

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

BELL SPORTS INC.,

Plaintiff/Counter-Defendant

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v.

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Case No. 342922-V

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MICHAEL BEASLEY,

Defendant/Counter-Plaintiff

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COUNTERCLAIM

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Defendant/Counter-Plaintiff, Michael Beasley, by and through his attorney, Mark A. Smith, and pursuant to Maryland Rule 2-331, respectfully represents unto the Court as follows:

BACKGROUND

1. Plaintiff/Counter-Defendant Bell Sports, Inc., a Maryland corporation, ("Counter-Defendant") filed a Complaint in the above-entitled action, submitting the corporation to the jurisdiction of this Court and entitling Defendant/Counter-Plaintiff to file a counterclaim in this action.

2. Counter-Defendant is in the business of representing professional basketball players.

3. Joel Bell ("Bell") has been in the business of player representation since 1988. He is the president of Plaintiff/Counter-Defendant Bell Sports, Inc. He is also an attorney and held himself out as such, at critical junctures, to Fatima Smith and Defendant/Counter-Plaintiff, Michael Beasley.

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MONTGOMERY CO. MD

4. On information and belief, Bell Sports, Inc., consists of Bell, alone, and has no other visible employees. At all times stated herein, Bell was acting in his capacity as president of Bell Sports, Inc.

5. Defendant/Counter-Plaintiff, Michael Beasley, ("Beasley") is a professional basketball player with the National Basketball Association's ("NBA") Minnesota Timberwolves. He is twenty-two (22) years old and was nineteen (19) years old when he signed an NBA player-agent agreement with Bell.

6. Beasley's mother is named Fatima Smith ("Ms. Smith" or "his mother").

7. In 2001-2002, Beasley was in the eighth grade and was a student at National Christian Academy on a basketball scholarship.

8. His mother was a single mother of four children, and she could not afford to contribute to Beasley's scholarship gap after his grades slipped.

9. Beasley had been assessed as having special education needs and had an Individual Education Program ("IEP") Plan.

10. On information and belief, in November of 2002, the coach of National Christian Academy, Trevor Brown, introduced Ms. Smith to Herman C. Malone, aka Curtis Malone ("Malone").

11. Malone is co-founder and operator of DC Assault, an Amateur Athletic Union ("AAU") basketball team in the Washington, DC area that recruits boys from the area to play basketball. Adidas sponsors DC Assault, and, on information and belief, Malone is a paid consultant of Adidas.

12. From the time he was thirteen (13) years old, Beasley was envisioned as a strong NBA prospect by those who follow basketball talent in the AAU ranks. Even then he was over six feet tall and had a level of skill and intensity on the court that adumbrated success at every level of basketball.

13. At that time, Beasley was playing with basketball star Kevin Durant for a renowned AAU team called the P.G. Jaguars.

14. The P.G. Jaguars dissolved in or about 2004.

15. Because Beasley was still a minor, on information and belief, AAU contenders sought to recruit him through his mother after Beasley ended his time with the P.G. Jaguars.

16. On information and belief, while Beasley played with the P.G. Jaguars, his mother struggled to pay, and sometimes failed to pay, the costs associated with participation in the team. Consequently, when various AAU teams approached her in an attempt to recruit Beasley, it was part of her basic response to tell them that she was a struggling single mother with four children and was unable to afford the costs of Beasley's participation in their programs.

17. On information and belief, when she told Malone that she could not afford to pay for Beasley's participation in DC Assault, he told her that she did not need to worry about paying for anything because their program was sponsored by Adidas. He told her that even her transportation and lodging would be paid for when she wanted to travel to games.

18. Ms. Smith chose to involve Beasley in DC Assault, and on information and belief, her travel and lodgings were paid for consistently, and sometimes even her children's expenses were covered.

19. In or about early 2003, on information and belief, Ms. Smith was pulled over and discovered to be driving on a suspended license. She needed money for a lawyer, and she contacted Malone. Malone directed her to meet him at Houston's, a restaurant then located on Rockville Pike in Rockville, Maryland. There with Malone was a man she had not met before, whom she later came to understand was Bell. Upon departure from the restaurant, she observed Bell reach into his inside pocket and pull out an envelope, extend his arm outwards and hand it to Malone, who then handed it to Ms. Smith. Bell turned around and observed what was happening. Inside the envelope was \$2500.00 in cash.

20. Beasley developed a very close relationship to Malone during his time with DC Assault. Malone exercised strong influence over Beasley, who viewed him as an authority figure, a coach, a trusted mentor, and a source of guidance and direction. Ms. Smith describes Malone as assuming the status of a father figure with Beasley and the status of a brother to her during this period. Beasley had *de minimis* involvement with his actual father during this period of his life.

21. From the age of fourteen (14) through eighteen (18) years, Beasley played for Malone's DC Assault and was substantially under the helm of Malone. During that time, Beasley had interactions with Bell, who was, on information and belief, a regular presence in the life of Malone.

22. On information and belief, Beasley essentially lived with Malone from the time he was fourteen (14) until he was eighteen (18) years old. He regarded Malone's step son and daughters as his siblings during that time. Beasley was from a poor household, and the comparatively upscale home of Malone offered him comfort that the modest and spare dwelling of his own lacked.

23. At the time, Beasley was a kid with big feet, long arms, and huge hands. There was nothing ordinary about his high school years, starting with the fact that he lived with the person running his AAU program. He also went to six high schools in five years—all basketball-related: from Maryland to North Carolina to Florida to Virginia and finally to Massachusetts. He had conduct problems in school and lacked ability to focus, but one thing became clear: he was a prodigious basketball talent. By the time he was ready to go to college, he was one of the best teenage basketball players in America.

24. On information and belief, in addition to funneling money to Beasley's mother, Counter-Defendant improperly subsidized Malone's DC Assault program, and paid money to Malone "on the side" or "under the table," in exchange for Malone, at least attempting to manipulate, NBA prospects like Beasley, but typically far less-talented than Beasley, into signing an agency agreement with Counter-Defendant.

25. It appears that at various times in the course of Beasley's involvement with DC Assault, Counter-Defendant, through Bell's association with DC Assault—and its active participation in financial assistance to Beasley's mother—committed acts in violation of National Collegiate Athletic Association ("NCAA") rules, National Basketball Player Association ("NBPA") rules, rules of the federal Sports Agent Responsibility and

Trust Act of 2004 (“SPARTA”), and the rules of the Uniform Athlete Agent Act (“UAAA”), which the State of Maryland adopted in 2003.

26. On information and belief, Malone and Bell continued to provide money to Ms. Smith in a deliberate effort to ensure a foothold over her to secure dispositive influence over Beasley in their conspiratorial effort to make sure that Beasley would sign a player-agent agreement with Counter-Defendant.

27. Ms. Smith describes Malone as a “runner” for Counter-Defendant. A “runner,” in this vernacular, is a representative of an AAU program, who provides benefits to prospective or enrolled student-athletes with remaining college eligibility, or to their relatives or friends.

28. On information and belief, from 2003 through 2008, until the time after Beasley’s stellar freshman year at Kansas State when Beasley declared his eligibility for the NBA draft, Ms. Smith received money from Malone, Bell, and a man introduced to Ms. Smith by Malone in concert with Bell.

29. On information and belief, Malone told Ms. Smith that the man was someone who was important to him and his basketball program, and that the more she allowed this man to do things for her, the better it was for DC Assault.

30. On information and belief, while Beasley was a player for DC Assault, Dalonte Hill (“Hill”) was the coach of Malone’s AAU team.

31. Hill and Beasley were close.

32. But Hill was also a close friend and mentee of Malone, who was able to deploy his influence over both Hill and Beasley to the advantage of himself and Counter-Defendant.

33. In the summer of 2003, the University of North Carolina at Charlotte, hired Hill to become an assistant coach, reportedly for a salary in the range of \$60,000.00. Three weeks later Beasley said he was coming to UNC-Charlotte when it was time for him to play college basketball.

34. Beasley was fifteen years old.

35. After Hill had worked for Charlotte a couple of years, on information and belief, Bob Huggins of Kansas State wanted Beasley, so he offered Hill an assistant coaching job at Kansas State with a salary that ended up being in excess of \$420,000.00.

36. Hill took the job, and Beasley went to Kansas State.

37. On information and belief, when Beasley followed Hill to Kansas State as a freshman, where he became one of the most decorated freshman basketball players in recent NCAA history, Malone promoted that Ms. Smith move to Kansas with Beasley to, among other things, keep other agents away from him.

38. Ms. Smith moved to Kansas in June of 2007. The man that Malone had introduced to her paid for Ms. Smith's moving expenses to Kansas and made a lump-sum payment to cover the first six months of her rent while she was there.

39. On information and belief, in January of 2008, the man phoned her and told her that he wanted to be Beasley's financial advisor. Ms. Smith called Malone and

informed him about the conversation. Malone said something dismissive about him and told Ms. Smith to be at ease.

40. On information and belief, shortly afterwards, Bell phoned Ms. Smith, asked her the amount of her rent and her car payment and told her that they would be taken care of, and they were. Ms. Smith never made a rent or car payment during Beasley's entire freshman year as a player for Kansas State, his only year of collegiate basketball prior to going pro.

41. Although Bell had become a familiar presence in her life due to his connection to Malone and DC Assault, she did not know about his credentials as an agent. Ms. Smith conferred with others experienced in choosing NBA agents. After conferring with them, she contacted Bell and asked him for some background information on himself and his company, the Plaintiff/Counter-Defendant, including the names of a few of his former clients with whom she could speak. On information and belief, Bell took strong offense at her inquiry and referenced all he had done for her over the years. Their conversation became heated and ended.

42. On information and belief, Ms. Smith and Malone discussed the interaction she had with Bell, and Malone told Ms. Smith that Bell had taken care of him for years and now that he was in the position to offer Beasley, the best player in the draft, to Counter-Defendant he was going to do that. Malone acknowledged that Bell was not the best agent, but he stated that he was not the worst, either. He told her that he felt he owed it to Counter-Defendant to deliver Beasley.



43. Prior to signing a National Basketball Player's Association ("NBPA") standard agent-player contract ("Agent Contract") and a Merchandising Agreement with Counter-Defendant, Beasley was not told, and had not discovered otherwise, about the undisclosed interactions between his mother, Malone and Bell, and anyone else operating on behalf of Malone and Bell.

44. Despite being aware that Beasley was unlikely to read any document presented to him, Bell allowed him to sign the Agent Contract and Merchandising Agreement, nonetheless, without reading them.

45. Although undersigned counsel has never actually seen an executed copy of the Agent Contract, on information and belief, in or around April 2008, Beasley signed the Agent Contract and a Merchandising Agreement with Bell as he was directed to do by Malone.

46. While the Agent Contract was a standard contract promulgated by and in accordance with the NBPA's regulations, the Merchandising Agreement was not. The Merchandising Agreement is in the form of a letter agreement that is addressed to Beasley and signed by Bell as President of Counter-Defendant, Bell Sports, Inc. Presumably, it was drafted by Bell, as Beasley surely did not draft it. Some of its terms are unusual; some seem purposely vague and misleading. It is precisely upon these unusual and putatively misleading terms in the Merchandising Agreement that Counter-Defendant has based its claims. (Copies of the Agent Contract and the Merchandising Agreement are attached as Exhibits A and B and incorporated herein.)

47. Material terms of the merchandising agreement are in conflict with the NBA player-agent contract that gives Counter-Defendant the authority to represent Beasley in the first instance.

48. Beasley trusted Malone and had a confidential relationship with him. Malone conspired with Bell to drive Beasley to him as a client.

49. At the time that he entered into the Merchandising Agreement with Counter-Defendant, Beasley was the top 2008 NBA draft prospect, but Bell was not among the top agents in the country.

50. Beasley told Bell that he wanted his agent to get him a multi-million dollar endorsement contract as quickly as possible and that he wanted a contract with Nike.

51. On information and belief, at all relevant times, Adidas sponsored DC Assault and paid Malone as a consultant. Bell had no intention of getting a merchandising agreement for Beasley with Nike.

52. Approximately five months after Beasley—the number one draft prospect and number two draft pick—entered into the Merchandising Agreement with Counter-Defendant, and other lesser players had secured contracts, Bell still had not obtained an endorsement contract for him from either Nike or Adidas.

53. In or around September 2008, Beasley learned, through a third party, that Malone and Bell had been making payments to his mother without his knowledge or consent for years. He felt betrayed by the men in whom he had placed his trust and immediately terminated the Agent Contract and the Merchandising Agreement with Bell and dramatically shifted his relationship with Malone at the same time.

54. In summary, Counter-Defendant corrupted every mechanism of honest guidance Beasley had in his life to assist him to pursue the best NBA agent available, which seriously deprived Beasley, both economically and otherwise.

**COUNT ONE**  
Rescission (Undue Influence)

55. Defendant/Counter-Plaintiff realleges and incorporates by reference herein all of the allegations contained in Paragraphs 1-54.

56. A confidential relationship existed between Malone and Beasley at the time that Beasley entered into the Merchandising Agreement with Counter-Defendant.

57. Due to this confidential relationship, Malone had a duty to act in Beasley's best interest, without any deception or self-dealing.

58. Counter-Defendant induced Malone to breach his confidential relationship with Beasley who exercised undue influence over Beasley in advising Beasley to sign an Agent Contract with Counter-Defendant.

59. Beasley relied completely on Malone's advice and entered into an Agent Contract and derivative Merchandising Agreement whose terms benefited Counter-Defendant to the detriment of Beasley.

60. In September 2008, when Beasley discovered that Counter-Defendant had been using money behind the scenes to manipulate him and his mother over a period of several years without his knowledge, he promptly notified Counter-Defendant that he was terminating the Agent Contract and rescinded the Merchandising Agreement by sending Counter-Defendant a letter.

61. In addition, Beasley promptly paid Counter-Defendant the outstanding balance that Counter-Defendant claimed was due him. Specifically, Bell demanded that Beasley reimburse Counter-Defendant for thousands of dollars that had been laid out before Beasley had ever signed a player-agent agreement. Beasley promptly paid Counter-Defendant in full.

62. Because Bell inducement's were a proximate cause of Malone's breach of his duties to Beasley, Beasley is entitled to rescind the Merchandising Agreement and to recover restitution of the full amount he paid to Malone in connection with his rescission of the Agent Contract and the Merchandising Agreement.

**COUNT TWO**  
(Intentional Concealment)

63. Defendant/Counter-Plaintiff realleges and incorporates by reference herein all of the allegations contained in Paragraphs 1-62.

64. At all relevant times, Bell and Malone had an ongoing relationship in which Malone would introduce basketball players to Bell before they were eligible for professional representation in exchange for benefits for himself, his program, the players, their families.

65. Bell and Malone had an understanding with each other that was never disclosed to Beasley: that Malone, by advising Beasley to sign with Counter-Defendant as his agent when Beasley became eligible for such representation would recompense Counter-Defendant for the benefits it had conferred in advance.

66. Counter-Defendant's failure to disclose the relationship with Malone and the understanding that Malone would deliver Beasley as recompense for benefits conferred is a failure to disclose material facts, which it had a duty to disclose.

67. Counter-Defendant failed to disclose the arrangement with Malone or the true nature of their relationship to Beasley because Counter-Defendant knew that if such disclosure was made, Beasley would not have signed any agreements with Counter-Defendant.

68. Beasley relied on Malone's advice because of their confidential relationship and signed the Agent Contract and Merchandising Agreement, and he was justified in his reliance.

69. Because of Counter-Defendant concealment, Beasley suffered damages and asks for recoupment in the amount pled by Counter-Defendant in this action.

**COUNT THREE**  
Constructive Fraud (Breach of Fiduciary Duty)

70. Defendant/Counter-Plaintiff realleges and incorporates by reference herein all of the allegations contained in Paragraphs 1-69.

71. By virtue of his position both as the agent of Beasley under the Agent Contract and as an attorney with an attorney-client relationship to Beasley, Counter-Defendant had a fiduciary duty to Beasley to disclose the financial arrangement with Malone pertaining to Beasley and to disclose that Counter-Defendant had been funneling thousands of dollars, directly and indirectly, to Beasley's mother the entire year that Beasley was in college and earlier.

72. Counter-Defendant breached this fiduciary duty intentionally by conspiring with Malone to capture Beasley as a client in making this financial arrangement and by not disclosing its conduct to Beasley.

73. Counter-Defendant also breached his fiduciary duty intentionally by funneling thousands of dollars to Beasley's mother without his knowledge or consent and by not disclosing to Beasley that he had done so.

74. Counter-Defendant's conduct both deceived Beasley and violated his confidence. In breaching its fiduciary duty to Beasley, Counter-Defendant acted willfully and contrary to Beasley's best interests.

75. As a result of Counter-Defendant's breach, Beasley has suffered damages and demands judgment by way of recoupment against Counter-Defendant.

**COUNT FOUR**  
(Fraud)

76. Defendant/Counter-Plaintiff realleges and incorporates by reference herein all of the allegations contained in Paragraphs 1-75.

77. Counter-Defendant's promise to represent Beasley's best interest was material to Beasley's entrance into the contract.

78. Beasley directed Counter-Defendant to pursue merchandising contracts with Nike.

79. On information and belief, Counter-Defendant, failed to pursue negotiations with Nike based on pecuniary interests that would result from Adidas to

Counter-Defendant and Malone, in addition to compensation that would result from the agreement.

80. Counter-Defendant's relationship with Malone and payments to Ms. Smith were intended, ultimately, improperly to induce Beasley into executing a player agent agreement without competition from other agents.

81. Counter-Defendant breached his fiduciary duty to Beasley by failing to disclose the existence and nature of his relationship with Malone.

82. Counter-Defendant was aware that his relationship with Malone as it relates to Beasley was corrupt.

83. Counter-Defendant's acts were intentionally calculated to deceive Beasley and to cause Beasley to enter into a player-agent agreement with him.

84. Beasley relied upon Counterclaim-Beasley's representations to his detriment because he believed that Counter-Defendant through Bell was acting in his best interest, with complete transparency, both as a lawyer and as a sports agent, when, in fact, Counter-Defendant was concealing that Bell was funneling money actively to Beasley's mother to manipulate the relationship with Beasley to its own ends. This deprived Beasley of the information he would have needed to see that Bell is a lawyer/agent willing to engage in improper conduct and to breach the law to accomplish his ends, and that it was not in Beasley's long-term interest to have such a Counter-Defendant representing him, which, in part, the instant law suit against Beasley indicates.

85. Beasley was damaged by Counter-Defendant's acts, which prevented Beasley's exposure to the possibility of other agents who could have and would have

identified, clarified, communicated, represented and advanced Beasley's interests more effectively. Moreover, Counter-Defendant's fraudulent scheme has as one of its various nefarious outcomes this lawsuit and the unfair economic costs and distraction it has imposed on Beasley, who demands judgment for such damages by way of recoupment against Counter-Defendant.

**COUNT FIVE**  
(Civil Conspiracy)

86. Defendant/Counter-Plaintiff realleges and incorporates by reference herein all of the allegations contained in Paragraphs 1-85.

87. NCAA rules, the UTAA, and SPARTA Acts prohibit agents from conveying financial benefits on players and/or their families and friends when they are students.

88. Counter-Defendant and Malone conspired to commit acts that transgress these rules while seeking to ensure that Beasley did not execute an agreement with an agent other than Counter-Defendant.

89. Counter-Defendant and Malone conspired to drive Beasley to sign an agent agreement with Counter-Defendant.

90. Malone's position as head coach for DC Assault provided an ideal position to identify players with the potential of entering professional basketball.

91. On information and belief, Malone and Counter-Defendant have acted in concert to form relationships with promising players, their family, and friends in order to



lure such players to Counter-Defendant and to allow Malone to derive the stream of benefits that flow from such players.

92. Counter-Defendant and Malone employed this scheme in order to consummate the agreement that is the subject of this action.

93. As a result, Beasley was damaged by being deprived of superior representation, deprived of getting a merchandising contract quickly, deprived of honest representation, and he was damaged because of this lawsuit, its costs in legal fees, which threatens the prospect of further monetary loss.

**COUNT SIX**  
(Negligent Misrepresentation)

94. Defendant/Counter-Plaintiff realleges and incorporates by reference herein all of the allegations contained in Paragraphs 1-93.

95. Bell, Counter-Defendant's president, is an attorney and, among other things, held himself out to Beasley as a trustworthy and honest one.

96. Counter-Defendant had a duty to deal truthfully and honestly with Beasley both in his efforts to draw him as a client and thereafter.

97. Counter-Defendant breached its duty in both respects because it withheld material information from Beasley regarding its financial dealings with Malone and with Beasley's mother before and after inducing Beasley to sign the Agent Contract and Merchandising Agreement.

98. Counter-Defendant's silence regarding this misconduct was negligent in that it was tantamount to an affirmative statement of good conduct, and Counter-

Defendant had knowledge that Beasley would interpret this silence as such; indeed, Counter-Defendant intended that Beasley construe it as such.

99. Beasley justifiably relied on Plaintiff/Counter-Defendant's misrepresentation.

100. Beasley was damaged by Counter-Defendant's negligent misrepresentation by being deprived of honest representation, of superior representation, and because of this lawsuit, which has cost Beasley considerable legal fees and threatens the prospect of further monetary loss.

#### **COUNT SEVEN**

(Intentional Interference of Prospective Economic Advantage)

101. Defendant/Counter-Plaintiff realleges and incorporates by reference herein all of the allegations contained in Paragraphs 1-100.

102. Counter-Defendant intentionally sought to keep away other agents, regardless of what more or better they could do for Beasley, economically or otherwise.

103. Counter-Defendant's actions kept Beasley from realizing these beneficial, advantageous business connections.

104. Beasley was damaged by Counter-Defendant's intentional interference because he was deprived of honest representation, of superior representation, and because of this lawsuit, which has cost Beasley considerable legal fees and threatens the prospect of further monetary loss.

**COUNT EIGHT**  
(Legal Malpractice)

105. Defendant/Counter-Plaintiff realleges and incorporates by reference herein all of the allegations contained in Paragraphs 1-104.

106. Counter-Defendant is an attorney and at times crucial times declined to secure an attorney for Beasley because he represented himself to Beasley and his mother as Beasley's attorney in these transactions.

107. Accordingly, Counter-Defendant viewed himself as employed as an attorney for Beasley while he functioned as Beasley's sports agent.

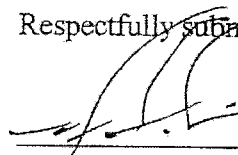
108. Counter-Defendant had a reasonable duty to disclose material facts to his client, Beasley.

109. That Counter-Defendant had funneled money to Beasley's mother and to Malone in an intentional effort to secure Beasley as a client is a material fact that Counter-Defendant did not disclose before or after Beasley was his client.

110. As a proximate cause of Counter-Defendant's dishonesty and lack of disclosure, Beasley—the best player in the 2008 NBA Draft—was deprived of a real opportunity to have an honest agent, a superior agent, and economically superior endorsement opportunities. Additionally, this lawsuit, brought by the same dishonest agent/attorney, has costs Beasley economic loss and public embarrassment. The suit also continues to threaten him with further economic loss.

WHEREFORE, Defendant/Counter-Plaintiff asks that the Merchandising Agreement between the parties be rescinded; that judgment be entered against the Counter-Defendant by way of recoupment against Plaintiff/Counter-Defendant in the amount up to \$1,000,000 plus interest and costs, including reasonable attorney's fees and costs.

Respectfully submitted,



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*Counsel for Defendant/Counter-Plaintiff*

**POINTS AND AUTHORITIES**

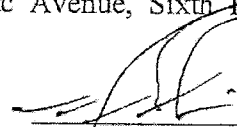
Maryland Rules 2-331 and 2-325

**JURY DEMAND**

Defendant/Counter-Plaintiff, by counsel, pursuant to Maryland Rule 2-325, demands a jury trial.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 29<sup>th</sup> day of September, 2011, a copy of the foregoing Counterclaim will be forwarded via first-class mail, postage prepaid to Glenn C. Etelson, Esquire, Shulman, Rogers, Gandal, Pordy & Ecker, P.A., *Counsel for Counter-Defendant*, 12505 Park Potomac Avenue, Sixth Floor, Potomac, Maryland 20854.



Mark A. Smith

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LOUISE E. KNIGHT  
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