court enter a final judgment in favor of Defendants and against Plaintiff, and that the Court grant the Defendants attorney's fees, costs, and such further relief as the Court deems appropriate.

COUNTERCLAIM

Defendant Buchanan Ingersoll & Rooney PC ("Buchanan Ingersoll"), by and through undersigned counsel and pursuant to Rule 1.170, Florida Rules of Civil Procedure, files this Counterclaim against Avra Jain ("Jain") and states:

1. This is an action for the collection of unpaid legal fees and costs that seeks damages in excess of \$1.3 million, exclusive of interests, costs, and attorney's fees.

PARTIES, JURISDICTION, AND VENUE

2. Buchanan Ingersoll is a professional corporation organized under the laws of Pennsylvania and, at all material times, was authorized to conduct business in Miami-Dade County, Florida.

3. Jain is an individual residing in Miami-Dade County, Florida.

4. This Court has jurisdiction over Jain because she: (1) is a resident of the State of Florida; (2) operates, conducts, engages in, or carries on a business or business venture in this

state or has an office or agency in this state that gave rise to this action as set forth in Fla. Stat. § 48.193(1)(a); and (3) engages in substantial and not isolated activity within this state as set forth in Fla. Stat. § 48.193(2).

5. This Court has jurisdiction over the subject matter of this action in that the relief sought exceeds \$15,000.00, exclusive of interest, attorney's fees and costs.

6. Venue is proper in Miami-Dade County, Florida, because this Jain resides in this County and because this action accrued in this County.

7. Buchanan Ingersoll has retained the undersigned law firm and has agreed to pay it a reasonable fee for its services.

GENERAL ALLEGATIONS

8. In 2009, Jain hired Buchanan Ingersoll to represent her in certain lawsuits, including the case styled *Abraham Cohen v. Avra Jain, Paul Cashman Murphy, and H-H Investments, LLC*, Case No. 09-14497 (the "Cohen Lawsuit"). Buchanan Ingersoll agreed to represent Jain and Jain agreed to pay – and for years did pay – Buchanan Ingersoll for its legal services at Buchanan Ingersoll's usual hourly rates, and agreed to promptly reimburse Buchanan Ingersoll for all disbursements that it advanced on Jain's behalf (the "Agreement"). The Agreement is attached as **Exhibit A**.

9. Pursuant to the Agreement, Buchanan Ingersoll rendered legal services and incurred costs with respect to the Cohen Lawsuit, including multiple appeals, over the course of several years.

10. Buchanan Ingersoll provided Jain with periodic billing statements detailing the work performed, the timekeepers involved, the respective rates charged, and the costs incurred. These billing statements also included a total sum owed.

11. For years, Jain paid the amounts invoiced by Buchanan Ingersoll. Jain, however, stopped paying the amounts invoiced on or about November 25, 2015.

12. Buchanan Ingersoll continued to represent Jain until on or about August 17, 2017. On that date, Buchanan Ingersoll withdrew as counsel for Jain in the Cohen Lawsuit and terminated its attorney-client relationship with Jain.

13. On November 20, 2017, Jain filed a two-count complaint in this case alleging that Defendants Buchanan Ingersoll and Morgan committed legal malpractice and breached their fiduciary duty to her.

14. As a result of Jain's failure to pay her outstanding fee and cost obligations, Buchanan Ingersoll has suffered damages.

15. All conditions precedent to Buchanan Ingersoll's recovery have occurred, have been performed, or have been waived.

COUNT ONE
BREACH OF CONTRACT

16. Buchanan Ingersoll incorporates by reference each and every allegation in paragraphs 1 through 15 of this Counterclaim and re-alleges them as if they were fully set forth herein.

17. This is an action for damages against Jain for breach of contract.

18. In 2009, Jain entered into an Agreement with Buchanan Ingersoll for the performance of legal services whereby Jain promised to: (1) pay for the legal services rendered by Buchanan Ingersoll at Buchanan Ingersoll's usual hourly rates; and (2) promptly reimburse Buchanan Ingersoll for all disbursements that it advanced on Jain's behalf.

19. At Jain's request, Buchanan Ingersoll has performed legal services and incurred costs for Jain in conjunction with the Cohen Lawsuit and related appeals.

20. Buchanan Ingersoll has fully performed its duties under the Agreement.

21. During the course of its representation of Jain in the Cohen Lawsuit and appeals, Buchanan Ingersoll submitted regular billing statements to Jain explaining the legal fees for services rendered and the costs incurred by Buchanan Ingersoll.

22. Buchanan Ingersoll has requested payment from Jain for the legal services Buchanan Ingersoll has performed and the costs it has incurred. But Jain has not paid all of the bills that Buchanan Ingersoll has sent to her and has refused, and continues to refuse, to pay Buchanan Ingersoll for these services rendered and costs incurred.

23. Jain has breached the Agreement by refusing to pay for the legal services provided by Buchanan Ingersoll and the costs incurred on Jain's behalf.

24. As a direct and proximate cause of Jain's failure to pay Buchanan Ingersoll for the legal services rendered and costs incurred on her behalf related to Cohen Lawsuit and appeals, Buchanan Ingersoll has suffered damages in the amount of \$1,336,285.64, plus interest.

WHEREFORE, Buchanan Ingersoll demands judgment against Jain for damages sustained as a result of Jain's breach of contract, prejudgment and post judgment interest, attorney's fees and costs as authorized by applicable law, and for such other relief the Court deems appropriate.

COUNT TWO
ACCOUNTS STATED

25. Buchanan Ingersoll incorporates by reference each and every allegation in paragraphs 1 through 15 of this Counterclaim and re-alleges them as if they were fully set forth herein.

26. This is an action for damages in the amount of \$1,336,285.64, plus interest, pled in the alternative to Buchanan Ingersoll's cause of action for breach of contract.

27. Before bringing this action, Jain and Buchanan Ingersoll had business transactions between them and in March, 2009, agreed that Buchanan Ingersoll would represent Jain in the Cohen Lawsuit with the parties also agreeing to the resulting balance.

28. On multiple occasions, including on or about September 13, 2017, Buchanan Ingersoll rendered a statement of the balance to Jain, a copy being attached as **Exhibit B** and Jain did not object to that statement.

29. Jain owes Buchanan Ingersoll \$1,336,285.64 (with interest) that is due, from September 13, 2017, on the account.

WHEREFORE, Buchanan Ingersoll demands judgment against Jain for damages, prejudgment and post judgment interest, attorney's fees and costs as authorized by applicable law, and for such other relief the Court deems appropriate.

COUNT THREE
QUANTUM MERUIT

30. Buchanan Ingersoll incorporates by reference each and every allegation in paragraphs 1 through 15 of this Counterclaim and re-alleges them as if they were fully set forth herein.

31. This is an action for quantum meruit, pled in the alternative to Buchanan Ingersoll's cause of action for breach of contract.

32. At Jain's request, Buchanan Ingersoll has performed legal services and incurred costs for Jain in conjunction with the Cohen Lawsuit and appeals. Thus, Buchanan Ingersoll conferred a benefit on Jain by providing valuable legal services to Jain and incurring costs on her behalf in conjunction with the Cohen Lawsuit and appeals.

33. Jain accepted the benefit by Buchanan Ingersoll performing legal services and incurring costs on Jain's behalf.

34. Jain promised to – and for several years did – pay Buchanan Ingersoll for the legal services rendered by Buchanan Ingersoll at Buchanan Ingersoll’s usual hourly rates and to promptly reimburse Buchanan Ingersoll for all disbursements that it advanced on Jain’s behalf.

35. Jain was aware that Buchanan Ingersoll expected to be paid for the legal services rendered to Jain and incurred costs on her behalf in conjunction with the Cohen Lawsuit and appeals.

36. Buchanan Ingersoll has requested payment from Jain for the legal services rendered and costs incurred on Jain’s behalf in conjunction with the Cohen lawsuit and appeals. Jain has refused, and continues to refuse, to pay Buchanan Ingersoll for these services rendered and costs incurred. As a result, Jain has been unjustly enriched.

37. Allowing Jain to retain the benefit of Buchanan Ingersoll performing legal services and incurring costs on her behalf would be inequitable.

38. As a direct and proximate result of Jain’s failure to pay Buchanan Ingersoll for the legal services rendered and costs incurred by Buchanan Ingersoll on Jain’s behalf in conjunction with the Cohen Lawsuit and appeals, Buchanan Ingersoll has suffered damages of \$1,336,285.64, plus interest.

WHEREFORE, Buchanan Ingersoll demands judgment against Jain for damages, prejudgment and post judgment interest, attorney’s fees and costs as authorized by applicable law, and for such other relief the Court deems appropriate.

Respectfully submitted on January 5, 2018:

By: /s/ James N. Robinson
James N. Robinson

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*Counsel for Defendants and
Counter-Plaintiffs*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of Court and served electronically via the Florida Courts E-Portal System to the following parties on January 5, 2018:

Boies, Schiller & Flexner LLP
Bruce Weil
bweil@bsflp.com
Steven Davis
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Telephone: (305) 539-8400

By: /s/ James N. Robinson
James N. Robinson

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Buchanan Ingersoll & Rooney PC
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March 2, 2009

VIA U.S. MAIL

Ms. Avra M. Jain
Suite 500
120 NE 27th Avenue
Miami, Florida 33137

Re: Engagement Letter

Dear Ms. Jain:

Buchanan Ingersoll & Rooney PC ("Buchanan Ingersoll & Rooney" or the "Firm") is pleased to accept the request of Avra M. Jain and Regalia, LLC (collectively, the "Clients") for legal representation. In accordance with the Rules of Professional Conduct and the Firm's procedures, this engagement agreement (the "Agreement") confirms the terms on which Buchanan Ingersoll & Rooney will provide legal services to the Clients in connection with certain matters with BankFirst.

Billing Matters

I will be the attorney in the Firm principally responsible for the Clients' matters. The charge for our services is based primarily upon the then current hourly rates of our personnel performing the services (unless otherwise agreed in a separate written addendum to this Agreement). Other attorneys, non-lawyer professionals, and legal assistants, including personnel with lower rates, will work with me as appropriate. My current hourly rate is \$465.00. The hourly rate of Kelly A. McGovern, who will also be assisting and preparing the initial draft of most filings, is \$250.00. Our billing rates and charges for all clients are usually revised annually, but we reserve the right to revise them at other times during the course of our representation, with 30 days' advance notice to you. Following any such revision, our new rates will be applied to the Clients' account.

Although the Firm may provide an estimate of fees and expenses for the Clients' guidance, the actual fees and expenses that the Clients will incur during the course of the representation may vary from the estimate. Accordingly, any estimate given by the Firm does not constitute a guarantee of the final amount of fees and expenses that the Clients will incur.

We will provide a monthly statement with a brief description of each item of work. Monthly billings will also include expenses incurred in connection with each service matter. Expenses include items such as filing fees, travel costs, delivery/messenger services, photocopy,

Regalia, LLC
Avra M. Jain
March 2, 2009

Scope of Representation

The Clients are our sole clients with respect to this engagement. Individuals or entities that are affiliated or related with any of the Clients, are not clients of the Firm, unless we otherwise agree in writing.

Advance Waiver of Conflicts of Interest

Recognizing and addressing conflicts of interest is a continuing issue for attorneys and clients. We have implemented policies and procedures to identify actual and potential conflicts at the outset of each engagement. From time to time we may be asked to represent someone whose interests may differ from or even be adverse to the interests of the Clients. We are accepting this engagement with the Clients' understanding and express consent that our representation of the Clients will not preclude us from accepting an engagement from a new or existing client that is adverse to the Clients ("Adverse Representation") except under the circumstances identified below. By granting this waiver, the Clients are relinquishing its right to receive detailed information about a proposed Adverse Representation and to decide on a case by case basis whether or not to give its consent. An Adverse Representation could involve, for example, the Firm representing another client in the following: (1) litigation adverse to the Clients; (2) a review, opinion, or challenge involving intellectual property held by the Clients; or (3) a business, commercial or real estate transaction between the Clients and the other client. An Adverse Representation could also involve representing other businesses in the same industry as the Clients in legal, government relations, and legislative/administrative/ executive activities. However, the Firm will not accept an Adverse Representation that is substantially related to the particular matters in which we represent the Clients. Also, we will we not accept an Adverse Representation if because of our representation of the Clients we obtained confidential Client information that is material to the Adverse Representation.

Waiver of Conflict of Interest Involving Avra M. Jain

This Agreement also confirms the waiver agreement the Firm has requested in connection with our ongoing representation of Avra M. Jain ("Ms. Jain") in other matters unrelated to this litigation. As we discussed, the Firm represents Ms. Jain in various matters, and we understand that Ms. Jain is one of the clients being jointly represented in the litigation. Because of our ongoing relationship with Ms. Jain, we ask that the Clients waive any conflict of interest that exists or may arise in the future with respect to our ongoing relationship with Ms. Jain, even if such conflicts are directly adverse to Regalia, LLC.

By granting this waiver, Regalia, LLC, agrees not to assert the Firm's representation of Ms. Jain as a basis for disqualifying the Firm from representing Regalia, LLC in any present or future matter. Regalia, LLC also agrees not to assert the Firm's possession of its confidential information as a basis for disqualifying the Firm from representing Ms. Jain in any matter. Regalia, LLC recognizes that the Firm may take actions or positions adverse to Regalia, LLC in

Regalia, LLC
Avra M. Jain
March 2, 2009

the course of representing Ms. Jain. The waiver and agreement in this letter will continue in effect after the completion of our representation of Regalia, LLC.

Joint and Common Interest Representation -- Conflicts of Interest and Information Sharing

Under the professional and ethical rules that govern the attorney/client relationship, the Firm is permitted to represent more than one client in the same matter if the Firm reasonably believes that it can provide competent and diligent representation to each affected client and if the affected clients give their informed consent after consultation about the material risks and reasonably available alternatives. You have explained to the Firm that the Clients' individual positions and interests in this matter are consistent and aligned and that there is no material dispute between the Clients. The joint representation in this matter has been proposed because of the predominant defenses common to the Clients. However, each Client may also have legal defenses and particular facts unique only to that Client. In undertaking this engagement we intend to pursue all individual defenses and to develop facts unique to each Client, as well as to pursue and develop the defenses and facts common to the Clients. At this time, the Firm does not believe that the development of defenses or facts specific to each Client will jeopardize or prejudice any other Client's respective positions or interests. As a result, the Firm has concluded that it can provide appropriate representation to you in connection with the litigation.

Joint representation, however, carries the risk of potential conflicts of interest that could be viewed as impairing the Firm's ability to continue to represent the Clients on a joint basis if circumstances change. Accordingly, as a condition to accepting this engagement, Buchanan Ingersoll & Rooney asks the Clients to waive any conflicts of interest associated with our joint representation. By signing this letter and granting this waiver, each Client agrees not to assert the Firm's joint representation of the Clients or possession of each Client's confidential information as a basis to disqualify the Firm from representing any other Client in this or other matters. If the Firm determines that conflicts of interest may prevent us from meeting our ethical obligations to the Clients, we reserve the right to limit the scope of our legal services or, if necessary, to withdraw from representing one or more of the Clients as we may determine in our sole discretion.

The Firm also asks the Clients to agree that there will be no individual right of confidentiality as between them with regard to information provided to Buchanan Ingersoll & Rooney regarding the Litigation. We will assume that we may disclose to each Client any information we receive that is pertinent to the subject matter of this engagement. If a request by any of the Clients to keep information confidential creates a potential or actual conflict of interest for us, the Firm may choose to withdraw from representing the Client making the request.

Regalia, LLC
Avra M. Jain
March 2, 2009

Document Procedures

The Firm's policy is to deliver to the Clients, upon request, all documents and property the Clients have provided the Firm and documents and materials prepared as part of the representation. We may exclude our internal memoranda and records, attorney notes, drafts not intended for external distribution and similar lawyer working materials. We may also elect to retain a copy of other portions of the file at our expense. In accordance with the Firm's records retention program, we will retain any files relating to the Clients' matters that it does not ask to have returned. However, to avoid indefinite storage, we reserve the right to dispose of any documents or other materials retained by us within a reasonable time after the completion of our engagement. Our policy is to notify the Clients by appropriate means of our intention to dispose of such documents or materials. The Clients have 60 days from the date of such notice to take possession of its files. If the Clients are in breach of the Clients' representation agreement with the Firm, the Firm may choose to withhold certain portions of the Clients' files consistent with its ethical and professional obligations.

Effective Date

This Agreement will govern all legal services performed by the Firm on behalf of the Clients commencing with the date the Firm first performed services. Even if this Agreement does not take effect, the Clients will be obligated to pay the Firm the reasonable value of any services the Firm may have performed for the Clients.

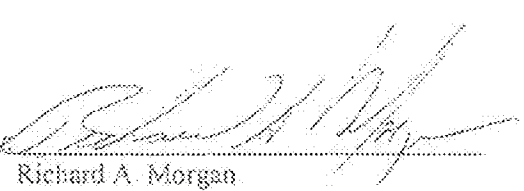
Assent

Please acknowledge your understanding and agreement regarding the terms of our engagement as described in this Agreement by signing one of the enclosed copies in the space provided below and returning it to me together with a check for the advance payment described above. The Clients should retain the second copy duplicate for its records. The Firm will have no obligation to provide legal services until it receives the Clients' signed Agreement and advance payment.

Buchanan Ingersoll & Rooney and I greatly appreciate your confidence in us, and look forward to having the Clients among our clients.

Sincerely,

BUCHANAN INGERSOLL & ROONEY PC

By 
Richard A. Morgan

Regalia, LLC
Avra M. Jain
March 2, 2009

Agreed and accepted this 3 day of MARCH, 2009.

AVRA M. JAIN



Miami Tower
100 S.E. Second Street, Suite 3500
Miami, FL 33131-2158

T 305 347 4080
F 305 347 4089
www.bipc.com

REGALIA, LLC
C/O CAROLYN ZEGER, ESQ.
GENERAL COUNSEL
THE VAGABOND GROUP, LLC
7272 NE 6TH COURT, SUITE 10
MIAMI, FL 33138

September 13, 2017
Invoice No. 10953348

INVOICE SUMMARY

For Professional Services Rendered:

RE: ABRAHAM COHEN V. AVRA JAIN ET AL
0076039-000002

Legal Contact: R. A. Morgan

Fees:	\$0.00
Disbursements:	<u>\$155.00</u>

Total Current Invoice:	\$155.00
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STATEMENT OF ACCOUNT

Invoice Date	Invoice No	Invoice Amount	Payments/Credits	Due
11/25/15	10788126	\$281,370.94	-\$35,651.92	\$245,719.02
12/02/15	10790099	\$14,763.54	\$0.00	\$14,763.54
01/07/16	10797009	\$34,033.62	\$0.00	\$34,033.62
02/05/16	10805317	\$12,531.41	\$0.00	\$12,531.41
03/03/16	10811670	\$43,224.27	\$0.00	\$43,224.27
04/14/16	10824347	\$46,155.77	\$0.00	\$46,155.77
05/12/16	10831231	\$33,601.85	\$0.00	\$33,601.85
06/16/16	10840644	\$115,118.58	\$0.00	\$115,118.58
07/06/16	10843667	\$104,633.34	\$0.00	\$104,633.34
08/05/16	10852843	\$84,334.44	\$0.00	\$84,334.44
09/14/16	10862949	\$204,620.50	\$0.00	\$204,620.50
10/13/16	10870011	\$172,375.60	\$0.00	\$172,375.60
11/07/16	10876094	\$104,277.52	\$0.00	\$104,277.52
11/26/16	10881284	\$1,017.39	\$0.00	\$1,017.39

EXHIBIT B

Miami Tower
100 S.E. Second Street, Suite 3500
Miami, FL 33131-2158

T 305 347 4080
F 305 347 4089
www.bipc.com

12/06/16	10885927	\$425.27	\$0.00	\$425.27
01/10/17	10891807	\$164.00	\$0.00	\$164.00
02/08/17	10899271	\$3,382.76	\$0.00	\$3,382.76
04/12/17	10915014	\$24,342.75	\$0.00	\$24,342.75
07/07/17	10934668	\$87,206.65	\$0.00	\$87,206.65
08/04/17	10942151	\$4,202.36	\$0.00	\$4,202.36

Total Prior Balances Due: \$1,336,130.64
Current Invoice: \$155.00

Total Due All Invoices For This Matter: \$1,336,285.64

Miami Tower
100 S.E. Second Street, Suite 3500
Miami, FL 33131-2158

T 305 347 4080
F 305 347 4089
www.bipc.com

REGALIA, LLC
C/O CAROLYN ZEGER, ESQ.
GENERAL COUNSEL
THE VAGABOND GROUP, LLC
7272 NE 6TH COURT, SUITE 10
MIAMI, FL 33138

September 13, 2017
Invoice No. 10953348

For Professional Services Rendered:

RE: ABRAHAM COHEN V. AVRA JAIN ET AL
0076039-000002

DESCRIPTION OF COSTS

Description	Amount
06/29/17 Transcripts - Veritext Corporation - Witness: Judge J. Scola	155.00
Total Costs	\$155.00
Amount Due This Invoice:	\$155.00

Miami Tower
100 S.E. Second Street, Suite 3500
Miami, FL 33131-2158

T 305 347 4080
F 305 347 4089
www.bipc.com

REMITTANCE STATEMENT

REGALIA, LLC
C/O CAROLYN ZEGER, ESQ.
GENERAL COUNSEL
THE VAGABOND GROUP, LLC
7272 NE 6TH COURT, SUITE 10
MIAMI, FL 33138

September 13, 2017
Invoice No. 10953348

Our Reference	0076039-000002
Client Name:	REGALIA, LLC
Invoice Date:	September 13, 2017
Invoice Number:	10953348
Total Due This Invoice:	\$155.00
Total Prior Balances Due:	\$1,336,130.64

Total Due All Invoices For This Matter:	\$1,336,285.64
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**PLEASE RETURN THIS REMITTANCE STATEMENT WITH YOUR PAYMENT.
THANK YOU**

Make checks payable to: Buchanan Ingersoll & Rooney
One Oxford Centre
301 Grant Street, 20th Floor
Attn: Accounting Department
Pittsburgh, PA 15219-1410
Tax ID: 25-1381032

Wire / ACH Information
PNC Bank, N.A.

Buchanan Ingersoll & Rooney Operating Account

Account #: [REDACTED]

ABA#: [REDACTED]

SWIFT CODE: PNCCUS33

Please Reference: 0 [REDACTED] Invoice: 10953348

Amount remitted this payment \$ _____

**RECENT FEES AND DISBURSEMENTS MAY NOT
YET BE ENTERED ON YOUR ACCOUNT AND
IF NOT, WILL BE SUBSEQUENTLY BILLED**