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Filing date: **12/15/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|--|
| Proceeding | 92062676 |
| Party | Defendant Reliant Care Group, LLC |
| Correspondence Address | RELIANT CARE GROUP LLC 17 B WEST LOCKWOOD ST LOUIS, MO 63119 UNITED STATES |
| Submission | Motion to Suspend for Civil Action |
| Filer's Name | Matthew B. Robinson |
| Filer's e-mail | mattrobinson@hessemartone.com, cathycurtiss@hessemartone.com |
| Signature | /Matthew B. Robinson/ |
| Date | 12/15/2015 |
| Attachments | Reliant TM Notice of Related Lawsuit 121415.pdf(68479 bytes) A Complaint 011014.pdf(4602759 bytes) B Second Amended Counterclaim.pdf(2521371 bytes) D RCG Resp to 1st Rogs 051815.pdf(884370 bytes) E CMO.pdf(577580 bytes) |

**United States Patent and Trademark Office
Trademark Trial and Appeal Board**

| | | |
|-----------------------------|---|----------------------------|
| RELIANT PRO REHAB, LLC |) | Cancellation No. 92062676 |
| |) | Registration No. 1,953,530 |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | |
| RELIANT CARE GROUP, L.L.C., |) | |
| |) | |
| Owner. |) | |

**Notice of Pending Civil Action and
Motion for Suspension of Proceedings**

Reliant Care Group, LLC, by its undersigned counsel of record, notifies the Board of the following civil action involving the same or related parties and the same mark: *Reliant Care Group, L.L.C., et al. v. Reliant Management Group, L.L.C.*, Case No. 14-cv-00043-CDP, United States District Court, Eastern District of Missouri, Eastern Division. This notice is provided pursuant to 37 C.F.R. § 2.117, TBMP § 510.02, and the Board’s November 20, 2015 letter.

1. Petitioner Reliant Pro Rehab, L.L.C. is in privity with Reliant Management Group, L.L.C.
2. Reliant Care Group filed a lawsuit against Reliant Management Group for trademark infringement and other claims on January 10, 2014. A true and accurate copy of Reliant Care Group’s Complaint is attached as ***Exhibit A***.
3. Reliant Management Group counterclaimed against Reliant Care Group seeking cancellation of the same Service Mark involved in this cancellation proceeding, registration 1,953,530, amongst other relief. A true and accurate copy of

Reliant Management Group's Second Amended Counterclaim is attached as *Exhibit B*.

4. The United States District Court for the Eastern District of Missouri ordered a mediation be held between the parties and the parties held the mediation on November 20, 2015.

5. A day before the mediation, Reliant Pro Rehab filed its Petition to Cancel as a means to gain leverage for Reliant Management Group in its court-ordered mediation with Reliant Care Group.

6. Reliant Management Group and Reliant Pro Rehab are closely related companies and Reliant Pro Rehab is licensed to use Reliant Management Group's "Reliant Rehabilitation" service mark.

7. David Nance represents both Reliant Pro Rehab and Reliant Management Group.

8. Reliant Management Group identified Reliant Pro Rehab as its sister company, they have the same owner, the same executives, the same address, and Reliant Management Group is asserting Reliant Pro Rehab's legal rights in the Counterclaim it filed against Reliant Care Group. *See*, Defendant/Counterclaim Plaintiff's First Amended Counterclaim [doc#20] at ¶¶ 6, 15, 17, 19, 21, 23, 25 (A true and accurate copy of Defendant/Counterclaim Plaintiff's First Amended Counterclaim is attached as *Exhibit C*); RMG First Response to RC First Set of Interrogatories at interrogatories 2-6 (A true and accurate copy of cited portions of RMG First Response to RC First Set of Interrogatories is attached as *Exhibit D*).

9. The lawsuit is ongoing and is scheduled for trial on August 22, 2016.

10. Suspension of the Board's proceedings is appropriate because Petitioner, Reliant Pro Rehab, L.L.C., and Defendant and Counterclaim Plaintiff Reliant Management Group, L.L.C. are closely-related proxies and the lawsuit and this proceeding have the same factual and legal issues, specifically cancellation of Reliant Care Group's Service Mark, Registration No. 1,953,530. See 37 C.F.R. § 2.117; TBMP § 510.02; *General Motors Corp. v. Cadillac Club Fashions, Inc.*, 22 U.S.P.Q.2d 1933 (T.T.A.B. 1992) (cancellation proceeding should be suspended when there is a civil action seeking cancellation of the same mark because the district court decision will be dispositive of the issue before the Board).

Wherefore, Reliant Care Group respectfully requests that the Board issue an order suspending its proceedings pending resolution of the civil action and for such other relief as the Board deems just and appropriate.

Respectfully submitted,

HESSE MARTONE, P.C.

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Dated: December 15, 2015.

Attorneys for Reliant Care Group, L.L.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of December, 2015, a copy of the foregoing document was electronically filed with the Clerk of the Court using the ESTTA system, which will be served electronically to the following:

Mr. David William Nance
Nance Group, LLC
3912 Constance Street
New Orleans, LA 70115
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*Attorneys for Reliant Management
Group, LLC*

/s/ Matthew B. Robinson

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

| | | |
|---|---|----------------|
| RELIANT CARE GROUP, INC., |) | |
| a Missouri Corporation, |) | |
| |) | |
| and |) | |
| |) | |
| RELIANT CARE MANAGEMENT, LLC, |) | |
| a Missouri Limited Liability Company, |) | |
| |) | |
| and |) | |
| |) | |
| RELIANT CARE REHABILITATIVE SERVICES, LLC, |) | |
| a Missouri Limited Liability Company, |) | |
| |) | |
| Plaintiffs, |) | |
| v. |) | Case No. _____ |
| |) | |
| RELIANT MANAGEMENT GROUP, LLC, |) | |
| a Louisiana Limited Liability Company, |) | |
| |) | |

COMPLAINT

COME NOW Plaintiffs Reliant Care Group, Inc., Reliant Care Management, LLC and Reliant Care Rehabilitative Services, LLC (hereinafter “Plaintiffs”), by and through their undersigned counsel, and for their Complaint against Defendant Reliant Management Group, LLC (hereinafter “Defendant”) state to the Court as follows:

INTRODUCTION

1. This is an action for trademark infringement under the Lanham Act, 15 U.S.C. §1114(1)(a), false designation of origin under the Lanham Act, 15 U.S.C. §1125(a), Federal trademark dilution under the Lanham Act, 15 U.S.C. §1125(c), violation of Missouri’s anti-dilution statute, Mo. Rev. Stat. §417.061, common law trademark infringement and common law unfair competition arising from Defendant’s unauthorized use of the trade name “Reliant

Rehabilitation” in the Missouri healthcare and rehabilitation services market.

PARTIES

2. Reliant Care Group, Inc. is a Missouri Corporation with its principal place of business at 1869 Craig Park Court in Maryland Heights, Missouri.

3. Reliant Care Group, Inc. owns Plaintiffs Reliant Care Management, LLC and Reliant Care Rehabilitative Services, LLC.

4. Reliant Care Group, Inc. was created on June 23, 1992, has been registered to do business in the State of Missouri since June 23, 1992, and is in good standing.

5. Plaintiff Reliant Care Management, LLC is a Missouri limited liability company with its principal place of business at 1869 Craig Park Court in Maryland Heights, Missouri.

6. Plaintiff Reliant Care Management, LLC manages healthcare facilities throughout Missouri including the following cities: St. Louis, Kansas City, Salisbury, Florissant, Sedalia, Hannibal, Milan, Moberly, St. Elizabeth, Viburnum and Center.

7. Plaintiff Reliant Care Management, LLC has been registered to do business in the State of Missouri since November 29, 1994.

8. Plaintiff Reliant Care Management, LLC maintains an informational website at www.reliantcaremgmt.com.

9. Plaintiff Reliant Care Rehabilitative Services, LLC is a Missouri limited liability company with its principal place of business at 2011 Corona Road in Columbia, Missouri.

10. Plaintiff Reliant Care Rehabilitative Services, LLC is a therapy management company specializing in skilled nursing facilities and hospital-based rehabilitation management services.

11. Plaintiff Reliant Care Rehabilitative Services, LLC has been registered to do

business in the State of Missouri since December 28, 1994.

12. Plaintiff Reliant Care Rehabilitative Services, LLC maintains an informational website at www.reliantcarerehab.com.

13. Defendant Reliant Management Group, LLC is a Louisiana limited liability company and not in good standing. Its principal office is at 11616 Southfork Avenue in Baton Rouge, Louisiana.

14. Defendant maintains an office at 1200 McCutchen Road, Rolla, Missouri 65401.

15. Defendant Reliant Management Group, LLC has recently started providing rehabilitation services in the State of Missouri under the name “Reliant Rehabilitation.”

16. Defendant Reliant Management Group, LLC began using the name “Reliant Rehabilitation” in 2003.

17. Defendant Reliant Management Group, LLC is not registered with the Missouri Secretary of State.

18. Reliant Rehabilitation is not registered with the Missouri Secretary of State.

19. Defendant Reliant Management Group, LLC maintains an informational website at www.reliant-rehab.com.

JURISDICTION AND VENUE

20. This Court has original subject matter jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 15 U.S.C. §§ 1116, 1121. This Court has supplemental jurisdiction over Plaintiffs’ state law claims under 28 U.S.C. § 1367.

21. This Court has personal jurisdiction over the Defendant in that it is doing business in the State of Missouri and in this District.

22. Venue is proper in this District under 28 U.S.C. § 1391 in that Defendant is

subject to personal jurisdiction in this District and this is the District where the events giving rise to Plaintiffs' claims occurred.

BACKGROUND FACTS

23. Plaintiffs have been providing rehabilitation services throughout Missouri since 1994.

24. Plaintiffs' names are published through the Missouri Secretary of State and can be found by a simple search of the Missouri Secretary of State's website.

25. Plaintiff Reliant Care Management, LLC has been servicing the rehabilitation needs of Missouri residents since 1994 and has been successfully managing healthcare and nursing facilities since 1994. These facilities are located in the following cities throughout Missouri: St. Louis, Kansas City, Salisbury, Florissant, Sedalia, Hannibal, Milan, Moberly, St. Elizabeth, Viburnum and Center.

26. A search of Reliant Care Management, LLC's name on the World Wide Web will bring a person to its website which lists its services as well as its health care facilities.

27. Plaintiff Reliant Care Rehabilitative Services, LLC maintains its key facility in Columbia, Missouri. It provides rehabilitation services to residents in Missouri.

28. A search of Reliant Care Rehabilitative Services, LLC on the World Wide Web will bring a person to its website which lists its services in Missouri.

29. Reliant Care Group, Inc. owns the following United States trademark registration containing the words "Reliant Care Group:"

Registration No.: 1,953,530

Mark: RELIANT CARE GROUP

Registration Date: January 30, 1996

Goods & Services: “Health care services: namely, skilled and intermediate nursing care services, medical services, pharmacy and medical supply services, therapy services and in-home health services.”

Filing Date: February 22, 1993

30. A copy of the Certificate of Registration for this Mark is attached hereto as **Exhibit A**. The Certificate of Registration is valid and subsisting and Plaintiff owns the record title to the registered trademark described above.

31. The Certificate of Registration is *prima facie* evidence of the validity of the registered trademark, Plaintiff Reliant Care Group, Inc.’s ownership of the registered trademark, Plaintiff Reliant Care Group, Inc.’s exclusive right to use the registered trademark in connection with the services specified in the Certificate of Registration and constructive notice of ownership under 15 U.S.C. § 1072.

32. The above-referenced registration is incontestable and is conclusive evidence of its validity under 15 U.S.C. § 1115(b).

33. Plaintiff Reliant Care Group, Inc. has authorized Plaintiffs Reliant Care Management, LLC and Reliant Care Rehabilitation Services, LLC to use the trademark “Reliant Care.”

34. Plaintiffs’ names are well known in Missouri for the excellent services they provide. For almost 20 years, Plaintiffs have strived to become leaders in the healthcare and rehabilitation industry in Missouri.

35. The internet is important to the continued success of Plaintiffs, including their reputations throughout Missouri.

36. As such, when a client types “Reliant,” “Reliant Care Group”, “Reliant Care

Management” or “Reliant Care Rehabilitative Services” and “Missouri” in a search engine such as Google, it is imperative that the search result take them to these companies and not to sites with similar and confusing names.

37. Several employment websites advertise Plaintiffs’ employment positions in Missouri.

38. Several of these employment websites also advertise employment positions with Defendant Reliant Rehabilitation in the same areas where Plaintiffs maintain their facilities and provide rehabilitation services. This is causing confusion within the rehabilitation services industry in this state.

39. Plaintiffs exercise strict control over the use of their business names and control the advertising and marketing of their services and facilities.

40. The advertising, marketing and promotion of Plaintiffs and their services by use of the names Reliant Care Group, Inc., Reliant Care Management, LLC and Reliant Care Rehabilitative Services, LLC for almost 20 years have caused consumers as well as potential employees to recognize their names as indicators of Plaintiffs’ exceptional rehabilitative services and have caused consumers to seek out Plaintiffs for their rehabilitation needs rather than other companies.

DEFENDANT’S WRONGFUL ACTS

41. On January 12, 2011, attorney David W. Nance forwarded a letter to Reliant Care Rehabilitative Services, LLC advising that Defendant Reliant Management Group, LLC would soon be offering rehabilitation services in Missouri under the name “Reliant Rehabilitation” and demanding Reliant Care Rehabilitative Services, LLC to stop use of its name in connection with its services. See **Exhibit B** attached hereto.

42. On February 3, 2011, Plaintiffs responded to attorney Nance's letter correcting the information contained in his January 12, 2011 letter and specifically advising that Reliant Care Rehabilitative Services, LLC and Reliant Management Group, LLC had been doing business in Missouri under the name "Reliant" since 1994, almost one decade before the existence of Reliant Management Group, LLC. See Exhibit C attached hereto.

43. In September 2013, Plaintiffs became aware that Defendant was offering rehabilitative services to customers in Missouri despite receiving notice in February 2011 of Plaintiffs' rights to use the name "Reliant."

44. Defendant is also advertising employment positions in Missouri on several of the same websites used by Plaintiffs.

45. Defendant is knowingly providing, offering and advertising its services under the name "Reliant Rehabilitation" despite its knowledge that Plaintiffs have been using "Reliant" in their names in Missouri since 1994.

46. Defendant is not authorized by Plaintiffs to provide, offer or advertise its services under the name "Reliant Rehabilitation."

47. Defendant's use of the word "Reliant" in connection with its services has caused and will continue to cause confusion among individuals seeking rehabilitation services as well as individuals seeking employment positions with Plaintiffs.

48. The following are examples of the confusion Defendant has created due to its unlawful use of the name Reliant Rehabilitation:

- A. On or about August 21, 2013, Plaintiff Reliant Care Rehabilitation Services, LLC hired a Speech Language Pathologist ("SLP") who turned in a new hire packet. On her Missouri tax form, the SLP erroneously

listed Plaintiff's company name as "Reliant Rehab" and erroneously wrote that Plaintiff's company was located in Texas.

- B. On or about September 12, 2013, Plaintiff Reliant Care Rehabilitation Services, LLC offered a full-time position to an SLP at its location at Hillside/Beauvais, Missouri. The SLP stated that the Hillside/Beauvais location was too far for her to drive. She stated that she was interested in Plaintiff's full-time position in Ballwin, Missouri posted on Plaintiff's website. Plaintiff did not have such a position available and upon investigation, Plaintiff Reliant Care Rehabilitative Services, LLC learned that the position to which the SLP referred was with "Reliant Rehabilitation."
- C. On or about September 13, 2013, Plaintiff Reliant Care Rehabilitative Services, LLC's employee received a voicemail from a former co-worker stating that she heard that Plaintiff Reliant Care Rehabilitative Services, LLC was taking over several rehabilitation facilities in Rolla, Missouri. The former co-worker advised that she was interested in full-time employment with Plaintiff at one of these facilities. Upon investigation, it was learned that she was referring to facilities owned or managed by "Reliant Rehabilitation."
- D. On or about September 17, 2013, Plaintiff Reliant Care Rehabilitative Services, LLC received an email regarding a position it allegedly posted on its website for Ballwin, Missouri. Plaintiff did not have a position posted in Ballwin at that time and upon investigation, it learned that the

email was referring to a position offered by “Reliant Rehabilitation.”

- E. On or about September 29, 2013, Plaintiff Reliant Care Rehabilitative Services, LLC received a voicemail from a Certified Occupational Therapist Assistant (“COTA”) who stated that she heard Plaintiff Reliant Care Rehabilitative Services, LLC acquired a rehabilitation facility in Lexington, Missouri. Upon investigation, Plaintiff learned that the facility to which the COTA was referring was owned or managed by “Reliant Rehabilitation.”
- F. On or about October 3, 2013, Plaintiff Reliant Care Rehabilitative Services, LLC spoke with an SLP regarding full-time employment with Plaintiff. The SLP erroneously advised Plaintiff that she was currently assigned to one of Plaintiff’s facilities in Rolla, Missouri. At that time, Plaintiff did not own or manage a facility in Rolla, Missouri. The SLP stated the facility was run by “Reliant Rehabilitation.”

49. Defendant, by using the name “Reliant Rehabilitation,” is knowingly providing, offering and advertising its services to mislead, deceive and confuse customers and employees, and draw them away from Plaintiffs and to “Reliant Rehabilitation”.

COUNT I
TRADEMARK INFRINGEMENT
UNDER 15 U.S.C. § 1114(1)(a)

50. Plaintiff Reliant Care Group, Inc. re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 to 49 of the Complaint as if fully set forth herein.

51. Defendant’s aforementioned acts constitute trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114(1)(a).

52. Plaintiff Reliant Care Group, Inc.'s federal registration of the mark "Reliant Care Group" (Registration No. 1,953,530) is incontestable which provides conclusive evidence of the validity of the registration, Plaintiff's ownership of the "Reliant Care" mark, and Plaintiff's exclusive rights to use the "Reliant Care" name in commerce in connection with the services specified in the Certificate of Registration under the provisions of 15 U.S.C. § 1115(b).

53. Defendant's wrongful use of the word "Reliant" in its business name, particularly where the business is in direct competition with Plaintiff's business, is likely to cause confusion as to the ownership or authorization by Plaintiff. Defendant's actions constitute trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114.

54. As a proximate result of Defendant's actions, Plaintiff has suffered and will continue to suffer great damage to its business, goodwill, reputation, profits as well as the strength of the "Reliant Care" name. The injuries to Plaintiff are and continue to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Plaintiff for its injuries and Plaintiff lacks an adequate remedy at law.

55. The foregoing acts of infringement have been and continue to be deliberate, willful and wanton, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

56. Plaintiff Reliant Care Group, Inc. is entitled to a permanent injunction against Defendant as well as other remedies available under the Lanham Act including but not limited to compensatory damages, loss of profits, costs and attorney's fees.

57. As a result of Defendant's activities, Plaintiff has been damaged in an amount greater than \$75,000.

COUNT II
FALSE DESIGNATION OF ORIGIN
UNDER 15 U.S.C. § 1125(a)

58. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 to 49 of the Complaint as if fully set forth herein.

59. Defendant's use of the word "Reliant" in its name in connection with rehabilitation services in Missouri falsely represents that such services originate with Plaintiffs and are sponsored by, authorized by and licensed by Plaintiffs.

60. Defendant is not an authorized user of the trade name "Reliant" and Plaintiffs cannot exercise any control over the nature and quality of Defendant's rehabilitative services.

61. Upon information and belief, Defendant's false designation of origin has been willful and deliberate and designed specifically to trade upon the wide public awareness and consumer goodwill enjoyed by Plaintiffs for identical services.

62. Plaintiffs' consumer goodwill is of enormous value and Plaintiffs will suffer irreparable harm if Defendant's false designation of origin as to "Reliant Rehabilitation" is allowed to continue.

63. Plaintiffs' names are "famous marks" within the meaning of the Lanham Act, 15 U.S.C. § 1125(c), and have been famous marks prior to Defendant's conduct alleged herein.

64. Defendant's false designation of origin will likely continue unless enjoined by this Court.

65. By misappropriating and using the word "Reliant" in its business name, Defendant misrepresents and falsely describes to the general public that its services are those of or affiliated with the services of Plaintiffs and creates a likelihood of confusion by the ultimate consumers as to the source of the rehabilitation services.

66. Defendant's unlawful and unauthorized use of the word "Reliant" in its name in connection with rehabilitation services creates express and implied misrepresentations that

Defendant's services are performed, authorized, offered and approved by Plaintiffs all to Defendant's benefit and to the detriment of Plaintiffs.

67. Defendant's aforesaid acts are in violation of The Lanham Act, 15 U.S.C. § 1125(a) in that Defendant's use of the word "Reliant" in its name in connection with rehabilitation services constitutes false designation of origin.

68. Through Plaintiffs' hard work in providing excellent rehabilitation services and promotion of their businesses under the names Reliant Care Group, Inc., Reliant Care Management, LLC and Reliant Care Rehabilitative Services, LLC, Plaintiffs have created valuable goodwill and their names symbolize their reputation for quality and excellence in the healthcare and rehabilitation industry.

69. Defendant's acts have misled and will continue to mislead the public as to the source of the services, permit and accomplish palming off of Defendant's services as those of Plaintiffs, and falsely suggest a connection with Plaintiffs.

70. As a proximate result of Defendant's actions, Plaintiffs have suffered and will continue to suffer great damage to their business, goodwill, reputation, profits as well as the strength of the "Reliant Care" name. The injuries to Plaintiffs are and continue to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Plaintiffs for their injuries and Plaintiffs lack an adequate remedy at law.

71. The foregoing acts of infringement have been and continue to be deliberate, willful and wanton, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

72. Plaintiffs are entitled to a permanent injunction against Defendant as well as other remedies available under the Lanham Act including, but not limited to, compensatory damages, loss of profits, costs and attorney's fees.

73. As a result of Defendant's activities, Plaintiffs have been damaged in an amount greater than \$75,000.

COUNT III
FEDERAL TRADEMARK DILUTION
UNDER 15 U.S.C. § 1125(c)

74. Plaintiffs hereby re-allege and incorporate herein by reference the allegations contained in Paragraphs 1 through 49 of the Complaint as if fully set forth herein.

75. The "Reliant Care" trademark is a famous mark within the meaning of the Lanham Act, 15 U.S.C. § 1125(c) and has been a famous mark prior to Defendant's conduct as alleged herein.

76. Defendant's advertisement, promotion, marketing, offering of services and providing of services in the healthcare and rehabilitation market using the name "Reliant" is likely to cause dilution by blurring and/or dilution by tarnishment of the distinctive quality of the "Reliant Care" trade name and was done with willful intent to trade on Plaintiffs' reputation and/or to cause dilution of the "Reliant Care" trade name.

77. Defendant's unauthorized use of the word "Reliant" in its business name was done with notice and full knowledge that the advertisement, promotion, marketing, offering of services and providing of services in the healthcare and rehabilitation market under the name "Reliant" was not authorized or licensed by Plaintiffs.

78. Defendant's aforementioned acts are in knowing and willful violation of Plaintiffs' rights under the Lanham Act, 15 U.S.C. § 1125(c).

79. As a proximate result of Defendant's actions, Plaintiffs have suffered and will continue to suffer great damage to their business, goodwill, reputation, profits and the strength of the "Reliant Care" mark. The injuries to Plaintiffs are and continue to be ongoing and

irreparable. An award of monetary damages alone cannot fully compensate Plaintiffs for their injuries and Plaintiffs lack an adequate remedy at law.

80. The foregoing acts of infringement have been and continue to be deliberate, willful and wanton, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

81. Plaintiffs are entitled to a permanent injunction against Defendant as well as all other remedies available under the Lanham Act including but not limited to compensatory damages, lost profits, costs and attorney's fees.

82. As a direct and proximate result of Defendant's conduct, Plaintiffs have suffered damages in an amount greater than \$75,000.

COUNT IV
VIOLATION OF MISSOURI'S ANTI-DILUTION STATUTE
MO. REV. STAT. § 417.061

83. Plaintiffs hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 49 of the Complaint as if fully set forth herein.

84. The "Reliant Care" trademark is a distinctive mark within the meaning of Mo. Rev. Stat. § 417.061 and has been a distinctive and famous mark since prior to Defendant's alleged conduct.

85. Defendant's advertising, promoting, marketing, offering of services and providing of services in the healthcare and rehabilitation industry using the name "Reliant" dilutes the distinctive quality of the "Reliant Care" trade name and was and is being done with the willful intent to trade on Plaintiffs' reputation and/or to cause dilution of the "Reliant Care" trade name.

86. Defendant's unauthorized use of the word "Reliant" in its business name was and is being done with notice and full knowledge that such advertising, promotion, marketing, offering of services and providing of services was not authorized or licensed by Plaintiffs.

87. As a proximate result of Defendant's actions, Plaintiffs have suffered and will continue to suffer great damage to their business, goodwill, reputation, profits as well as the strength of the "Reliant Care" mark. The injuries to Plaintiffs are and continue to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Plaintiffs for their injuries and Plaintiffs lack an adequate remedy at law.

88. Defendant's aforesaid acts are in knowing and willful violation of Plaintiffs' rights under Mo. Rev. Stat. § 417.061.

89. Plaintiffs are entitled to a permanent injunction against Defendant, as well as other remedies available under Missouri's anti-dilution statute including but not limited to compensatory damages, loss of profits, costs and attorney's fees.

COUNT V
COMMON LAW TRADEMARK INFRINGEMENT

90. Plaintiffs hereby re-allege and incorporate herein by reference the allegations contained in Paragraphs 1 to 49 of the Complaint as if fully set forth herein.

91. As a result of Plaintiffs' hard work and investment in time and money in promoting, advertising, marketing, offering of services and providing services in the healthcare and rehabilitation industry, Plaintiffs have created and maintained valuable goodwill in the "Reliant Care" trade name. As such, the word "Reliant" has become associated with Plaintiffs and has come to symbolize the excellent quality of Plaintiffs' services.

92. Plaintiffs have ownership of the name "Reliant" in the healthcare and rehabilitative industry in Missouri.

93. Defendant's unauthorized use of the word "Reliant" in its business name is likely to and does permit Defendant to pass off its infringing name and services to the general public to the detriment of Plaintiffs and to the unjust enrichment of Defendant.

94. Defendant's acts have caused and continue to cause confusion as to the source of Defendant's services.

95. Defendant's acts constitute willful infringement of Plaintiff's exclusive rights in the "Reliant Care" trademark in violation of state common law.

96. As a proximate result of Defendant's actions, Plaintiffs have suffered and will continue to suffer great damage to their business, goodwill, reputation, profits as well as the strength of the "Reliant Care" name. The injuries to Plaintiffs are and continue to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Plaintiffs for their injuries and Plaintiffs lack an adequate remedy at law.

97. Plaintiffs are entitled to a permanent injunction against Defendant, as well as other remedies available under Missouri law including compensatory damages, loss of profits, costs and attorney's fees.

COUNT VI
COMMON LAW UNFAIR COMPETITION

98. Plaintiffs re-allege and incorporate herein by reference the allegations set forth in Paragraphs 1 through 49 of the Complaint as if fully set forth herein.

99. As a result of Plaintiffs' hard work and investment in time and money in advertising, promoting, marketing, offering to provide and providing services in the healthcare and rehabilitation industry, Plaintiffs have created and maintained valuable goodwill in the "Reliant Care" trade name. As such, the word "Reliant" has become associated with Plaintiffs and has come to symbolize the excellent quality of Plaintiffs' services. "Reliant" identifies the Plaintiffs in the rehabilitation industry in Missouri.

100. Defendant, with full knowledge of the fame of the "Reliant Care" trademark, intended to and has traded on the goodwill and reputation associated with Plaintiffs' trademark.

101. Defendant has misled and continues to mislead and deceive the general public as to the source of its services. Defendant has permitted and accomplished palming off of Defendant's services as those of Plaintiffs. Defendant has falsely suggested a connection with Plaintiffs. Therefore, Defendant has engaged in unfair competition in violation of Missouri common law.

102. Defendant has unfairly used the name "Reliant" to the prejudice of Plaintiffs' interests.

103. Defendant has benefited from Plaintiffs' goodwill and reputation associated with the name "Reliant."

104. Allowing Defendant to continue using the name "Reliant" in connection with its services would be inequitable.

105. As a proximate result of Defendant's actions, Plaintiffs have suffered and will continue to suffer great damage to their business, goodwill, reputation, profits as well as the strength of the "Reliant Care" name. The injuries to Plaintiffs are and continue to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Plaintiffs for their injuries and Plaintiffs lack an adequate remedy at law.

106. Plaintiffs are entitled to a permanent injunction against Defendant, as well as other remedies available under Missouri law including compensatory damages, lost profits, costs and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Reliant Care Group, Inc., Reliant Care Management, LLC and Reliant Care Rehabilitative Services, LLC request entry of judgment in their favor and against Defendant on all of the above counts as follows:

1. That this Court preliminarily and permanently enjoin Defendant, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with any of them:

- a. from using in any manner the word “Reliant” or any other designation that is confusingly similar to “Reliant Care” or likely to cause confusion, deception or mistake in connection with the advertising, marketing, promotion, offering of services or providing of services in the healthcare rehabilitation industry and from using the word “Reliant” in any business name;
- b. from passing off, inducing or enabling others to pass off any service offered by Plaintiffs, which is not Plaintiffs’ and which is not offered or provided under the control and supervision of Plaintiffs and approved by Plaintiffs to be offered or provided under the name “Reliant.”
- c. from committing any acts calculated to cause consumers to believe that Defendant’s services are those offered and provided under the control and supervision of Plaintiffs, or sponsored, approved by or connected with the Plaintiffs;
- d. from further diluting and infringing the “Reliant Care” trade name and damaging Plaintiffs’ goodwill; and
- e. from otherwise competing unfairly with Plaintiffs in any manner.

2. That this Court enter a judgment finding that Defendant has infringed, and willfully infringed, the “Reliant Care” trademark.

3. That this Court enter a judgment finding that Defendant has diluted, and willfully

diluted, the “Reliant Care” trademark.

4. That this Court enter a judgment finding that Defendant’s use of the word “Reliant” in its business name has caused and/or is likely to cause confusion among the general purchasing public as to the source of origin of Defendant’s rehabilitation services.

5. That this Court order Defendant to deliver up for destruction or show proof of destruction of any and all advertisements, publications, labels and any other materials in their possession, custody or control that depict or reference the trademark covered by this Court’s judgment.

6. That this Court order Defendant to file with this Court and to serve upon Plaintiffs a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with any injunction resulting from this matter within thirty days after service of such injunction pursuant to 15 U.S.C. § 1116(a);

7. That this Court award Plaintiffs such damages, compensatory and otherwise, as the proof may show.

8. That this Court deem this matter an exceptional case under 15 U.S.C. § 1117 and that this Court award Plaintiffs their reasonable attorney’s fees and costs incurred in connection with this action.

9. That Plaintiffs be awarded exemplary damages for Defendant’s willful and intentional acts.

10. That this Court grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

HESSE MARTONE, P.C.

By: /s/ Andrew J. Martone

Andrew J. Martone, #37382

Lori A. Schmidt, #45561

1650 Des Peres Road, Suite 200

St. Louis, MO 63131

Phone: (314) 862-0300

Fax: (314) 862-7010

*Attorneys for Plaintiffs Reliant Care Group, Inc.,
Reliant Care Rehabilitative Services, LLC and
Reliant Care Management, LLC*



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

713624.8

REGISTRATION NO: 1953530 SERIAL NO: 74/360743
REGISTRATION DATE: 01/30/1996
MARK: RELIANT CARE GROUP AND DESIGN
REGISTRATION OWNER: RELIANT CARE GROUP, L.L.C., THE

MAILING DATE: 04/12/2006

DOCKET

MAY 04 2006

CORRESPONDENCE ADDRESS:
SHERRY G. HANLON
BLACKWELL SANDERS PEPPER MARTIN
720 OLIVE STREET
24TH FLOOR
ST. LOUIS, MO 63101

RECEIVED

APR 24 2006

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

NOTICE OF RENEWAL

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1059.

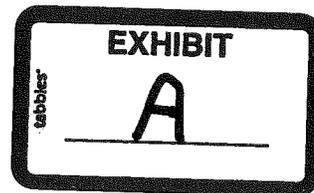
ACCORDINGLY, THE REGISTRATION IS RENEWED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
042.

THOMPSON, LISA LORRIN
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

ORIGINAL



Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office **Reg. No. 1,953,530**
Registered Jan. 30, 1996

**SERVICE MARK
PRINCIPAL REGISTER**



RELIANT CARE GROUP

RELIANT CARE GROUP, INC. (MISSOURI CORPORATION)
103 WEST LOCKWOOD
ST. LOUIS, MO 63119

FOR: HEALTH CARE SERVICES; NAMELY, SKILLED AND INTERMEDIATE NURSING CARE SERVICES, MEDICAL SERVICES, PHARMACY AND MEDICAL SUPPLY SERVICES, THERAPY SERVICES AND IN-HOME

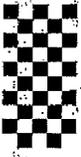
HEALTH SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-17-1995; IN COMMERCE 4-17-1995.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CARE GROUP", APART FROM THE MARK AS SHOWN.

SN 74-360,743, FILED 2-22-1993.

PAUL KRUSE, EXAMINING ATTORNEY



D.W. NANCE LLC

DAVID W. NANCE
Florida/Louisiana/New York/Texas

ISMAIL AMIN of counsel
California/Nevada

THOMAS D. DUNN of counsel
Louisiana

DANA R. MOORE of counsel
Texas

Attorneys & Counselors at Law
www.dwnance.com

AUSTIN - NEW ORLEANS

MANAGING MEMBER OF
NANCE GROUP, LLC
www.nancegroup.com

CALL DIRECT

(504) 717-4730
(512) 961-7127

mail@dwnance.com
dwnance SKYPE
(888) 698-7007 FAX

Mail and Courier Address:
3912 CONSTANCE STREET
NEW ORLEANS, LA 70115

EIN No. 26-0773016

January 12, 2011

VIA ELECTRONIC MESSAGE: JWOODS@RELIANTCAREREHAB.COM;
ROACH, JMICHAEL@GMAIL.COM
FACSIMILE MESSAGE: 573-447-4272
CMRRR: 7007 0220 0004 7793 8114

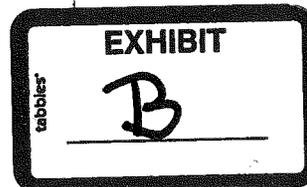
RELIANT CARE REHABILITATION SERVICES
2011 CORONA ROAD, SUITE 301
COLUMBIA, MO 65203

RE: DWN1715; INFRINGEMENT OF UNITED STATES REGISTERED TRADEMARK NO. 77,264,934
RELIANT REHABILITATION

To Whom It May Concern:

This firm represents Reliant Management Group, LLC ("RMG"), a Louisiana limited liability company with headquarters in Baton Rouge, Louisiana. RMG offers rehabilitation services under the service mark RELIANT REHABILITATION ("Registered Mark") which are offered in over 15 states. Our attention has been directed to your recent adoption and use of the name "Reliant Care Rehabilitative Service" and "Reliant Care Rehab" ("Infringing Marks") to identify your rehabilitation related services.

RMG has used the Registered Mark since at least as early as July of 2003 with unprecedented success. RMG's services are offered in 16 states, with Missouri soon to be added; RMG's services are widely advertised on the Internet, in newspapers, on the radio, on billboards, billboard trucks and other media at significant expense to our client.



As a result of such investment and unprecedented success, the Registered Mark has naturally become very familiar to RMG's customers. Annexed hereto is a copy of the home page of RMG's web site. If you are not already familiar with it, RMG, as we suspect you are also aware, enjoys a prominent reputation in rehabilitation related services. As a result of RMG's reputation for these services, and through extensive advertising and promotion, RMG has developed extremely valuable good will in the Registered Mark, which appears in RMG advertising, web sites, and facilities.

Moreover, the United States Patent and Trademark Office has granted RMG the U.S. service mark Reg. No. 3426134 for the Registered Mark on the Principal Register as shown on the attached copy. Your use of the Infringing Marks to offer virtually identical services constitutes an infringement of RMG's registered service mark rights, as well as unfair competition.

In addition, your use of a similar graphic design and website design constitutes copyright infringement. RMG has registered these with the U.S. Copyright Office of the Library of Congress. RMG sets a standard for quality in the rehabilitation industry, as its many customers will confirm. Confusion could lead to substantial damage to our client in terms not only of loss of sales, but, perhaps worse, injury to its reputation in the event that your marketed services are not commensurate with those of RMG.

Under the circumstances, we demand that you forthwith cease and desist further use of the Infringing Marks in connection with the marketing and provision of rehabilitation services within the United States and transfer to our client all domain names containing the word "Reliant." We further demand that you take immediate steps to change the design of your logo and web sites and that you delete the name "Reliant" from all advertising and promotional materials, billboards, stationery, business cards, invoices and the like.

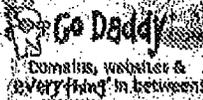
We wish to receive your assurances by January 17, 2011, that you will discontinue all use of the name "Reliant" as outlined above, transfer all above-described domain names to our client, discontinue use of the infringing logo design, and pay \$2,000.00 as compensation for legal fees and your use of our client's service mark. If you fail to so advise us by the above-referenced deadline, our client shall, without further notice to you, take such action as it deems advisable to assert its statutory right to recover damages, lost profits, and the costs thereof, and to otherwise protect its interests.

This letter is written without prejudice to any of our client's right and remedies all of which are expressed or reserved.

Sincerely,



David W. Nance



24/7 Business Support (480) 505-0877

Products

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Business

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SEARCH RESULTS for:

| | | | | | |
|--|---|---|--|--|------------|
| <input type="checkbox"/> INFO \$12.99/yr SAVE! | <input type="checkbox"/> NET \$12.99/yr SAVE! | <input type="checkbox"/> .ORG \$5.99/yr SAVE! | <input type="checkbox"/> .ME \$5.99/yr SAVE! | <input type="checkbox"/> .MOBI \$5.99/yr SAVE! | |
| <input type="checkbox"/> THE RELIANTCAREHER... | \$11.99/yr | <input type="checkbox"/> MYRELIANTCAREHEA... | \$11.99/yr | <input type="checkbox"/> NEWRELIANTCAREHER... | \$11.99/yr |
| <input type="checkbox"/> FREERELIANTCAREHE... | \$11.99/yr | <input type="checkbox"/> BESTRELIANTCAREHE... | \$11.99/yr | <input type="checkbox"/> TCAREHEHABS.COM | \$11.99/yr |
| <input type="checkbox"/> SRELIANTCAREHEHAB... | \$11.99/yr | <input type="checkbox"/> TCAREHEHABSITE.COM | \$11.99/yr | <input type="checkbox"/> SITERELIANTCAREHE... | \$11.99/yr |
| <input type="checkbox"/> TCAREHEHABONLINE.COM | \$11.99/yr | <input type="checkbox"/> ONLINERELIANTCARE... | \$11.99/yr | <input type="checkbox"/> TCAREHEHABSTORE.COM | \$11.99/yr |

| | | |
|---|--|---|
| <input type="checkbox"/> CareReliantMall.com \$260.00 | <input type="checkbox"/> GloCare.com \$1,000.00 | <input type="checkbox"/> CareGlo.com \$1,000.00 |
| <input type="checkbox"/> RELIANTs.com \$1,100.00 | <input type="checkbox"/> ReliantFunding.com \$3,000.00 | <input type="checkbox"/> ReliantServices.com \$2,000.00 |

Plus ICANN fee of \$0.16 per domain name year.
*.CA domain names will be registered through Go Daddy Domains Canada, Inc., a CIRA certified registrar.

Interested in this domain name? [Let our Domain Buy Service help you get it.](#)

The data contained in GoDaddy.com, Inc.'s WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, GoDaddy.com, Inc. is not the registrant of domain names listed in this database.

Registrant:
Reliant Care Rehabilitative Services

2011 Corona Road
Suite 301
Columbia, Missouri 65203
United States

Registered through: GoDaddy.com, Inc. (<http://www.godaddy.com>)
Domain Name: RELIANTCAREHEHAB.COM
Created on: 31-May-09
Expires on: 31-May-13

Last Updated on: 11-Nov-10

Administrative Contact:

Woods, Jason: woods@reliancecarehab.com
Reliant Care Rehabilitative Services
2011 Corona Road
Suite 3017
Columbia, Missouri 65203
United States
+1 314 543 9860

Technical Contact:

Roach, Michael: roachmichael@gmail.com
Galedon Virtual
1800 Galedon
Columbia, Missouri 65203
United States
+1 573 446 7777

Domain servers in listed order:
NS03: DOMAINCONTROL.COM
NS04: DOMAINCONTROL.COM

Registry Status: clientDeleteProhibited
Registry Status: clientRenewProhibited
Registry Status: clientTransferProhibited
Registry Status: clientUpdateProhibited

See Underlying Registry Data
Report Invalid Whois

Account Manager

- My Account
- My Renewals
- My Upgrades
- Account Settings
- Customer Information
- Order History
- Credits Account

Shopping

- Domain Search
- Product Catalog
- Product Advisor
- Gift Cards
- Go Daddy Mobile
- Today's Offers

Resources

- Webmail
- WHOIS Search
- ICANN Certification
- Migration
- Follow & Fan Us!
- Gogets/Widgets
- Commercial
- Contexts
- Site Map

Help & Support

- Telephone Support & Sales
- Go Daddy Community
- Discussion Forums
- Help and Guides
- User Groups
- Sauna Support Ticket
- Site Suggestions
- Report Spam
- Executive Account Services

About Go Daddy

- Careers
- Security Center
- Company Info
- News Center
- Customer Testimonials
- Go Daddy Local
- Marketing Proposals
- Advertising Opportunities
- ME Scholarship

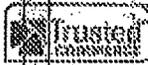
View Our Special Offers

Special Offer:

View Our Community Forums

SECURE SHOPPING

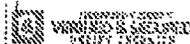
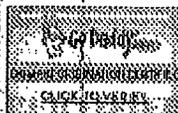
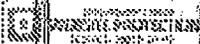
Our Partners

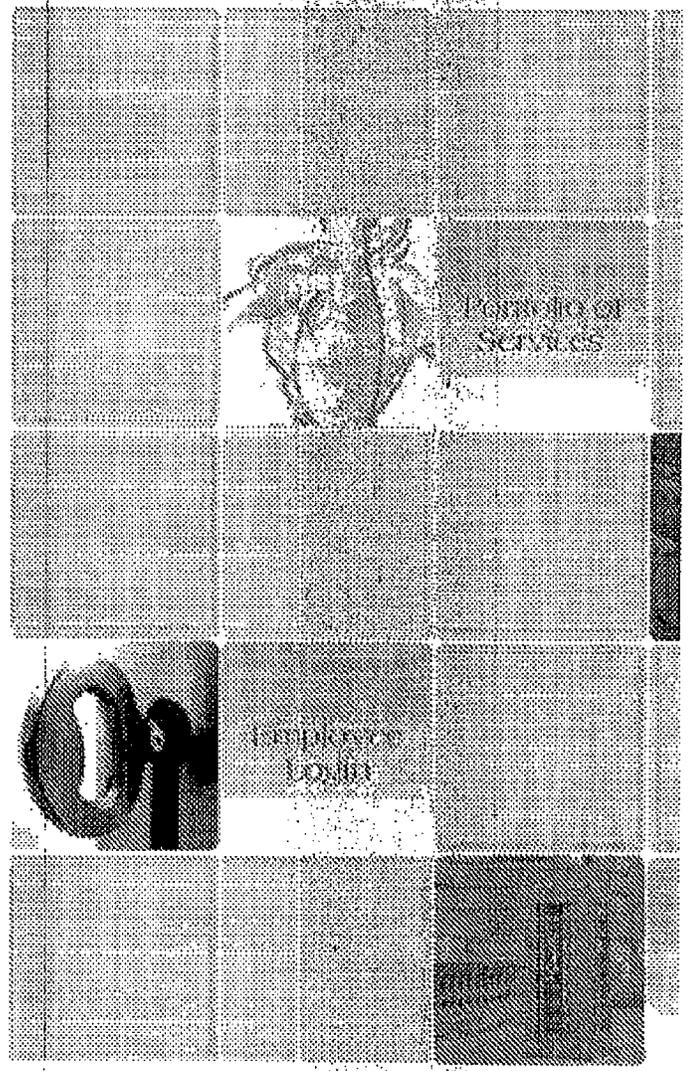
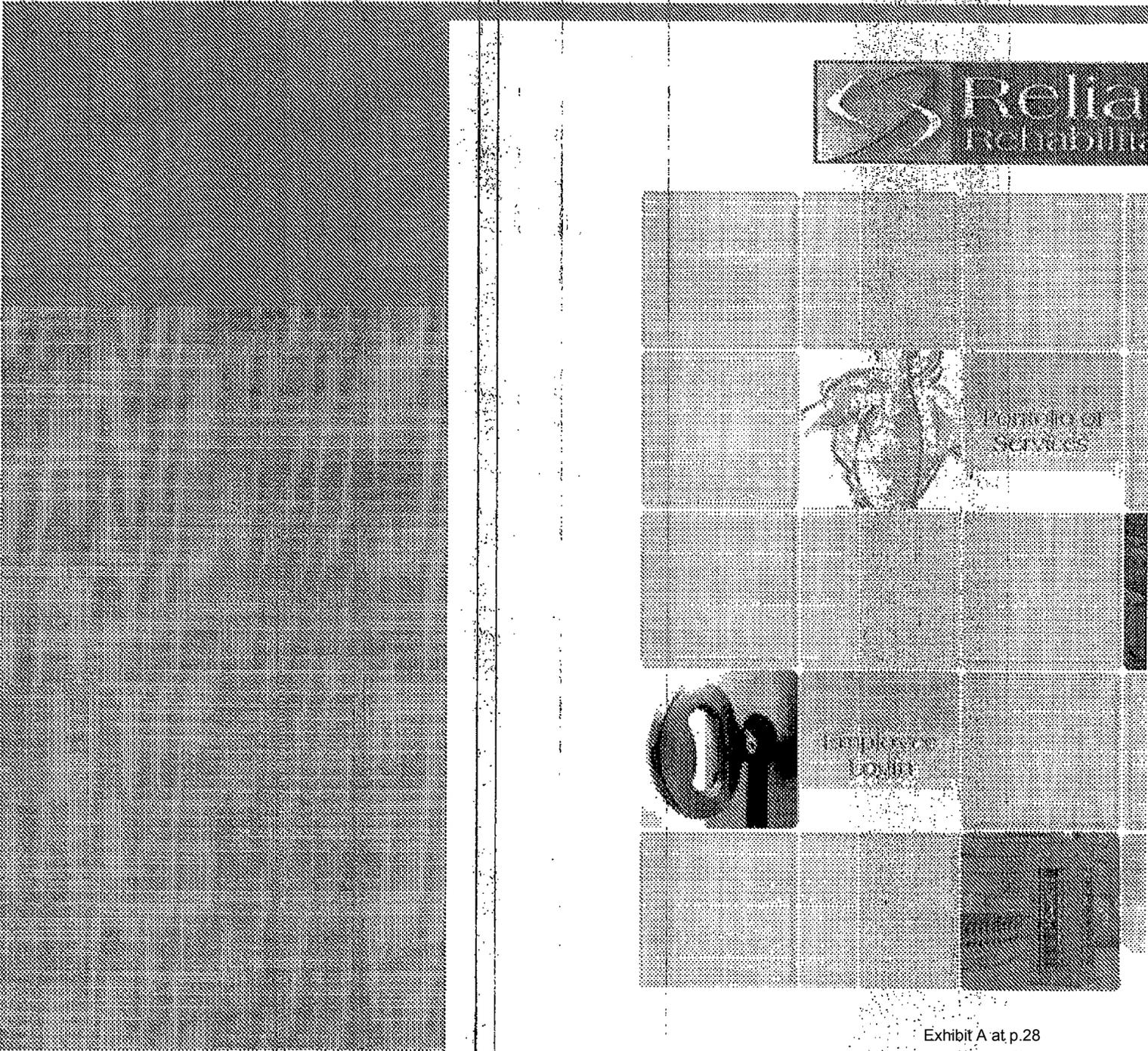


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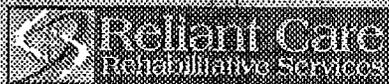




Reliant Care Rehabilitative Service Skilled Nursing Facility Therapy Management Services

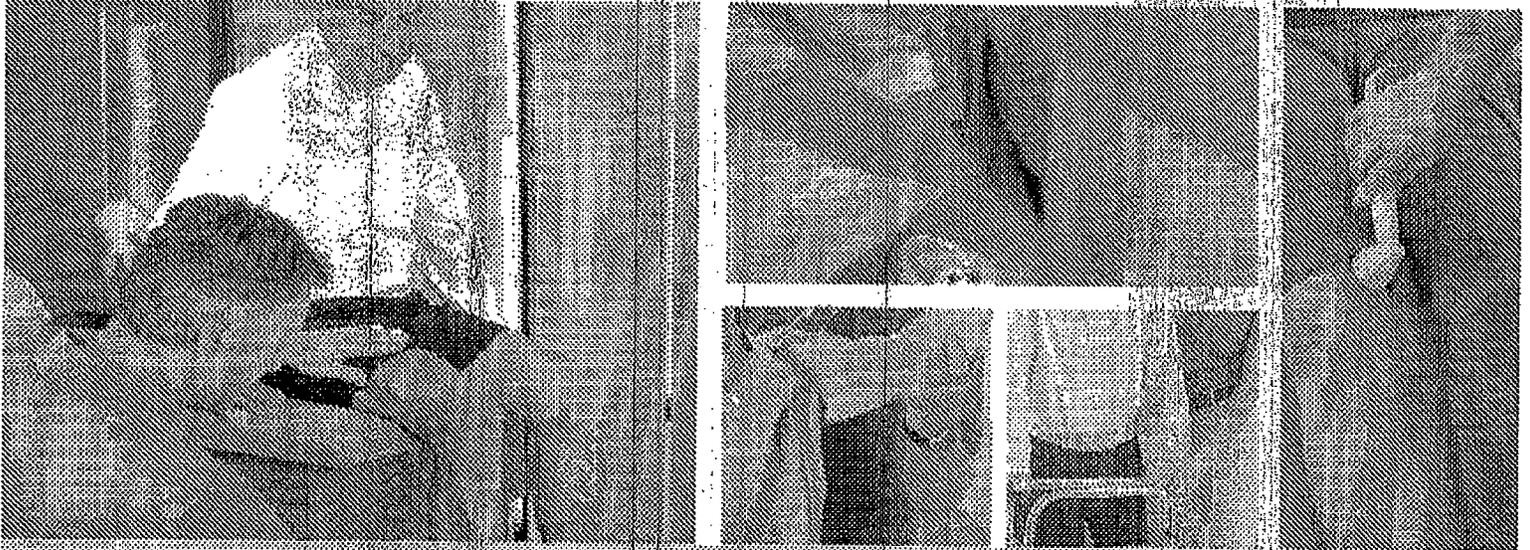
Reliant Care Rehabilitative Service (RCRS) provides comprehensive therapy management focusing on:

- Maximizing RUG category utilization
- Thorough monthly screening of facility residents to ensure appropriate use of skilled therapy services
- Providing staff education to increase use of skilled therapy services
- Fostering a team approach with facility personnel to establish a patient-centric delivery of healthcare services
- Using proprietary modeling to maximize facility profits and minimize reimbursement denials



2011 Coronet Road, Suite 301
Columbia, MO 65203
Voice: (314) 543-3850
Fax: (673) 447-4272

jwoods@reliantcarerehab.com



Rehab Care Rehabilitative Services (RCRS) is a leading provider of physical, occupational, and speech therapy services. For over 25 years, RCRS has incorporated compassionate care with an evidence-based approach to therapy. What sets us apart is our ability to deliver compassionate care and repeat profits for our facility partners.

In an ever-changing climate of increased liability and stricter government regulation, providing a caring therapy service is not sufficient enough for the success of your skilled nursing facility. You also need a reliable partner to maximize reimbursement. RCRS provides the most innovative caring therapy services while using proprietary programs that increase your bottom line.

Better Performance

At RCRS, we employ the most sought-after therapists giving you confidence in the overall effectiveness of your therapy services. Our therapists and managers serve on several programs to help you gain financial control of your therapy services and increase overall better performance results for you and your patients. The following provides an overview of these programs:

Medicare Denial Management

The Recovery Audit Contractors System, created by the Centers for Medicare and Medicaid Services, significantly increases the pressure of facilities to maintain accurate documentation and Medicare compliance. With therapy documentation affecting both 5106 category of discharge and Medicare Part B reimbursement, the success of providers depends on their ability to minimize denials of skilled therapy services.

RCRS employs a proprietary model that proactively ensures therapists adhere with every government guideline, resulting in fewer denials. We call this the **RCRS Reimbursement Assurance** model. The RCRS Reimbursement Assurance model includes:

- Tracking denial trends
- Establishing criteria and guidelines to track denials through an awards program
- Employing a full-time denial management team headed by a registered nurse, formerly with over 25 years of industry experience, protecting claims and maximize therapy service ratings
- Using CASANEX, a computerized, real-time documentation of skilled therapy services

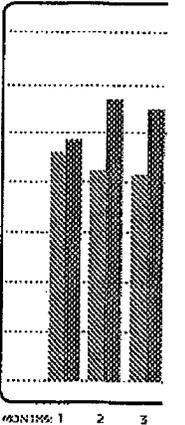


management is a client facility in "compliance while

We'll prove it The RCRS Profit

The RCRS Profit therapy services analysis inventor productivity, and trends. The evaluation therapy services therapy services.

Average Month



BOBROFF, HESSE, MARTONE & DOETZEL
Attorneys & Counselors

BHMD
ST. LOUIS || PHOENIX

1650 Des Peres Road, Suite 200
St. Louis, MO 63131

tel 314.862.0300 fax 314.862.7010
www.bobroffhesse.com

ANDREW J. MARTONE
Direct Dial 314.862.0608
andymartone@bobroffhesse.com

February 3, 2011

Mr. Davis Nance
D.W. Nance LLC
3912 Constance Street
New Orleans, LA 70115

RE: *Reliant Care Rehabilitative Services, L.L.C. and Reliant Management Group, L.L.C.*

Dear Mr. Nance:

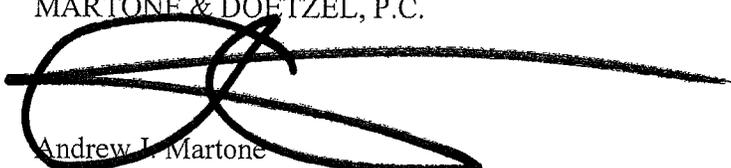
I write to follow up on my prior correspondence concerning the use of the name "Reliant" in connection with providing rehabilitation services in Missouri. Reliant Care Rehabilitate Services, LLC has been using its name to market its services in Missouri since at least 1994, when it registered with the Missouri Secretary of State. Because it has been using its name for well over a decade before Reliant Management Group, L.L.C. existed, it has a superior claim as a matter of law. *See, e.g., 15 U.S.C. §§ 1057(c), 1115(b)(5); Temperato v. Horstman*, 321 S.W.2d 657, 665 (Mo. 1959); *Emergency One, Inc. v. Am. Fire Eagle Co., Inc.*, 332 F.3d 264 (4th Cir. 2003).

Given that the demands made in your letter were based on an incomplete set of facts, I assume your client will withdraw its demands. In addition, it is expected that your client will refrain from using the Reliant name when doing business in the State of Missouri.

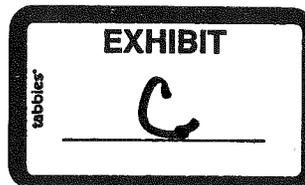
Please contact me if you have any questions or would like to discuss this matter further.

Very truly yours,

BOBROFF, HESSE,
MARTONE & DOETZEL, P.C.


Andrew J. Martone

AJM/mbr



JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 RELIANT CARE GROUP, L.L.C., RELIANT CARE MANAGEMENT COMPANY, L.L.C. and RELIANT CARE REHABILITATIVE SERVICES, L.L.C.

DEFENDANTS
 RELIANT MANAGEMENT GROUP, LLC

(b) County of Residence of First Listed Plaintiff **ST. LOUIS**
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **PHELPS**
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
 ANDREW J. MARTONE, # 37382 (314) 862-0300
 Hesse Martone, P.C.
 1650 Des Peres Road, Ste. 200, St. Louis, MO 63131

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|---|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §1114, 15 U.S.C. §1125
 Brief description of cause:
Trademark infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____
 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 1/10/14 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

UNITED STATES DISTRICT COURT
for the
Eastern District of Missouri

Reliant Care Group, L.L.C., et al.
Plaintiff
v.
Reliant Management Group, LLC
Defendant
Civil Action No.

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: David Nance, Registered Agent for Reliant Management Group, LLC
(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days (give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 01/10/2014

Handwritten signature of Andrew J. Martone

Mo # 37382

Signature of the attorney or unrepresented party

Andrew J. Martone

Printed name

Hesse Martone, P.C.
1650 Des Peres Road, St. 200
St. Louis, MO 63131

Address

andymartone@hessemartone.com

E-mail address

(314)862-0300

Telephone number

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT
for the
Eastern District of Missouri

Reliant Care Group, L.L.C., et al.
Plaintiff
v.
Reliant Management Group, LLC
Defendant
Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: Andrew J. Martone
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 01/10/2014, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

RELIANT CARE GROUP, LLC)
a Missouri Limited Liability Company)
and)
RELIANT CARE MANAGEMENT)
COMPANY, LLC)
a Missouri Limited Liability Company)
and)
RELIANT CARE REHABILITATIVE)
SERVICES, LLC)
a Missouri Limited Liability Company)

Plaintiffs/
Counterclaim
Defendants,

v.

RELIANT MANAGEMENT)
GROUP, LLC)
a Delaware Limited Liability Company)
Defendant/
Counterclaim
Plaintiff.)

Case No. 14-cv-00043-CDP
JURY TRIAL DEMANDED

**DEFENDANT/COUNTERCLAIM PLAINTIFF'S SECOND AMENDED
COUNTERCLAIM**

COMES NOW DEFENDANT/COUNTERCLAIM PLAINTIFF Reliant
Management Group, LLC (hereinafter "RMG"), reserving all Answers and Affirmative

Defenses previously filed, arguing in the alternative, and for the sake of these Counterclaims only, for its Counterclaims against Plaintiffs/Counterclaim Defendants in this cause states, in the alternative to its Answer and Affirmative Defenses, the following:

A. Nature of the Action

1. This is an action for trademark infringement under the Lanham Act, 15 U.S.C. §1114(1)(a); false designation of origin under the Lanham Act, 15 U.S.C. §1125(a); Federal trademark dilution under the Lanham Act, 15 U.S.C. §1125(c); violation of Illinois' trademark infringement and anti-dilution statute, Illinois Trademark Registration and Protection Act, 765 ILCS 1036/60; and common law unfair competition arising from Counterclaim Defendants' unauthorized use of one or more variations of the trade name "Reliant Rehabilitation" in the Illinois healthcare and rehabilitation services market.

2. In this action, RMG seeks penalties, damages, legal fees and costs resulting from violations of federal and state laws. Pursuant to 15 U.S.C. Section 1119, RMG also asks this court to cancel Counterclaim Defendants' registration of the federally registered mark RELIANT CARE GROUP, Registration No. 1,953,530 ("RCG Mark"). RMG believes that Counterclaim Defendants have never used the RCG Mark for all the covered services, neither prior to nor following application for registration of the RCG Mark, in violation of 37 C.F.R. §2.34(a)(1)(i), regarding applications held void *ab initio* based on the applicant's failure to use the mark on the identified goods and in violation of 37 C.F.R. §7.37 regarding the requirement of use or excusable nonuse of a mark to avoid termination.

3. Counterclaim Defendants' use of the RCG Mark harms RMG and

interferes with RMG's rights related to its federally registered RELIANT REHABILITATION mark, Registration No. 3,426,134 ("RR Mark") as demonstrated by the copy of the registration information attached hereto as Exhibit 1 and incorporated herein for all purposes. RMG's sister company Reliant Pro Rehab, LLC ("RPro"), under license from RMG, uses the RR Mark in Missouri, Illinois and over 20 other states to conduct business activities covered by the RR Mark activities description, provided to the United States Patent and Trademark Office, in all of these states.

4. Every instance of infringement, confusion, and other adverse treatment of the RR Mark caused by Counterclaim Defendants in Illinois and Missouri adversely affects both RMG and RPro directly as RMG is the owner of all intellectual property rights derived from the RR Mark and RPro is the entity authorized by each state to and actively conducting business in each state under the RR Mark. So every aspect of RPro's business activities in these states is undertaken under the identity of the RR Mark, and when the RR Mark is adversely affected by the Counterclaim Defendants the value of the RR Mark for RMG is directly affected as is every aspect of RPro's business in that state and elsewhere.

5. If this Court could find that there is a likelihood of consumer confusion based on RMG's and its affiliates' use of the RR Mark for their business, then Counterclaim Defendants' use of the RCG Mark for their business would also give rise to a likelihood of consumer confusion by Counterclaim Defendant's entry into the Illinois market using the RCG Mark after RMG's RR Mark had already begun to be used in Illinois as well as in Missouri because of Counter Defendants' improper use of the RCG Mark in all states where they conduct business—i.e., failure to use the RCG Mark for all

activities listed in the description upon registration of this mark..

B. The Parties

6. Counterclaim Defendant Reliant Care Group, LLC. is a Missouri limited liability company with its principal place of business at 1869 Craig Park Court, Maryland Heights, Missouri.

7. Counterclaim Defendant Reliant Care Management, LLC is a Missouri limited liability company with his principal place of business at 1869 Craig Park Court, Maryland Heights, Missouri.

8. Counterclaim Defendant Reliant Care Rehabilitative Services, LLC is a Missouri limited liability company with his principal place of business at 2011 Corona Road, Columbia, Missouri.

9. Counterclaim Plaintiff Reliant Management Group, LLC is a Delaware limited liability company with its principal place of business at 5212 Village Creek Drive, Plano, Texas, and has previously licensed the use of the RR Mark to its sister company Reliant Pro Rehab, LLC which is a Delaware limited liability company with its principal place of business at 5212 Village Creek Drive, Plano, Texas. RPro is registered to conduct business in Missouri and in Illinois, as well as in approximately 23 other states, as evidenced by the copies of records maintained by the Secretaries of State for both Missouri and Illinois respectively marked as Exhibits 2 and 3 and attached hereto and incorporated herein for all purposes.

C. Jurisdiction

10. This Court has original subject matter jurisdiction over Counterclaim Plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1332, 1338; 15 U.S.C. §§ 1116 and

1121. This Court has supplemental jurisdiction over Counterclaim Plaintiff's state law claims under 28 U.S.C. § 1367.

11. This Court has personal jurisdiction over the Counterclaim Defendants in that they are conducting business in the State of Missouri and in this District.

12. Venue is proper in this District under 28 U.S.C. § 1391 in that Counterclaim Defendants are subject to personal jurisdiction in this District.

D. Background Facts

13. RPro has been registered to conduct business in Illinois since November 20, 2012, and has in fact used, under license from RMG, the RR Mark in connection with solicitation of business and provision of services in Illinois prior to this date.

14. RMG is not registered to and does not conduct business in Missouri or Illinois.

15. The main website of RMG and RPro has always been <http://www.reliant-rehab.com>. A review of this website currently and as archived at <https://archive.org/> demonstrates that both companies have always marketed their services and recruited at this main website the RR Mark and any specific reference to either RMG or RPro in an earlier version of the pages on this website would have been an error arising from the website manager's lack of knowledge about the continually changing corporate structure of these companies and their holding and affiliated companies.

16. Upon information and belief, Counterclaim Defendant Reliant Care Group, LLC allowed RCG, Inc. f.k.a. Reliant Care Group, Inc. ("RCG Inc.") to register to conduct business in Illinois on April 23, 2013, as evidenced by "Exhibit 4" attached hereto and is incorporated herein for all purposes by this reference. Upon information and

belief, RCG Inc. conducted business in Illinois, without formal authorization RCG, using the RCG Mark or a similar version thereof. RCG also appears to have allowed some or all of the other Counterclaim Defendants to also use, the RCG Mark or a similar version thereof in Illinois.

17. Upon information and belief, Counterclaim Defendant Reliant Care Management Company, LLC registered on December 14, 1994, to conduct business in Illinois and used, without formal authorization, the RCG Mark or a similar version thereof in Illinois. This registration was subsequently revoked on April 1, 1997. Nevertheless, this entity has conducted business using the RCG Mark or a similar version thereof in Illinois, and it advertises that it currently manages a facility in Illinois. A recent screen capture of the www.reliantcaremgmt.com homepage is attached hereto as “Exhibit 5” and is incorporated herein for all purposes by this reference.

18. Upon information and belief, Counterclaim Defendant Reliant Care Rehabilitative Services, LLC registered on April 13, 2011, to conduct business in Illinois, under the assumed name INNOVATE REHAB AND WELLNESS. This entity also appears to conduct business in Missouri under the same fictitious name. The Illinois Secretary of State records and registration of fictitious name form filed February 1, 2012, with the Missouri Secretary of State are attached hereto as “Exhibit 6” and “Exhibit 7,” respectively, and are incorporated herein by this reference.

19. Counterclaim Defendants use one or more websites to advertise their services under the RCG Mark or a similar variation thereof and these websites are accessed by actual and potential customers and therapists of all the parties in both Illinois and Missouri as well as in all other states where any of the parties is conducting business.

20. Upon information and belief, current and potential customers, patients and therapists of RMG's authorized licensee for use of the RR Mark in Illinois and Missouri have been confused and mistakenly called and visited Counterclaim Defendants' locations in search of RPro's locations and *vis-a-versa*. This confusion raises costs of the parties by increasing hourly rates paid to therapists, lowering return on investment in recruitment of therapist advertising, increased rejection of offers after time spent on courting therapists, loss of potential and possibly former customers due to confusion about past actions by Counterclaim Defendants incorrectly attributed to RMG or RPro.

21. Upon information and belief, RMG has lost revenue because Counterclaim Defendants' activities in Illinois have caused RPro to suffer damage to its business, goodwill, and revenue and has harmed the reputation of RMG and RPro as well as the strength of the RR Mark.

**COUNT 1
TRADEMARK INFRINGEMENT
UNDER 15 U.S.A. § 1114(1)(a)**

22. RMG restates and realleges the allegations set forth in all the paragraphs above and below as if fully set forth herein in connection with this count.

23. Counterclaim Defendants are liable to RMG for willful trademark infringement in violation of the Lanham Act, 15 U.S.C. §1114(1)(a) because Counterclaim Defendants' use of the RCG Mark or a similar variation thereof in the State of Illinois results in Counterclaim Defendants' use in commerce and without RMG's consent of colorable imitations of RMG's RR Mark—i.e., all marks contain the word "Reliant." This use is likely to cause confusion, mistake or to deceive the actual and potential customers and therapists of all the parties active in Illinois and thereby cause

harm to RMG as owner of the RR Mark by damaging the business, goodwill, revenue, reputation of RMG and RPro as well as the strength of the RR Mark. As an example current or potential customers and therapists of RPro, RMG's licensed provider in Missouri and Illinois, have already or are likely to be confused by the branding and advertising and recruiting of Counterclaim Defendants and mistakenly contact and subsequently contract with Counterclaim Defendants instead of with RPro, RMG's licensed operator in Missouri and Illinois.

**COUNT 2
FALSE DESIGNATION OF ORIGIN
UNDER 15 U.S.A. § 1125(a)**

24. RMG restates and realleges the allegations set forth in all the paragraphs above and below as if fully set forth herein in connection with this count.

25. Counterclaim Defendants have caused a commercial injury to RMG based upon the deceptive use of the RCG Mark and similar variations of same in Illinois causing confusion among current and potential customers, patients and therapists of all the parties regarding the services and reputations of the parties. Upon information and belief, RMG has lost revenue because Counterclaim Defendants' activities in Illinois have caused RPro to suffer damage to its business, goodwill, and revenue and has harmed the reputation of RMG and RPro as well as the strength of the RR Mark.

26. Counterclaim Defendants are liable to defendant for willful false designation of origin in violation of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) and (B) because Counterclaim Defendants' use of the RCG Mark or a similar variation of same in the State of Illinois falsely represents that their services originate with or are sponsored or authorized by RMG.

27. Counterclaim Defendants' use of the RCG Mark or a similar variation thereof in branding their services in the State of Illinois results in Counterclaim Defendants' use in commerce and without RMG's consent of colorable imitations of RMG's RR Mark—i.e., all marks contain the word "Reliant." This use includes misleading statements as to their own services in interstate commerce, gives rise to actual deception or at least a tendency to deceive a substantial portion of the intended audience, is material in that it is likely to influence contracting decisions of the intended audience, and is likely to cause confusion, mistake or to deceive the actual and potential customers and therapists of all the parties active in Illinois and thereby cause harm to RMG as owner of the RR Mark by damaging the business sales, goodwill, revenue, reputation of RMG and RPro as well as the strength of the RR Mark.

28. These harms affect RMG as the owner of the RR Mark and because they affect RPro, the licensee of RMG, by hindering RMG's ability to compete with Counterclaim Defendants through RPro in Illinois and Missouri. As an example current or potential customers and therapists of RPro, RMG's licensed provider in Missouri and Illinois, have already or are likely to be confused by the branding and advertising and recruiting of Counterclaim Defendants and mistakenly contact and subsequently contract with Counterclaim Defendants instead of with RPro, RMG's licensed operator in Missouri and Illinois.

29. RMG is famous across the country for professional rehabilitation services branded under the RR Mark and confusion in the industry about distinguishing RMG and its licensed providers' services and activities versus the competition harms RMG's revenue, goodwill, reputation and the lowers the value of the RR Mark.

**COUNT 3
FEDERAL TRADEMARK DILUTION
UNDER 15 U.S.A. § 1125(c)**

30. RMG restates and realleges the allegations set forth in all the paragraphs above and below as if fully set forth herein in connection with this count.

31. Counterclaim Defendants are liable to RMG for willful trademark dilution in violation of the Lanham Act, 15 U.S.C. §1125(c) because their advertisement, promotion, marketing, and recruiting in connection with their offering of services and providing of services in the healthcare and rehabilitation market began after the RR Mark was already famous and uses a variation of the RR Mark—i.e., the word “Reliant” in their service mark—that is likely to cause dilution of the RR Mark by blurring and/or dilution and tarnishes the distinctive quality of the RR Mark, which also has the word “Reliant” in it.

32. Counterclaim Defendants’ above-described actions were done with willful intent to trade on defendant’s reputation and/or to cause dilution of the famous RR Mark used and advertised since 2003, and currently covering rehabilitation services provided in more than 20 states. As an example current or potential customers and therapists of RPro, RMG’s licensed provider in Missouri and Illinois, have already or are likely to be confused by the branding and advertising and recruiting of Counterclaim Defendants and mistakenly contact and subsequently contract with Counterclaim Defendants instead of with RPro, RMG’s licensed operator in Missouri and Illinois.

**COUNT 4
VIOLATION OF ILLINOIS’ ANTIDILUTION STATUTE
INFRINGEMENT UNDER 765 ILCS 1036 ET SEQ.**

33. RMG restates and realleges the allegations set forth in all the paragraphs above and below as if fully set forth herein in connection with this count.

34. Counterclaim Defendants are liable to defendant for willful trademark infringement/dilution in violation of Illinois law because their use of their RCG Mark or a similar variation thereof in the State of Illinois is in direct competition with RMG's licensed user of the federally registered RR Mark, RPro and causes confusion as to the ownership or authorization of services provided under a service mark incorporating the word "Reliant" and thereby causes harm to RMG, as the mark owner of RR Mark, by causing confusion among the consuming public—i.e., Medicare approved providers of rehabilitation services, patients and therapists—thereby damaging RMG's and RPro's business, goodwill, revenue, reputation as well as the strength of the mark. As an example current or potential customers and therapists of RPro, RMG's licensed provider in Missouri and Illinois, have already or are likely to be confused by the branding and advertising and recruiting of Counterclaim Defendants and mistakenly contact and subsequently contract with Counterclaim Defendants instead of with RPro, RMG's licensed operator in Missouri and Illinois.

35. Counterclaim Defendants' have caused injury, arising from confusion and mistake, to RMG and its licensed provider in Missouri and Illinois. One example is the lowered value of the RR Mark because of confusion and mistake about which services, whether those of RPro or the Counterclaim Defendants, are covered by the RR Mark and which are covered by the variations of the RCG Mark used in Illinois and Missouri. This confusion and mistake would cease if Counterclaim Defendants were not using service marks similar to the RR Mark.

**COUNT 5
COMMON LAW TRADEMARK INFRINGEMENT**

36. RMG restates and realleges the allegations set forth in all the paragraphs above and below as if fully set forth herein in connection with this count.

37. Counterclaim Defendants are liable to defendant for willful trademark infringement/dilution in violation of Illinois common law because their use of their RCG Mark or a similar variation thereof in the State of Illinois is in direct competition with RMG's licensed user of the federally registered RR Mark, RPro and causes confusion as to the ownership or authorization of services provided under a service mark incorporating the word "Reliant" and thereby causes harm to RMG, as the mark owner of RR Mark, by causing confusion among the consuming public—i.e., Medicare approved providers of rehabilitation services, patients and therapists—thereby damaging RMG's and RPro's business, goodwill, revenue, reputation as well as the strength of the mark. As an example current or potential customers and therapists of RPro, RMG's licensed provider in Missouri and Illinois, have already or are likely to be confused by the branding and advertising and recruiting of Counterclaim Defendants and mistakenly contact and subsequently contract with Counterclaim Defendants instead of with RPro, RMG's licensed operator in Missouri and Illinois.

38. Counterclaim Defendants' have caused injury, arising from confusion and mistake, to RMG and its licensed provider in Missouri and Illinois. One example is the lowered value of the RR Mark because of confusion and mistake about which services, whether those of RPro or the Counterclaim Defendants, are covered by the RR Mark and which are covered by the variations of the RCG Mark used in Illinois and Missouri. This

confusion and mistake would cease if Counterclaim Defendants were not using service marks similar to the RR Mark.

**COUNT 6
COMMON LAW UNFAIR COMPETITION**

39. RMG restates and realleges the allegations set forth in all the paragraphs above and below as if fully set forth herein in connection with this count.

40. Counterclaim Defendants are liable to defendant for unfair and unlawful competition under Illinois common law because their use of the RCG Mark or a similar variation of same in the State of Illinois is in direct competition with RMG's licensed provider in Missouri and Illinois, RPro, using the federally registered RR Mark and therefore causes confusion as to the ownership or authorization by causing the target audience to think Counterclaim Defendants and their competing rehabilitation services are also covered by the RR Mark and *vic-a-versa*. This confusion and mistake causes harm to RMG as the RR Mark owner by damaging RMG's and RPro's business, goodwill, revenue, reputation as well as the strength of the mark. As an example current or potential customers and therapists of RPro, RMG's licensed provider in Missouri and Illinois, have already or are likely to be confused by the branding and advertising and recruiting of Counterclaim Defendants and mistakenly contact and subsequently contract with Counterclaim Defendants instead of with RPro, RMG's licensed operator in Missouri and Illinois.

41. Counterclaim Defendants' have caused injury, arising from confusion and mistake, to RMG and its licensed provider in Missouri and Illinois. One example is the lowered value of the RR Mark because of confusion and mistake about which services,

whether those of RPro or the Counterclaim Defendants, are covered by the RR Mark and which are covered by the variations of the RCG Mark used in Illinois and Missouri. This confusion and mistake would cease if Counterclaim Defendants were not using service marks similar to the RR Mark.

**COUNT 7
CANCELLATION OF U.S.
TRADEMARK REGISTRATION NO. 1,953,530
FOR NONUSE OR NONCONTINUOUS USE**

42. RMG restates and realleges the allegations set forth in all the paragraphs above and below as if fully set forth herein in connection with this count.

43. RMG will be damaged by the continued registration of Counterclaim Defendants' RCG Mark in that RMG is using, and has licensed use of, the RR Mark in commerce and the value, reputation, goodwill, and registration of the RR mark is being impaired by the continued registration of Counterclaim Defendants' RCG Mark. Further, if Counterclaim Defendants' RCG Mark is permitted to remain on the Principal Register, with all the substantive and procedural benefits conferred by its status as a registration on the Principal Register, Counterclaim Defendants will enjoy unlawful gain and advantage to which they are not entitled under the Trademark Act of 1946.

44. Pursuant to 15 U.S.C. Section 1119, RMG also asks this court to cancel Counterclaim Defendants' registration of the federally registered RCG Mark. RMG believes that Counterclaim Defendants have never used the RCG Mark for all the covered services, neither prior to nor following application for registration of the RCG Mark, in violation of 37 C.F.R. §2.34(a)(1)(i), which provides that applications shall be held void *ab initio* based on the applicant's failure to use the mark on the identified goods, and in violation of 37 C.F.R. §7.37, which requires use or excusable nonuse of a mark to avoid

termination.

45. RMG believes the facts obtained through discovery will demonstrate that the current and previous owners of the RCG Mark were not providing all of the services listed in their application for federal registration neither prior to nor subsequent to their application for registration of the RCG Mark. For example, Counterclaim Defendants appear to not have consistently provided all of the listed services since February 22, 1993, and do not appear to have informed and obtained consent from the United States Patent and Trademark Office prior to each instance when some listed services were not being provided and properly branded with the RCG Mark. Use of variations of the RCG Mark does not constitute proper use of the RCG Mark.

E. PRAYER FOR RELIEF

WHEREFORE, in the alternative to RMG's answer and affirmative defenses, RMG asks the court to enter judgment in its favor and against Counterclaim Defendants, jointly and severally, including an award of damages, exemplary damages for their willful and intentional acts, and to enjoin them from the use of RCG Mark and any other service mark containing the word "Reliant" in the State of Illinois, dismiss their suit against RMG with prejudice, assess costs against them, cancel their Registration No. 1953530, find this to be an exceptional case and award RMG its reasonable attorney fees under 15 U.S.C. §1117(a), and award RMG all other relief the court deems appropriate.

Respectfully submitted this 3rd day of March 2015.

/s/ David W. Nance
David W. Nance, admitted *pro hac vice*
FL Bar No. 32126, LA Bar No. 25467
NY 3rd Dept., TX Bar No. 24013225

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St. Louis, MO 63141-0404

Phone: (314) 277-9977

Fax: (314) 392-9912

howard@shalowitz.org

Co-Counsel for Defendant
Reliant Management Group, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the persons listed below on this 3rd day of March 2015.

Via ECF filing:

Andrew J. Martone (#37382)

Lori A. Schmidt (#45561)

HESSE MARTONE, P.C.

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lorischmidt@hessemartone.com

COUNSEL FOR PLAINTIFFS/COUNTERCLAIM DEFENDANTS

/s/ David W. Nance

David W. Nance



United States Patent and Trademark Office

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| | |
|--|--|
| Word Mark | RELIANT REHABILITATION |
| Goods and Services | IC 044. US 100 101. G & S: Physical rehabilitation; Providing physical rehabilitation facilities. FIRST USE: 20030700. FIRST USE IN COMMERCE: 20031100 |
| Mark Drawing Code | (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS |
| Design Search Code | 01.15.15 - Fire (flames), emanating from objects, words or numbers 26.15.03 - Incomplete polygons and polygons made of broken or dotted lines; Polygons (incomplete); Polygons made with broken lines 26.15.21 - Polygons that are completely or partially shaded |
| Trademark Search Facility Classification Code | INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames SHAPES-COLORS-3-OR-MORE Design listing or lined for three or more colors SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons |
| Serial Number | 77264934 |
| Filing Date | August 27, 2007 |
| Current Basis | 1A |
| Original Filing Basis | 1A |
| Published for Opposition | February 26, 2008 |
| Registration Number | 3426134 |
| Registration Date | May 13, 2008 |

Exhibit 1

Owner (REGISTRANT) Reliant Management Group, L.L.C. DBA Reliant Rehabilitation LIMITED LIABILITY COMPANY LOUISIANA 11616 Southfork Ave., Ste. 101 Baton Rouge LOUISIANA 70816

(LAST LISTED OWNER) RELIANT MANAGEMENT GROUP, L.L.C. DBA Reliant Rehabilitation LIMITED LIABILITY COMPANY DELAWARE c/o Paracorp Incorporated 2140 S. Dupont Highway Camden DELAWARE 19934

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record David W. Nance

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "REHABILITATION" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) red, blue, black and white is/are claimed as a feature of the mark. The mark consists of a solid white background; on the left and centered vertically is a vertically split pentagon tilted to the left with a red side on the left, a blue side on the right and the white background visible in the hollowed center with a red flame rising from the bottom of the red, left side vertically upwards almost to the top of the blue right side of the pentagon; immediately to the right of the pentagon are the words in black "Reliant" on top of "Rehabilitation" both aligned on the left with the first word extending half as far to the right as the second word. .

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

| | | | | | | | | | |
|---------------------------|---------------------------|----------------------------|---------------------------|-----------------------------|---------------------------|---------------------|----------------------|---------------------------|---------------------------|
| TESS HOME | NEW USER | STRUCTURED | FREE FORM | BROWSE Dict | SEARCH OG | TOP | HELP | PREV LIST | CURR LIST |
| NEXT LIST | FIRST DOC | PREV DOC | NEXT DOC | LAST DOC | | | | | |

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

Exhibit 1



FILED DOCUMENTS

(Click above to view filed documents that are available.)

Date: 3/24/2014

Business Name History

| Name | Name Type |
|------------------------|-----------|
| Rellant Pro Rehab, LLC | Legal |

Limited Liability Company - Foreign - Information

| | |
|-----------------------|------------|
| Charter Number: | FL1349602 |
| Status: | Active |
| Entity Creation Date: | 10/16/2013 |
| State of Business.: | DE |
| Expiration Date: | Perpetual |

Registered Agent

| | |
|------------------|--|
| Agent Name: | <u>PARACORP INCORPORATED</u> |
| Office Address: | 210 East High St. Jefferson City MO 65101 |
| Mailing Address: | |

- sos.mo.gov
- [Internet Privacy Policy](#)
- [Bid Opportunities](#)
- [Missouri State Government](#)
- [Employment](#)
- [Directions](#)
- [Site Map](#)
- [Employee Access](#)



Contact Us:
 600 West Main Street
 Jefferson City, MO 65101
 Main Office: (573) 751-4936
 Info@sos.mo.gov
 Branch Offices

Exhibit 2

WWW.CYBERDRIVEILLINOIS.COM

JESSE WHITE
SECRETARY OF STATE



LLC FILE DETAIL REPORT

| | | | |
|---------------------------|------------------------------------|-------------------|--|
| Entity Name | RELIANT PRO REHAB, LLC | File Number | 04094433 |
| Status | ACTIVE | On | 10/17/2014 |
| Entity Type | LLC | Type of LLC | Foreign |
| File Date | 11/20/2012 | Jurisdiction | DE |
| Agent Name | PARACORP INC | Agent Change Date | 11/20/2012 |
| Agent Street Address | 901 S 2ND ST STE 201 | Principal Office | 5212 VILLAGE CREEK DR PLANO, TX 75093 |
| Agent City | SPRINGFIELD | Management Type | MGR View |
| Agent Zip | 62704 | Duration | PERPETUAL |
| Annual Report Filing Date | 10/17/2014 | For Year | 2014 |
| Series Name | NOT AUTHORIZED TO ESTABLISH SERIES | | |

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[Purchase Certificate of Good Standing](#)

(One Certificate per
Transaction)

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Exhibit 3

1/9/2015

LLC - File Detail Report



JESSE WHITE
SECRETARY OF STATE



LLC FILE DETAIL REPORT

| | | | |
|---------------------------|--|-------------------|---|
| Entity Name | RELIANT CARE REHABILITATIVE SERVICES, L.L.C. | File Number | 03543706 |
| Status | ACTIVE | On | 02/21/2014 |
| Entity Type | LLC | Type of LLC | Foreign |
| File Date | 04/13/2011 | Jurisdiction | MO |
| Agent Name | ROBERT J CRADDICK | Agent Change Date | 04/13/2011 |
| Agent Street Address | 5050 SUMMIT AVE | Principal Office | 1869 CRAIG PARK COURT ST LOUIS, MO 63146 |
| Agent City | E ST LOUIS | Management Type | MBR View |
| Agent Zip | 62203 | Duration | PERPETUAL |
| Annual Report Filing Date | 02/21/2014 | For Year | 2014 |
| Assumed Name | ACTIVE - INNOVATE REHAB AND WELLNESS | | |
| Series Name | NOT AUTHORIZED TO ESTABLISH SERIES | | |

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Purchase Certificate of Good Standing

(One Certificate per Transaction)

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Exhibit 4

Exhibit B

[Reliant Care Management Company L.L.C.](#)

[Home](#)

[Nursing Homes](#)

[Bernard Care Center, L.L.C.](#)

[Bridgewood Health Care Center, L.L.C.](#)

[Chariton Park Health Care Center, L.L.C.](#)

[Crestwood Health Care Center, L.L.C.](#)

[Eastview Manor Care Center](#)

[Four Seasons Living Center, L.L.C.](#)

[Heritage Care Center of Berkeley, L.L.C.](#)

[Kasey Paige Assisted Living, L.L.C.](#)

[Levering Regional Health Care Center, L.L.C.](#)

[Milan Health Care Center](#)

[Nathan Health Care Center, L.L.C.](#)

[North Village Park, L.L.C.](#)

[St Elizabeth Care Center](#)

[Stonecrest Healthcare](#)

[Westview Nursing Home](#)

[About](#)

[Contact](#)

We help independent healthcare facilities provide long term healthcare in Missouri and Illinois Homes

Exhibit 5



[Bernard Care Center, L.L.C.](#)



[Bridgewood Health Care Center, L.L.C.](#)



[Chariton Park Health Care Center, L.L.C.](#)



Crestwood Health Care Center, L.L.C.



Eastview Manor Care Center



Four Seasons Living Center, L.L.C.



Heritage Care Center of Berkeley, L.L.C.



Kasey Paige Assisted Living, L.L.C.



Levering Regional Health Care Center, L.L.C.



Milan Health Care Center



Nathan Health Care Center, L.L.C.



North Village Park, L.L.C.



St Elizabeth Care Center



[Stonecrest Healthcare](#)



[Westview Nursing Home](#)

Locations

The best care comes from within the community

[Sitemap](#)

Reliant Care Management Company L.L.C.

(http://reliantcaremgmt.com)

- Home (<http://reliantcaremgmt.com>)
- Nursing Homes (<http://reliantcaremgmt.com/nursing-homes/>)
- About (<http://reliantcaremgmt.com/about/>)
- Contact (<http://reliantcaremgmt.com/contact/>)

We help independent healthcare facilities provide long term healthcare in Missouri and Illinois

Homes



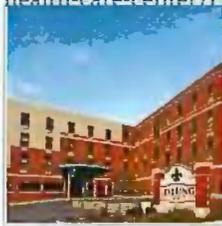
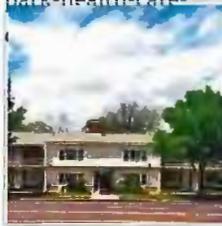
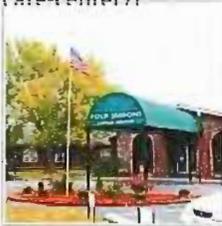
Bernard Care Center, L.L.C.
(<http://reliantcaremgmt.com/homes/bernard-care-center/>)

Bridgewood Health Care Center, L.L.C.
(<http://reliantcaremgmt.com/homes/bridgewood-health-care-center/>)

Chariton Park Health Care Center, L.L.C.
(<http://reliantcaremgmt.com/homes/chariton-park-health-care-center/>)

Crestwood Health Care Center, L.L.C.
(<http://reliantcaremgmt.com/homes/crestwood-health-care-center/>)

Eastview Manor Care Center
(<http://reliantcaremgmt.com/homes/eastview-manor-care-center/>)



Four Seasons Living Center, L.L.C.
(<http://reliantcaremgmt.com/homes/four-seasons-living-center/>)

Heritage Care Center of Berkeley, L.L.C.
(<http://reliantcaremgmt.com/homes/heritage-care-center-of-berkeley/>)

Kasey Paige Assisted Living, L.L.C.
(<http://reliantcaremgmt.com/homes/kasey-paige-assisted-living/>)

Levering Regional Health Care Center,
(<http://reliantcaremgmt.com/homes/levering-regional-health-care-center/>)

Milan Health Care Center
(<http://reliantcaremgmt.com/homes/milan-health-care-center/>)



Nathan Health Care Center, L.L.C.
(<http://reliantcaremgmt.com/homes/nathan-health-care-center/>)

North Village Park, L.L.C.
(<http://reliantcaremgmt.com/homes/north-village-park/>)

St Elizabeth Care Center
(<http://reliantcaremgmt.com/homes/st-elizabeth-care-center/>)

Stonecrest Healthcare
(<http://reliantcaremgmt.com/homes/stonecrest-healthcare/>)

Westview Nursing Home
(<http://reliantcaremgmt.com/homes/westview-nursing-home/>)



CORPORATION FILE DETAIL REPORT

| | | | |
|-------------------------------|--|--------------------------|---|
| Entity Name | RELIANT CARE GROUP, INC. | File Number | 68861462 |
| Status | ACTIVE | | |
| Entity Type | CORPORATION | Type of Corp | DOMESTIC BCA |
| Incorporation Date (Domestic) | 04/23/2013 | State | ILLINOIS |
| Agent Name | BRETNER PAUL | Agent Change Date | 04/23/2013 |
| Agent Street Address | 125 N BRITTANY LN | President Name & Address | BRETNER PAUL 125 N BRITTANY LN, HAINESVILLE, IL 60030 |
| Agent City | HAINESVILLE | Secretary Name & Address | |
| Agent Zip | 60030 | Duration Date | PERPETUAL |
| Annual Report Filing Date | 00/00/0000 | For Year | 2015 |
| Assumed Name | INACTIVE - IN HOME PERSONAL SERVICES, IL-01 | | |

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(One Certificate per Transaction)

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Exhibit 6



State of Missouri
Robin Carnahan, Secretary of State

File Number: 201203280182
X01201062
Date Filed: 02/01/2012
Expiration Date: 02/01/2017
Robin Carnahan
Secretary of State

Registration of Fictitious Name

This fictitious name filing shall expire 5 years from the date filed unless a renewal filing is submitted within 6 months prior to the expiration date.

This information is for the use of the public and gives no protection to the name being registered. There is no provision in this Chapter to keep another person or business entity from adopting and using the same name. (Chapter 417, RSMo)

The undersigned is doing business under the following name, and at the following address:

Business name to be registered: **Innovate Rehab and Wellness**
Business address: **9200 Watson Road, Suite 201**
City, State and Zip Code: **St. Louis MO 63126**

If all parties are jointly and severally liable, percentage of ownership need not be listed.

| Name of Owners, Individual or Business Entity | Street and Number | City and State | Zip Code | If listed, Percentage of ownership must equal 100% |
|---|--------------------------|----------------|----------|---|
| RELIANT CARE REHABILITATIVE SERVICES, LLC. | 9200 Watson Rd Suite 201 | St. Louis MO | 63126 | 100% |

Exhibit 7

In Affirmation thereof, the facts stated above are true:

(The undersigned understands that false statements made in this filing are subject to the penalties of a false declaration under Section 575.060, RSMo)

Richard J DeStefane
(Authorized Signature)

Owner
(Authorized Party Relationship)

Exhibit C Exhibit B at p.29

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

RELIANT CARE GROUP, LLC)
a Missouri Limited Liability Company)

and)

RELIANT CARE MANAGEMENT)
COMPANY, LLC)
a Missouri Limited Liability Company)

and)

RELIANT CARE REHABILITATIVE)
SERVICES, LLC)
a Missouri Limited Liability Company)

Plaintiffs and)
Defendants in)
Counterclaim,)

) Case No. 14-cv-00043-CDP

v.)

) JURY TRIAL DEMANDED

RELIANT MANAGEMENT)
GROUP, LLC)
a Delaware Limited Liability Company)

Defendant and)
Plaintiff in)
Counterclaim.)

RMG First Response to RC First Set of Interrogatories

To: Plaintiffs and Defendants in Counterclaim, Reliant Care Group, LLC; Reliant Care Management Company, LLC; and Reliant Care Rehabilitative Services, LLC ("RC"), through its counsel of record, Lori A. Schmidt, Esq. of HESSE MARTONE, P.C., 1650 Des Peres Road, Suite 200, St. Louis, MO 63131.

2. Identify the name, job title, business address or residence address, and telephone number of each individual with knowledge of any facts or information related to the allegations contained in the Complaint and the Second Amended Counterclaim. For each individual identified, identify the subject of the person's facts or information.

2. All persons listed, aside from those listed as witnesses for RC all of whom are hereby listed here by this reference, may be contacted through RMG counsel of record, David Nance.
 - a. Joe McDonough, C.E.O. is generally aware of all aspects of this litigation due to his management position;
 - b. John Lund, C.F.O. is generally aware of all aspects of this litigation due to his management position and would have knowledge about financial aspects of activities in both states;
 - c. Peggy Gourgues, C.O.O.; is generally aware of all aspects of this litigation due to her management position and would have additional information regarding activities in both states;
 - d. Stephanie Necaie, Chief Development Officer is generally aware of all aspects of this litigation due to his management position and may have additional information regarding activities in both states;
 - e. Austin Lanham, in-house counsel is generally aware of all aspects of this litigation due to his management position; and
 - f. Robert Harrington, M.D., Chief Medical Officer.

3. Identify each owner of Defendant and for each owner state its address and percentage of membership/ownership.

3. RMG is solely owned by Reliant Rehabilitation Holdings, Inc. and both entities are based at the same Plano address.

4. Identify each officer of Defendant and state his/her title and job duties.

4. Joe McDonough, President/C.E.O.; John Lund, C.F.O.; Peggy Gourgues, C.O.O.; and Stephanie Necaie, C.B.D.

5. Identify each owner of RPro and for each owner state its address and percentage of ownership.

5. RMG is solely owned by Reliant Rehabilitation Holdings, Inc. and both entities are based at the same Plano address.

6. Identify each officer of RPro and his/her title and job duties.

1. Joe McDonough, President/C.E.O.; John Lund, C.F.O.; Peggy Gourgues, C.O.O.; and Stephanie Necaie, C.B.D.

7. For each facility in Missouri and Illinois that is owned, managed or for which Defendant provides services, identify the following:

a. the name of the facility;

b. the date that Defendant first owned, managed or provided services for the facility;

c. the services Defendant provides at each facility;

d. under what name Defendant owns, manages or provides services for each facility; and

e. the number of Defendant's employees at each facility.

2. RMG does not own, manage or provide any services to anyone in Illinois or Missouri.

25. Describe, in detail, the nature, the substance, dollar amount and method of calculation, computation or measurement of each and every type of damage claimed in your Second Amended Counterclaim and identify all documents pertaining to your alleged damages.

20. RMG objects that this interrogatory is vague, beyond the rules and overbroad. RMG is not obligated to list all facts of which it is aware; the very nature of facts makes "describe[ing] in detail" impossible when the inference is that "all" facts will be listed, as is requested in most of these interrogatories. Subject to these objections, RMG is in the process of calculating damages, in so far as a calculation is possible, and will produce supporting documentation as it is identified as evidence at trial.

I have read and confirmed the answers and objections above on behalf of Reliant Management Group, LLC.

 [signature]

AUSTIN LANHAM [name and title]
INTERNAL COUNSEL

Respectfully submitted this 18th day of May 2015.

DAVID W. NANCE LAW FIRM, LLC
3912 Constance Street
New Orleans, Louisiana 70115
504.229.2363 direct
504.355.1669 facsimile
david@dwnlaw.com
www.dwnlaw.com

s/ David W. Nance

David W. Nance

FL Bar No. 32126

LA Bar No. 25467

NY 3rd Dept.

TX Bar No. 24013225

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the persons listed below on this 18th day of May 2015.

Via ECF filing:

Andrew J. Martone (#37382)

Lori A. Schmidt (#45561)

HESSE MARTONE, P.C.

1650 Des Peres Road, Suite 200

St. Louis, MO 63131

314.862.0300 telephone

314.862.7010 facsimile

andymartone@hessemartone.com

lorischmidt@hessemartone.com

COUNSEL FOR DEFENDANTS

s/ David W. Nance

David W. Nance

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|---------------------------------|---|-----------------------|
| RELIANT CARE GROUP, LLC, et al. |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Case No. 4:14CV43 CDP |
| |) | |
| RELIANT MANAGEMENT |) | |
| GROUP, LLC, |) | |
| |) | |
| Defendant. |) | |

CASE MANAGEMENT ORDER - TRACK 3: COMPLEX

Pursuant to the Civil Justice Reform Act Expense and Delay Reduction Plan and the Differentiated Case Management Program of the United States District Court of the Eastern District of Missouri, and the Rule 16 Conference held on **December 19, 2014**,

IT IS HEREBY ORDERED that any amendment to defendant’s counterclaim shall be due by **January 9, 2015**.

IT IS FURTHER ORDERED that the following schedule shall apply in this case, and will be modified only upon a showing of exceptional circumstances:

I. SCHEDULING PLAN

1. This case has been assigned to Track 3 (Complex).
2. All motions for joinder of additional parties or amendment of pleadings shall be filed no later than **May 1, 2015**.
3. Disclosure shall proceed in the following manner:

(a) The parties shall make all disclosures required by Rule 26(a)(1), Fed. R. Civ. P., no later than **January 20, 2015**.

(b) Plaintiff shall disclose all expert witnesses and shall provide the reports required by Rule 26(a)(2), Fed. R. Civ. P., no later than **July 15, 2015**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **August 14, 2015**.

(c) Plaintiff shall disclose all rebuttal expert witnesses and shall provide the reports required by Rule 26(a)(2), Fed. R. Civ. P., no later than **November 16, 2015**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **December 15, 2015**.

(d) Defendant shall disclose all expert witnesses and shall provide the reports required by Rule 26(a)(2), Fed. R. Civ. P., no later than **September 15, 2015**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **October 15, 2015**.

(e) The presumptive limits of ten (10) depositions per side as set forth in Rule 30(a)(2)(A), Fed. R. Civ. P., and twenty-five (25) interrogatories per party as set forth in Rule 33(a), Fed. R. Civ. P., shall apply.

(f) Requests for physical or mental examinations of parties pursuant to Rule 35, Fed. R. Civ. P., are not expected in this case.

(g) The parties shall complete all discovery in this case no later than **December 15, 2015**.

(h) Motions to compel shall be pursued in a diligent and timely manner, but in no event filed more than seven (7) days following the discovery deadline set out above.

4. This case will be referred to alternative dispute resolution effective **March 27, 2015**, and that reference shall terminate on **May 29, 2015**.

5. Any motions to dismiss, motions for summary judgment, motions for judgment on the pleadings, or any motions to limit must be filed no later than **March 30, 2016**. Opposition briefs shall be filed no later than thirty days after the motion or **April 29, 2016**, whichever is earlier. Any reply brief may be filed no later than ten days following the response brief or **May 9, 2016**, whichever is earlier.

6. Any motions to exclude expert testimony must be filed no later than **January 15, 2016**. Opposition briefs shall be filed no later than 14 days after the motion or **January 29, 2016**, whichever is earlier. Any reply brief may be filed no later than seven days following the response brief or **February 5**, whichever is earlier.

7. A hearing on any *Daubert* motion to exclude expert testimony will be held on **February 19, 2016** at **9:00 a.m.** in Courtroom 14-South.

II. ORDER RELATING TO TRIAL

This action is set for a **JURY** trial on **August 22, 2016**, at **8:30 a.m.** This is a **two** week docket.

Pursuant to Local Rule 8.04 the court may tax against one or all parties the per diem, mileage, and other expenses of providing a jury for the parties, when the case is terminated or settled by the parties at a time too late to cancel the jury attendance or to use the summoned jurors in another trial, unless good cause for the delayed termination or settlement is shown.

In this case, unless otherwise ordered by the Court, the attorneys shall, not less than twenty (20) days prior to the date set for trial:

1. **Stipulation:** Meet and jointly prepare and file with the Clerk a JOINT Stipulation of all uncontested facts, which may be read into evidence subject to any objections of any party set forth in said stipulation (including a brief summary of the case which may be used on Voir Dire).

2. **Witnesses:**

(a) Deliver to opposing counsel, and to the Clerk, a list of all proposed witnesses, identifying those witnesses who will be called to testify and those who may be called.

(b) Except for good cause shown, no party will be permitted to call any witnesses not listed in compliance with this Order.

3. Exhibits:

(a) Mark for identification all exhibits to be offered in evidence at the trial (Plaintiffs to use Arabic numerals and defendants to use letters, e.g., Pltf-1, Deft.-A, or Pltf. Jones-1, Deft Smith-A, if there is more than one plaintiff or defendant), and deliver to opposing counsel and to the Clerk a list of such exhibits, identifying those that will be introduced into evidence and those that may be introduced. The list shall clearly indicate for each business record whether the proponent seeks to authenticate the business record by affidavit or declaration pursuant to Fed. R. Evid. 902(11) or 902(12).

(b) Submit said exhibits or true copies thereof, and copies of all affidavits or declarations pursuant to Fed. R. Evid. 902(11) or 902(12), to opposing counsel for examination. Prior to trial, the parties shall stipulate which exhibits may be introduced without objection or preliminary identification, and shall file written objections to all other exhibits.

(c) Except for good cause shown, no party will be permitted to offer any exhibits not identified or not submitted by said party for examination by opposing counsel in compliance with this Order. Any objections not made in writing at least ten (10) days prior to trial may be considered waived.

4. Depositions, Interrogatory Answers, and Request for Admissions:

(a) Deliver to opposing counsel and to the Clerk a list of all interrogatory answers or parts thereof and depositions or parts thereof (identified by page and line numbers), and answers to requests for admissions proposed to be offered in evidence. At least ten (10) days before trial, opposing counsel shall state in writing any objections to such testimony and shall identify any additional portions of such depositions not listed by the offering party which opposing counsel proposes to offer.

(b) Except for good cause shown, no party will be permitted to offer any interrogatory answer, or deposition or part thereof, or answer to a request for admissions not listed in compliance with this Order. Any objections not made as above required may be considered waived.

5. Instructions: Submit to the Court and to opposing counsel their written request for instructions and forms of verdicts reserving the right to submit requests for additional or modified instructions at least ten (10) days before trial in

light of opposing party's requests for instructions. (Each request must be supported by at least one pertinent citation.)

6. Trial Brief: Submit to the Court and opposing counsel a trial brief stating the legal and factual issues and authorities relied on and discussing any anticipated substantive or procedural problems.

7. Motions In Limine: File all motions in limine to exclude evidence at least ten (10) days before trial.

Failure to comply with any part of this order may result in the imposition of sanctions.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 19th day of December, 2014.