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STATE OF NORTH CARC	111 25 PA 3: 56	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION NO 99-CVS-12425
DOMINICK DeJOY, JR.,	. (J.)-	
Plaintiff.		STIPULATION OF DISMISSAL WITH PREJUDICE
LOUIS DeJOY and MICHA	EL DeJOY.	
Defendants		

Pursuant to Rule 41(a) of the North Carolina Rules of Civil Procedure, the parties to the above-styled action, through the undersigned counsel, hereby stipulate and agree that all claims asserted, or which could have been asserted, in this action are dismissed with prejudice because of settlement. Each party shall bear its own costs, attorney's fees and expenses of litigation.

This the 35" day of January, 2001.

Joseph W. Moss Moss & Mason 1650 First Union Tower 300 North Greene Street Greensboro, North Carolina 27401

Gilbert J. Andia, Jr. Rhodes & Mason, PLLC 1600 First Union Tower 300 North Greene Street Greensboro, North Carolina 27401 Attorneys for Dominick DeJoy. Jr

Sardel , Zous

Ronald R. Davis Womble Carlyle Sandridge & Rice, PLLC Post Office Drawer 84 Winston-Salem, North Carolina 27102 Attorney for Louis DeJoy and Michael DeJoy

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CERTIFICATE OF SERVICE

I, Richard S. Gottlieb, hereby certify that on this date 1 served the foregoing STIPULATION OF DISMISSAL WITH PREJUDICE upon coursel of record by facsimile and by depositing a copy thereof in the United States mail, postage prepaid and addressed as follows:

> Joseph W. Moss, Esq. Rhodes & Mason, PLLC 1600 First Union Tower 300 North Greene Street Greensboro, North Carolina, 27401

Attorney for Defendant Dominick DeJoy Jr.

Ronald R. Davis, Esq Womble Carlyle Sandridge & Rice Post Office Drawer 84 Winston-Salem, North Carolina 27102

Attorney Louis Deloy and Michael Deloy

This the 25th day of January, 2001

Richard S. Gottlieb

KILPATRICK STOCKTON LLP 1001 West Fourth Street Winston-Salem, North Carolina 27101 Telephone: (336) 607-7300

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STATE OF NC		CARO	LINA Countv	10 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Film No	vS-12425 heral Court Of Ju Superior Court	ustice Division
Name Of Plaintiff DOMINICK DEJOY, JR.		GEFELL DIV CSC					
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Name Of Defendant LOUIS DEJOY and M		Nan	ne of Third-Party Defendant	BL		For Superior and Di	
Does this Court Actio	on comple	te this li	tigation? 🛛 Yes 🛛] No			
		CLAIN	OR MOTION ACTED	ON		COURT	ACTION
Type of Claim or Motion (For each claim or motion acted on, enter code for Type of Claim or Motion from lat on reverse side, # 07HR, describe)	Date Filed		By (Identify Party)	Against (Iden	uly Party)	Action (Enter code for Type of Court Action from (st on reverse)	Date
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Types Of Motions (Domestic and Non-Domestic) (Superior Court and District Court) .

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GUILFORD	County)			al Court Of Justice
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Tax ID/SSN	EC.		LING 🖂	SUBSE	QUENT FILING
Name Of Plaintiff 3	D-1	Name And Address Of	Attorney, Or Part	ty If Not R	epresented (complete)
Tax ID/SSN		Richard S. Gottlicb	ange of address)		
VERSUS					
Name Of Defendant 1 Louis DeJoy and Micl	had Daloy	Attorney Bar No	23131	1	3
Tas IC/SSN	Summons Submitted	Initial Appearan		1	hange of Address
Nama Of Defendant 2	Yes No	Name Of Firm	Kilpatrick Stoc	1	
Tax ID/SSN	Summons Submitted	Tax ID No.	Telephone No. 336-607-748		FAX No 336-607-7500
Name Of Definidant 3		Counsel for All Plaintiffs All	1		A CONTRACTOR OF THE OWNER
Tax iD/SSN	Symmons Subnutted				
TYPE OF PLEAD Icheck all that apoly Amended Answer/Reply (AMN Amended Complaint (AMND) Answer/Reply (ANSW-Respon Complaint (COMP) Confession of Judgment (CNF. Confession of Judgment (CNF. Counterclaim vs. (CTCL) All Plaintiffs Only (Ling Crossciaim vs. (List on back) (CR Extend Statute of Limitations, F Extend Time for Answer (MEO) Extend Time For Complaint (E) Rule 12 Motion In Lieu Of Answer (MEO) Third Party Complaint (List Third Party Complaint (List Third Party Complaint (List Third Party Consent Order Other (specify) Consent Order	D-Response) se) J) st on back) tSS) Rule 9 (ESOL) T-Response) XCO) wer (MDLA)	Administrative Appointment of Attachment/Gi Claim and Del Collection on A Condemnation Contract (CNT Discovery Sch Injunction (INJ Medical Malpri Minor Settleme Money Owed (Negligence - N Motor Vehicle	of Receiver (Al arnishment (A ivery (CLMD) Account (ACC (CNDM) (R) eduling Order U) actice (MDML ent (MSTL) MNYO) Motor Vehicle (Lien G S 44A Privilege - Oc Personal Proj ty (PROD) (RLPR)	MA) PRC) ATTC) TTC) (DSCH (MVNG) (MVNG) (MVLN ut-of-State perty (P))) Convictions (PLDP)
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STATE OF NORTH CAROLINA	SUPERIOR COURT OF JUSTICE
COUNTY OF GUILFORD	SUPERIOR COURT DIVISION
DOMINICK DEJOY, JR., 007	
Plaintiff,	
	99-CVS-12425
V	

LOUIS DEJOY and MICHAEL DEJOY,

Defendants.

NEW BREED, INC.,

Plaintifi.

V.

DOMINICK DEJOY, JR.,

Defendant.

00-CVS-3751

١.,

LOUIS DEJOY, MICHAEL DEJOY and NEW BREED TRANSFER CORP.

Third-Party Defendants

CONSENT ORDER

THIS MATTER coming on to be heard and being heard pursuant to N.C. Gen. Stat. § 55-7-45 by consent of all parties.

AND IT APPEARING to the Court that the above-captioned matters involve, among other claims, derivative claims brought by Dominick DeJoy. Jr on behalf of Defendant New Breed, Inc.;

AND, IT FURTHER APPEARING that the parties have reached a confidential settlement and wish to dismiss all claims, counterclaims and third-party claims, including all derivative claims, raised in these matters:

AND IT FURTHER APPEARING that all of the parties have been represented throughout the pendency of these matters by counsel and that the parties have reviewed the terms of the confidential settlement agreement and release and have agreed to be bound by the terms thereof; and

AND IT FURTHER APPEARING that all shareholders of New Breed. Inc. and New Breed Transfer Corp. are parties to the confidential settlement agreement and release, and all shareholders have received notice of, and have knowingly and voluntarily agreed to the settlement.

SOW, THEREFORE, upon the consent of the parties, it is hereby ORDERED that the derivative claims asserted in connection with the above-captioned matters may be dismissed and hereby are dismissed with prejudice.

This the 22 alay of January _. 2001

Honorable Ben F. Tennille Special Superior Court Judge for Complex Business Cases

CONSENTED TO:

Joseph W. Moss Moss & Mason 1650 First Union Tower 300 North Greene Street Greensboro, North Carolina 27401

Gilbert J. Andia, Jr. Rhodes & Mason, PLLC 1600 First Union Tower 300 North Greene Street Greenshoro, North Carolina 27401 Attorneys for Dominick DeJoy. Jr

Farall Strini

Ronald R. Davis Womble Carlyle Sandridge & Rice, PLLC Post Office Drawer 84 Winston-Salem, North Carolina 27102 Attorney for Louis DeJoy and Michael DeJoy

ausen 210. Daniel R. Taylor, Jr.

Damel R. Taylor, Jr. Mark A. Stafford Richard S. Gottlieb Kilpatrick Stockton LLP 1001 West Fourth Street Winston-Salem, North Carolina 27101-2400 Attorneys for New Breed Inc. and New Breed Transfer Corp

CONSENTED TO:

DOMINICK DEJOY 1R

SWORN TO and subscribed by me, this the / day of January , 2001

J. Cl A NOTARY PUBLIC Me Commission Expires: 12/04/04

MICEAEL DEJOY

SWORN TO and subscribed by me. this the $2\frac{9}{2}$ day of $\int a x \cos x$. 2001.

Maurel Cher NOTARY PUBLIC My Commission Expires.

HAROLD & RICE Motory Public, State of New York No. 30-4747391 Commission Expires March 30, 2000

LOUIS DEJOY

SWORN TO and subscribed by me, this the 18 day of January 2001.

UL ar NOTARY PUBLIC

My Commission Expires: 10/23/03

NEW BREED TRANSFER CORT LOUIS DEJOY, CEO

STATE OF NORTH CAROLINA COUNTY OF FORSYTH

This day of <u>Anuary</u>. 2001, personally came before me, a Notary Public for said County and State, Louis DeJoy, who, being by me duly sworn, says that he is the Chief Executive Officer of **New Breed Transfer Corp.**, a corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Chief Executive Officer acknowledged the said writing to be the act and deed of the corporation

WITNESS my hand and official seal, this the fo day of the surary 2001.

(Official Seal)

112 NOTARY PUBLIC My Commission Expires NEW BREED, INC By IS DEIOY, CEO

STATE OF NORTH CAROLINA COUNTY OF FORSYTH

This day of August. 2001, personally came before me, a Notary Public for said County and State, Louis DeJoy, who, being by me duly sworn, says that he is the Chief Executive Officer of **NEW BREED, INC.**, a corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Chief Executive Officer acknowledged the said writing to be the act and deed of the corporation.

WITNESS my hand and official seal, this the $/\delta$ day of udu (2001.

(Officiai Seal)

archa M NOTARY PUBLIC My Commission Expires. 10/23

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STATE OF NORTH CAROLINAL ED IN COUNTY OF GUILFORD 7151 JUL 25 FM 3: 55	THE GENERAL COURT OF JUSTICI SUPERIOR COURT DIVISION
Plaintiff. IN CARTONI CONTINUES	99-CVS-12425
V.	
LOUIS DEJOY and MICHAEL DEJOY.	
Defendants.	
NEW BREED, INC .	
Plaintiff.	

Υ.

DOMINICK DEJOY, JR.,

Defendant.

00-CVS-3751

N

LOUIS DEJOY, MICHAEL DEJOY and NEW BREED TRANSFER CORP.

Third-Party Defendants.

CONSENT ORDER

THIS MATTER coming on to be heard and being heard pursuant to N.C. Gen Stat § 55-7-45 by consent of all parties;

AND IT APPEARING to the Court that the above-captioned matters involve, among other claims, derivative claims brought by Dominick DeJoy, Jr on behalf of Defendant New Breed, Inc.;

AND, IT FURTHER APPEARING that the parties have reached a confidential settlement and wish to dismiss all claims, counterclaims and third-party claims, including all derivative claims, raised in these matters;

AND IT FURTHER APPEARING that all of the parties have been represented throughout the pendency of these matters by counsel and that the parties have reviewed the terms of the confidential settlement agreement and release and have agreed to be bound by the terms thereof; and

AND IT FURTHER APPEARING that all shareholders of New Breed. Inc. and New Breed Transfer Corp. are parties to the confidential settlement agreement and release, and all shareholders have received notice of, and have knowingly and voluntarily agreed to the settlement.

NOW, THEREFORE, upon the consent of the parties, it is hereby ORDERED that the derivative claims asserted in connection with the above-captioned matters may be dismissed and hereby are dismissed with prejudice.

This the 22 reliay of January . 2001

i.

Honorable Ben F. Tennille Special Superior Court Judge for Complex Business Cases

CONSENTED TO:

Joseph W. Moss Moss & Mason 1650 First Union Tower 300 North Greene Street Greensboro, North Carolina 27401

Gilbert J. Andia, Jr. Rhodes & Mason, PLLC 1600 First Union Tower 300 North Greene Street Greensboro, North Carolina 27401 Attorneys for Dominick DeJoy, Jr

Jacob Lowie

Ronald R. Davis Wornble Carlyle Sandridge & Rice, PLLC Post Office Drawer 84 Winston-Salem, North Carolina 27102 Attorney for Louis DeJoy and Michael DeJoy

Daniel R. Taylor, Jr Mark A. Stafford Richard S. Gottlieb Kilpatrick Stockton LLP 1001 West Fourth Street Winston-Salem, North Carolina 27101-2400 Attorneys for New Breed, Inc. and New Breed Transfer Corp **CONSENTED TO:**

DOMINICK DEJOY JR

SWORN TO and subscribed by me, this the // day of January, 2001.

B NOTARY PUBLIC

My Commission Expires:

MICEAEL DEJOY

SWORN TO and subscribed by me, this the 19 day of faxing, 2001

Marile Chies NOTARY PUBLIC

My Commission Expires:

HAROLD A. RICT Notary Public, State of Hew York No. 30-4747381 Oualified in Nesseu County Commission Expires March 30, 200

LOUIS DEJOY

SWORN TO and subscribed by me, this the 18 day of January 2001.

NOTARY PUBLIC My Commission Expires: 10 23/03

NEW BREED TRANSFER COR LOUIS DIJOY.

STATE OF NORTH CAROLINA COUNTY OF FORSYTH

This day of <u>Cale</u> 2001, personally came before me, a Notary Public for said County and State, Louis DeJoy, who, being by me duly sworn, says that he is the Chief Executive Officer of **New Breed Transfer Corp.**, a corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Chief Executive Officer acknewledged the said writing to be the act and deed of the corporation.

WITNESS my hand and official seal, this the for day of fare auf 2001.

(Official Seal)

NOTARY PUBLIC My Commission Expires: NEW BREED, INC

By: S DEIOY, CEO

STATE OF NORTH CAROLINA COUNTY OF FORSYTH

This day of 2001, personally came before me, Marsha M. Culler a Notary Public for said County and State, Louis DeJoy, who, being by me duly sworn, says that he is the Chief Executive Officer of NEW BREED, INC. a corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Chief Executive Officer acknowledged the said writing to be the act and deed of the corporation.

WITNESS my hand and official seal, this the day of

5

(Officiai Seal)

NOTARY PUBLIC My Commission Expires: 10/23/03

WINLING #57542.3.

STATE OF NORTH CAROLIN	A			9 Cus 12425
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Name Of Paintiff 3 Tax ID:SSN		And Address Of Attorne appearance of change of addre Joseph M DO BWL 95	Coss	Represented scomplete for milit
VERSUS		Greenok		27429
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Name Of Defendant 2	LITEL LING	Moss & n		A DESCRIPTION OF CAMPACING AND A DESCRIPTION OF THE OWNER
141 ID 55N	Summons Submitte	Tax ID No.	Temphone All	82 271-63
Name Of Defendant J	Ves [] No	Counsel for		
Ter 10:55N	Summons Submitte	17	rfendants [_] 0	inly (List partylies) represented
U Jury Demanded In Pleading		Amount in controversy does not exceed \$15,000 Stipulate to arbitration CLAIMS FOR RELIEF FOR:		
Complex Litigation	1			
and the second second second with the second s		Administrative App Appointment of Re Attachment/Garnis Claim and Delivery Collection on Acco Condemnation (CN Contract (CNTR) Discovery Schedul Injunction (INJU) Medical Malpractic Minor Settlement Money Owed (MN Negligence - Moto Negligence - Moto Negligence - Other Motor Vehicle Lien Limited Driving Pri Possession of Pers Product Liability (P Real Property (RLP Specific Performan Other: (specify)	eceiver (APRi shment (ATT / (CLMD) bunt (ACCT) iDM) ling Order (D ce (MDML) (MSTL) YO) r Vehicle (M' r (NEGO) o G.S. 44A (I vilege - Out-o sonal Propert PROD) PR)	C) C) SCH) VNG) MVLN) of State Convictions (PLC
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STATE OF NORTH CAROLINA COUNTY OF GUILFORD T 1 P 3: 46 DOMINICK DEJOY, JR., Plaintiff, v.

LOUIS DEJOY and MICHAEL DEJOY,

Defendants.

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 99 CVS 12425

OCT 11 2000

NOTICE OF APPEARANCE

Joseph W. Moss and the firm of Moss & Mason, Attorneys at Law, and Gilbert J. Andia, Jr. and the firm of Rhodes & Mason, Attorneys at Law, give notice of their appearance in this action as counsel for Plaintiff Dominick Dejoy, Jr.

This the 10 day of October, 2000.

Joseph W

Attorney for Plaintiff

OF COUNSEL:

MOSS & MASON 300 North Greene Street. Suite 1650 Post Office Box 9597 (27429) Greensboro, North Carolina 27401 Telephone: (336) 370-1282

Gilbert J. Andia, Jr.

Gilbert J. Andia, Jr. Attorney for Plaintiff

OF COUNSEL:

RHODES & MASON 1600 First Union Tower 300 North Greene Street Post Office Box 2974 Greensboro, North Carolina 27402 Telephone: (336) 273-4422

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing NOTICE OF APPEARANCE was duly served upon counsel for all parties in accordance with the provisions of Rule 5 of the North Carolina Rules of Civil Procedure by depositing it in the United States Mail. first-class postage prepaid, addressed as follows:

> Ronald R. Davis WOMBLE CARLYLE SANDRIDGE & RICE Post Office Drawer 84 Winston-Salem, North Carolina 27102 Attorney for Defendants

G. Russell Kornegay, III Richard B. Fennell Katherine Line T. Kelly Ann L. Hester JAMES, MCELROY & DIEHL, P.A. 600 South College Street Charlotte, North Carolina 28202 Attorneys for Plaintiff

Daniel R. Taylor Mark A. Stafford KILPATRICK STOCKTON, LLP 1001 West Fourth Street Winston-Salem, North Carolina 27101-2400 Attorneys for New Breed. Inc.

This the 10²/day of October, 2000.

Joseph W. Moss

	NORTH CAROLINA	99 CVS 12425
	uilford County	In The General Court Of Justic Superior Court Division
Name Of Paintifful Dominick Do	ejoy, Jr. 200 ANG -9 AN 10 4	derrechnent oon chende
Name Of Plantif's Ar G. Russell 600 South (Charlotte,	Kornegay College Street Au	AND TRIAL CALENDAR NOTICE G.S. 7A 38.1; Bules Of Mediated Settlement Conference
	VERSUS	12-9-00
Name Dr Defendancial Louis DeJoy	y and Michael DeJoy	Neme And Address Of Other Interested Partyliesi And Pussible Lienholders
Name Of Defendants Ronald R. I P.O. Drawer Winston-Sal	Davis	Name And Address Of Attorneyis). If Applicable
In accordance		ttlement Conferences, it is ORDERED that this case be reterred to a ed before the deadline shown above.
parties. A co	elected by agreement of the parties shall be ourt-appointed mediator shall be compensate	ee on a mediator. Notice shall be on form AOC-CV-812. compensated at a rate agreed upon between the mediator and the id at the rate of \$125 per hour for time spent in the mediated ents. In addition, a \$125 administrative fee shall be paid pursuant to
parties. A co settlement co Rule 7.B. The All persons re excused purso	elected by agreement of the parties shall be ourt-appointed mediator shall be compensate onference, to be billed in guarter hour segme e conference fee shall be paid as provided for equired by Rule 4.A(1) to attend the conferen- uant to the agreement of all parties and pers	compensated at a rate agreed upon between the mediator and the ed at the rate of \$125 per hour for time spent in the mediated ents. In addition, a \$125 administrative fee shall be paid pursuant to
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AUG 2 1	2000 H
STATE OF NORTH CAROLINA FILED 00 AUG 18 AM 9	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 99-CVS-12425
DOMINICK DEJOY, JR., Plaintiff,	ORDER SETTING
LOUIS DEJOY and MICHAEL DEJOY,	SCHEDULING AND SETTLEMENT CONFERENCE
Defendants.	

On August 8, 2000, the court conducted a telephonic hearing to determine convenient dates for the parties and counsel to attend a scheduling conference. Upon the agreement and request of the parties, the Court hereby sets a scheduling and settlement conference for August 18, 2000 at 10:00 o'clock a.m. in the courtroom. All counsel are instructed to appear, along with their respective clients or client representatives. All clients or client representatives shall have full settlement authority.

SO ORDERED.

This the 16H day of August, 2000.

The Hon. Ben Tennille. Superior Court Judge for Complex Business Cases

CCTCA



OD AUG 18 AH 9: 14 STATE OF NORTH CAROLINA

Ben F. Tennille Special Superior Countered For Complex Business

FILED

NORTH CAROLINA BUSINESS COURT

August 16, 2000

Mr. David Churchill Clerk of Superior Court Guilford County Courthouse Post Office Box 3008 Greensboro, North Carolina 27402

> Re: Dominick DeJoy, Jr. v. Louis DeJoy and Michael DeJoy 99 CVS 12425 (Guilford County)

Dear Mr. Churchill:

Enclosed please find an original and one copy of an order setting scheduling and settlement conference in the above-referenced case. Please file the original and return a filed copy to me in the attached self-addressed envelope

Thank you for your assistance. Please contact me if you have any questions regarding this matter.

Sincerely

Juliet E. Holmes Judicial Assistant

cc: (via facsimile) Richard B. Fennell, Esq. Ronald R. Davis, Esq. H. Grady Barnhill, Esq.

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200 S. Elm Street, Suite 200 Greensboro, N. C. 27401 Telephone (336) 334-5252 Facsimile (336) 334-5162

STATE OF NORTH C	File No 99-CVS-12425 In The General Court Of Justice				
Vame of Plaintiff 1	County	1	Distr	ict 🖪 Supe	rior Court Divisi
Dominick DeJoy Jr. 00 / 200	AH11:15		GENER	RAL	
Name of Plaintiff 2		Same and Shake	IL ACTION C		
Tax ID/SSN	C~~	1 -	(b), Rules of Practice		
Name of Plaintiff 3		Name And Address	Cif ABorney Or Party e or change of addre	, If Not Repre	
Tax 10/55N		G. Russell Ko		annes an a	ege St.
VERSUS	and the plant of the second states	Charlotte, NC	28202		
Vame of Defendant 1 Louis DeJoy		Attorney Bar No 12459		a land	and the second
Tax ID/SSN	Yes No	📕 Initial Appea	rance in Case	Char	ge of Address
Vame of Defendant 2 MICHAEL DEJOY		Name Of Fam James, McElroy	& Diehl, P.A.		
ax ID/SSN	Summon's Submitted	Tax ID No	Telephone No	FAX	
Jame of Defendant 3	Yes No	56-0986309 Counsel for	372-9870	34.	2-5858
Jury Demanded In Pleading? Yes		Amount in co	ontroversy does r inditration CLAIM FOR REL		\$15,000
	ack) (ESOL) Response) DLA) befendants On Back) First Set of Requests F(Check one) ese same eard testimony or	Appointme Attachmen Claim and Collection Condemna Contract (C Discovery Injunction (Medical Ma Minor Setti Money Ow Negligence Negligence Negligence Negligence Negligence Real Proper	Scheduling Order	PRC) TTC) T) (DSCH)) (MVNG) A (MVLN) State Convid perty (POP	the second se
entered orders in this action or in a previously these same parties NOTE: Small claims are exen	opt from cover sheets	the second s			
these same parties	pt from cover sheets	Signatur Of Attorn	Con ma	E/Sm	

de,

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STATE OF NORTH CAROLINA COUNTY OF GUILFORD

LOUIS DEJOY and MICHAEL DEJOY.

Defendants.

DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION

Plaintiff Dominick DeJoy, Jr. answers Defendants' First Set of Requests for Admission as follows:

REQUEST FOR ADMISSION NO. 1: Attached hereto as Exhibit "1" is a true and correct copy of a Shareholders' Agreement dated January 1, 1998.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 2: The signature of Plaintiff on Exhibit "1" is genuine.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 3: Plaintiff signed Louis DeJoy's signature on a check.

RESPONSE: Admitted

This the 20 day of April, 1999.

JAMES, MCELROY & DIEHL, P.A.

G. Russell Kornegay, If Richard B. Fennell Katherine Line T. Kelly Ann L. Hester 600 South College Street Charlotte, North Garolina 28202 Telephone: (704) 372-9870 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of April, 2000, the foregoing *Plaintiff's Answers to Defendants' First Set of Requests for Admission* was duly served upon counsel for Defendants by depositing a copy thereof in the United States Mail, sufficient first class postage prepaid, addressed as follows:

Ronald R. Davis Womble Carlyle Sandridge & Rice Post Office Drawer 84 Winston-Salem, North Carolina 27102

JAMES, MCELROY & DIEHL, P.A.

d B. Cennell Richard B. Fennell

STATE OF NORTH CAROLINA GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO: 99 CVS 12425

Dominick Dejoy Jr.

Plaintiff(s),

vs

ORDER

Louis DeJoy and Michael DeJoy

Defendant(s).

THIS CAUSE came on to be heard and was heard before the undersigned Senior Resident Superior Court Judge of the Eighteenth Judicial District upon a written motion filed by the [x] plaintiff(s)/[x] defendant(s) to dispense with the Hediated Settlement Conference heretofore ordered herein.

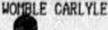
The Court is of the opinion that the Motion should be [x] Allowed/[] Denied.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED, in the discretion of the Court, that the Motion be and the same is hereby [x] ALLOWED/[] DENIED.

This the _____ day of ____ September _____2000

Douglas Albright ₩. Senior Resident Superior Coart Judge

cc: Ronald Davis G. Russell Kornegay & Richard Fennell AUG- 30-00 WED 12:32 PM WOME



FAX NO 3387213880



WOMBLE CARLYLE SANDRIDGE

& RICE

A PROFESSIONAL LINITED

LIANILITY COMPANY

200 West Second Street Winston-Salem, NC 27101

Melling Address: Post Office Drawer 84 Winston-Salem, NC 27102 Telephone: (336) 721-3660 Fax: (336) 721-3660

Ronald R. Drvis Direct Dial: (336) 721-3771 Direct Fax: (336) 726-6006 E-mail: Rdavis@wcar.com

August 30, 2000

Ms. Debbie Burr Trial Court Administrator Guilford County Superior Court Post Office Box 3008 Greensboro, NC 27402

Via Fax (336) 574-4396 and First Class Mail

Re: Dominick DeJoy, Jr. v. Louis DeJoy and Michael DeJoy; Case No.: 99 CVS 12425

Dear Ms. Burr:

I represent the Defendants in the referenced matter, and Rich Fennell represents the Plaintiff. This letter shall serve as a joint response from Mr. Fennell and me to the Court's Order for Mediated Settlement Conference and Trial Calendar Notice. All parties participated in a two-day mediation for this case (and another related matter) on May 15-16, 2000. Although the lawsuit was not resolved at mediation, the parties made significant progress and have continued their settlement negotiations with the assistance of Judge Tenille, to whom this matter is assigned. Thus, the parties' joint response to the Court's order is that they have already complied with the order that the case be mediated by December 19, 2000, and that they hope that they will be able to reach an amicable resolution of their disputes.

With best regards,

Very truly yours,

ATLANTA / CHAPLOTTE / RALEIGH / RESEARCH TRIANGLE PARK / WASHINGTON, D.C. / WINSTON-SALEM

Ronald R. Davis

RRD/rrd

cc: Richard B. Fennell, Esq. R. Frank Murphy, II, Esq.

Via Fax (704) 333-5508

P. 02

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE COUNTY OF GUILFORD 00 SEP 15 MM 8: 26

DOMINICK DEJOY, JR., Plaintiff,	BY	
v .		99-CVS-12425

LOUIS DEJOY and MICHAEL DEJOY,

Defendants.

NEW BREED, INC.,

up remaile

Plaintiff,

٧.,

ν.

DOMINICK DEJOY, JR.,

Defendant,

00-CVS-3751

LOUIS DEJOY, MICHAEL DEJOY and NEW BREED TRANSFER CORP.,

Third Party Defendants.

NOTICE

A case management conference will be held in the above-captioned matters on September 19, 2000 at 9:30 a.m. at the North Carolina Business Court, 200 South Elm Street, Suite 200, Greensboro, North Carolina.

This the 13th day of September, 2000.

Honorable Ben F. Tennille Special Superior Court Judge for Complex Business Cases

Parties Served (via facsimile): Richard B. Fennell, Esq. Ronald R. Davis, Esq. H. Grady Barnhill, Esq. Daniel R. Taylor, Esq.

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IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 2.9. 99-CVS-12425
-
NOTICE OF FILING AFFIDAVIT OF SERVICE
STATE AND

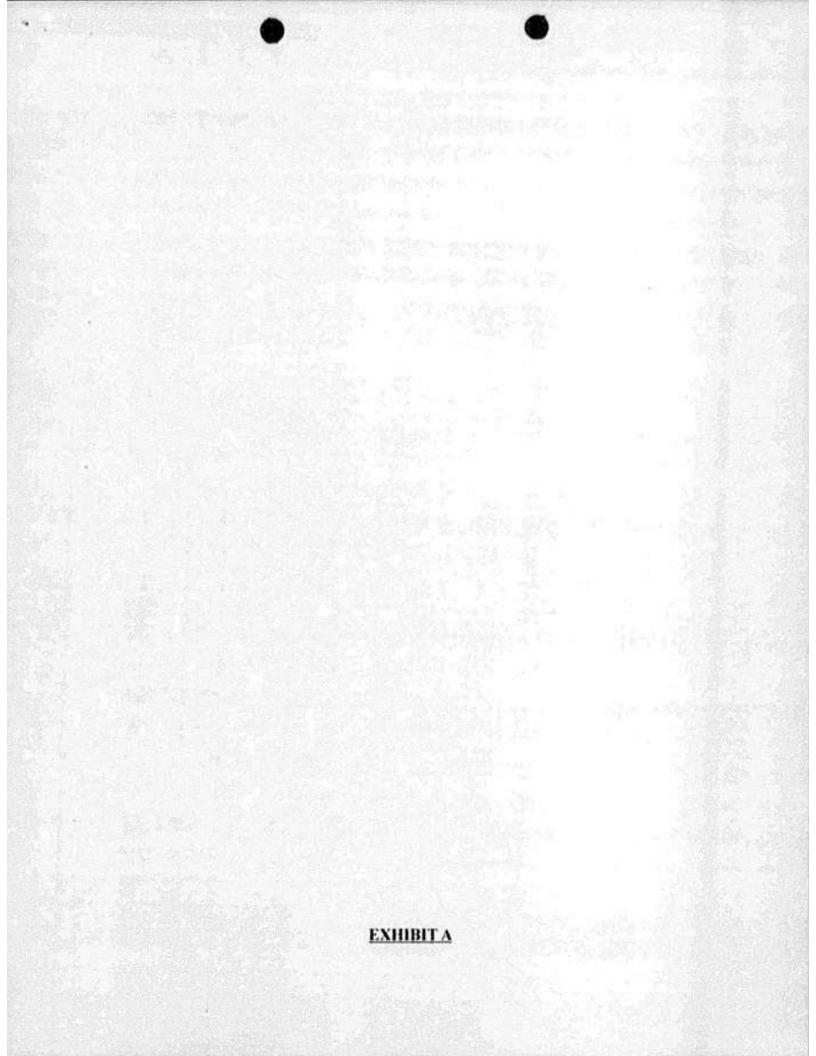
Plaintiff, through undersigned counsel, hereby files the Affidavit of Dominic Dellaporte demonstrating that Defendant Michael DeJoy was personally served with the Summons and Complaint on February 5, 2000. The original Affidavit of Dominic Dellaporte is attached as Exhibit A.

The original Alias and Pluries Summons, a copy of which was served upon Michael DeJoy along with the Complaint, is attached as Exhibit B.

This the 29 thay of February, 2000.

JAMES, McELROY & DIEHL, P.A.

G Russell Kornegay, III Richard B. Fennell Katherine Line T. Kelly Ann L. Hester 600 South College Street Charlotte, North Carolina 28202 Telephone: (704) 372-9870 Attorneys for Plaintiff





Demovsky Lawyer Service

Premier Nationwide Document Retrieval and Process Service Company

STATE OF NORTH CAROLINA IN THE GENER/ COUNTY OF GUILFORD SUPERIOR COU

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION

DOMINICK DEJOY, JR.,

Plaintiff,

Index No. 99-CVS-12425

-against-

AFFIDAVIT OF SERVICE

LOUIS DEJOY and MICHAEL DEJOY.

Defendants. X STATE OF NEW YORK) S.S.: COUNTY OF NEW YORK)

DOMINIC DELLAPORTE, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, DLS, INC., and is not a party to this action.

That on the 5^{*} day of February, 2000, at approximately 10:00 AM, deponent served a true copy of the SUMMONS AND COMPLAINT upon MR. MICHAEL DEJOY at 95 Manetto Hill Road, Huntington, New York, by personally delivering and leaving the same with MR. MICHAEL DEJOY at that address. At the time of aervice, deponent asked MR. MICHAEL DEJOY whether he is in active military service for the United States of America or for any state in the United States in any capacity whatever and received a negative reply.



Demovsky Lawyer Service

Premier Nationwide Document Retrieval and Process Service Company

MR. MICHAEL DEJOY is a white male, approximately 38 years of age, stands

approximately 5 feet 6 inches tall, weighs approximately 145 pounds with black hair and dark

eyes.

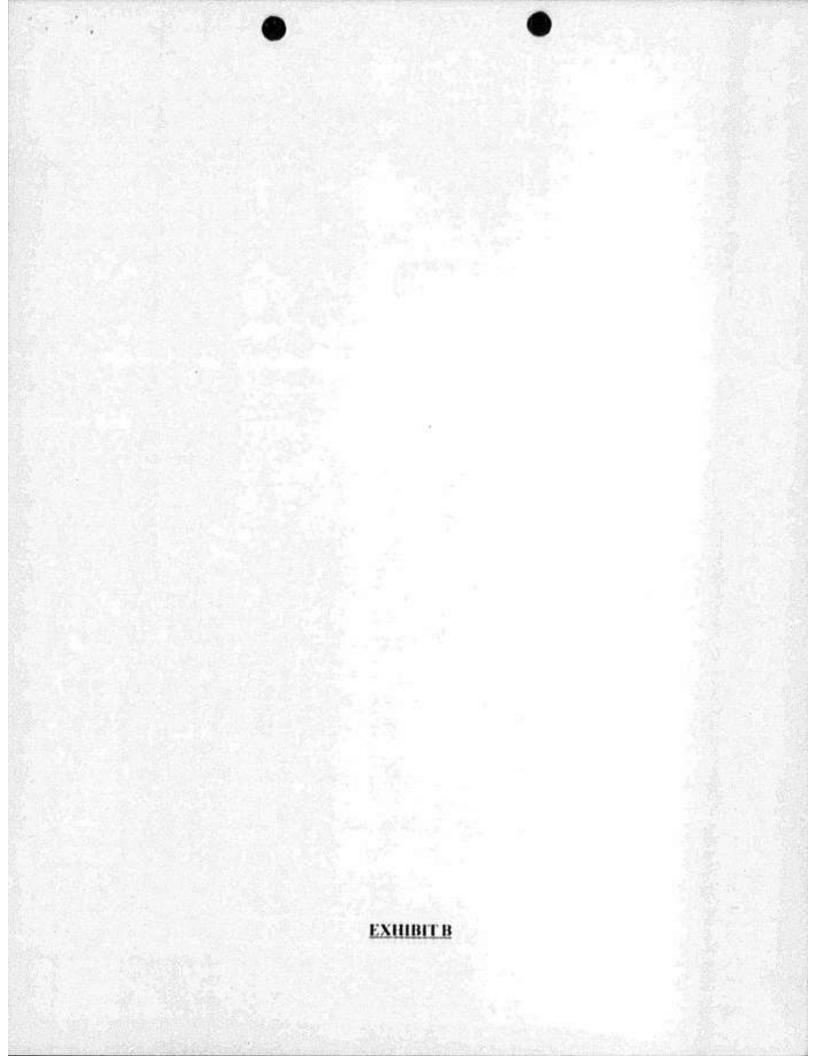
DOMINIC DELLAPORTE

849217

Sworn to before me this -15th day of February, 2000

NOTARY PUBLI

HOWARD DANIEL GOLDMAN Notary Public, State of New York No. 31.5062405 Qualified in New York County Cartificate field in New York County Commission Expires Jury 1, 2000



STATE OF NORTH CAROLINA	File No 99-CVS-12425
GUILFORD County	In the General Court of Justice District Superior Court Division
Name of Plaintif DOMINICK DEJOY, JR.	
1501 Regents Park Lane	CIVIL SUMMONS
Sty, State, Zip	
Greensboro, NC 27455 VERSUS	
VERSUS lame of Defendant(s)	G.S. 1A-1, Rules 3
LOUIS DEJOY MICHAEL DEJOY	Alias and Pluries Summons December 29, 1999 Date Last Summons Issued
To Each Of The Defendant(s) Named Below:	
Name & Address of Defendant 1	Name & Address of Defendant 2
LOUIS DEJOY c/o New Breed, Inc., 4043 Piedmont Parkway High Point, NC 27265	MICHAEL DEJOY 95 Manetto Hill Road Huntington, New York 11743
to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Su	on the plaintiff or plaintiff's attorney within thirty (30) Inswer by delivering a copy to the plaintiff or by mailing it uperior Court of the county named above.
If you fail to answer the complaint, the plaintiff will apply to t	he Court for the relief demanded in the complaint.
G. Russell Kornegay, III James, McElroy & Diehl, P.A. 600 S. College St. Charlotte, NC 28202	Date Issued -26-00 Tene Signature Challer William Deputy CSC Assistant CSC Clerk of Superior Court
	Date Issued Time
This summons was originally issued on the date indicated above and returned not served. At the request of the plaiotiff, the time within which this	Signature
Summons must be served is extended thirty (30) days.	Deputy CSC Assistant CSC Clerk of Superior Court
NOTE TO PARTIES: Many counties have MANDATORY ARBITRAT \$15,000 or less are heard by an arbitrator before arbitration, and, if so, what procedure is to be fol	TON programs in which most cases where the amount in controversy is trial. The parties will be notified if this case is assigned for mandatory lowed.
NDC-CV-100	Dver)

	RETURN OF	SERVICE
I certify that this Summons	and a copy of the complaint were re	ceived and served as follows:
	DEFEND	ANT 1
Date Served	the second se	ane Of Defendant
	<u> </u>	OUIS DEJOY
By delivering to the de	rendant named above a copy of the	summons and complaint.
By leaving a copy of the named above with a p	he summons and complaint at the dv erson of suitable age and descretion	veiling house or usual place of abode of the defendant of then residing therein.
As the defendant is a the person named be		delivering a copy of the summons and complaint to
kame And Address Of Person Wit	h Whom Copies Left (If corporation, give title	of person copies left with:
Other manner of service (s	pecifyl	
Defendant WAS NOT serve	ed for the following reason.	
	DEFEND	ANT 2
Date Served 2-5-00	The second se	ame Of Defendant NCHAEL DEJOY
By leaving a copy of the named above with a p	erson of suitable age and descretion corporation, service was effected by	velling house or usual place of abode of the defendant
	h Whom Copies Left (if corporation, give title	of exercise coming laft with:
95 MANETTO HILL R HUNTINGTON, NEW Y	CAD	
Other manner of service (s	pecify)	
Defendant WAS NOT serve	ed for the following reason.	
Service Fee Paid	Date Received	PROCESS SERVER, DOMINIC DELLAPORT
Paid By	Date Of Return	County NEW YORK
AOC-CV-100, Side Two Rev. 976		at Here York AD A this sto by tork County of February to before we this sto by tork County or to before we this sto by tork County or to before we tork County or to before we tork County or to before we tork County or to be before we tork County or to be before we tork County or to be before we this sto by to be before we tork County or to be before we then sto by the before we then sto by to be be be before we then sto by to be

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF FILING AFFIDAVIT OF SERVICE has this date been served upon the DEFENDANTS' counsel of record by depositing a copy of same in the United States Mail, sufficient postage prepaid, addressed to the Defendants' counsel as follows:

> Ronald R. Davis H. Grady Barnhill Womble Carlyle Sandridge & Rice, PLLC Post Office Drawer 84 Winston-Salem, North Carolina 27102

This the 29 Hay of February, 2000.

JAMES, McELROY & DIEHL, P.A.

By: J. Russell Kornegan, III

G. Russell Kornegay, III 600 South College Street Charlotte, North Carolina 28202 (704) 372-9870 Attorneys for Plaintiff

STATE OF NORTH CA	AROLINA		2	99-CVS-12425
Guilford	County	Section 201		the General Court Of Justice
Name of Plaintiff 1 Dominick DeJcy Jr. Tax ID/SSN		14 19 34 36	GENER	AL
	a second second	CIN	IL ACTION C	OVER SHEET
Vame of Plaintiff 2	ШY	mil		UBSEQUENT FILING
Tax ID/SSN				For Superior and District Cour
lame of Plaintiff 3		Name And Address		If Not Represented (complete
Tex 10/35N		G. Russell Kon		00 S. College St.
VERSUS	and the second second	Charlotte, NC		oo s. conege st.
Vame of Defendant 1		Attorney Bar No		and an end only one of the
Louis DeJoy		12459	1974 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 - 1984 -	
Tax ID/SSN	Summons Submitted	👩 Initial Appea	rance in Case	Change of Address
Vame of Defendant 2		Name Of Firm		
MICHAEL DEJOY	Summons Submitted	James, McElroy Tax ID No.	and the second se	TENTIL
ar reader	Yes No	56-0986309	Telephone No 372-9870	FAX No 342-5858
lame of Defendant 3	1.64	Counsel for		
ax ID/SSN	Summons Submitted	Ail Plaintiffs	All Defendants Or	ily(List Party(ies) Represented
ar its 2-24	Yes No	1.		
Jury Demanded In Pleading? Yes	and the second s	Amount in co	onfroversy does n	ot exceed \$15,000
TYPE OF PLEADING	the second s	Stipulate to a	CLAIM FOR RELI	FE FOR
(check appropriate box) Amended Answer/Reply (AMND-Res Amended Complaint (AMND) Answer/Reply (ANSW-Response) Complaint (COMP) Confession Of Judgement (CNFJ) Counterclaim vs. (CTCL) All Plaintiffs Only (List on back) Crossclaim vs. (List on back) Extend Statute of Limitations, Rule 9 Extend Time For An Answer (MEOT Extend Time For Complaint (EXCO) Rule 12 Motion In Lieu Of Answer (MEOT Third Party Complaint (List Third Party D) (TPCL) Other: Motion and Order for Extension of Discovery AFFIDAVIT FOR JUDICIAL ASSIGNMEN District Judge previously filed action involving the parties/issues, the assigned judge is District Judge previously these same parties	ack) (ESOL) - Response) IDLA) Defendants On Back) Time to Respond to T (Check ons) ese same eard testimony or	Appointme Attachmen Claim and Collection Condemna Contract (C Discovery Injunction () Medical Ma Minor Setti Money Ow Negligence Negligence Negligence Negligence Real Proper Contract Line Contract (C Contract (C)	Scheduling Order INJU) alpractice (MDML ement (MSTL) ed (MNYO) e - Motor Vehicle (- Other (NEGO) cle Lien G S. 44A	PRC) TTC) T) (DSCH) (MVNG) (MVNG) State Conviction (PLDP) perty (POPP)
NOTE: Small claims are exen	npt from cover sheets	Signatury Of Attorne	WRath I	HT/.
3 9 00 NOTE: All papers filed in civil actions, specia	TANKAR INCOMEND	1 blun	ell'hornes	

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF GUILFORD	99-CVS-12425
1	MD
DOMINICK DEJOY, JR.,	
Plaintiff,	
vs.)	PLAINTIFF'S MOTION FOR
	EXTENSION OF TIME TO FILE AND
LOUIS DEJOY and MICHAEL) DEJOY,	SERVE DISCOVERY RESPONSES
) Defendants.)	

MOTION

Plaintiff Dominick DeJoy, Jr., through undersigned counsel, hereby moves the Court, pursuant to Rule 6(b) of the North Carolina Rules of Civil Procedure, to extend the time for serving discovery responses, and for filing responses to Requests for Admission, by an additional thirty (30) days, up to and including April 21, 2000, because he needs additional time in which to prepare a response. In support of this Motion, Plaintiff shows the Court that Defendants served him, *via* hand-delivery on February 21, 2000, with Defendant's First Set of Requests for Production and Defendant's First Set of Interrogatories and Requests for Admission, and that the time for responding to these discovery requests has not expired.

This Motion is made in good faith and not for the purpose of delay.

This the 90 day of March, 2000.

JAMES, McELROY & DIEHL P.A.

C. Ressell Kornegay, III Richard B. Fennell Katherine Line T. Kelly Ann L. Hester 600 South College Street Charlotte, North Carolina 28202 Telephone: (704) 372-9870 Attorneys for Plaintiff

CC. TA CC mailed

•

ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned Clerk of Superior Court on Motion of Plaintiff for an Order extending time for serving discovery responses, and for filing responses to Requests for Admission, pursuant to Rule 6 of the North Carolina Rules of Civil Procedure; and it appearing to the Court that the time allowed has not expired and that the Motion should be allowed:

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff's time for serving responses to Defendant's First Set of Requests for Production and Defendant's First Set of Interrogatories and Requests for Admission, and for filing responses to Defendant's First Set of Requests for Admission, be extended to and including the 21st day of April, 2000.

This, the 17% day of March, 2000.

Guilford County, North Carolina

FILED 00 MAR 18 AM 3: 07

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE AND SERVE DISCOVERY RESPONSES has this date been served upon the DEFENDANTS' counsel of record by depositing a copy of same in the United States Mail, sufficient postage prepaid, addressed to the Defendants' counsel as follows:

Ronald R. Davis H. Grady Barnhill Womble Carlyle Sandridge & Rice, PLLC Post Office Drawer 84 Winston-Salem, North Carolina 27102 This the State day of March, 2000.

JAMES, MCELROY & DIEHL, P.A.

By: A for

G/Rrssell Kornegay, III 600 South College Street Charlotte, North Carolina 28202 (704) 372-9870 Attorneys for Plaintiff

			-	MAR # \$ 2000 A.
TATE OF NORTH CAP	ROLINA			File No. 99 CVS 12425 m No.
Guilford	County	FILED MR-s Phila		neral Court Of Justice X Superior Court Division
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Louis DeJoy and M	the second s			
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Ronald R. Davis		Womble, (Carlyle, Sandridge	& Rice, PLLC
P O. Drawer 84 Winston-Salem, NC 27102		56-0308470	(336) 72	-3771 (336) 726-600
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NOTE: All papers fied in civil actions, special proceedings and estates shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing is a format prescribed by the Administrative Diffice of the Courts. The Clerk of Superior Court shall require a party to refle any paper which does not include the required cover sheet.

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STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
COUNTY OF GUILFORD 00 MIR - 6 PM	99-CVS-12425
DOMINICK DEJOY, JR ,	
Plaintiff,	
v	JOINT MOTION THAT CASE BE DESIGNATED AS "COMPLEX
LOUIS DEJOY and MICHAEL DEJOY.	BUSINESS" AND TRANSFERRED TO THE BUSINESS COURT
Defendants.	

Plaintiff Dominick DeJoy, Jr. and Defendants Louis and Michael DeJoy respectfully move the Court, pursuant to under Rules 2.1 and 2.2 of the General Rules of Practice, that this case be designated as a "complex business case" and for a recommendation from this Court that this matter be transferred to the Honorable Judge Ben Tenille, Superior Court Judge for Complex Business Cases (the "Business Court"), and in support thereof, respectfully show the Court that:

The complaint in this case was filed on January 18, 2000.

2. Defendants appeared and answered on February 21, 2000, requesting in their answer that Plaintiff concur with a request to this Court that this case be designated as a "complex business case" and a recommendation from this Court that this matter be transferred to the Business Court.

3. Plaintiff agrees and hereby requests that this Court recommend to the Chief Justice that this case be designated as a "complex business case" and a recommendation from this Court that this matter be transferred to the Business Court. Accordingly, each party agrees and consents to the relief requested in this motion.

 Good cause exists for this request because this case involves questions of corporate governance and the duties among various corporate principals. This case involves numerous family-

owned corporate entities in which the parties either own shares, serve as directors, or serve as officers. Plaintiff has alleged, among other things, that Defendants fraudulently created many of these corporate entities and fraudulently induced Plaintiff into signing a shareholders' agreement that limits Plaintiffs rights in connection with a corporate reorganization. Defendants have plead various defenses, including the shareholders' agreement and various other corporate actions by Plaintiff. The case is likely to involve complex evidentiary and corporate legal issues. The parties also anticipate that the case will involve substantial pretrial discovery, including voluminous document productions and numerous depositions.

 The parties agree that a transfer to Judge Ben Tenille, Superior Court Judge for Complex Business Cases, will promote the efficient administration of justice.

This the 6th day of March, 2000.

Richard B. Fennell N.C. State Bar No. James, McElroy & Diehl, P.A. 600 South College Street Charlotte, NC 28202 (704) 372-9870

Attorney for Plaintiff

Fundled at ami

Ronald R. Davis N.C. State Bar No. 20408 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC Post Office Drawer 84 Winston-Salem, NC 27102 (336) 721-3600

Attorney for Defendants

MAR-06-2000 15:09 FROM: MCELROYEDIENL MAR-08-00 HON 11:54 AM WOMBLE CARLYLE

> owned corporate entities in which the parties either own shares, serve as directors, or serve as officers. Plaintiff has alleged, among other things, that Defendants fraudulently created many of these corporate entities and fraudulently induced Plaintiff into signing a shareholders' agreement that limits Plaintiffs rights in connection with a corporate reorganization. Defendants have plead various defenses, including the shareholders' agreement and various other corporate actions by Plaintiff. The case is likely to involve complex evidentiary and corporate legal issues. The parties also anticipate that the case will involve substantial pretrial discovery, including voluminous document productions and numerous depositions.

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FAX NO. 335/215000

P. 883/885

5. The parties agree that a transfer to Judge Ben Tenille, Superior Court Judge for Complex Business Cases, will promote the efficient administration of justice.

This the 6th day of March, 2000.

Richard B. Fennell N.C. State Bar No. __17398 __ James, McEiroy & Diehl, P.A. 600 South College Street Charlotte, NC 28202 (704) 372-9870

Attorney for Plaintiff

June le Romi

Ronald R. Davis N.C. State Bar No. 20408 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC Post Office Drawer \$4 Winston-Salem, NC 27102 (336) 721-3600

Attorney for Defandants

100 West Second Street Winston Salers, NC 27101

WOMBLE CARIYLE SANDRIDGE & RICE A PROPERTAIONAL LAMITED TYARGETTY COMPANY.

Malling Address Post Office Drawer #4 Winston Salem Nr 27102 Telephone (336) 721 1999 Fax (136) 771 3660 Web are: www.wcsration

March 6, 2000

SC

Renald R. Davis Direct Dial: (336) 721-3771 Direct Fax: (336) 726-6006 E-mail RDavisiewear com

VIA HAND-DELIVERY

The Honorable David L. Churchill Guilford County Clerk of Superior Court Courthouse P.O. Box 3008 201 S. Eugene Street Greensboro, NC 27401

Dominick DeJoy, Jr. v. Louis DeJoy and Michael DeJoy Re: 99 CVS 12425 (Guilford County)

Dear Mr. Churchill:

Enclosed for filing please find an original and two copies of a Joint Motion That Case Be Designated As "Complex Business" And Transferred To The Business Court.

Kindly file the Joint Motion and return a file stamped copy to our office via the courier delivering this correspondence.

Thank you in advance for your assistance.

With best regards,

Very truly yours,

Ronald R. Davis

RRD/sac Encl

G. Russell Kornegay, III, Esq. (w/encl) cc: Richard B. Fennell, Esq. (w/encl) The Honorable W. Douglas Albright (w/encl)

W#886276.3

ATLANTA / GREENVILLE, SC / CHARLOTTE / WINSTON-TALEM / RESEARCH TRIANGLE FARE / RALLING / WASHINGTON, DC

STATE OF NORTH C	AROLINA			99-CVS-12425
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	in the second			600 S. College St.
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Louis DeJoy		Attorney Bar No. 12459		
ax ID/SSN	Summons Submitted			In a second
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MICHAEL DEJOY		James, McElroy	& Diehl P A	
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ame of Defendant 3	Yes No	56-0986309 Coursel for	372-9870	342-5858
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STATE OF NORTH CAROLINA				99-CVS-12425
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		for initial appearance	e or change of addre	y in Not Represented (complete (\$3)
Tax ID/SSN	Contraction of the second	G. Russell Kor		600 C College Ct
VERSUS		Charlotte, NC		600 S. College St.
Name of Defendant 1		Attorney Bar No.		
Louis DeJoy Tar IDISSN		12459	-	
18110-224	Yes No	🖀 Initial Appear	ance in Case	Change of Address
Name of Defendant 2		Name Of Firm		
MICHAEL DEJOY	Summons Submitted	James, McElroy	& Diehl, P.A.	FAX No.
	Yes No	56-0986309	372-9870	342-5858
Name of Defendant 3		Counsel for		
Tax ID/SSN	Summons Submitted	All Plaintiffs	Defendants [] O	hly(List Party(ies) Represented)
	Yes No			
Jury Demanded In Pleading? Yes	No No	Amount in co	ntroversy does r	not exceed \$15,000
TYPE OF PLEADING	THE REAL PROPERTY.	and the second sec	CLAIM FOR REL	IEF FOR:
(check appropriate box) Amended Answer/Reply (AMND-Res) Amended Complaint (AMND) Answer/Reply (ANSW-Response) Complaint (COMP) Confession Of Judgement (CNFJ) Counterclaim vs. (CTCL) All Plaintiffs [] Only (List on back) Crossclaim vs. (List on back) (CRSS) Extend Statute of Limitations, Rule 9 (Extend Statute of Limitations, Rule 9 (Extend Time For An Answer (MEOT - Extend Time For Complaint (EXCO) Rule 12 Motion In Lieu Of Answer (ME Third Party Complaint (List Third Party De (TPCL) Other: Certificate of Service AFFIDAVIT FOR JUDICIAL ASSIGNMENT There is no previously-filed action involving the parties/issues, the assigned judge is District Judge previously-fitese same parties. NOTE: Small claims are example	ack) ESOL) Response) DLA) efendants On Back) (Check one) se same ard testimony or led action involving	Appointmer Attachment Claim and C Collection o Condemnat Contract (C Discovery S Injunction (I Medical Ma Minor Settle Money Owe Negligence Negligence Negligence Negligence Negligence Negligence Negligence Negligence Real Proper	icheduling Order NJU) Ipractice (MDML ment (MSTL) id (MNYO) - Motor Vehicle - Other (NEGO) Ie Lien G S. 444 ing Priv- Out-of- of Personal Pro- bility (PROD)	PŘC) ATTC) T) (DSCH) (MVNG) (MVNG) A (MVLN) State Conviction (PLDP) perty (POPP)
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STATE OF NORTH CAROLINKAR - I	PH ANTHE GENERAL COURT OF JUSTICE
COUNTY OF GUILFORD	SACES SUPERIOR COURT DIVISION 99-CVS-12425
DOMINICK DEJOY, JR.,	Contraction States and States
Plaintiff,	;
VS.) <u>CERTIFICATE OF SERVICE</u>
LOUIS DEJOY and MICHAEL DEJOY,	
Defendants.	

I hereby certify that the Affidavit of Service attached as Exhibit A hereto has this date been served upon the Defendants by depositing a copy of same in the United States Mail, sufficient postage prepaid, addressed to the Defendants' attorneys of record as follows:

> Ronald R. Davis H. Grady Barnhill Womble Carlyle Sandridge & Rice, PLLC Post Office Drawer 84 Winston-Salem, North Carolina 27102

This the 29th day of February, 2000.

JAMES, McELROY & DIEHL, P.A.

milte

G. Russell Kornegay, III Richard B. Fennell Katherine Line T. Kelly Ann L. Hester 600 South College Street Charlotte, North Carolina 28202 Telephone: (704) 372-9870 Attorneys for Plaintiff



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STATE OF NORTH CAROLINA JULI 27	IN THE GENERAL COURT OF JUSTICE
	99-CVS-12425
DOMINICK DEJOY, JR.,	Gut
Plaintiff,) vs.)	AFFIDAVIT OF SERVICE
	month of the second
LOUIS DEJOY and MICHAEL) DEJOY,	
Defendants.	

G. RUSSELL KORNEGAY, III, being first duly sworn, deposes and says as follows:

 I am a citizen and resident of the State of North Carolina. I am over the age of eighteen (18) years. I am under no legal disability, and I make this Affidavit upon my personal knowledge.

 I am an attorney licensed to practice in the State of North Carolina, and I represent Plaintiff in this action.

3. On January 4, 2000, via certified mail, return receipt requested. number Z 027 082 480, my office sent a copy of an Application and Order Extending Time to File Complaint and Civil Summons to be Served with Order Extending Time to File Complaint in this matter addressed to Defendant, MICHAEL DEJOY, 95 Manetto Hill Road, Huntington, New York 11743. [The original "Receipt for Certified Mail" is attached hereto as Exhibit A.]

4. The green Return Receipt Card was returned on January 10, 2000, indicating that the Application and Order Extending Time to File Complaint and Civil Summons to be Served with Order Extending Time to File Complaint was delivered on January 7, 2000. [The original green "Domestic Return Receipt" is attached hereto as Exhibit A.]

5. On January 18, 2000, via certified mail, return receipt requested, number Z 157 771 650, my office sent a copy of a Complaint and Delayed Service of Complaint in this matter addressed to Defendant, MICHAEL DEJOY, 95 Manetto Hill Road, Huntington, New York 11743. [The original "Receipt for Certified Mail" is attached hereto as Exhibit B.] The green Return Receipt Card was returned on January 24, 2000, indicating that the Complaint and Delayed Service of Complaint was delivered on January 21, 2000. [The original green "Domestic Return Receipt" is attached hereto as Exhibit B.]

sell Kornegay, III

SWORN and SUBSCRIBED before me this _26th day of January, 2000.

e I. ynhonef Notary Public

My Commission Expires: 7-25-2001

EXHBIT A

Z'027 082 480 US Postal Service Receipt for Certified Mail No Insurance Coverige Provided. Do not use for International Mail (See reverse) Michael DeJoy 95 Manetto Hill Road Four Office State 4 20 Code Huntington, NY 11743 Postage \$.33 Cetifed Fee 1.40 Special Delivery Fee **Restricted Delivery Fee** 1995 m Receipt Showing to .25 & Date Delyared C 3 Return Pacetet Showing to When Date & Addresson & Address, 1 0 3800 TOTAL PORTA Fees 2,98 PS Form January ALH

SENDER COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
 Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A Received by (Please Print Clearly) B. Diffe of Delivery 1 7/00 () C. Signatu P. Jour March L. B. Agent X M. P. Jour Land La Bastressee D. Is delivery address different from item 17 1944
Michael DeJoy 95 Manetto Hill Road Huntington, NY 11743	If YES, enter delivery address tokow
	3. Service Type Differentied Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.
	4. Restricted Delivery? (Extra Fee)

PS Form 3811, July 1999

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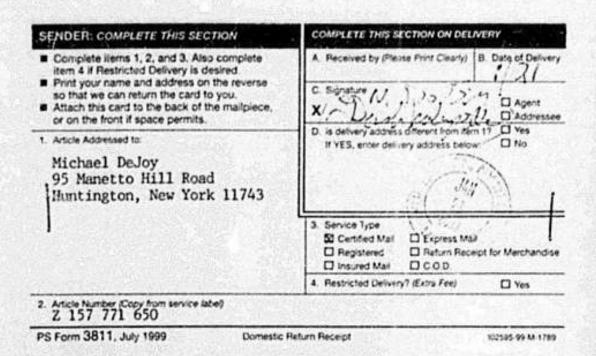
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EXHIBIT B

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STATE OF NORTH CABOLINA PH 3: 16 IN THE GENERAL COURT OF JUSTICE
COUNTY OF GUILFORD CREATE CREATE CREATE COUNTY OF GUILFORD CREATE CREATE CREATE COUNTY OF GUILFORD CREATE CREAT
DOMINICK DEJOY, JR.,)
) Plaintiff,
vs.) <u>NOTICE OF FILING AFFIDAVIT OF</u>) <u>SERVICE</u>
LOUIS DEJOY and MICHAEL) DEJOY,
) Defendants.)

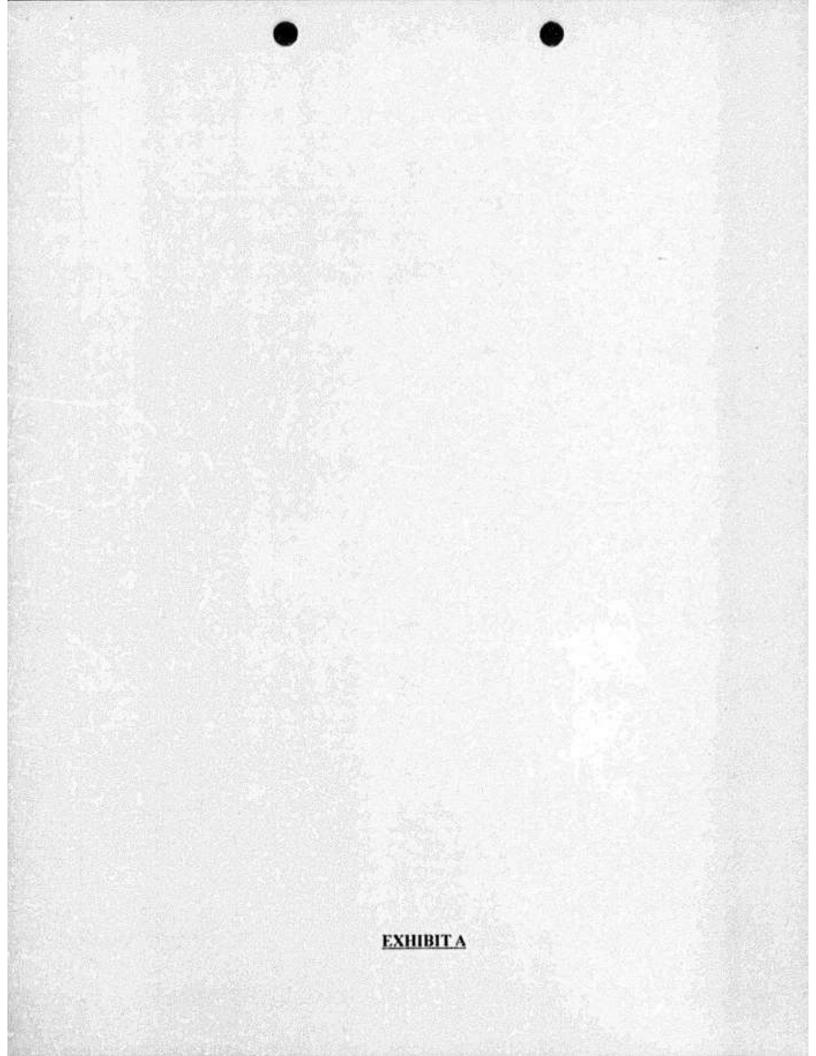
Piaintiff, through undersigned counsel, hereby files the Affidavit of Dominic Dellaporte demonstrating that Defendant Michael DeJoy was personally served with the Summons and Complaint on February 5, 2000. The original Affidavit of Dominic Dellaporte is attached as Fxhibit A.

The original Alias and Pluries Summons, a copy of which was served upon Michael DeJoy along with the Complaint, is attached as Exhibit B.

This the 29 Hay of February, 2000.

JAMES, MCELROY & DIEHL, P.A.

GRussell Kornegay, III Richard B. Fennell Katherine Line T. Kelly Ann L. Hester 600 South College Street Charlotte, North Carolina 28202 Telephone: (704) 372-9870 Attorneys for Plaintiff





Demovsky Lawyer Service

Premier Nationwide Document Retrieval and Process Service Company

STATE OF NORTH CAROLINA COUNTY OF GUILFORD SUPERIOR COURT DIVISIONX

IN THE GENERAL COURT OF JUSTICE

DOMINICK DEJOY, JR.,

Plaintiff,

Index No. 99-CVS-12425

-against-

AFFIDAVIT OF SERVICE

LOUIS DEJOY and MICHAEL DEJOY.

Defendants.

.....X STATE OF NEW YORK) SS: COUNTY OF NEW YORK)

DOMINIC DELLAPORTE, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, DLS, INC., and is not a party to this action.

That on the 5th day of February, 2000, at approximately 10:00 AM, deponent served a true copy of the SUMMONS AND COMPLAINT upon MR. MICHAEL DEJOY at 95 Manetto Hill Road, Huntington, New York, by personally delivering and leaving the same with MR. MICHAEL DEJOY at that address. At the time of service, deponent asked MR. MICHAEL DEJOY whether he is in active military service for the United States of America or for any state in the United States in any capacity whatever and received a negative reply.



Demovsky Lawyer Service Premier Nationwide Document Retrieval and Process Service Company



MR. MICHAEL DEJOY is a white male, approximately 38 years of age, stands

approximately 5 feet 6 inches tall, weighs approximately 145 pounds with black hair and dark

cycs.

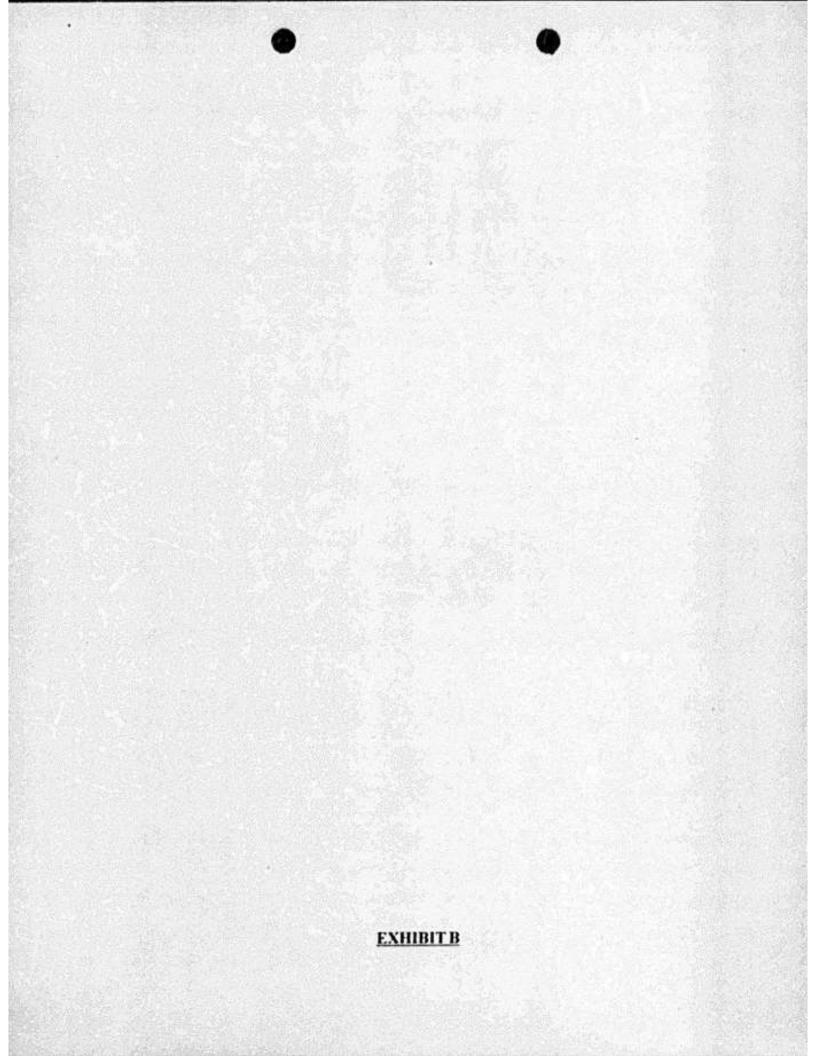
DOMINIC DELLAPORTE

849217

Sworn to before me this 15th day of February, 2000

NOTARYPUBLIC

HOWARD DANIEL GOLDMAN Notary Public, State of New York No. 31-5062405 Qualified in New York County Certificate filed in New York County Commission Expires July 1, 2000



STATE OF NORTH CAROLINA		File No 99-CVS-12425
GUILFORD County		In the General Court of Justice District Superior Court Division
Varme of Plaintiff DOMINICK DEJOY, JR.	a the second	
Iddress 1501 Regents Park Lane		
ity, State, Zp		L SUMMONS
Greensboro, NC 27455		
VERSUS		G.S. 1A-1, Rules 3
lame of Delendant(s) LOUIS DEJOY	Alias and Pluries Summ	N/MS
MICHAEL DEJOY	December 29, 1999	
	Date Last Summons Issued	
To Each Of The Defendant(s) Named Below:	and a second second	
Name & Address of Defendant 1	Name & Address of Defenda	unt 2
LOUIS DEJOY	MICHAEL DEJOY 95 Manetto Hill Road Huntington, New York 11743	
c/o New Breed, Inc., 4043 Pledmont Parkway High Point, NC 27265		
 Serve a copy of your written answer to the complaint up days after you have been served. You may serve your a to the plaintif's last known address, and File the original of the written answer with the Clerk of S 	answer by delivering a copy uperior Court of the county i	to the plaintiff or by mailing it named above.
If you fail to answer the complaint, the plaintiff will apply to t	he Court for the relief dema	
Name and Address of Plaintiff's Attorney (if None, Address Of Plaintiff)	1-26-CO	1.28 DAM DEM
G. Russell Kornegay, III James, McElroy & Diehl, P.A. 600 S. College St.	Signature hulla	. 1 1002.
Charlotte, NC 28202	Ti Deputy CSC Assis	tant CSC Clerk of Superior Court
	1	
ENDORSEMENT	Date issued	
This summons was originally issued on the date	Signature	
indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended thirty (30) days.	A CONTRACTOR OF THE OWNER	
	Deputy CSC Assis	tant CSC Clerk of Superior Court
NOTE TO PARTIES: Many counties have MANDATORY ARBITRA \$15,000 or less are heard by an arbitrator befor arbitration, and, if so, what procedure is to be for	e trial. The parties will be notified	ises where the amount in controversy is if this case is assigned for mandatory

Persona and a second	RETURN	OF SERVICE
I certify that this Se	ummons and a copy of the complaint wer	e received and served as follows:
	DEFE	NDANT 1
Date Served		Name Of Defendant LOUIS DEJOY
By delivering	to the defendant named above a copy of	the summons and complaint.
By leaving a c named above	opy of the summons and complaint at the with a person of suitable age and descre	e dwelling house or usual place of abode of the defendant tion then residing therein.
As the defend the person nat	ant is a corporation, service was effected med below.	by delivering a copy of the summons and complaint to
Name And Address Of P	terson With Whom Copies Left (If corporation, give	fille of person copies left with)
Other manner of s	service (specify)	
Defendant WAS M	IOT served for the following reason.	
	DEFEN	IDANT 2
ate Served 2-5-00		Name Of Defendant MICHAEL DEJOY
named above t	with a person of suitable age and descret ant is a corporation, service was effected	dwelling house or usual place of abode of the defendant ion then residing therein. by delivering a copy of the summons and complaint to
	rson With Whom Copies Left (I corporation, give t	the of memory statistics (of units)
95 MANETTO H		
Other conner of s	ervice (specify)	
Defendant WAS N	OT served for the following reason.	
ervice Fee Paid	Date Received	PROCESS SERVER, DOMINIC DELLAPORT
aid By	Date Of Return	County NEW YORK
	HOWARD Notary Pu	to of New York 2/0
OC-CV-100, Side Two ev. 9/96	Outife	ison York County to before we thin 3th of

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF FILING AFFIDAVIT OF SERVICE has this date been served upon the DEFENDANTS' counsel of record by depositing a copy of same in the United States Mail, sufficient postage prepaid, addressed to the Defendants' counsel as follows:

.

Ronald R. Davis H. Grady Barnhill Womble Carlyle Sandridge & Rice, PLLC Post Office Drawer 84 Winston-Salem, North Carolina 27102

This the 29 day of February, 2000.

JAMES, McELROY & DIEHL, P.A.

By: J. Russell Korneyan, II

G. Russell Kornegay, III. 600 South College Street Charlotte, North Carolina 28202 (704) 372-9870 Attorneys for Plaintiff

FILED	
STATE OF NORTH CAROLINA-1 PH 3	B: IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF GUILFORD LFORD COUNTY	C.S.G. 99-CVS-12425
вүХ	<u> </u>
DOMINICK DEJOY, JR.,)	
) Plaintiff,	
vs.)	NOTICE OF FILING AFFIDAVIT OF
LOUIS DEJOY and MICHAEL) DEJOY,)	SERVICE
; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ;	
Defendants.)	

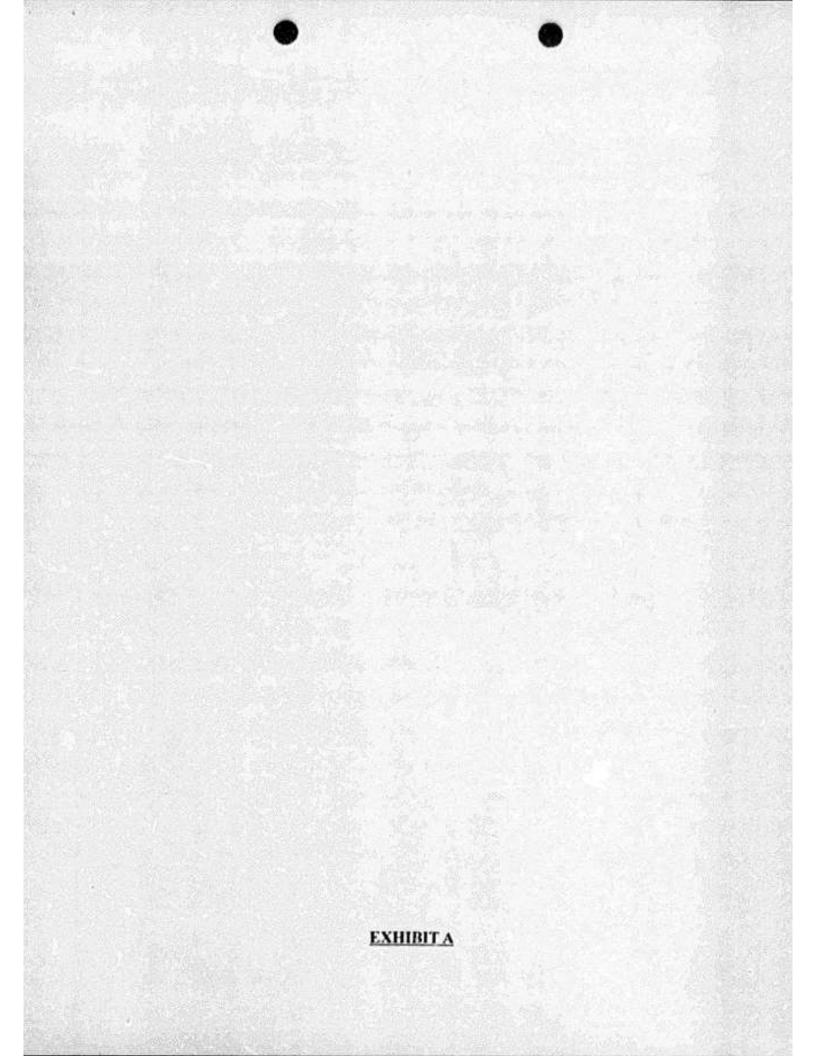
Plaintiff, through undersigned counsel, hereby files the Affidavit of Dominic Dellaporte demonstrating that Defendant Michael DeJoy was personally served with the Summons and Complaint on February 5, 2000. The original Affidavit of Dominic Dellaporte is attached as Exhibit A.

The original Alias and Pluries Summons, a copy of which was served upon Michael DeJoy along with the Complaint, is attached as Exhibit B.

This the 29 thay of February, 2000.

JAMES, MCELROY & DIEHL, P.A.

GRussell Kornegay, III Richard B. Fennell Katherine Line T. Kelly Ann L. Hester 600 South College Street Charlotte, North Carolina 28202 Telephone: (704) 372-9870 Attorneys for Plaintiff





Demovsky Lawyer Service Premier Nationwide Document Retrieval

and Process Service Company

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COUNTY OF GUILFORD SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

DOMINICK DEJOY, JR.,

Plaintiff,

Index No. 99-CVS-12425

-against-

AFFIDAVIT OF SERVICE

LOUIS DEJOY and MICHAEL DEJOY,

Defendants.

STATE OF NEW YORK) S.S.: COUNTY OF NEW YORK)

DOMINIC DELLAPORTE, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, DLS, INC., and is not a party to this action.

-----X

That on the 5th day of February, 2000, at approximately 10:00 AM, deponent served a true copy of the SUMMONS AND COMPLAINT upon MR. MICHAEL DEJOY at 95 Manetto Hill Road, Huntington, New York, by personally delivering and leaving the same with MR. MICHAEL DEJOY at that address. At the time of service, deponent asked MR. MICHAEL DEJOY whether he is in active military service for the United States of America or for any state in the United States in any capacity whatever and received a negative reply.



Demovsky Lawyer Service

Premier Nationwide Document Retrieval and Process Service Company

MR. MICHAEL DEJOY is a white male, approximately 38 years of age, stands

approximately 5 feet 6 inches tall, weighs approximately 145 pounds with black hair and dark

cycs.

DOMINIC DELLAPORTE

849217

Sworn to before me this 15th day of February, 2000

, NOTARY PUH

HOWARD DANIEL GOLDMAN Notary Public. State of New York No. 31-5062405 Qualitied in New York County Certificats filed in New York County Commission Expires July 1, 2000

EXHIBIT B

STATE OF NORTH CAROLINA	File No. 99-CVS-12425	
GUILFORD County	In the General Court of Justice	
DOMINICK DEJOY; JR.		
1501 Regents Park Lane	CIVIL SUMMONS	
lity, State, Zip Greensboro, NC 27455		
VERSUS	G S. 1A-1, Rules 3,	
lame of Deferidant(s)		
LOUIS DEJOY MICHAEL DEJOY	Alias and Pluries Summons December 29, 1999 Date Last Summons (ssued)	
To Each Of The Defendant(s) Named Below:		
Name & Address of Defendant 1	Name & Address of Delendent 2	
LOUIS DEJOY c/o New Breed, Inc., 4043 Piedmont Parkway High Point, NC 27265	MICHAEL DEJOY 95 Manetto Hill Road Huntington, New York 11743	
 You are notified to appear and answer the complaint of the plant of the plant of your written answer to the complaint upon days after you have been served. You may serve your a to the plaintiff's last known address, and File the original of the written answer with the Clerk of Su 	on the plaintiff or plaintiff's attorney within thirty (30) Inswer by delivering a copy to the plaintiff or by mailing it	
If you fail to answer the complaint, the plaintiff will apply to the		
Name and Address of Plaintif's Altorney (If None, Address Of Plaintiff) G. Russell Kornegay, III James, McElroy & Diehl, P.A. 600 S. College St. Charlotte, NC 28202	Date issued -26-60 Time. 28 I AM DEM Signature	
	Deputy CSC Assistant CSC Clerk of Superior Court	
	Date issued Time	
C ENDORSEMENT This summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended thirty (30) days.	Signature	
	Deputy CSC Assistant CSC Clerk of Superior Court	
	TON programs in which most cases where the amount in controversy is trial. The parties will be notified if this case is assigned for mandatory lowed.	
AOC-CV-109 Rev. 9/96 (1	Over)	

The start of the second	RETURN	OF SERVICE
I certify that this Summe	ons and a copy of the complaint we	re received and served as follows:
	OFFE	NDANT 1
Date Served	Dure	Name Of Datendant
		LOUIS DEJOY
By delivering to the	e defendant named above a copy of	the summons and complaint.
	of the summons and complaint at th a person of suitable age and descri	e dwelling house or usual place of abode of the defendant etion then residing therein.
As the defendant in the person named		d by delivering a copy of the summons and complaint to
Name And Address Of Person	With Whom Copies Left (If corporation, give	e title of person copies left with)
Other manner of service	e (specify)	
Defendant WA3 NOT s	erved for the following reason.	
	DEFE	NDANT 2
Date Served 2-5-00		Name Of Defendant MICHAEL DEJOY
named above with	a person of suitable age and descriptions a corporation, service was effected	e dwelling house or usual place of abode of the defendant etion then residing therein. d by delivering a copy of the summons and complaint to
Name And Address Of Fision	With Whom Copies Left (if corporation, give	e title of person copies left with)
95 MANETTO HILL HUNTINGTON, NEW	ROAD	
Other manner of servic	a (steciji)	
Defendant WAS NOT s	erved for the following reason.	
Service Fee Paid	Date Received	PROCESS SERVER, DOMINIC DELLAPORT
Paid By	Date Of Return	County NEW YORK
		x SMC
AOC-CV-100, Side Two	Qualifie	There york County, to before we thin sto of the story of
Rev. 9/96	Commission E	+ HA 1 2000 OF Febr. Y. 1000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF FILING AFFIDAVIT OF SERVICE has this date been served upon the DEFENDANTS' counsel of record by depositing a copy of same in the United States Mail, sufficient postage prepaid, addressed to the Defendants' counsel as follows:

> Ronald R. Davis H. Grady Barnhill Womble Carlyle Sandridge & Rice, PLLC Post Office Drawer 84 Winston-Salem, North Carolina 27102

This the 29 May of February, 2000.

JAMES, McELROY & DIEHL, P.A.

By: J. Russell Kornegar, II By set

G. Russell Kornegay, <u>III</u> 600 South College Street Charlotte, North Carolina 28202 (704) 372-9870 Attorneys for Plaintiff

FILED	
STATE OF NORTH CAROLINA 00 FEB 21, MM	0: 19IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF GUILFORD GUILFORD COUNT	99-CVS-12425
DOMINICK DELOY IR BY	find
DOMINICK DEJOY, JR., 81	0
Plaintiff,	
v.	NOTICE OF DEPOSITIONS
LOUIS DEJOY and MICHAEL DEJOY,	
Defendants.	

TO: DOMINICK DEJOY, JR. by and through his attorneys, G. Russell Korngay, III and Richard B. Fennell, at James, McElroy & Diehl, P.A., 600 South College Street, Charlotte, North Carolina 28202.

PLEASE TAKE NOTICE that counsel for Louis DeJoy will take the depositions of the

following parties before a person authorized to administer oaths at the executive conference room,

second floor, New Breed corporate headquarters, 4043 Piedmont Parkway, High Point NC 27265,

beginning at 8:30 a.m. on Thursday, March 2, 2000, and continuing from day to day until

completion, pursuant to Rules 26 and 30 of the Rules of Civil Procedure:

Dominick DeJoy, Jr. 1501 Regents Park Lane Greensboro, NC 27455 8:30 a.m., March 2, 2000

Patricia DeJoy 1501 Regents Park Lane Greensboro, NC 27455 9:00 a.m., March 3, 2000 (or upon completion of the Dominick DeJoy Jr. deposition)

Notice of Depositions - Page 1 ##192963.1 The deposition will be taken by stenographer and videotape recording.

You are invited to attend and examine the witnesses.

Respectfully submitted,

Gada But

Ronald R. Davis NC State Bar No. 20408 H. Grady Barnhill, Jr. NC State Bar No. 224

- Attorneys for Defendants -

Of Counsel:

WOMBLE CARLYLE SANDRIDGE & RICE A Professional Limited Liability Company Post Office Drawer 84 Winston-Salem, NC 27102 Telephone: 336-721-3600

Notice of Depositions - Page 2 #918/369.1

CERTIFICATE OF SERVICE

I certify that by my direction on February 2, 2000 I have caused to be served on the party in this action a copy of the foregoing Notice of Depositions by hand delivery, addressed as follows:

ADDRESSEE:

G. Russell Korngay, III, Esquire Richard B. Fennell, Esquire James, McElroy & Diehl, P.A. 600 South College Street Charlotte, North Carolina 28202

(Freder Jawa

Ronald R. Davis NC State Bar No. 20408

- Attorney for Defendants -

Of Counsel:

WOMBLE CARLYLE SANDRIDGE & RICE A Professional Limited Liability Company Post Office Drawer 84 Winston-Salem, NC 27102 Telephone: 336-721-3600

Notice of Depositions - Page 3

W#662369.1

200 West Second Street WOMBLE Winstein Salern, SJC 27101 CARIVIE Mailing Address: FILED SANDRIDGE Post Office Drawer 84 Winston Salem, NC 17107 Fax (1346) 711 3660 00 FEB 24 AM ID: 18 & RICE Ronald R. Davis Direct Dial: (336) 721-3771 A PROPERTIES AND CONTENTS GUILFORD COUNTY, C.S.C Direct Fax: (336) 726-6006 LUMPERTY SCOTTAGES E-mail RDavisticwest com February 23, 2000

Via Hand Delivery

The Honorable David L. Churchill Guilford County Clerk of Superior Court Courthouse P.O. Box 3008 201 S. Eugene Street Greensboro, NC 27401

Re: Dominick DeJoy, Jr. v. Louis DeJoy and Michael DeJoy 99 CVS 12425 (Guilford County)

Dear Mr. Churchill:

Enclosed for filing please find an original and one copy of the Notice of Depositions for Dominick DeJoy, Jr. and Patricia DeJoy.

Please file the Notice of Deposition, place your file-stamp on the additional copy, and return the file stamped copy to the courier delivering this package.

With best regards,

Very truly yours,

Ronald R. Davis

ATLANTA / GRIENVILLE, SC / CHARLOTTE / WINSTON SALEM / RESEARCH TRIANGLE FARC / FALLIGH / WASHINGTON DC

RRD/sac Enclosure

cc: G. Russell Korngay, III, Esq. (w/encl)

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STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 99-CVS-12425

DOMINICK DEJOY, JR.,

Plaintiff,

LOUIS DEJOY and MICHAEL DEJOY, Defendants.

DEFENDANTS' ANSWER

LOUIS DEJOY and MICHAEL DEJOY ("Defendants") answer the allegations in Plaintiff's Complaint (the "Complaint") as follows:

 On information and belief, Defendants admit the averments in paragraph 1 of the Complaint.

Defendants admit the averments in paragraph 2 of the Complaint.

Defendants admit the averments in paragraph 3 of the Complaint.

Defendants admit the averments in paragraph 4 of the Complaint.

5. Defendants are requesting that Plaintiff concur with designating this case as a "complex business case" and a recommendation from this Court that this matter be transferred to the Honorable Judge Ben Tenille, Superior Court Judge for Complex Business Cases, under Rule 2.2 of the General Rules of Practice. Subject to and without waiving these rights, Defendants admit the averments in paragraph 5 of the Complaint.

Defendants' Answer - Page 1 Westerland - 2

Citter

 It is admitted that PlaintifT has claimed damages in excess of \$10,000. Except as admitted, denied.

Defendants admit the averments in paragraph 7 of the Complaint.

8. It is admitted that Dominick DeJoy Sr. started and operated businesses known as New Breed Moving, New Breed Leasing (of New York), and New Breed Hauling and Rigging and that these companies engaged in, among other businesses, the businesses of trucking and transportation, rigging, and warehousing. It is admitted that Dominick DeJoy Sr. was injured in 1977 and became unable to run the businesses, and that at one time Michael DeJoy managed Dominick DeJoy Sr.'s companies. Except as admitted, denied.

 It is admitted that Louis DeJoy is a CPA and that Dominick DeJoy Jr. does not have a college education. It is admitted that Louis DeJoy hired and fired staff in the office. Except as admitted, denied.

10. It is admitted that Louis DeJoy did not initially own interests, and Michael and Dominick DeJoy Jr. never owned interests, in New Breed Moving, New Breed Hauling, or New Breed Leasing (of New York). Except as admitted, denied.

 It is admitted that New Breed Transfer Company was incorporated in 1986 in New Jersey. Except as admitted, denied.

12. It is admitted that Louis DeJoy was the president and a director of New Breed Transfer and that Louis, Dominick Jr. and Michael DeJoy each owned one-third of the stock in New Breed Transfer. It is admitted that Louis DeJoy had substantial influence on the areas of New Breed Transfer's finances, bank accounts, check signing, legal issues and tax return filing. It is admitted Defendants' Ammer - Page 2

W#880202.2

that formal director meetings were not held for New Breed Transfer because there was only one director, who had no need to meet with himself, and because that director operated by way of numerous informal meetings. In like manner, the shareholders operated by numerous informal, as opposed to formal, meetings. Except as admitted, denied.

 Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 13 of the Complaint and therefore deny same.

14. It is admitted that Dominick DeJoy, Jr. worked as a member of various project teams that worked on specific projects, including the development of certain equipment. Defendants are without knowledge or information sufficient to form a belief as to the truth of whom Dominick Jr. relied upon or trusted and therefore deny same. Except as admitted, denied.

15. It is admitted that Louis DeJoy and Michael DeJoy set up various corporations throughout the country between 1989 and 1997. It is admitted that an internal company document exists that uses the terms "parent company" in a way that could erroneously be construed to refer to New Breed Transfer. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments concerning the ambiguous phrases "New Corporations" and "New Companies" and therefore deny same. Except as admitted, denied.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments concerning the ambiguous phrase "New Corporations" and therefore deny same. Defendants deny the remaining averments in paragraph 16 of the Complaint.

17. It is admitted that Louis DeJoy and Michael DeJoy established various corporations that were primarily owned by Defendants. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments concerning the ambiguous phrase "New Corporations" and therefore deny same. Except as admitted, denied.

18. It is admitted that Louis DeJoy was the majority shareholder of all but one of the corporations set up between 1989 and 1997, that Michael DeJoy owned 49% of some of the corporations, and that Defendants were among the officers and directors of some of the corporations. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 18 of the Complaint concerning the ambiguous phrase "New Corporations" and therefore deny same. Except as admitted, denied.

19. It is admitted that Louis DeJoy and Michael DeJoy received salaries, bonuses, benefits, dividends or distributions of income from one or more of the corporations that they created between 1989 and 1997. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 19 concerning the ambiguous phrase "New Corporations" and therefore deny same. Except as admitted, denied.

20. It is admitted that Louis DeJoy, Michael DeJoy, and Dominick DeJoy Jr., after extensive regotiations, agreed on and structured business transactions in such a way as to provide Dominick DeJoy Jr. with additional interests in additional corporations in 1998 and that Louis DeJoy, Michael DeJoy, and Dominick DeJoy Jr. further negotiated and structured the ownership of New Breed Inc. such that Dominick DeJoy, Jr. initially received a 15% interest in New Breed, Inc. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments concerning the ambiguous phrase "New Corporations" and therefore deny same. Except as admitted, denied.

Defendants' Answer - Page 4 www.page.2 21. It is admitted that Louis DeJoy, Michael DeJoy, and Dominick DeJoy Jr. caused the stock of New Breed, Inc. to be initially issued as follows: 55% to Louis, 30% to Michael, and 15% to Dominick DeJoy, Jr. It is admitted that Louis DeJoy, Michael DeJoy, and Dominick DeJoy, Jr. signed a shareholders' agreement governing the stock of New Breed, Inc. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 21 of the Complaint concerning the ambiguous phrase "New Corporations" and therefore deny same. Except as admitted, denied.

22. Defendants deny the averments in paragraph 22 of the Complaint.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 23 of the Complaint and therefore deny same.

24. It is admitted that Louis DeJoy has been the majority shareholder of New Breed Inc. at all times since its incorporation. Except as admitted, denied.

25. It is admitted that at various times, but not at all times, Louis DeJoy and Michael DeJoy have been officers of New Breed Transfer, Louis DeJoy and Michael DeJoy have been officers of New Breed, Inc., Louis DeJoy and Michael DeJoy have been directors of New Breed Transfer, and Michael DeJoy and Louis DeJoy have been directors of New Breed, Inc. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 25 of the Complaint concerning the ambiguous phrase "New Corporations" and therefore deny same. Except as admitted, denied.

26. It is admitted that Louis DeJoy was the chief executive officer and chairman of the board of New Breed Transfer and New Breed, Inc. It is admitted that Louis is three years older than

Defendants' Answer - Page 5 141660202.2 Dominick Jr., that Louis has a college education and Dominick Jr. does not, and that Louis has held leadership positions with New Breed Transfer and New Breed Inc. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 26 of the Complaint and therefore deny same.

 Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 27 of the Complaint and therefore deny same.

28. It is admitted that Louis DeJoy established a joint bank account at Branch Banking and Trust in Greensboro, North Carolina under the two names of Louis DeJoy and Dominick DeJoy. Jr. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments concerning the execution of the signature card for the BB&T account, but since it was the custom and practice of the DeJoy brothers to sign each other's name (including Dominick Jr. signing Louis's signature on behalf of Louis) and Dominick DeJoy Jr. had given Louis DeJoy permission to sign Dominick Jr.'s name to documents, it is possible that Louis DeJoy executed Dominick DeJoy, Jr.'s signature on the signature card. It is admitted that New Breed Inc. deposited \$4,478,624 to the BB&T account for Dominick Jr. and that Louis DeJoy deposited \$156,349 to the account for Dominick Jr., It is admitted that \$1,405,497 of monies from the account were used to pay Dominick Jr.'s personal income tax obligations, \$2,173,755 of monies from the account were used to repay Dominick Jr.'s obligations to New Breed, Inc., Dominick Jr. gave \$10,000 from the account to his mother, Dominick Jr. took \$100,000 in cash from the account, \$653,300 in proceeds from the account were invested by or for Dominick Jr. in investments, and Dominick Jr. loaned Louis DeJoy \$254,985 from the account. Defendants are without knowledge or information sufficient to form a

belief as to the truth of the averments in paragraph 28 of the Complaint concerning the phrase "New Corporations" and therefore deny same. Except as admitted, denied.

29 Defendants deny the averments in paragraph 29 of the Complaint.

Defendants deny the averments in paragraph 30 of the Complaint.

Defendants deny the averments in paragraph 31 of the Complaint.

Defendants deny the averments in paragraph 32 of the Complaint.

33. It is admitted that Louis DeJoy, Michael DeJoy, and Dominick DeJoy Jr. all received distributions from New Breed Inc. and New Breed Transfer. At this time Defendants are without knowledge or information sufficient to form a belief as to distributions from New Breed Transfer prior to 1995 because Defendants have not yet had an opportunity to review records for years prior to 1995 for New Breed Transfer, and therefore deny same. Defendants will supplement the response to the averments in Paragraph 33 of the Complaint concerning distributions from New Breed Transfer for the years prior to 1995 upon completion of review of the relevant records. Except as admitted, denied.

34 It is admitted that New Breed Inc. recorded loans to Dominick Jr. on its books and that Louis DeJoy knew of the same. Except as admitted, denied.

35. It is admitted that formal director meetings were not held for New Breed Transfer because there was only one director, who had no need to meet with himself, and because that director operated by way of numerous informal meetings. In like manner, the shareholders operated by numerous informal, as opposed to formal, meetings. It is admitted that New Breed Inc. has not yet had its annual meeting of directors or shareholders because of Plaintiff's actions. It is admitted that <u>Betradants' summer</u> - Page 7

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Louis DeJoy and Michael DeJoy, as vas their legal right to do, have caused certain corporate actions to take place without notice to Plaintiff. Except as admitted, denied.

36. Upon information and belief, it is admitted that loans to shareholders and repayments of loans to shareholders have been unequal and not in proportion to the respective share ownerships in both New Breed Transfer and New Breed Inc. because Louis, Michael, and Dominick DeJoy Jr. have borrowed and repaid various amounts from both companies, related in part to the personal expenses that each of them have respectively incurred during a particular year. It is admitted that Louis, Michael, and Dominick DeJoy Jr. agreed to make, and made, contributions to capital on an unequal basis for one year for New Breed Transfer. Except as admitted, denied.

37. Defendants deny the averments in paragraph 37 of the Complaint.

38. Defendants incorporate all previous responses, set forth above, in response to the averments in paragraph 38 of the Complaint.

Defendants deny the averments in paragraph 39 of the Complaint.

 It is admitted that Dominick DeJoy, Jr. has demanded funds. Except as admitted, denied.

41. Defendants deny the averments in paragraph 41 of the Complaint.

42. Defendants incorporate all previous responses, set forth above, in response to the averments in paragraph 42 of the Complaint.

43. It is admitted that Louis DeJoy is and always has been the majority shareholder of New Breed, Inc. and that Louis DeJoy and Michael DeJoy, presuming they voted in the same

manner, could have exercised the rights of the holders of two-thirds of the shares of New Breed Transfer and, at least initially, 70% of the shares of New Breed, Inc. Except as admitted, denied.

44. It is admitted that Louis DeJoy is and was the chief executive officer and chairman of the board of New Breed Transfer and New Breed, Inc. It is admitted that Louis is three years older than Dominick Jr., that Louis has a college education and Dominick Jr. does not, and that Louis has held leadership positions with New Breed Transfer and New Breed Inc. Defendants are without knowledge or information sufficient to form a belief as to whom Dominick Jr. placed confidence in or trusted and therefore deny same. Except as admitted, denied.

45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 45 of the Complaint and therefore deny same.

46. It is admitted that Louis DeJoy and Michael DeJoy have been, and remain, officers and directors of New Breed Inc. It is admitted that Louis DeJoy and Michael DeJoy at various times but not at all times have both been, and currently are, officers and directors of New Breed Transfer. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 46 concerning the ambiguous phrase "New Corporations" and therefore deny same. Except as admitted, denied.

Defendants deny the averments in paragraph 47 of the Complaint.

Defendants deny the averments in paragraph 48 of the Complaint.

49. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 49 concerning the ambiguous phrase "New Corporations" and therefore deny same. Defendants deny the remaining averments in paragraph 49 of the Complaint.

50. Defendants incorporate all previous responses, set forth above, in response to the averments in paragraph 50 of the Complaint.

51. It is admitted that, after Coopers and Lybrand, independent certified public accountants who prepared personal tax returns for Louis DeJoy, Michael DeJoy, and Dominick DeJoy, Jr., completed all work on their personal returns and had the returns in final form, Coopers and Lybrand then mailed the personal tax returns to a New Breed entity, and Louis DeJoy (or for one year Frances DeJoy) actually physically handed Dominick DeJoy his personal tax return for his inspection, review and approval, and signature and mailing for the years 1990, '91, '92. It is admitted that an internal company document exists that uses the terms "parent company" in a way that could erroneously be construed to refer to New Breed Transfer. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 51 concerning the ambiguous phrases "New Corporations" and "New Companies" and therefore deny same. Except as admitted, denied.

52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 52 concerning the ambiguous phrase "New Corporations " and therefore deny same. Defendants deny the remaining averments in paragraph 52 of the Complaint.

53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 53 concerning the ambiguous phrase "New Corporations" and therefore deny same. Defendants deny the remaining averments in paragraph 53 of the Complaint.

54. Defendants deny the averments in paragraph 54 of the Complaint.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 55 of the Complaint concerning the awareness and reliance of Dominick DeJoy, Jr. and concerning the ambiguous phrase "New Companies" and therefore deny same. Defendants deny the remaining averments in paragraph 55 of the Complaint.

Defendants deny the averments in paragraph 56 of the Complaint.

57. Defendants deny the averments in paragraph 57 of the Complaint.

58. Defendants incorporate all previous responses, set for the above, in response to averments in paragraph 58 of the Complaint.

59. Defendants deny the averments in paragraph 59 of the Complaint.

60. It is admitted that any economic benefits that Defendants received from New Breed Transfer or New Breed, Inc. were legally and properly earned. It is admitted that Defendants have not made, since none has been or is due, restitution. Except as admitted, denied.

61. Defendants deny the averments in paragraph 61 of the Complaint.

62. Defendants incorporate all previous responses, set forth above, in response to the averments in paragraph 62 of the Complaint.

63. No responsive pleadings are necessary to paragraph 63 of the Complaint, since the paragraph submits a legal proposition. If any response be needed, paragraph 63 is denied.

64. Defendants deny the averments in paragraph 64 of the Complaint.

65. Defendants incorporate all previous responses, set forth above, in response to the averments in paragraph 65 of the Complaint.

66. It is admitted that loans to shareholders and repayments of loans to shareholders have been unequal and not in proportion to the respective share ownerships in both New Breed Transfer and New Breed Inc. because Louis, Michael, and Dominick DeJoy Jr. have borrowed and repaid various amounts from both companies, related in part to the personal expenses that they have respectively incurred during any particular year. It is admitted that Louis, Michael, and Dominick DeJoy Jr. agreed one year to make, and made, contributions to capital on an unequal basis for New Breed Transfer. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 66 concerning the ambiguous phrase "New Corporations" and therefore deny same. Except as admitted, denied.

67. Defendants deny the averments in paragraph 67 of the Complaint.

68. Defendants incorporate all previous responses, set forth above, in response to the averments in paragraph 68 of the Complaint.

Defendants deny the averments in paragraph 69 of the Complaint.

70. Defendants deny the averments in paragraph 70 of the Complaint.

Any averment not specifically responded to above is denied.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint fails to state a claim against the Defendants, or either of them, upon which relief can be granted.

Defendants' Answer - Page 12 W####00007.2

SECOND DEFENSE

Defendants plead the defense of waiver, both expressly and impliedly.

THIRD DEFENSE

Defendants plead the defenses of estoppel and acquiescence in response to any alleged wrongful act of Defendants, or either of them, which is denied. As to any alleged wrongful act of Defendants, or either of them, Defendants plead that Plaintiff led Defendants to reasonably believe that their actions were authorized by Plaintiff, and Defendants reasonably relied and acted upon the same, all such wrongful conduct by Defendants, or either of them, being denied.

FOURTH DEFENSE

Defendants plead the defense of accord and satisfaction.

FIFTH DEFENSE

Defendants plead the defense of license because Plaintiff, both expressly and impliedly and by his conduct, gave Defendants permission and authority to take many of the action for which he is now complaining.

SIXTH DEFENSE

Defendants plead the defense of the terms of the reorganization and the shareholders' agreement, which Plaintiff negotiated, agreed to, and signed.

SEVENTH DEFENSE

Defendants plead that Plaintiff is precluded from asserting some or all of the claims contained, or seeking the relief requested, in the Complaint by his failure to timely institute this action to present his claims. The defense includes application of the doctrine of laches and all applicable statutes of limitations, which are each specifically pleaded in bar to any recovery.

EIGHTH DEFENSE

Defendants plead that their actions were not a or the cause, proximate cause, superseding cause, or intervening cause of Plaintiff's damages, if any. Accordingly, Plaintiff's damages, if any, are barred and should be denied in whole or in part.

NINTH DEFENSE

Defendants plead the defense that if either Defendant assumed control over Plaintiff's personal property, which is denied, such assumption of control was authorized by Plaintiff.

TENTIL DEFENSE

Defendants plead the defense of ratification. To the extent that Defendants took any unauthorized action, which is denied, then Plaintiff subsequently approved those actions in connection with negotiating and executing the reorganization documents and by other subsequent acts.

ELEVENTH DEFENSE

Defendants plead that they acted in good faith, fairly, and in an open and honest manner.

TWELFTH DEFENSE

With respect to Plaintiff's claim of conversion, Defendant Louis DeJoy pleads the defense that his name was on the accounts allegedly converted, and accordingly he had joint authority over the monies in the same. Furthermore, all monies were used to Plaintiff's benefit, except for monies that Plaintiff chose to give to his mother.

THIRTEENTH DEFENSE

To the extent that Plaintiff attempts to plead derivative claims, Defendants plead the business judgment rule.

WHEREFORE, having answered all of the allegations in the complaint, Defendants Louis DeJoy and Michael DeJoy pray that:

- Plaintiff have and recover nothing from Defendants, or either of them;
- Defendants recover their reasonable and necessary attorneys' fees, costs, and expenses; and
- Defendants further pray for such further relief to which it may be entitled.

Respectfully submitted,

Cardel Romin

Ronald R. Davis NC State Bar No. 20408 H. Grady Barnhill, Jr. NC State Bar No. 224

- Attorney for Defendants -

Of Counsel:

WOMBLE CARLYLE SANDRIDGE & RICE A Professional Limited Liability Company Post Office Drawer 84 Winston-Salem, NC 27102 Telephone: 336-721-3600

CERTIFICATE OF SERVICE

x

I certify that by my direction on February 2, 2000 I have caused to be served on the party in this action a copy of the foregoing **Defendants' Answer** by hand delivery, addressed as follows:

ADDRESSEE:

G. Russell Korngay, III, Esquire Richard B. Fennell, Esquire James, McElroy & Diehl, P.A. 600 South College Street Charlotte, North Carolina 28202

Baald of form

Ronald R. Davis NC State Bar No. 20408

- Attorney for Defendants -

Of Counsel:

WOMBLE CARLYLE SANDRIDGE & RICE A Professional Limited Liability Company Post Office Drawer 84 Winston-Salem, NC 27102 Telephone: 336-721-3600

Defendants' Answer - Page 16

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WOMBLE CARLYLE SANDRIDGE & RICE 200 West Second Street Winston Salem, NC 27101

Mailing Address Post Office Drawer 84 Winston Salem, NC 27102 Telephone: (\$36) 721-3600 Fas: (\$36) 721-3660 Web site: www.wcsr.com

Ronald R. Davis Direct Dial (336) 221-3771 Direct Fax (336) 726-6006 F-mail RDavisisewear com

February 21, 2000

Via Hand Delivery

Estie Benington Clerk, Superior Court Courthouse 201 S. Eugene Street Greensboro, NC 27402

> Re: Dominick DeJoy, Jr. v. Louis DeJoy and Michael DeJoy – 99 CVS 12425 (Guilford County)

Dear Ms. Bennington:

Enclosed for filing please find an original and copies of the following:

- 1. Defendants' Answer (with one additional copy);
- General Action Cover Sheet.

Please file the answer, place your file-stamp on the additional copies, and return the file stamped copies to the courier delivering this package.

With best regards,

Very truly yours,

Small.

Ronald R. Davis

RRD:sac Enclosure

cc: G. Russell Korngay, III

(w/encl)

Via Hand Delivery

W#882799.2

ATLANTA / GREENVILLE, SC / CHARLOTTE / WIESTON SALEM / RESPARCE TRIANCIT PARE / RALLIGH / WASHINGTON, DC

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Louis DeJoy and Michael DeJoy	G.S. 1A-1, Rules 3
o: Louis DeJoy	TO: Michael De Joy
TO: LOUIS DEJOY	A Name And Address Of Detendant 2
Louis DeJoy	Michael DeJoy
c/o New Breed, Inc.	95 Manetto Hill Road Huntington, New York 11743
4043 Piedmont Parkway High Point, North Carolina 27265	Huntington, New York 11743
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You are being served with a copy of the complaint is summons was issued. You must:	JENO
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1. Serve a copy of your written answer to the con	nplaint upon the plaintiff or the plaintiff's attorney within thirty y serve your answer by delivering a copy to the plaintiff or the
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plaintiff's attorney or by mailing a copy to one of 2. File the original of the written answer with the 0 If you fail to answer the complaint, the plaintiff will were And Address Of Plaintif's Attorney of None, Address Of Plaintiff G. Russell Kornegay, III James, McElroy & Diehl, P.A. 600 South College Street	Clerk of Superior Court of the county named above. I apply to the Court for the relief demanded in the complaint. Deterned JAN 18 2000 Time 9:15 Superior Of Superior Court Supremure August Hackberg Court of Superior Court

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STATE OF NORTH CAROLINA

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IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION 99-CVS-12425

COUNTY OF GUILFORD

DOMINI	CK DEJOY, JR.,	1	:GF-		JAN 2 8 2000	m
	Plaintiff,)			0"
vs.) A	FFIDAVIT OF S	SERVICE	
LOUIS	DEJOY and	MICHAEL	2			
DEJOY,)			
	Defendants.)			

G. RUSSELL KORNEGAY, III, being first duly sworn, deposes and says as follows:

 I am a citizen and resident of the State of North Carolina. I am over the age of cighteen (18) years. I am under no legal disability, and I make this Affidavit upon my personal knowledge.

 I am an attorney licensed to practice in the State of North Carolina, and I represent Plaintiff in this action.

3. On January 4, 2000, via certified mail, return receipt requested, number Z 027 082 480, my office sent a copy of an Application and Order Extending Time to File Complaint and Civil Summons to be Served with Order Extending Time to File Complaint in this matter addressed to Defendant, MICHAEL DEJOY, 95 Manetto Hill Road, Huntington, New York 11743. [The original "Receipt for Certified Mail" is attached hereto as Exhibit A.]

4. The green Return Receipt Card was returned on January 10, 2000, indicating that the Application and Order Extending Time to File Complaint and Civil Summons to be Served with Order Extending Time to File Complaint was delivered on January 7, 2000. [The original green "Domestic Return Receipt" is attached hereto as Exhibit A.]

 On January 18, 2000, via certified mail, return receipt requested, number Z 157 771
 650, my office sent a copy of a Complaint and Delayed Service of Complaint in this matter addressed to Defendant, MICHAEL DEJOY, 95 Manetto Hill Road, Huntington, New York 11743. [The original "Receipt for Certified Mail" is attached hereto as Exhibit B.] The green Return Receipt Card was returned on January 24, 2000, indicating that the Complaint and Delayed Service of Complaint was delivered on January 21, 2000. [The original green "Domestic Return Receipt" is attached hereto as Exhibit B.]

G. Brissell Kornegay, III

SWORN and SUBSCRIBED before me this 26th day of January, 2000.

a I y honaf Notary Public

My Commission Expires: 7-25-2001

EXHBIT A

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95 Manetto	Hill Road
Huntington	Code 1, NY 11743
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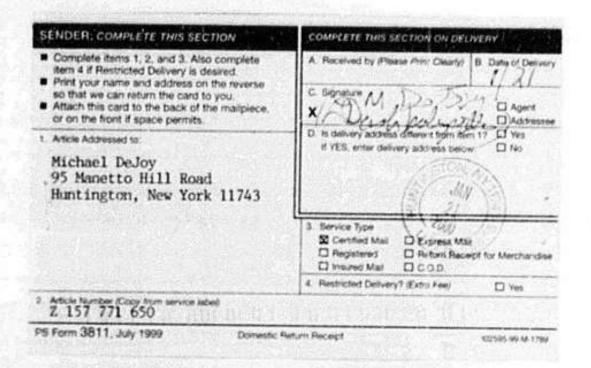
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Complete items 1, 2, and 3. Also complete item 4 if Bestricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the malpiece, or on the front if space permits.	A Received by Presse Print Charly B. Dips of Patients 17/00 0 C Storvat P2 Joy A full Charles X P2 P2 C Deck full Charles	
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EXHIBIT B

Z 157 772 E 0 (AIY) US Postal Service Receipt for Certified Mail No Insurance Coverage Provided

Dentation of the law	onal Mail (See reverse)
Michael DeJo	y
95 Manetto E	117 Box
Huntington 1	Netro 1174
Postage City	8 J3T
Certified Fee	10
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GUILFORD COUNTY		District Superior Court Division		
Tax IDSSN		GENERAL CIVIL ACTION		
		COVER SHEET		
Name Of Plaintiff 2	0	Rule 5(b) Rules of Practice for Superior and District Courts		
Tax ID/SSN	PY			
Name Of Plaintiff 3		Name And Address Of Attorney, Or Party If Not Represented (complete for initis! appearance or change of address)		
Tax ID-SSN		G. Russell Kornegay, III 600 S. College Street Charlotte, NC 28202		
VERSU	S	Attorney Bar No		
Name Of Defendant 1 LOUIS DE	ΙΟΥ	12459		
Tax ID:SSN	Summons Submitted	Initial Appearance in Case Change of Address		
Name Of Defendant 2 MICHAEL D Tax ID SSN		Name Of Firm James, McElroy & Diehl, P.A. Tax ID No. Telephone No. FAX No.		
Name Of Delay days 2	Yes No	704/372-9870 704/342-5858 Counsel for		
Name Cf Defendant 3		All Plaintiffs All Defendants Only (List party(les) represented)		
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No.	Additional Plaintif(s)	Tax ID/SSN

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Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

AOC-CV-751, Side 2 Revised 11/96

JAMES. MCELROY & DIEHL. P.A.

ATTORNEYS AT LAW

600 BOUTH COLLEGE STREET

CHARLOTTE, NORTH CAROLINA 28202

TELEPHONE TOA 372 9870 800 247 9870

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January 26, 2000

"ALSO ADM TTED IN S.C. HEREY JANES, JR. IN COLUMPSE

Mr. David L. Churchill Clerk of Superior Court Guilford County Courthouse Post Office Box 3008 Greensboro, North Carolina 27402-3008

RE-Dominick DeJoy, Jr. v. Louis DeJoy and Michael DeJoy Guilford County File No. 99-CVS-12425

Dear Mr. Churchill:

Enclosed is the original and two copies of an Affidavit of Service to be filed in the above entitled matter. Please file the original and return the copies to me marked filed in the enclosed self-addressed, stamped envelope.

I also enclose a civil action cover sheet in the event a cover sheet is necessary to file with an Affidavit.

Thank you for your assistance.

Sincerely yours,

ussell Kornegay, III

GRK/aty Enclosures

Mr. Dominick DeJoy, Jr. (w/encl.) CC1

STATE OF NORTH CAROLINA	File Na. 99-CVS-12425
GUILFORD County	In the General Court of Justice District Superior Court Division
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1501 Regents Park Lane	CIVIL SUMMONS
Mir, State, 20 Greensboro, NC 27455 VERSUS	0.5. 1A-1, Pules 3
lame of Defendant(s) LOUIS DEJOY MICHAEL DEJOY	Alias and Pluries Summons December 29, 1999 Date Last Summons Issued
To Each Of The Defendant(s) Named Below.	
Name & Address of Defendent 1 LOUIS DEJOY c/o New Breed, Inc., 4043 Piedmont Psrkway High Point, NC 27265	Name & Address of Defendant 2 MICHAEL DEJOY 95 Manetto Hill Road Huntington, New York 11743
to the plaintiff's last known address, and	on the plaintiff or plaintiff's attorney within thirty (30) answer by delivering a copy to the plaintiff or by mailing it
2. File the original of the written answer with the Clerk of S	
If you fail to answer the complaint, the plaintiff will apply to to Name and Address of Plaintiff's Attorney (If None, Address Of Plaintiff) G. Russell Kornegay, III James, McElroy & Diehl, P.A. 600 S. College St. Charlotte, NC 28202	Date Issued -24-04 Time 28 AM SIPN Signature Signature Deputy CSC Assistant CSC Clerk of Supersor Court
ENDORSEMENT This summons was originally issued on the date	Date Issued Time AM PN
indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended thirty (30) days.	Deputy CSC Assistant CSC Clerk of Superior Court
NOTE TO PARTIES: Many country have MANDATORY ARBITRA	e trial. The parties will be notified if this case is assigned for mandatory
AOC-CV-100	(Over)

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MES. MCELROY & DIEHL. P.A.

ATTORNEYS AT LAW

600 SOUTH COLLEGE STREET

CHARLOTTE, NORTH CAROLINA 28202

TELEPHONE 704 372 9870 800 247-9870

TELECOPIEN 704 3338508

. WITCHELL ABERMANT FOMAND T KINSON, JR. JOHN & ARRONDOD CATHERINE & BARNES KENT & JONES VOAN & REDDOW JOINT & BURC DAVID C. COMDES WILLIAM R. DIEM, UR PRED & MONROS R-CHARD & ELK-MA RICHARD B. FENSELL TANK & HEARD AND C. H. PTER. LABRENCE IN LEWITE

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January 20, 2000

"AL SUS ADMITTED IN S.C. HENRY HANKS. JR. DF COUNTES

Mr. David L. Churchill Clerk of Superior Court Guilford County Courthouse Post Office Box 3008 Greensboro, North Carolina 27402-3008

> RE: Dominick DeJoy, Jr. v. Louis DeJoy and Michael DeJoy Guilford County File No. 99-CVS-12425

Dear Mr. Churchill:

Enclosed herewith are the original and two yellow copies each of a Civil Summons to be issued in the above entitled matter. The original Civil Summons was issued on December 29, 1999.

In order to timely serve both Defendants, I would appreciate if you would issue the Alias and Pluries Summons and return the copies to me in the enclosed self-addressed, stamped envelope,

Please call me at 1-800-247-9870 if you have any questions. Thank you for your assistance.

Sincerely yours,

4 Russell Kornegay, III

GRK/aiy Enclosures

Mr. Dominick DeJoy, Jr. (w/encl.) CC:

GUILFORD COUNTY	JAN 182	000	εt	and the second	e Gen	VS-12425 eral Court of Justice Superior Court Divis
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No.	Additions	Defendant(s)	Third Party Defendant(s)	Tax ID/SSN	Summons Submitted
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Plaintiff(s) Against Whom Counterclaim Assarted

Defendant(s) Against Whom Crossclaim Asserted

AOC-CV-751, Side 2 Revised 11/96 STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 99-CVS-12425

COUNTY OF GUILFORD

DOMINICK DEJOY, JR.,

Plaintiff.

VS.

LOUIS DEJOY and MICHAEL DEJOY,

Defendants.

.

COMPLAINT

[JURY TRIAL DEMANDED]

Plaintiff complains against Defendants as follows:

PARTIES, JURISDICTION AND VENUE

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Hela

 Plaintiff Dominick DeJoy, Jr. (hereinafter "Dominick" or "Dominick, Jr.") is an adult citizen and resident of Greensboro, Guilford County, North Carolina.

 Defendant Louis DeJoy (hereinafter "Louis"), is an adult citizen and resident of Greensboro, Guilford County, North Carolina.

 Defendant Michael DeJoy (hereinafter "Michael"). is an adult citizen and resident of Huntington, New York.

4. Jurisdiction in this action is proper pursuant to N.C.G.S. § 1-75.1, et seq..

5. Venue in this Court is proper pursuant to N.C.G.S. § 1-82.

The amount in controversy in this action exceeds \$10,000.

FACTUAL ALLEGATIONS

 Louis and Michael DeJoy are the older brothers of Dominick DeJoy, Jr. Louis, Dominick, Jr., and Michael are all the children of Dominick DeJoy, Sr. (hereinafter "Dominick, Sr.").

 From 1968 to 1977, Dominick, Sr. started and operated a business, known as New Breed Moving ("Moving"), in New York and New Jersey. During that time period, he



also started and operated two other businesses known as New Breed Hauling and Rigging ("Hauling") and New Breed Leasing ("Leasing"). Dominick, Sr.'s companies were engaged in the trucking and transportation business. In 1977, Dominick, Sr. was injured and became unable to run the businesses. Thereafter, Dominick, Jr., and Michael began managing Moving, Hauling and Leasing for their father.

9. Louis graduated from college in 1978 with a degree in accounting and became a CPA. Dominick, Jr., does not have a college education. In approximately 1983, Louis began working at Moving, Hauling and Leasing as the Chief Financial Officer. He took control of the companies' finances, handling bank accounts, check signing, and tax return filings. He hired and fired the staff in the office, and he took control of all dealings with the companies' legal counsel.

 Neither Louis, Dominick, Jr., or Michael owned any interest in Moving, Hauling or Leasing, until Louis purported to purchase Dominick, Sr.'s stock in Moving in approximately 1998.

11. In 1986, New Breed Transfer Corp. (hereinafter "Transfer") was incorporated in New Jersey to undertake business outside of the trucking and transportation business. Led in large part by Dominick, Jr.'s marketing efforts, Transfer expanded into the warehousing and logistical support business. Transfer's business dealings spread from New Jersey across the country.

12. Louis was the president and a director of Transfer. Louis, Michael and Dominick, Jr. each owned one-third of the stock in Transfer. However, Louis maintained *de facto* control of Transfer, handling the company's finances, bank accounts, check signing, legal issues and tax return filings, while Dominick's job duties consisted of business development and the technical aspects of implementing customers' contracts. Except for one occasion in June 1996, no directors' or shareholders' meetings of Transfer were ever held.

13. Dominick, Jr., trusted Louis, believed that he was a capable CPA, and believed that Louis would responsibly look after all three brothers' interests in managing the finances of Transfer. Likewise, Dominick, Jr., trusted Michael and believed that Michael would responsibly look after all three brothers' interests in Transfer.

14. When Dominick, Jr., brought in new customers for Transfer, he dealt with the technical aspects of implementing the customers' contract specifications. He developed new processes, systems, methods, proprietary equipment and other intellectual property to serve the needs of Transfer's new customers. However, he trusted and relied upon Louis to handle the necessary legal paperwork related to Transfer's acquisition of new customer contracts. Dominick, Jr., never saw the written contracts which Transfer's customers signed.

15. Between 1989 and 1997, when Dominick, Jr., brought in new customers for Transfer, Louis and, upon information and belief, Michael, set up additional corporations ("the New Corporations") throughout the country to contract with the customers which Dominick, Jr., had been instrumental in obtaining for Transfer through his sales efforts and development of new technology. On numerous occasions between 1989 and 1997, Louis made express statements to Dominick, Jr. that the New Corporations were wholly owned by Transfer and that Dominick, Jr. owned a one-third interest in <u>all</u> of the New Breed entities, including the New Corporations. These statements were false and included, but were not limited to the following:

- a. In or about October 1990, October 1991, and October 1992, when Louis presented Dominick, Jr., with Dominick, Jr.'s personal tax returns for signature, Louis represented to Dominick, Jr., that the New Breed Transfer and the New Corporations were consolidated and that Dominick, Jr., owned one-third of all of them.
- In or about April or May 1994, Louis represented to Dominick, Jr., that Dominick, Jr., owned one-third of all of the "New Breed Companies."
- c. In or about May 1996, Louis specifically represented to Dominick, Jr., and confirmed in writing in an internal company document issued by him, that New Breed Transfer was the "parent company" of the New Breed entities.

16. Between 1989 and 1997, and continuing to the present, Louis and, upon information and belief, Michael, intentionally concealed from Dominick, Jr., all documentation which would have revealed the true ownership of the New Corporations.

17. Without the knowledge of Dominick, Jr., and, upon information and belief, with the knowledge and cooperation of Michael, Louis primarily established himself, and to some extent Michael, as the owners of the New Corporations, while, upon information and belief, entirely excluding Dominick, Jr., from ownership in the New Corporations, at least until approximately 1998.

18. Louis always established himself as the majority shareholder of the New Corporations. In some instances, Michael was provided with a 49 percent ownership interest in the New Corporations. Louis and Michael were always among the officers and directors of the New Corporations; Dominick, Jr., was never made an officer or director. Dominick, Jr., was never informed of the true ownership of the New Corporations.

19. The New Corporations were formed and operated with the working capital, knowledge and expertise, personnel, equipment, methods, technology and intellectual property of Transfer. In fact, they were formed by diverting contracts which Dominick, Jr., had been instrumental in obtaining for Transfer from Transfer to the New Corporations. Upon

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information and belief. Louis and Michael profited from the New Corporations by receiving salaries, bonuses, benefits, dividends, and/or distributions of income, while Dominick, Jr., received no profits or other benefits from the New Corporations.

20. Upon information and belief. Michael and Louis DeJoy incorporated the New Corporations with the intent to later reorganize the New Corporations into a new holding company in which Dominick DeJoy, Jr. would own less than the one-third interest which he owned in Transfer. Upon information and belief, Dominick DeJoy, Jr., was given no ownership interest in any of the New Corporations until approximately 1998, when Louis and Michael DeJoy apparently gave Dominick, Jr., a small minority interest in a few of the New Corporations in order to achieve their goal of having Dominick, Jr., own only a predetermined 15 percent interest in a new holding company known as New Breed, Inc. ("New Breed").

21. In approximately April 1998, Louis DeJoy and, upon information and belief, Michael DeJoy, took steps to reorganize Transfer and the New Corporations into the new corporation known as New Breed. Louis DeJoy and, upon information and belief, Michael DeJoy caused the stock of New Breed to be issued as follows: 55 percent to Louis; 30 percent to Michael; and 15 percent to Dominick, Jr. Louis and Michael also presented Dominick, Jr., with a shareholders' agreement governing the stock of New Breed which is very disadvantageous to Dominick, Jr. Louis and Michael DeJoy conspired to and did force Dominick, Jr. to sign the shareholder agreement.

22. Upon information and belief, Louis and Michael's creation of New Breed was part of a plan that the two of them had developed together, without the knowledge or consent of Dominick, Jr., to sell Dominick, Jr.'s interest in New Breed to a third-party investor, to disclose to Dominick, Jr., only a portion of the sale price of his stock, and to keep the remaining proceeds of the sale for their own use.

 Prior to the presentation to him of the shareholders' agreement in April 1998, Dominick, Jr. did not suspect that Louis and Michael had been operating Transfer in a manner that was harmful to Dominick, Jr.

24. At all times alleged herein, Louis DeJoy and Michael DeJoy were the majority and controlling shareholders of Transfer. At all times since the incorporation of New Breed, Inc., Louis DeJoy has been the majority and controlling shareholder of New Breed. In cooperation with Louis, Michael also has been in control of New Breed at all times alleged herein.

 At all times alleged herein, Louis and Michael DeJoy have been officers and directors of Transfer, the New Corporations and New Breed.

26. At all times alleged herein, based on his education, family status, and leadership position within the DeJoy family's business interests, Louis was in a dominant or superior

position to Dominick, Jr., and Dominick, Jr. placed trust and confidence in Louis to remain loyal to Dominick, Jr. and to act in the best interests of Dominick, Jr.

27. At all times alleged herein, based on Michael's familial and trusted business relationship with Dominick, Jr., Dominick, Jr., has placed trust and confidence in Michael to remain loyal to Dominick, Jr., and to act in the best interests of Dominick, Jr.

28. In mid-1999, Dominick, Jr. learned that Louis had established an account at Branch Banking & Trust in Greensboro, North Carolina ("the BB&T account"), under the joint names of Louis and Dominick, Jr. This account was established without the knowledge or consent of Dominick, Jr., and Dominick, Jr.'s signature was forged on the signature card. Without the knowledge or consent of Dominick, Jr., Louis made millions of dollars in deposits to this account from New Breed and the New Corporations. Louis made millions of dollars of payments from this account to himself and caused millions of dollars of additional payments from this account to be made to Transfer. New Breed, and related entities.

29. Upon information and belief, Louis used the BB&T account to pay required distributions to Dominick, Jr. from Transfer and New Breed, and then used these distributions for Louis' own personal purposes, including making payments directly to Louis and making capital contributions to Transfer and to New Breed which were neither authorized by nor properly credited to Dominick, Jr. Prior to Dominick, Jr.'s discovery of and closure of the BB&T account, Louis never informed Dominick, Jr., that distributions were made to Dominick, Jr., via the BB&T account, and Louis never informed Dominick, Jr., of the ultimate disposition of such distributions.

30. In mid-1999, Dominick, Jr., learned that Louis had established bank accounts at Bank One and had established investment accounts at Donaldson. Lufkin & Jenrette ("DL&J"), also in the joint names of Dominick, Jr., and Louis. Upon information and belief, Louis used the Bank One and DL&J accounts to make distributions to Dominick, Jr., of which Dominick, Jr., was never informed, and to use those distributions for Louis' own personal purposes.

31. Upon information and belief, when account statements from the BB&T, Bank One and DL&J accounts were sent to the attention of Dominick, Jr., Louis had office employees intercept such account statements so that Dominick, Jr., would not be aware of the accounts' existence, thereby actively concealing the existence of the accounts from Dominick, Jr. Upon information and belief, this concealment began in late 1994 and has continued to the present.

32. After learning of the joint accounts at BB&T, Bank One and DL&J, Dominick, Jr., demanded that Louis return the funds which he has misappropriated from Dominick, Jr., via those accounts. Louis has refused to do so.

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33. Upon information and belief, Louis and Michael received distributions from Transfer and from New Breed which were disproportionate to their ownership interests and which were disproportionate to the distributions received by Dominick, Jr.

34. Louis DeJoy has caused New Breed to record loans to Dominick, Jr., on its books, when Dominick, Jr., has never received the proceeds of loans from New Breed. Such loans were issued without the knowledge or consent of Dominick, Jr.

35. Except for one occasion in June 1996 and one occasion in April 1998 (when the meeting was held without advance notice to Dominick, Jr.), neither Transfer nor New Breed ever held stockholders' or directors' meetings. Dominick, Jr., a director of both Transfer and New Breed, has never been presented with or signed a consent to action without meeting. Louis and, upon information and belief. Michael DeJoy have caused numerous corporate actions, including numerous actions detrimental to the interests of Dominick, Jr., to take place without notice to Dominick, Jr., and without proper authorization.

36. Upon information and belief, Louis and Michael have caused loans to shareholders, repayment of loans owed by shareholders, and contributions to capital of Transfer to occur on an unequal basis detrimental to Dominick, Jr. Upon information and belief, Louis and Michael have caused loans to shareholders, repayment of loans owed by shareholders, and contributions to capital of New Breed to occur on a disproportionate basis detrimental to Dominick, Jr.

37. As the result of Defendants' actions alleged in this Complaint, Dominick, Jr., has incurred, and will continue to incur, significant legal fees and expenses.

FIRST CLAIM FOR RELIEF (CONVERSION)

 The allegations of paragraphs 1 through 37 are realleged and incorporated herein by reference as if fully set out.

39. Louis DeJoy has, without authority, exercised rights of ownership over money properly belonging to Dominick DeJoy, Jr., by diverting distributions paid to Dominick, Jr., via the BB&T, Bank One and DL&J accounts to Louis' own use, and to the exclusion of the rights of Dominick, Jr.

 Dominick, Jr., has demanded that Louis return the misappropriated funds, and Louis has refused.

41. As the direct result of Louis' conversion of funds properly belonging to Dominick, Jr., Dominick, Jr. has been damaged in an amount to be determined at trial, which exceeds \$10,000.

SECOND CLAIM FOR RELIEF (BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE TRUST)

42. The allegations of Paragraphs 1 through 41 are realleged and incorporated berein by reference as if fully set out.

43. At all times alleged herein, Louis and Michael DeJoy were the majority and controlling shareholders of Transfer. At all times alleged herein, Louis DeJoy was the majority shareholder of New Breed. At all times alleged herein, Michael DeJoy, in cooperation with Louis DeJoy, had control of New Breed.

44. At all times alleged herein, based on his education, family status, and leadership position within the DeJoy family's business interests, Louis was in a dominant or superior position to Dominick, Jr., and Dominick, Jr., placed trust and confidence in Louis to remain loyal to Dominick, Jr, and to act in the best interests of Dominick, Jr.

45. At all times alleged herein, based on Michael's familial and trusted business relationship with Dominick, Jr., Dominick, Jr., placed trust and confidence in Michael to remain loyal to Dominick, Jr., and to act in the best interests of Dominick, Jr.

 At all times alleged herein. Louis and Michael DeJoy have been officers and directors of Transfer, the New Corporations and New Breed.

47. By taking the actions alleged in this Complaint, Louis and Michael breached the fiduciary duties which they owed Dominick, Jr. Furthermore, Louis and Michael gained personally as the result of their breaches of fiduciary duty, to the detriment of Dominick, Jr.

48. As the direct result of Louis' and Michael's breaches of fiduciary duty, Dominick, Jr., has been damaged in an amount to be determined at trial, which exceeds \$10,000.

49. Additionally, and in the alternative. Dominick, Jr., is entitled to have the Court place a constructive trust on all assets which Louis and Michael have obtained by means of their breaches of fiduciary duty, including, but not limited to, any interest with Louis and Michael owned or own in the New Corporations and in New Breed.

THIRD CLAIM FOR RELIEF (ACTUAL FRAUD)

50. The allegations of Paragraphs 1 through 49 are realleged and incorporated herein by reference as if fully set out.

 As previously alleged in this Complaint, from 1989 through the end of 1997, Louis DeJoy falsely represented to Dominick, Jr., that the New Corporations were wholly

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owned by Transfer and that Dominick, Jr., owned a one-third interest in all of the New Breed entities, including the New Corporations. These statements were false and included, but were not limited to the following:

- a. In or about October 1990, October 1991, and October 1992, when Louis presented Dominick, Jr., with Dominick, Jr.'s personal tax returns for signature, Louis represented to Dominick, Jr., that the New Breed Transfer and the New Corporations were consolidated and that Dominick, Jr., owned one-third of all of them.
- In or about April or May 1994, Louis represented to Dominick, Jr., that Dominick, Jr., owned one-third of all of the "New Breed Companies."
- c. In or about May 1996, Louis specifically represented to Dominick, Jr., and confirmed in writing in an internal company document issued by him, that New Breed Transfer was the "parent company" of the New Breed entities.

52. When he made these representations to Dominick, Louis knew that the representations were false. He made the representations with the intention that Dominick would rely upon them and would refrain from undertaking any investigation which would lead him to discover that, in fact, Louis and Michael were engaging in a practice of obtaining ownership and control of the New Corporations (and the business of Transfer which was given to the New Corporations) for themselves.

53. From 1989 through the present, Louis DeJoy and Michael DeJoy concealed from Dominick, Jr., all documentation which would have revealed the true ownership of the New Corporations. Based on Louis and Michael DeJoy's fiduciary relationship to Dominick, Jr., they each had an obligation to disclose this information to Dominick, whose ownership interest in Transfer was being adversely affected while Louis and Michael were enriching themselves.

54. From late 1994 through mid-1999, Louis concealed from Dominick, Jr., the existence of joint bank and investment accounts titled in the name of Dominick, Jr., as well as all transactions which involved those accounts. Based on Louis DeJoy's fiduciary relationship to Dominick, Jr., Louis had an obligation to disclose this information to Dominick, whose ownership interest in assets held in the accounts was being adversely affected, while Louis profited from and diverted those assets.

55. Louis' misrepresentations, and Louis and Michael's concealments, caused Dominick, Jr., to continue relying on and trusting Louis and Michael at a time when they were taking advantage of him. Because of these misrepresentations and concealments, Dominick, Jr., was not aware that he should be investigating Louis' and Michael's activities, and

Dominick, Jr., did not investigate Louis' and Michael's activities with respect to Transfer, the New Companies, and the joint bank and investment accounts.

56. Dominick, Jr., reasonably relied on Louis' misrepresentations, and on Louis and Michael's concealments, to his detriment.

57. As the result of Louis' misrepresentations and Louis and Michael's concealments, Dominick, Jr., has been damaged in an amount to be determined at trial, which exceeds \$10,000.

FOURTH CLAIM FOR RELIEF (RESTITUTION BASED ON UNJUST ENRICHMENT)

58. The allegations of Paragraphs 1 through 57 are realleged and incorporated herein by reference as if fully set out.

59. By means of his actions alleged in this Complaint, Louis and Michael DeJoy have given themselves benefits which properly belong to Dominick, Jr.

60. Louis and Michael DeJoy accepted these benefits - including, but not limited to, money and stock ownership - without the knowledge or consent of Dona, k, Jr. and under circumstances which gave rise to a duty to account for the benefits received. These benefits were not conferred upon Louis and Michael gratuitously, and Louis and Michael have failed to either account for or make restitution for the property and benefits which they have received.

61. As the result of the actions of Louis and Michael DeJoy alleged in this Complaint, Louis and Michael DeJoy have been unjustly enriched, and Dominick DeJoy, Jr., has been injured, in an amount to be determined at trial, which exceeds \$10,000.

FIFTH CLAIM FOR RELIEF (UNFAIR OR DECEPTIVE ACTS OR PRACTICES)

62. The allegations of Paragraphs 1 through 61 are realleged and incorporated herein by reference as if fully set out.

63. Louis and Michael DeJoy's actions alleged in this complaint are unfair and deceptive. Their conduct was in commerce or affected commerce.

64. As the direct result of Louis and Michael DeJoy's actions, Dominick, Jr., has been injured in an amount to be determined at trial, which exceeds \$10,000. The amount of damages awarded to Dominick. Jr. should be trebled, and Dominick, Jr., should be awarded attorneys fees and expenses incurred in prosecuting this action.

SIXTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY)

65. The allegations of Paragraphs 1 through 64 are realleged and incorporated herein by reference as if fully set out.

66. Louis and Michael DeJoy entered into an agreement to wrongfully deprive Dominick DeJoy of his ownership interests in Transfer. New Breed and the New Corporations. Additionally, upon information and belief, Louis and Michael DeJoy agreed and planned to sell Dominick, Jr.'s New Breed stock to a third-party investor and to keep for themselves a portion of the proceeds without informing Dominick, Jr. of the true stock price or even that a sale of his stock was taking place. In furtherance of these agreements, Louis and Michael DeJoy have committed numerous overt acts, including, but not limited to:

- A. Establishing the New Corporations to undertake business and receive income which Dominick, Jr., had obtained for Transfer, and establishing themselves as the shareholders, officers and directors of the New Corporations;
- B. Intentionally concealing the true ownership of the New Corporations from Dominick. Jr.;
- C. Reorganizing Transfer into New Breed, and reducing Dominick, Jr.'s ownership share from one third to 15 percent;
- Forcing Dominick, Jr., to enter into a disadvantageous shareholder agreement which, among other things, restricted the transfer of his New Breed stock;
- E. Paying themselves distributions from Transfer and New Breed which were disproportionate to their ownership interests and to the distributions received by Dominick, Jr.; and
- F. Causing loans to shareholders, repayment of loans owed by shareholders, and contributions of capital to Transfer and New Breed to occur on an unequal and disproportionate basis disadvantageous to Dominick, Jr..

67. As the direct result of Louis and Michael DeJoy's actions, Dominick, Jr., has been injured in an amount to be determined at trial, which exceeds \$10,000.

PUNITIVE DAMAGES

68. The allegations of Paragraphs 1 through 67 are realleged and incorporated herein by reference as if fully set out.

69. Louis and Michael DeJoy committed the acts alleged in this Complaint willfully and with malice, and for the purpose of defrauding Dominick DeJoy, Jr. of money, stock ownership and other benefits he was entitled to receive.

70. In the alternative to treble damages, punitive damages should be awarded against Louis and Michael DeJoy in an amount to be determined at trial.

WHEREFORE, Plaintiff prays that the Court:

A. Impose a constructive trust on all assets which Defendants have obtained by means of breaching their fiduciary duties owed Plaintiff;

B. Award Plaintiff compensatory damages exceeding \$10,000 against Defendants;

C. Treble the amount of compensatory damages awarded Plaintiff;

D. Award Plaintiff attorneys' fees and expenses:

E. In the alternative to treble damages, award Plaintiff punitive damages against Defendants;

F. Tax the costs and expenses of this action to Defendants: and

G. Award Plaintiff such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES TRIABLE BY A JURY.

This, the 14 day of January, 2000.

JAMES, MCELROY & DIEHL, P.A.

G. Russell Kornegay, III
Richard B. Fennell
Katherine Line T. Kelly
Ann L. Hester
600 South College Street
Charlotte, North Carolina 28202
Telephone: (704) 372-9870
Attorneys for Plaintiff

VERIFICATION

DOMINICK DEJOY, JR., being first duly sworn, deposes and says that he has read the foregoing Complaint by him subscribed, that the statements contained therein are true of his own knowledge, except as to those matters and things stated upon information and belief; and as to those such matters and things, he believes them to be true.

DOMINICK DEJOY, JR

Sworn to and subscribed before me this the 12^{44} day of January, 2000

I. Loberto

Notafy Public

My Commission Expires: 10/19/02

Aldona Was

JAMES, MCELROY & DIEHL, P.A.

ATTORNEYS AT LAW BOD SOUTH DOLLEGE STREET CHARLOTTE, NORTH CAROLINA 28202

TELEPHONE 704 372-9670 800 247 5820

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January 4, 2000

"ALSO ADMITTED IN B.C. ------OF COUNSEL

ATTN: CIVIL PROCESS Hon, B. J. Barnes Guilford County Sheriff 201 South Eugene Street Greensboro, North Carolina 27401

> Dominick DeJoy, Jr. vs. Louis DeJoy and Michael DeJoy, Guilford Re: County, North Carolina, case number 99-CVS-12425

Dear Sheriff Barnes:

Enclosed for service upon Louis DeJoy are:

JAN 12 2000

RECEIVED

FROM

- An Application and Order Extending Time to File Complaint; and
- A Civil Summons to be Served With Order Extending Time to File Complaint (the original and one copy).

The address on the Civil Summons is Mr. DeJoy's work address. His home address is:

> 7 Elm Ridge Lane Greensboro, North Carolina 27408

Once you have served the Application and Civil Summons, please return the original Civil Summons, with return of service completed, to me in the enclosed stamped, selfaddressed envelope so that I can make a photocopy of it before sending it to the Clerk's office for filing.

I have enclosed a check for \$5.00 for the service fee.

If you have any questions, please call me or Russ Kornegay at 704-372-9870.

Hon. B. J. Barnes January 4, 2000 Page 2

Sincerely yours,

1 tento

Ann L. Hester

/ALH

Enclosures

cc: Mr. Dominick DeJoy, Jr.

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VERSUS ORDER	
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D: Louis DeJoy TO: Michael DeJoy	
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