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ROBERT J. BROWN
CLERK OF THE CIRCUIT COURT
CHANCERY DIVISION
COUNTY DEPARTMENT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVISION

FRANK COLAPINTO, individually and on Behalf
of All Others Similarly Situated,

Case No. **09CH34804**

Plaintiffs,

vs.

ESQUIRE DEPOSITION SERVICES LLC, a
Hobart West Company aka ESQUIRE an
ALEXANDER GALLO COMPANY,

DEMAND FOR JURY TRIAL

Defendant.

Plaintiff Frank Colapinto ("Plaintiff"), individually and on behalf of all others similarly situated, brings this action against Defendant ESQUIRE DEPOSITION SERVICES LLC, a Hobart West Company aka ESQUIRE, an ALEXANDER GALLO COMPANY ("Defendant") and alleges as follows:

INTRODUCTION

1. This is a class action arising out of Defendant's wrongful and fraudulent practice of charging transcription rates for the computer-generated word indexes attached to transcripts for depositions, hearings, trials and other proceedings.

2. Plaintiff brings this suit on behalf of all persons and entities who or which, during the four years prior to the filing of this action and during the pendency of this action (the "class period"), paid for a transcript word index at the per page rate charged by Defendant for transcription services in connection with depositions and other proceedings that occurred in Illinois.

3. Defendant is a licensed court reporting company in the business of providing legal transcription services for depositions, hearings, trials, and other proceedings. Plaintiff and the

Class hired Defendant to attend, record, and transcribe depositions, hearings, trials and other proceedings. Plaintiff and the Class paid Defendant for its services in attending, recording, and transcribing depositions, hearings, trials and other proceedings.

4. Defendant provides transcription services through licensed court reporters who contract with or are employed by Defendant. The court reporters transcribe testimony or other proceedings, typically resulting in a written transcript purchased by persons or entities such as Plaintiff and the Class. Defendant routinely attaches computer-generated word indexes to the transcripts and charges for the indexes based on a per page fee that is the same fee it charges for the actual transcription performed by the court reporters, even though the word indexes are not transcribed. Although Defendant charges a per page transcription for the indexes (which are not transcribed), it pays its licensed court reporters only for the pages of actual transcription and not for the word indexes.

5. Moreover, while Defendant's standard rate sheet discloses that it charges a per page rate for transcripts, it does not disclose a charge for indexes. On the other hand, the rate sheet discloses a separate flat fee for both the condensed version of the transcript ("mini-script") and a word index to the condensed transcript. Defendant did not disclose that it charged a fee for the index to the standard transcript, much less that the fee would be charged at the per page transcription rate.

6. As a result of the unfair, unlawful, and deceptive practices challenged in this action, Defendant charged Plaintiff and the Class (a) a per page rate for transcript pages; (b) the same per page rate for non-transcribed word index pages; and (c) in some instances a flat fee for the condensed script and word index. Defendant's rate sheet and invoices solely disclosed that Defendant charged a per page rate for the actual transcript, which constitutes the transcription services of the licensed court reporter, but did not disclose that Defendant charged the same per page rate for the word index, which is not a "transcript" of anything and thus does not require the services of a licensed court reporter.

THE PARTIES

7. At all times material hereto, Plaintiff Frank Colapinto was a resident of the State of California and a party to a civil lawsuit.

8. In the course of Plaintiff's lawsuit, Plaintiff was charged by Defendant for transcription of several depositions that occurred in Illinois and was charged for word indexes at the same rate as for transcription services.

9. Defendant Esquire is a Delaware corporation with its principal place of business in New Jersey.

10. The true names and capacities of Defendants named herein as Does 1 through 50 are unknown to Plaintiff, who, therefore, sues these Defendants by such fictitious names. Plaintiff will amend this complaint to show the true names and capacities when they have been ascertained. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, each of the Does 1 through 50 were the agent, joint venturer, partner, alter ego, and/or employee of Defendant and at all times mentioned herein each was acting within the scope of such agency, joint venture, partnership, alter ego status, and/or employment.

FACTUAL ALLEGATIONS

11. Typically, the party taking the deposition or setting the hearing pays the appearance fee and, if it orders the transcript of the proceeding, agrees to pay for the transcription of the testimony on a per page basis. Further, if another party orders a copy of the transcription of the testimony, that party typically pays a lesser per page charge for the copy. Finally, if either party wants any exhibit attached to a transcript, that party pays a per page copy charge which is significantly less than the per page transcription charge.

12. Plaintiff and the Class paid Defendant a per page fee for the transcription of a deposition, hearing, trial, or other proceeding. Defendant typically charged per page for the transcription, in addition to the appearance fee or per diem, and in addition to a flat fee for a condensed transcript and word index to that transcript.

13. The word index, as the name implies, is a listing of words appearing in the transcript and a designation of the place in the transcript where the words appear. The index does not involve the transcription of testimony. The index is in all material respects identical to the one for which Plaintiff and the Class paid a flat fee as part of the condensed transcript package. Thus, without disclosing a fee for the index to the standard transcript, Defendant nevertheless charged Plaintiff and the Class for that transcript and did so at the same per page rate as it charged for the transcript itself.

14. While the transcription of the spoken word, such as a deposition testimony, requires the labor and skill of the licensed court reporter, the deposition index is generated by a computer software program. The index does not require or involve any particular labor or skill on the part of the licensed court reporter, is not a transcription of testimony, and is not even a part of the official legal transcript of the deposition, hearing or trial.

15. Defendant recognizes the difference between a transcript of a proceeding and the index to that transcript. Defendant compensates its licensed court reporters based on the number of pages of spoken word they transcribe and not based upon the number of pages of the index attached to the particular transcript. Yet, without disclosure, Defendant applied a different standard to Plaintiff and the Class and charged them for the index as if it were the transcript rather than what it is: a computer-generated *attachment* to the transcript.

16. The index Defendant creates from the transcript does not constitute a transcript. The term "transcript" refers to: (a) "that which has been transcribed...commonly...*the record* of a trial, hearing or other proceeding as *prepared by a court reporter*" (Black's Law Dictionary, 6th Ed.; emphasis supplied); (b) "an official recording of a legal proceeding" (uslegal.com); and/or (c) "something transcribed or made by transcribing" (dictionary.com). In other words, a transcript is the "word-for-word typing of everything that was said 'on the record' during the trial [or other proceeding]"; not the index. (Black's Law Dictionary, 6th Ed.)

17. In addition to charging transcription rates for the index, in many instances Defendant double-charged Plaintiff and the members of the Class for the index, and did so at the improper transcription rate, meaning that it not only imposed the charge twice, but did so at an illegal rate. When Defendant created the condensed transcript (a physically condensed version of the transcript in

which four pages of the full transcript appear on one page), it charged Plaintiff and the Class a flat fee for an index for the condensed transcript, even though Defendant had already charged Plaintiff and the Class for the index as part of the original transcript. This double charge also constitutes a deceptive trade practice.

CLASS ALLEGATIONS

18. Plaintiff brings this action on his own behalf, and as a class action on behalf of the Class defined herein, pursuant to, and properly maintainable under 735 I.L.C.S. 5/2-801. The Class consists of potentially tens of thousands of Illinois consumers Defendant victimized through its deceptive practices. Specifically, Plaintiff brings this suit on behalf of the following Class:

All persons or entities who or which paid for a transcript word index at the per page rate charged by Defendant for transcription services in connection with depositions and other proceedings that occurred in Illinois during the Class Period.

19. Defendant subjected Plaintiff and the Class to the same unfair, unlawful, and deceptive practices and harmed them in the same manner. Now, Plaintiff and the Class seek to enforce the same rights and remedies pursuant to the same legal theories: (1) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 I.L.C.S. 505/2, *et seq.*; and (2) unjust enrichment.

20. **Numerosity:** The proposed class is so numerous that individual joinder of all its members is impracticable. While the exact number and identities of the Class Members are unknown at this time, such information can be ascertained through appropriate investigation and discovery, and is believed to be in the tens of thousands. The disposition of the claims of the Class Members in a single class action will provide substantial benefits to all parties and to the Court.

21. **Typicality:** Plaintiff's claims are typical of the claims of all Class Members in that Plaintiff and Class Members suffered similar damages resulting from a single, continuing course of conduct by Defendant. Each class member asserts the same legal causes of action.

22. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and

protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex lawsuits and class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interests adverse to the Class.

23. Superiority of Class Action and Impracticability of Individual Actions: Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result of Defendant's unlawful, fraudulent and unfair conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Individual joinder of all members of the Class is impractical. Even if individual Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all Class Members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system, and protects the rights of the Class Members. Adjudication of individual Class Members' claims with respect to Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other Class Members to protect their interests.

24. Common Questions of Law and Fact Predominate: There is a well defined community of interest between Plaintiff and the Class. There are questions of law and fact common to Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class Members. Common questions of law and fact include, but are not limited to, the following:

- a. Whether Defendant charged for the index to the transcript of depositions, hearing, trials or other proceedings and did so at the same per page charge it charged for the transcription of testimony or other spoken word.

- b. Whether Defendant disclosed that it charged for the index of the transcript of testimony or other spoken word and that it did so at the same per page charge it charged for the transcription of testimony or other spoken word;
- c. Whether Defendant's conduct was an unfair or deceptive practice, within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 I.L.C.S. 505/2, *et seq.*, in that it offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;
- d. Whether Defendant's practices were likely to deceive a consumer acting reasonably in the same circumstances;
- e. Whether Defendant's conduct caused harm to the Class;
- f. Whether the members of the Class suffered damages; and,
- g. Whether Defendant was unjustly enriched through the operation of its schemes.

FIRST CAUSE OF ACTION
FOR VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECPEPTIVE
BUSINESS PRACTICES ACT, 815 I.L.C.S. 505/2, et seq.

(By Plaintiff Against Defendant and Does 1 through 50)

25. Plaintiff restates and re-alleges each and every allegation contained in paragraphs 1 through 24 above as if fully set forth herein.

26. The wrongful acts of Defendant alleged herein were unfair and deceptive business practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 I.L.C.S. 505/2, *et seq* ("CFA").

27. It is an "unfair" or "deceptive" practice within the meaning of the CFA for any person or business to (a) knowingly and intentionally charge a fee for the computer-generated index based on it being a part of the "transcript" when it is not with the intent that consumers rely upon such misrepresentations, (b) fail to disclose that it charges its per page transcription fee for each page of the index, with the intent that consumers rely upon such concealment or omission, (c) charge, pursuant to a standard rate sheet, a flat fee for the word index together with a mini-transcript, and/or

(d) unreasonably overprices its charge for pages of an index to a transcript. The potential harm that consumers will unknowingly pay inflated rates for the production of the index to the transcript violates public policy and outweighs any utility or countervailing benefits of having such a billing practice. The resulting injury is substantial, is not outweighed by any countervailing benefits to consumers or to competition, and is not an injury the consumers themselves could reasonably have avoided. Moreover, the practice is immoral, unethical, oppressive, and unscrupulous.

28. Plaintiff and each Class Member suffered "actual damage" and lost money or property as result of the Defendant's wrongful business practices, including, but not limited to, the pecuniary loss suffered when Defendant charged a transcription rate for the index and double-charged Plaintiff and the members of the Class for the index.

29. Plaintiff and each Class Member are therefore entitled to restitution of all amounts wrongfully obtained by Defendant. Plaintiff and each Class Member are also entitled to disgorgement of all profits wrongfully obtained by Defendant in an amount to be proven at trial.

30. Plaintiff and each Class Member are entitled to injunctive relief to prevent Defendant from engaging in the unfair, fraudulent and unlawful practices described above.

SECOND CAUSE OF ACTION

FOR UNJUST ENRICHMENT

(By Plaintiff Against Defendant and Does 1 through 50)

31. Plaintiff restates and re-alleges each and every allegation contained in paragraphs 1 through 30 above as if fully set forth herein.

32. Plaintiff and the Class conferred a monetary benefit upon Defendant by paying defendant transcription services rates for pages of a deposition index with respect to which no transcription service was rendered.

33. Plaintiff and the Class conferred a monetary benefit upon Defendant by paying twice for an index of the transcripts.

34. Defendant accepted and retained this monetary benefit. Defendant's acceptance

and retention of this monetary benefit was inequitable because Defendant did not provide transcription services with respect to the indexes and because Defendant was, in any event, not entitled to charge twice for preparing the indexes.

35. As a result of its wrongful conduct Defendant has been unjustly enriched at the expense of Plaintiff and the Class.

36. Defendant's wrongful conduct caused Plaintiff and the Class damages.

WHEREFORE, Plaintiff prays for judgment against Defendant, and each of them, as follows:

ON THE FIRST CAUSE OF ACTION

- a. An Order certifying that the action be maintained as a class action under 735 I.L.C.S. 5/2-801;
- b. An award of damages, prejudgment interest, attorneys' fees and costs pursuant to 815 I.L.C.S. 505/10a;
- c. An award of post-judgment interest as provided by law;
- d. An award of suitable equitable, injunctive and declaratory relief; and;
- e. Such other and further relief as is just and appropriate.

ON THE SECOND CAUSE OF ACTION

- a. An Order certifying that the action be maintained as a class action under 735 I.L.C.S. 5/2-801;
- b. An award of damages, prejudgment interest, attorneys' fees and costs;
- c. An award of post-judgment interest as provided by law;
- d. An award of suitable equitable, injunctive and declaratory relief; and,
- e. Such other and further relief as is just and appropriate.

DATED: September 18, 2009

FRANK COLAPINTO, individually and on behalf of all others similarly situated

Local Attorneys for Plaintiffs:

LATIMER LeVAY JURASEK LLC
CARY R. LATIMER, Esq.
55 W. Monroe Street, Suite 1100
Chicago, Illinois 60603
Telephone: (312)422-8000
Facsimile: (312)422-8001
Atty No. 40379

By: 
Local Attorneys for Plaintiff

Pending Admission Pro Hac Vice:

EAGAN O'MALLEY & AVENATTI, LLP
MICHAEL J. AVENATTI, Bar No. 206929
JASON M. FRANK, Bar No. 190957
450 Newport Center Drive, Second Floor
Newport Beach, CA 92660
Telephone: (949) 706-7000
Facsimile: (949) 706-7050

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand trial of all causes by jury.

DATED: September 18, 2009