Case No. CV-08-2517

SUPERIOR COURT OF JUSTICE

B E T W E E N :

IMTIAZ KIANI

Plaintiff

v.

SCOTT BALINSON

Defendant

P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE K. CARPENTER-GUNN
on December 16, 2013 at HAMILTON, Ontario

APPEARANCES:
F. Siddiqui — Counsel for the Plaintiff
D. MacDonald — Counsel for the Defendant

SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

Transcript Ordered: January 8, 2014

Transcript Completed: January 28, 2014

Ordering Party Notified: January 30, 2014

R E A S O N S F O R J U D G M E N T

CARPENTER-GUNN, J. (Orally):

The defendant Scott Balinson brings a motion for an order that the plaintiff attend for a defence neuropsychological exam. An issue on this particular case is whether Rule 48.04(1) is triggered in the specific facts of this case. That rule says, "subject to sub-rule, sub-three, any party who has set an action down for trial, and any party who has consented to the action being placed on a trial list shall not initiate or continue any motion or form of discovery without relief of the court." It's the second part of that rule, "any party who has consented to the action being placed on a trial list," that is an issue on this particular motion.

In this particular case there was a timetable that was agreed to by the parties and indeed the moving party was the entity that proposed the timetable for this particular action. Within the material that I have in the Respondent's records, specifically at Tab F, there is a proposed timetable that says, "defence medical examinations are to be done by July 31, 2012, and the dates set down for trial is October 31, 2012." I note that in this particular case there was no amended timetable filed or a motion to bring about an amended timetable.

With respect to this discreet issue, I was given three cases by the moving party, who is the entity that would need to satisfy 48.04(1) if they are caught by that rule, by virtue of the timetable. It appears that none of these cases deal with the facts that we have here. That is a situation we're in. There is a timetable that's been agreed to between the parties. Indeed, one of the cases - the very old case of Justice Wilson from 1999, and that's *Tanner v. Clark* - and I don't believe that anyone was contemplating timetables back at that timeframe.

I do note that the moving party on this motion wants this motion heard and feels that Rule 48.04(1) should not be an issue and points out to the court paragraph 26 and it quotes the case dealing with substantive rights and how it's important the substantive rights be fully canvassed at trial. I was also given another case called *Kinch v. Walden*, a decision of this court of Justice Riley from 2011. Again, I couldn't see that the timetable was referred to in that particular case and again the moving party was referring the court to paragraph 15 where there's authority dealing with defence medical situations after the case has been set down for trial. And there's references to a Superior Court decision and a decision of a master. Obviously I'm not bound by any master's decision and I'm not bound by decisions of this court, although they are helpful to this court. I was also referred to

Mason v. MacMarmon, which is a 2011 Superior Court decision by the moving party, but again I don't see that it says anything about timetables. Indeed, I asked counsel if there was any cases that they could refer me to with respect to this issue, but none were proffered to the court.

I understand that this timetable was adhered to and at the time that this motion was heard the matter had been set down for trial and indeed, is on the trial sittings for the sittings of November 2014. I note also from the material that's before the court that in the responding Motion record at one of the tabs here it indicates that on April 16th, 2012, the responding party advised the moving party on this motion that the defence medical timelines were going to lapse. I also have at Tab J a letter from the former solicitor, an email, for the moving party, one Paul Ryan, who writes a letter July 30th, 2012, indicating, "I have been instructed to consent to the amendment to the prayer of relief on the understanding that we will be arranging defence medical examinations shortly." On this case we know that there was an amendment to the Statement of Claim and that amendment was done on August 26th, 2012, and the prayer for relief was increased from 1.5 to $15 million. I'm advised by plaintiff's counsel, who is the responding party in this motion, that as an officer of the court, that that particular amendment was within the limits of Mr. Ryan's

client, and indeed that would make sense given his acquiescence of the consent by virtue of the email that I've referred to, dated July 30, 2012.

On a plain reading of the timetable, it's the court's view that the moving party would be caught by the phrase, "any party who has consented to the action being placed on a trial list shall not initiate or continue any motion or form of discovery without leave of the court." So the court finds that leave would have to be granted in this particular situation. It's the court view leave would have to be considered by the court and normally, based on the fact that the defence has agreed that the trial record be served by a certain date and indeed it was, that leave would be required. On the facts of this case I would ordinarily deny leave for this application, but in the event that I am wrong, I am going to go through the substantive issues on this motion and I ultimately arrive at the decision that a defence medical order of psychological assessment not be granted in this instance.

The plaintiff opposes this motion on the following grounds: 1) He has already attended 3 defence medical examinations, 2) none of the defence medical findings reported the diagnosis of a brain injury nor a recommendation that neuropsychological examination be conducted, 3) the defence has not proffered compelling evidence

that the neuropsychological defence medical was necessary to a fair trial, and 4) the plaintiff commissioned a neuropsychological assessment wherein the findings of their assessor was that he likely did not sustain a brain injury. Obviously the facts of this case are very specific. In this particular case, the defence has had 3 defense examinations to date. They have had a defence psychiatric examination. They have had a defence physiatrist examination and then they've had a defence psychiatric examination. Of note, those examinations took place on the following dates: the psychiatric examination took place by a Dr. Williamson on November 26, 2012, and the notification letter about that was sent October 5, 2012. Secondly, there is a defence medical Dr. Berry. The report is dated February 20, 2013 and the plaintiff's counsel was written to on January 11, 2013, about that examination. There was a third defence medical with a physiatrist, Dr. Clifford. His report is dated March 20, 2013 and the plaintiff was written to about that on October 17, 2012. At the same time of that letter, the plaintiff was also advised that they were requesting a neuropsychological assessment with Dr. Snow as well. Now a Dr. Ivan Kiss is being proposed as Dr. Snow is unable to do the defence proposed examination in a timely fashion.

In the Second Supplementary Motion Record at Tab 3, there's an affidavit of Dr. Kiss that deals

with the purpose of the neuropsychological assessment, paragraphs 11 and 12 of that particular affidavit, and the court notes that what is stated therein is more extensive than what was indicated by Dr. Snow previously in terms of the proposed neuropsychological assessment.

The court asks, is a neuropsychological defence medical assessment necessary for a just a fair trial, and I would answer this question in the negative. The facts of this case are as follows: As I've already said there have been 3 defence medical examinations so far. There's no doubt that the Defendant, the moving party, bears the burden to show that a further fourth defence medical is warranted. The Courts of Justice Act and the Rules of Civil Procedure provide that a Defendant can have defence medicals, however the court notes this is not an unfettered right to multiple medical examinations of a plaintiff. Indeed, Rule 33.02(2) of the rules states that a court "may order a second examination or further examinations on such terms respecting costs and other matters that are just." So what the moving party is asking is for the court to exercise its discretion with respect to this fourth examination. As I alluded to a moment ago, the Statement of Claim has been amended both in terms of the prayer for relief, and I've already made comments about that, but as well there are additional changes to the Statement of Claim

found at page 7 of the claim, specifically paragraph 6. The moving party argues that these are new injuries whereas the responding party on the motion indicates that it is not so much as being new given page 6 of the Statement of Claim. The original claim under sub III talks about a variety of problems that the plaintiff had, including - and I'm selecting portions of these - mood, memory, executive and cognitive function. As well, on this specific case we had an earlier report from Dr. Salmon, which is found at Tab F of the original motion record, and I note that Dr. Salmon speaks about symptoms indicative of a head injury type of problem on pages 75, in detail of his report, and on page 89 of the report, "suggests possible mild traumatic brain injury." It's my understanding that this report was in the hands of the defence in January 2012. The position of the responding party is that there's nothing substantially new, that it was on the table early on, that the plaintiff sustained injuries of this ilk. Indeed, we know from the material before the court that the plaintiff saw Dr. Ronald Kaplan, neuropsychologist, in 2006 and he prepared a report in 2007. So the position of the responding party is that there is nothing new. The court also notes that when one reads the 3 defence medical reports that have been done that I've already alluded to, that none of those reports suggest that neuropsychological testing or a neuropsychological report is warranted on the facts of this case. I also note from Dr.

Barry's report, specifically the first page of it, that he does deal and has dealt with cognitive matters of the years in his lengthy career giving these types of opinions.

I note from the case law that there is a series of factors that one must look to and in *Mason v. MacMarmon* there are various factors set out in that case. Here the court finds that there were injuries suggested of head injury sequelae in the original Statement of Claim as I have said. There certainly was a refinement of articulating those in the amended Statement of Claim, but the bare bones of that sort of claim were within the original Statement of Claim and as I have said, Dr. Kaplan and Dr. Salmon had spoken of those issues early on as well. And the defence counsel who was involved earlier in time, prior to the present counsel, had those reports. So the court finds there has not been a substantive change. Also of note to the court is that there is only one plaintiff's expert report that definitively deals with the head injury issue and that's a physiatrist's report of Dr. Danesh Kumbhare and obviously that diagnosis would be outside of the area of expertise of Dr. Kumbhare and the court does not mean any sleight to Dr. Kumbhare, but it's the court's view that that is not his area of expertise. Also of note, the defence does have a defence psychiatric report of Dr. Clifford that refutes what's said in that report of Dr. Kumbhare.

In this particular case, I find that there is not ample evidence before the court to convince the court that there's a need for this further defence medical report and my authority there is *Moore v. Royal Insurance Company Canada, 2006* report. Of note in this case, the expert reports obtained by the plaintiff from Dr. Salmon, whom we've already spoke about, and Dr. Van Reekum, conclude that the plaintiff's injuries do not reflect that a brain injury scenario is present on the facts of this case. Specifically, they say that a diagnosis of brain injury "does not rise to the level of probability." I find there is nothing new that the defendant's have shown to the court that would warrant this fourth defence medical report. The only report, as I say from the plaintiff's expert, that gives a diagnosis of a brain injury is Dr. Kumbhare who is a physiatrist and I've already noted that that's a diagnosis out of his area of expertise. The defence already has a defence physiatrist report that refutes that assertion.

I agree with paragraph 22 of the responding party's factum wherein it states "the defence has provided no compelling evidence to support its request for the neuropsychological DME. In particular, they have provided no evidence from the doctors who conducted his previous DME's of the need for same. In fact, all of the doctors who conducted the DME's to date reviewed the

plaintiff's medical brief, including the previous neuropsychological assessments and they remain conspicuously silent on recommending any [further] neuropsychological examinations." I also note that the Dr. Barry report indicated the following, in terms of the plaintiff, that he may have sustained "the mildest form of concussion, but this would not in result in a permanent brain injury." Defence medicals are intrusive and they are not something that should be ordered lightly.

In my view, the defence counsel is seeking a further defence medical examination where even the plaintiff's reports from their experts, the qualified experts, do not support the injury of a brain injury. The defence counsel agrees that he is not entitled to a defence medical to match each and every one of the plaintiff's expert reports. In that regard, I would reference paragraph 37 of his factum. A further medical report may be warranted where a party's condition has changed or deteriorated since the date of a previous examination or a more current assessment of the plaintiff's condition is required for trial. I find that neither of those scenarios applies to the present case. I also note that a further medical may be appropriate where some of the plaintiff's alleged injuries fall outside the expertise of the first examining health practitioner. In this case, we have Dr. Berry who has offered his opinion on that front and we also have the other two medical reports, but more

importantly we don't have a plaintiff's expert report from a duly qualified plaintiff's expert with respect to head injury saying that in all probability this individual sustained a closed head injury.

In my view, this is not a case where this fourth defence medical is needed to "level the playing field" between the parties. Indeed, we have a situation here which is rather bizarre - that we have a defence medical from neurologist when there is no plaintiff's neurological report. We also have a defence psychiatric report when we don't have a plaintiff's psychiatric report, albeit we have a neuropsychiatric report from Dr. Van Reekum, which is very stale-dated.

The defence counsel cites to the court that additional reports were served, specifically Dr. Salmon in early 2013 and Dr. Kumbhare, but in the facts of this case we know that Dr. Salmon had earlier served the report on the predecessor defence counsel and I've already alluded to the paragraphs of that report that discuss cognitive deficits and other sequelae of a head injury. So there is nothing new there. We also have the report of Dr. Kumbhare that he said was served recently, but I've already made comments to the court about whether he is an appropriate person to make that diagnosis.

In my view, the defence counsel has failed to

meet the burden showing why this fourth defence medical is warranted. There is substantial change of the plaintiff's condition based on the facts of this specific case. Here, Mr. Ryan, the previous defence counsel, agreed to the amended statement of claim and knew the new figures and the prayer of relief and consented to it. I understand, as I've already said, that the increased prayer of relief was still within the policy limits and I do conceive that he said he was consenting on the basis of defence medicals, but the type of the defence medicals were not articulated in that particular letter.

So for all of the reasons that I have articulated, the moving party's request for a further fourth defence medical examination fails. The burden has not been met and, as I say, I set out at the beginning of these reasons that it was my view that leave was necessary and based on the substantive analysis of the issues on this motion I don't believe that leave should have been granted, but out of an abundance of cautiousness I have dealt with the substantive issues, in case someone else disagrees with me, that leave should have been granted.

So those are my reasons. I'll hear from counsel as to the issue of cost, please.

MR. SIDDIQUI: Your Honour, if it pleases the court, I would like to submit our cost outlines.

THE COURT: Yes. Thank you.

MR. SIDDIQUI: Your Honour, my friend and I have had a chance to discuss the cost outline, both from his end and my end.

THE COURT: Right.

MR. SIDDIQUI: We've agreed to leave it at your discretion to find an amount between $3,400 and $6,000.

THE COURT: Right.

MR. MACDONALD: It's not - my position - maybe it was misunderstood by my friend - was that his cost outline is at $3,400, mine was at about $6,000, both on partial indemnity. But we were going to leave it to Your Honour to decide what level of costs was appropriate.

THE COURT: Well, I guess the first question....

MR. MACDONALD: He said less than $3,400, but I'll address that when I get a chance to speak after my friend.

THE COURT: Okay, the first question will be was there a formal offer to settle the file with respect to this motion?

MR. SIDDIQUI: Yes, there was, Madam Justice.

THE COURT: Alright, where is that and when was it served?

MR. SIDDIQUI: Unfortunately, those were communications by email. I don't have the hard copies. My friend can confirm those arrangements were attempted by our office.

THE COURT: Right, but I guess the issue is if you beat your offer, was it served in a timely fashion or would it fall within the rules for an offer to settle the motion. Because we're trying

to encourage people to settle.

MR. SIDDIQUI: Oh, we were discussing resolutions since, I believe it was June when the adjournment first occurred.

THE COURT: Right.

MR. MACDONALD: With respect, Your Honour, I don't believe that there was actually a former offer for resolution.

THE COURT: Right.

MR. MACDONALD: Certainly not a resolution that has compromise. The position that was previously put forward in June, I understand, was if you want to go ahead - or they may consider agreeing to a neuropsychological assessment. Our assessor said they need two days. They also asked that - I do have the email exchange.

THE COURT: No, I just want to get to the bottom line. Was there an offer that was going to trigger solicitor - you know, substantial indemnity is what I'm asking.

MR. SIDDIQUI: Yes, Your Honour. We vetted our offer with your judgment.

THE COURT: Sorry?

MR. SIDDIQUI: Sorry. The judgment today...

THE COURT: Yes.

MR. SIDDIQUI: ...bettered our offer.

THE COURT: Do you agree with that?

MR. MACDONALD: I can't agree to that.

THE COURT: Alright.

MR. MACDONALD: I can't agree that there was an offer that actually had an element of compromise...

THE COURT: Right.

MR. MACDONALD: ...that we could have agreed to. My friend wanted us to have a neuropsychological assessment that did not allow us to have our assessor conduct his own...

THE COURT: Right.

MR. MACDONALD: ...cognitive testing...

THE COURT: Right.

MR. MACDONALD: ...and to rely on his individual's testing data.

THE COURT: Right.

MR. MACDONALD: The affidavit of Dr. Kiss addresses that and says that he could not agree to that. My friend is essentially putting forth, saying well we made an effort to compromise, but it's something that our neuropsychologist would never agree to.

THE COURT: Right.

MR. MACDONALD: So we can't say that there's something there to compromise on in terms of, you know, compromise such as well if debate isn't working for us or it's the inconvenience to my client or these sort of things that we can actually agree to a compromise on.

THE COURT: Alright. I didn't understand that first submission that plaintiff's counsel was saying about what you'd agree to. A range and - I don't understand, as your cost outline is before me, partial indemnity basis. Is it on the substantial indemnity basis? I don't understand it.

MR. SIDDIQUI: Which one do you have in front of

you, Madam?

THE COURT: I don't know. Whatever you handed up to me. I'm asking how I'm supposed to read it. Is the 5720 and change figure, is that the substantial indemnity and the 2000 and change is partial?

MR. SIDDIQUI: That is correct. In parentheses we detail the substantial and partial. We provided the slash, if you will. The total is $7,364.66 for substantial, $3,381.50 for partial.

THE COURT: Right. And I'm not - you know, you haven't put anything in front of me with formal offers to settle. I mean, it can't be a discussion back and forth. It's your obligation to put that in front of me if you've got something that you say you've "beat" that would trigger the substantial indemnity. I don't have any of that in front of me.

MR. SIDDIQUI: Fair enough.

THE COURT: So the other comment you made at the beginning, I was confused by what she said about the costs. You said it was agreed to between 3,400 and 6,000 but then the defence counsel took issue with that. So like....

MR. SIDDIQUI: I understood that we had an agreement in place or a meeting of the minds, so to speak, that we would let the court decide a range between 3,400 and 6,000 on a partial indemnity scale. My friend in our position now appears to say that that is not the case.

THE COURT: So how long have you been at the bar?

MR. SIDDIQUI: I've been at the bar for 5 and a

half years now, Madam Justice.

THE COURT: So you've got on here 15 hours of your time, on page 2. Is that right?

MR. SIDDIQUI: Correct.

THE COURT: So is that how you get to the numbers on page 1?

MR. SIDDIQUI: Yes.

THE COURT: And it's just you working on this motion? No other staff members?

MR. SIDDIQUI: Correct.

THE COURT: Alright. So what is your proposition as to what you feel is a fair disposition of costs?

MR. SIDDIQUI: I would render a - I would suggest a $5,000 cost, all-inclusive. That is the mid-range between the 30 - just less than 3,400 and the 7,400, that is the partial and substantial range that we have submitted to your cost outline.

THE COURT: Right. Is there anything you want to say about costs?

MR. SIDDIQUI: Unfortunately we don't have the offers to settle in front of you, but efforts were made to try and resolve this matter by our office and unfortunately defence counsel took an all or nothing position.

THE COURT: Right. Right, so the defence view - I mean costs follow the event. The plaintiff has been successful. What do you say is an appropriate, fair level of compensation for costs?

MR. MACDONALD: Well, my friend has put forth

partial indemnity costs of $3,381.50. I would submit that that would be in the realm of being fair. To clarify any confusion, if the moving party was successful our partial indemnity costs were 6,000 and that's where the confusion of should it fall within that range.

THE COURT: Right.

MR. MACDONALD: I apologize to my friend. I didn't mean to mislead him in any way. I told him that I thought it would be appropriate for Your Honour to decide what the appropriate level of costs were. I did not take offence to his level of costs though.

THE COURT: Right.

MR. MACDONALD: Within my friend's cost submissions, there are a couple of things I want to point out just very briefly.

THE COURT: Right.

MR. MACDONALD: With respect to the importance of the issues, it says that the defendant is trying to use our immense resources to stack medical evidence against the plaintiff. I find that a bit of a mischaracterization. If we had been permitted to have this assessment it would have been a fourth assessment compared to three assessments that we have of his right now. I don't see that as stacking the case against him.

THE COURT: Right.

MR. MACDONALD: With respect to the conduct of any party to shorten or lengthen the proceeding, my friend has mentioned this, it says that we take an uncompromising position in attempts to settle

the dispute. My understanding is that, as I've already put to you, the plaintiff's counsel was suggesting that our neuropsychologist could not do for his assessment. He would not...

THE COURT: Right.

MR. MACDONALD: ...agree to...

THE COURT: Right.

MR. MACDONALD: ...use someone else's data.

THE COURT: Right.

MR. MACDONALD: So we could not negotiate or resolve a compromise there.

THE COURT: Right. Right.

MR. MACDONALD: So I take a point of contention with that, if you'll have nothing to reproach. And the final point that I would make is we were in front of Your Honour in June...

THE COURT: Right.

MR. MACDONALD: I believe it was June 8th. It was a contested adjournment.

THE COURT: June 4th, right.

MR. MACDONALD: June 4th, sorry. The moving party was successful on that. You would have awarded $500 in costs be payable within 6 months.

THE COURT: Right.

MR. MACDONALD: That has not been paid. I think that that should be certainly taken off of any cost award and that would be my submission on that point, Your Honour. Thank you.

THE COURT: Any brief reply?

MR. SIDDIQUI: Your Honour, this motion really wasn't necessary, but the defence felt it was. Fair enough. We had indicated to the defendant

that we'd be willing to seek a compromise in the form of shortening the neuropsychological, as well as using other test data that had been applied, but they were absolutely abhorred by the idea and flat out rejected such overtures. There were no compromised positions put forth by defence counsel, I can advise the court. Other than that, yes, it is true that the $500 is owing, so it would be fair in the circumstances to reduce that from any gross costs awarded.

THE COURT: And your counsel fee that's on your bill of costs or costs outline, what's that premised on?

MR. SIDDIQUI: That's actually the rules of civil procedure under....

THE COURT: No, what amount of time are you using there?

MR. SIDDIQUI: The 15 hours?

THE COURT: No. It says counsel fee for the appearance. The second item on the page 1 of your costs outline.

MR. SIDDIQUI: Oh, yes. That was, with HST included, approximately three and a half hours.

THE COURT: And you're just contemplating today's time, is that right?

MR. SIDDIQUI: This has been for all the time coming here to speak to the adjournment, initially on June 4th as well as today.

THE COURT: Right, but on the June 4th date your client was ordered to pay costs of $500 to the defendant and on October 4th you unfortunately had a death in the family and so it was unable to

proceed that day. Right?

MR. SIDDIQUI: Yes. And we had submitted our notice to the court, but unfortunately it was after business hours so the court did not get in that time.

THE COURT: Alright. Is that it - the submission as to costs?

MR. SIDDIQUI: Yes, Your Honour. On my end.

THE COURT: Yes.

MR. MACDONALD: I am going to clarify one point. My friend says that the defendant, again, he's saying that we were unwilling to compromise and that they were the only ones willing to compromise. I do have an email from Mr. Osterberg who is [inaudible] on this file...

THE COURT: Right.

MR. MACDONALD: ...to Mr. Siddiqui. It's from the 13th, saying my client is prepared to compromise in setting out what our proposed compromise was. This was in agreeing to attend the assessment we would forgo any costs, obviously based on your judgment - that's not going to be the case - recommending the assessment be scheduled at a more convenient time, reconsidering or recommending that the assessment - sorry, forgoing the assessment if my friend undertook not to call neuropsychology...

THE COURT: Right.

MR. MACDONALD: ...evidence or evidence of a brain injury at trial.

THE COURT: Right.

MR. MACDONALD: That discussion was still going on

the 13th. It's now the 16th.

THE COURT: Right.

MR. MACDONALD: I don't think that there was certainly any offer, formal offer...

THE COURT: Right.

MR. MACDONALD: ...that would justify an increased level of costs.

THE COURT: Alright. Thank you. Can I just have a blank piece of paper? Do you have something? Because we're going to staple it to the motion record. There's already lengthy endorsements here. Please. Thank you, Mr. Registrar.

R U L I N G

CARPENTER-GUNN, J. (Orally):

For oral reasons given this day, defence motion for a fourth defence medical examination is dismissed. The defendant balance and shall pay costs of $2,881.50. This in costs to the plaintiff. This number reflects the fact that the plaintiff has not paid the $500 cost award I made on June 4th, 2013. That is, I deducted this amount from the plaintiff's costs outline.

So this, Mr. Registrar, can be attached to the motion record and the costs outline goes back to the plaintiff's counsel and I'm going to give you a bunch of the briefs. They got Stick 'Em's all over it - if I can just get rid of my Stick 'Em's, please. And I kept part of the file for my purposes for now. Is there anything else,

counsel?

MR. MACDONALD: No, Your Honour, thank you.

MR. SIDDIQUI: No, thank you very much, Your Honour.

THE COURT: Right. I thank the staff for waiting, but I'm off to Kitchener to finish a trial tomorrow.

...PROCEEDINGS CONCLUDED.

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

I, **Kyle Caldwell**
(Name of Authorized Person)

certify that this document is a true and accurate transcript of the recording of

Kiani v. Balinson *(Name of Case)* in the **Superior Court of Justice** *(Name of Court)*

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January 30, 2014 *(Date)*

(Signature of Authorized Person(s))