

CAUSE NO. _____

OCEAN HARVEST WHOLESAL, INC.

Plaintiff,

v.

MERLIN LAW GROUP, P.A. AND
SEAN SHAW

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURE**

COMES NOW, Ocean Harvest Wholesale, Inc. (“Plaintiff”) files this Plaintiff’s Original Petition & Request for Disclosure against Merlin Law Group, P.A. and Sean Shaw (hereinafter, collectively, “Defendants”), and respectfully shows the Court the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Discovery Control Plan Level Three of the Texas Rules of Civil Procedure and requests the Court to enter an Order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of this specific case.

II. PARTIES

2. Plaintiff, Ocean Harvest Wholesale, Inc., is a Texas corporation with its principle place of business located in Harris County, Texas.

3. Defendant, Merlin Law Group, P.A. (hereinafter, individually, “Defendant Merlin”), is a professional association licensed to do business in the state of Texas.

Defendant's principle place of business is located at 777 S. Harbour Island Boulevard, Suite 950, Tampa, Florida 33602, but maintains offices in Houston, Harris County to perform legal services for clients, including plaintiff. This defendant may be served through their registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3136.

4. Defendant, Sean Shaw (hereinafter, individually, "Defendant Shaw"), is an individual who can be served at his principle place of residence located at 6917 N. 17th Street, Tampa, Florida 33610.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over this cause, as the amount in controversy and damages sought by Plaintiff exceed the minimum jurisdictional limits of this Court.

6. This Court has jurisdiction over Defendant Merlin Law Group, P.A. as they do business within the state of Texas and committed a tort in whole or in part within the state of Texas against Plaintiff. This Defendant performed legal services on behalf of Plaintiff here in Harris County, Texas. Additionally, Defendant maintains a legal office here in Houston, Harris County, Texas to render legal services to clients here in Houston and throughout the state of Texas.

7. This Court has jurisdiction over Sean Shaw as he committed a tort, in whole or in part, within the state of Texas against Plaintiff. He further has rendered legal services to Plaintiff here Texas.

8. Plaintiff, through their owner and representative, Hung "Eric" Tran, entered

in to the Power of Attorney contract with Defendant Merlin at their offices located at 515 Post Oak Boulevard, Houston, Texas 77027 on May 11, 2010. Therefore, this case should be governed by the laws of the state of Texas.

9. Venue is proper in Harris County, Texas, pursuant to Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because Harris County, Texas is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred. In the alternative, Harris County, Texas is the proper venue pursuant to Section 15.002(a)(4) of the Texas Civil Practice and Remedies Code as Harris County, Texas is the principle place of business for Plaintiff.

IV. FACTS

10. This is a legal malpractice case. The underlying claim in this matter stemmed from the BP oil spill in the Gulf of Mexico in April of 2010. Subsequent to this incident many claims against BP began to surface. As a result, a multi-district litigation ("MDL-2179") was formed in the United States District Court, Eastern District of Louisiana. The case was styled *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 10, 2010* (hereinafter the "Underlying Lawsuit").

11. Plaintiff, is a family owned and operated seafood distributor and processor. Plaintiff is one of the nation's leading wholesaler, importer, marketer, distributor and processor of superior fresh and frozen seafood products. Plaintiff has a 70,000 square foot distribution center located in Houston, Texas.

12. In addition, Plaintiff has unloading docks and a processing plant in Louisiana that processes and packs shrimp that they purchase directly from the boats out of the

Gulf of Mexico. It is not hard to see how the major oil spill in the Gulf of Mexico significantly affected Plaintiff's business.

13. Plaintiff called the Merlin Law Group, P.A. located at 515 Post Oak Boulevard, Houston, Texas 77027 to inquire in to whether they could represent him in his claims against BP for the damages done to their business. On May 11, 2010, Plaintiff went to the law offices of the Merlin Law Group, P.A. in Houston, Texas and signed a power of attorney contract.

14. After obtaining representation, Plaintiff made a claim, through his attorneys, in MDL-2179. In response to this claim (and many others), on March 8, 2012, the MDL court issued an order in connection with an Agreement-in-Principle between BP Exploration and Production, Inc. and BP America Production Company and the Interim Class Counsel to settle numerous lawsuits arising out of the April 2010 BP oil spill from the Gulf Coast Claims Fund ("GCCF").

15. In response to a claim submitted by Defendants on behalf of Plaintiff, Defendants received a "Determination Letter" on April 12, 2012. The Determination Letter addressed a potentially payable claim based on the documents submitted by Defendants. The Determination Letter indicated that Plaintiff was entitled to compensation from the Gulf Coast Claim Fund. This letter that was only received by

the Defendants, and not Plaintiff, indicated as follows:

16. In order to elect to receive the payment as indicated above, Plaintiff would have been required to return the acceptance form no later than **30 days after the date of the letter being sent**. This date was displayed on top of the “Final Payment Election

You qualify for compensation from the GCCF. **Attachment A** to this Letter explains the amount, if any, that we are offering you after review of your Final Payment Claim (the “Final Payment Offer”).

The Final Payment Offer¹ includes payment for all future damages to you as a result of the Oil Spill, determined according to the Gulf Coast Claims Facility’s Final Rules Governing Payment Options, Eligibility and Substantiation Criteria, and Final Payment Methodology. Under the terms of the Order, if you are eligible to receive a Final Payment Offer, and you accept the offer of payment, the GCCF will send you 60% of that Final Payment Offer, without any requirement that you sign a Release or waive any future rights to recover any losses from the Oil Spill. **Attachments B and C** to this Letter show you the periods of your documented losses based upon the records you submitted. **Attachment D** shows you the periods where documents were missing (which means that we could not award you losses for those periods).

Form” included within this Determination Letter. In this case, that was **May 12, 2012**.

17. Under this Determination Letter, Plaintiff was entitled to receive a “Final Payment Offer” amount of \$2,811,596.08. Of this amount, Plaintiff would have received 60% of the Final Payment Offer (\$1,708,889.30) without having to sign a release and without foregoing any rights to later obtain additional settlement funds.

18. Upon information and belief, the Defendants received this Determination Letter shortly after it was sent on April 12, 2012. The next person that Plaintiff heard from regarding this matter was the accountant hired by Defendants, Michael Militescu who sent an email on April 19, 2012 to Plaintiff and Defendants indicating a letter was received from BP offering a total of “\$3.5 million before legal deductions.” The email does not indicate any time deadline on giving a response to the offer and does not attach a copy of the offer.

19. In response to this letter, Plaintiff writes an email on April 19, 2012, to

Defendants and Michael Militescu. Plaintiff closes the letter by indicating “Sean, call me when you get this email as I have asked you to call me last week.” In response Defendant Shaw writes back on April 21, 2012 saying he will give Plaintiff a call and was out of the office in depositions and sick.

20. On April 23, 2012, Michael Militescu writes an email to Plaintiff indicating they should accept the offer for multiple reasons, but again, does not indicate any deadlines for responding or attach the offer letter. And, at this time, Plaintiff has still not seen the actual offer, or, received any counsel from his lawyers in regard to accepting the offer, only the accountant. That same day, April 23, 2012, we know Plaintiff emailed Defendant Shaw requesting a copy of the offer letter. The next day, April 24, 2012, Defendant Shaw writes back “ok.” But apparently it was not “ok” because on April 25, 2012, Plaintiff wrote to Defendant Shaw again asking for a copy of the letter.

21. Apparently the second email did not help either because there is another email from Plaintiff to Defendant Shaw on May 3, 2012 saying, “I need the letter with the offer [sic] email to me asap so that I can forward to Jeff Landry office.” Defendant Shaw responds later that day by asking “what letter with the office email.” Clearly, he could not decode the typo in the email and had forgotten that his client was still waiting on this very important offer letter.

22. Plaintiff responded right back saying again “I need the offer letter from bp.” Finally, after this email, Defendant Shaw asks his secretary to send the BP offer letter to Plaintiff “asap” and Plaintiff, for the first time, receives the written offer

almost a month after Defendants first got the letter and just a little over a week before he must accept the offer.

23. Over the next week there is some communication regarding a document, “Summary of Agreement in Principle between Plaintiffs and BP Prepared by the MDL 2179 Plaintiffs’ Steering Committee.” On May 11, 2012 Defendant Shaw sends this document to the accountant and Plaintiff without any further explanation. Mr. Militescu, the accountant, finally just asks Defendant Shaw to “send me the legal document if you have it and let us know what it means for Eric (amount).” This is the last communication from Defendants prior to the May 12, 2012 final deadline.

24. There is no discussion at any time about the deadline or the effects of accepting or rejecting the offer. In fact, over the month that Defendants had the offer letter knowing it was going to expire, there is no explanation of any kind about the offer from Defendant Shaw and Plaintiff.

25. After the deadline passed to accept this offer, Plaintiff never had another opportunity to receive as much in settlement as he could have received had he accepted the offer before the May 12, 2012 deadline. Ultimately, on **March 30, 2018**, a final settlement was reached between Plaintiff and the BP entities. However, this settlement was only \$275,056.00. This was a **loss of over 2.5 million dollars**.

V. CAUSES OF ACTION

A. **Negligence**

26. All allegations herein are incorporated by reference.

27. In addition to the allegations outlined above, the following errors and/or

omissions by Defendants in the underlying representation constitute negligence:

- a. Failing to diligently represent Plaintiff;
- b. Failing to protect Plaintiff's interests;
- c. Failing to properly represent, counsel and advise Plaintiff;
- d. Failing to preserve Plaintiff's claims and rights;
- e. Failing to disclose material facts;
- f. Failing to pursue and obtain results advantageous and appropriate to Plaintiff;
- g. Failing to advise Plaintiff of risks and disadvantages associated with the settlement agreement.

28. The foregoing acts and omissions constitute negligence on the part of the Defendants, which thereby renders Defendants responsible for Plaintiff's damages, and Plaintiff seeks to recover such damages from Defendants.

B. Breach of Fiduciary Duty

29. All allegations herein are incorporated by reference.

30. An attorney-client relationship existed between Plaintiff and Defendants. Thus, Defendants owed Plaintiff various fiduciary duties as a matter of law, including:

- a. Duty to act with loyalty and utmost good faith;
- b. Duty to act with absolute perfect candor, openness, and honesty, and without any deception or concealment, no matter how slight;
- c. Duty to act with integrity of the strictest kind;

- d. Duty of fair, honest dealing;
- e. Duty of full disclosure; that is, a duty not to conceal matters that might influence a fiduciary to act in a manner prejudicial to the principal;
- f. Duty to make a full and fair disclosure of every facet regarding the matters material to the representation.

VI. DISCOVERY & TOLLING RULE

31. To the extent necessary, Plaintiff affirmatively pleads the discovery rule and the tolling rule to any defense of limitations asserted by Defendants regarding any of Plaintiff's causes of action.

32. Given the fact that the contract for legal representation was entered in to in the state of Texas, and Plaintiff's principle place of business is in the state of Texas, the laws of Texas should apply to this case. This includes, but is not limited to, the law on the discovery and tolling rules on legal malpractice causes of action.

33. Plaintiff did not discover, nor could they reasonably have discovered, their claims against Defendants until they were wrongfully damaged by Defendants' negligence in March of 2018 when final Confidential Settlement was entered in to by Plaintiff and underlying-Defendant BPXP.

VII. DAMAGES

34. Regarding the causes of action and conduct alleged above, Plaintiff has sustained pecuniary losses that were proximately caused by Defendants' conduct. Plaintiff seeks monetary relief over \$2,000,000.00. Regarding the conduct described and alleged above, Plaintiff sustained pecuniary losses that were proximately caused

by Defendants' wrongful conduct in an amount in excess of \$2,000,000.00.

VIII. JURY DEMAND

35. Plaintiff request a trial by jury pursuant to Rules 216 and 217 of the Texas Rules of Civil Procedure.

IX. REQUEST FOR ELECTRONIC SERVICE

36. Plaintiff request that service of pleadings, orders, notices, discovery, and papers in this cause be made electronically upon attorneys. Plaintiff's attorneys hereby affirm awareness of the right to later rescind this agreement by filing notice.

X. REQUEST FOR DISCLOSURE

18. Plaintiff request that Defendant produce responses to the Requests for Disclosure pursuant to Rule 194.2 (a) – (l) of the Texas Rules of Civil Procedure.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, , respectfully prays that Defendant, , be served and cited to appear and answer herein, and that upon final trial of this cause, Plaintiff be awarded judgment against Defendant for the above described compensatory damages in the full amounts allowed by law, together with pre-judgment and post-judgment interest, costs of court, and all such other and further relief, both at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

LOWENBERG & KUMAR

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