

CAUSE NO. \_\_\_\_\_

MICHAEL FEINBERG	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
KIPP, INC. A/K/A KIPP HOUSTON	§	
N/K/A KIPP TEXAS INC. AND	§	
KIPP FOUNDATION	§	___ JUDICIAL DISTRICT

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

Plaintiff Michael Feinberg ("Plaintiff") files his Original Petition as follows:

**DISCOVERY**

1. Plaintiff requests that discovery in this case be conducted pursuant to Rule 190.3 (Level 2) of the Texas Rules of Civil Procedure.

**PARTIES**

2. Plaintiff, Michael Feinberg, is an individual with his primary residence in Montgomery County, Texas.

3. Defendant KIPP, INC. a/k/a KIPP Houston n/k/a KIPP Texas, Inc. ("KIPP Houston") is a Texas corporation doing business in Texas, with its principal place of business in Harris County, Texas and may be served with this petition through its registered agent, Sehba Ali at 10711 Kipp Way Houston, Texas 77099 or wherever else she may be found.

4. Defendant KIPP Foundation is a California nonprofit public benefit corporation doing business in Texas. It does not have a registered agent in Texas. It may be served with this petition through the Secretary of State of the State of Texas by the Secretary of State forwarding citation and petition to KIPP Foundation's registered agent in California, Scott Hamilton, One Maritime Plaza, Suite 1470 San Francisco, California 94111 or wherever else he may be found.

5. KIPP Houston and KIPP Foundation are referred to as (“KIPP”).

### **JURISDICTION & VENUE**

6. Jurisdiction is proper in this Court because the amount in controversy in this case is within the Court’s jurisdictional limits, and Plaintiff and KIPP Houston are Texas citizens and/or residents.

7. Venue is proper in this Court pursuant to TCPRC § 15.002 (a)(1) and (2) because all or a substantial part of the acts and omissions giving rise to this claim occurred in Harris County, Texas, and because Defendant KIPP Houston resides in Harris County, Texas.

### **CONTROVERSY**

8. As required by Texas Rule of Civil Procedure 47, Plaintiff is seeking monetary relief over \$1,000,000.

### **FACTS**

#### **Mike Feinberg Revolutionized Education in Houston and Across the Country.**

9. Mike Feinberg has dedicated his adult life to educating and providing hope to lower income, at-risk students. In 1994, Mike co-founded the first KIPP school, which revolutionized public school education. Since then, more than 200 KIPP schools have been established across the country, serving more than 100,000 students. KIPP students have so consistently outperformed their peers at traditional public schools that there are now lengthy waitlists for KIPP schools nationwide. Mike’s work has earned him and KIPP many awards and accolades, and—most importantly—has earned Mike the respect of students, parents, teachers, community leaders, educational professionals, academics, and policy experts. His work has been referred to as “disruptive,” “innovative,” “life changing,” and “transformative.”

10. After receiving his Bachelor of Arts degree from the University of Pennsylvania in 1991, Mike joined Teach for America (TFA) and taught fifth grade in public school in Houston. Mike quickly became frustrated with the limitations in teaching at-risk students in Houston's public schools. So, in 1993, Mike and a fellow TFA teacher, Dave Levin, came up with the idea for KIPP (Knowledge Is Power Program). In 1994, Mike co-founded KIPP (Knowledge is Power Program) and established KIPP Academy Houston a year later. In 1998, he became the Superintendent of KIPP Houston, which now educates 15,000 students across 30 public charter schools: 13 middle schools, 12 primary schools, and 5 high schools.

11. KIPP's working theory is that the performance of low-income at-risk students can be improved through extended school hours, strict performance targets, clear accountability and the cultivation of close relationships between teachers, students, and their families. Unlike in most school environments, teachers at KIPP personally know students and their families. Rides home, shared meals, and home visits are common at KIPP. Mike developed what became known at KIPP as the "team and family culture," which encourages relationships and accountability between teachers, students, and their families.

12. The students at KIPP are referred to as "Kippsters," a term coined by Mike in the early years to reflect the camaraderie and sense of belonging that is so important to the school's culture. It is this culture, and in particular the close relationship between teachers, students, and their families, that has led to KIPP's phenomenal success.

13. In 2000, Mike co-founded the KIPP Foundation to bring KIPP's unique approach and methodology to students across the country. KIPP primarily serves students and families in low-income communities where fewer than 10% of the children in their neighborhoods graduate from college. In those same communities, KIPP's national average college graduation rate is closer

to 40%. In Houston, where Mike started KIPP, the college graduation rate for those who attended KIPP in eighth grade was 50%.

Mike Feinberg's Career and Reputation were Destroyed by the Very Organizations to Which He Had Dedicated Everything.

14. On February 22, 2018, Mike's life changed dramatically when KIPP declared to the world that Mike had sexually abused a minor. KIPP aggressively and recklessly disseminated this allegation by publishing it directly on its blog, by spreading it via word of mouth across its extensive professional network, and by sourcing a story that ran prominently in the New York Times.

15. This 20-year old allegation had already been fully investigated by KIPP Houston and Mike was cleared of any wrongdoing. But KIPP—wanting a different result—ordered a second investigation which lacked due process and was otherwise deeply flawed. Critical information about the allegations against Mike were never disclosed to him, and he was afforded no opportunity to respond or refute those career- and life-destroying allegations. The process was grossly unfair but KIPP saw it as necessary to effect and support Mike's ouster: an outcome that, upon information and belief, was predetermined by at least two KIPP board members, Richard Barth and Dave Levin. The result was the termination of Mike's employment, his removal from the KIPP boards and total public vilification.

16. KIPP's public statements following Mike's termination were false and inflammatory. KIPP knew that such a serious allegation would destroy Mike's career in education and be personally devastating to him, his family and friends. But KIPP didn't care. What mattered most to KIPP was that Mike be removed and his career be ruined. In that, KIPP succeeded.

### Mike is Cleared of a 20-Year Old Allegation.

17. Ten months earlier, in April 2017, Mike was addressing a class of high school seniors about their futures after KIPP when an assistant principal approached him. According to the assistant principal, a student had just told her that, 20 years prior, Mike had raped the student's female cousin, who had been a KIPP student at the time. (This allegation was later changed to "inappropriate touching.") Mike immediately instructed the assistant principal to follow KIPP's established protocols for handling such an allegation. The allegation was immediately reported to the Texas Department of Family Protective Services and senior KIPP officials. Mike formally recused himself from any deliberations among school officials and had no contact with the student making the accusation or with her cousin.

18. KIPP retained attorney Ellen Spalding, a recognized expert in employment, civil rights and school law, to conduct a comprehensive investigation. On August 28, 2017, following the conclusion of the four-month investigation, Sehba Ali, the Superintendent of KIPP Houston, wrote to Mike, making clear that Spalding had conducted "**a full investigation,**" was "**unable to confirm or substantiate the allegations being made against you**" and had found "**no evidence of wrongdoing**".<sup>1</sup> Ali informed Mike that she and KIPP "**consider this matter to be officially closed.**" Directors of both the KIPP Houston board and the KIPP Foundation board were informed of the Spalding investigation and its findings.

### WilmerHale Conducts Another Investigation.

19. Three months after KIPP "officially closed" the matter, in November 2017, under direct pressure from Foundation board directors, David Levin and Richard Barth, the KIPP Foundation and KIPP Houston decided to conduct a duplicative investigation of the same 20-year-

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<sup>1</sup> See Exhibit A – August 28, 2017 letter from Sehba Ali to Mike Feinberg.

old allegation of which Mike had just been cleared. The KIPP Foundation and KIPP Houston retained WilmerHale, a Washington, D.C. law firm, despite the fact that Ellen Spalding, the attorney hired by KIPP Houston, had just completed a full and thorough investigation of the allegation to everyone's apparent satisfaction, and had found "no evidence of wrongdoing" by Mike.

20. Companies and organizations regularly hire prominent white-collar law firms like WilmerHale to conduct investigations of sensitive and confidential matters. Such investigations allow these entities to show the outside world that there was an 'independent' and 'objective' review of the facts. But all too often, these investigations are not independent or objective fact-finding missions at all. Instead, the work of the law firm is intentionally circumscribed and tightly controlled by the employer to ensure that any findings and recommendations support a course of action that is preferred or one that has already been predetermined by the employer. The investigation often provides public relations air cover for the company or organization to proceed with what it has already decided to do.

21. Despite the obvious and severe consequences that can result for the subjects of such high-profile investigations, including termination of employment, loss of benefits, and destruction of reputation, those subjects have few rights and are afforded little due process. This seems especially true in cases involving allegations of sexual abuse and harassment, where companies and organizations often just want to get the accused employee out the door as soon as possible.

22. It appears that this is what happened to Mike due to the WilmerHale investigation. WilmerHale did a narrow and highly selective review of the facts. It only interviewed a select group of people. Most of the faculty and staff of KIPP at the time of the allegation—most of whom

are still working at KIPP and thus readily available—were never contacted by WilmerHale in connection with its investigation.

23. No one—not anyone at KIPP nor any of the attorneys at WilmerHale, which was acting on KIPP’s behalf—suggested during the investigation that Mike hire his own counsel. Instead, he was told that this was a process to clear his name and to “protect” him.

24. Mike cooperated fully with the investigation and met with the WilmerHale lawyers on two occasions. But never during the investigation was Mike given detailed information about the allegations being made against him. Had he been given the specifics of the allegations, Mike could have provided facts that would have disproved them. Without being provided these details, Mike had no meaningful opportunity to respond to or rebut the allegations made against him.

25. In contrast to their refusal to share with Mike critical facts about the allegations against him, KIPP and WilmerHale freely and widely shared the details of the allegations with KIPP’s supporters and third-party educators, including Howard Fuller and Chris Barbic, during conference calls immediately **after** Mike’s termination, all in an effort to justify KIPP’s actions.

26. Instead of a fair process, in which Mike was afforded due process and the opportunity to present his case, WilmerHale and KIPP were the sole judges, jury and, upon publishing false statements about their investigation, executioners.

27. WilmerHale was careful not to generate a written report of its findings for the KIPP boards: such a document would have been discoverable in any subsequent litigation. Instead, WilmerHale presented their findings verbally to the boards. During their presentation, the WilmerHale lawyers reported that there were “unanswered questions” pertaining to their investigation. Mike was never told what those unresolved questions were, and certainly was not given the opportunity to answer them.

28. By any measure, the WilmerHale investigation—as directed and controlled by the KIPP Foundation and KIPP Houston—was a travesty of due process and was fundamentally unfair to someone who had devoted his entire professional career to building KIPP into the success it is today.

Mike is Terminated from KIPP.

29. On the afternoon of February 19, 2018, Bill Boyar, the Chairman of KIPP Houston, texted Mike to inform him the board was going to meet on February 21<sup>st</sup> in an executive session to discuss the WilmerHale investigation. Mr. Boyar asked Mike to be in his office early on February 22<sup>nd</sup> and suggested that Mike bring an attorney. Surprised by Mr. Boyar’s suggestion, Mike retained counsel who appeared with him at the February 22<sup>nd</sup> meeting. During the meeting, a lawyer from WilmerHale told Mike that their investigation had found “no guilt” on Mike’s part and that WilmerHale could not confirm the 20-year old abuse allegation. Nevertheless, KIPP informed Mike that they were terminating his employment. Boyar asked Mike if he would agree to voluntarily resign his positions on the boards of the KIPP Foundation and KIPP Houston, to help end the matter “quietly and peacefully.” As they were leaving the meeting, Mike and his attorney informed KIPP that they would be back in touch about Boyar’s request that he resign, and offered to discuss the issuance of a joint statement about Mike’s resignation.

30. Little did Mike know that KIPP had no intention of preparing a joint statement or handling his departure “quietly.” KIPP had already sourced exclusive news stories about Mike’s firing to the *New York Times* and the *Houston Chronicle*. KIPP had also prepared its own statement in the form of a blog post—in both English and Spanish—that it distributed widely by email and other means across its vast network that same afternoon.

31. Shortly after the meeting with Boyar, Mike received a call from David Levin, who asked him, “are you ready for the incoming?” Mike didn’t realize at the time that Levin was making



a cryptic reference to the onslaught of media inquiries that Levin knew would follow the imminent publication of the *New York Times* article, in which Levin himself was extensively quoted.

KIPP Defames Mike in Email, Online, and in the Press.

32. Around 5 p.m., just hours after Mike had finished meeting with KIPP and WilmerHale, and while he was still considering Boyar's suggestion that he quietly resign his KIPP board seats, the *New York Times* prominently published on its website a 1,292-word story by Anemona Hartocollis entitled "Michael Feinberg, A Founder of KIPP Schools, is Fired After Misconduct Claims."<sup>2</sup> KIPP's stealth sourcing of this exclusive story in the *New York Times* was the first step of KIPP's deliberate, purposeful, and coordinated defamation of Mike's character and the destruction of his professional reputation.

33. The blog post that KIPP issued that same afternoon was addressed as a "Letter to KIPP Team and Family." The thousands of people in this "team and family" include families of students and alumni, staff, supporters, donors, and other important stakeholders in education reform. KIPP emailed the blog post to each and every one of them. In other words, the blog post was sent to virtually everyone in Mike's professional network, and to his friends and family. In the post, KIPP wrote that the child abuse allegation was "credible," and made other misstatements and omissions and told outright lies. KIPP wrote these statements: to justify their termination of Mike; to insulate them from expected criticism from funders and other KIPP supporters; to interfere with Mike's relationships with the entire KIPP community including students, educators, staff, and supporters, as well as the broader educational community; and to thereby destroy his career.<sup>3</sup> KIPP also provided the *New York Times* with a story on Mike's termination. Other news

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<sup>2</sup> See Exhibit B – New York Times Article. Upon information and belief, the attached is not the originally posted version.

<sup>3</sup> See Exhibit C – KIPP Blog.

outlets repeated statements from the blog and NYT article. The blog and NYT article essentially stated that Mike had sexually abused a child.

34. In the blog, KIPP disclosed “an allegation of sexual abuse of a student by Mike in the late 1990s.” The blog referenced both investigations into that allegation, identifying WilmerHale by name and Ellen Spalding as “external counsel.” Spalding’s four-month long investigation was not characterized as a **“full investigation”** that found **“no evidence of wrongdoing,”** and that had been **“unable to confirm or substantiate the allegations made against you,”** as both Spalding and KIPP acknowledged and admitted in August 2017. Instead, KIPP grossly misrepresented Spalding’s investigation, stating that she provided only “initial findings” and, like WilmerHale, she also found the allegation of sexual abuse to be “credible.” KIPP’s statement is **astounding** in its outright mendacity: the only conclusion that can be drawn from Spalding’s investigation is that the allegation of child abuse—made twenty years after the alleged incident—was **not** credible, yet KIPP told the world the opposite.

35. Further, KIPP’s termination letter to Mike, sent on February 22, 2018, admitted that Spalding’s investigation concluded that Mike’s denial of the abuse allegation was credible, but this important fact was not mentioned in the public statements. KIPP’s statements cannot be reconciled with the truth that KIPP knew. They are false on their face and defamatory in their impact.

36. In that same letter, Bill Boyar, Chairman of KIPP Houston Public Schools, wrote that the WilmerHale investigation “did not conclusively confirm the allegations brought by the former student.” Boyar also acknowledged that the earlier investigation by Ellen Spalding had shown that “the allegations were not confirmed.” Despite these admissions to Mike, KIPP representatives, including Bill Boyar, John Fisher, Doug Foshee, Sehba Ali, Richard Barth and

Katherine Bradley, further attempted to justify their firing of Mike by asserting to various people that WilmerHale concluded that Mike **had** sexually touched a child: the exact **opposite** of what the WilmerHale investigation actually found.

37. In order to bolster its lies about the allegations of sexual abuse of a child and to buttress its decision to fire Mike, KIPP sought to pile on with a 14-year old allegation of sexual harassment made against Mike by a KIPP staff employee. In its blog, KIPP wrote:

In the course of its work, WilmerHale presented evidence of sexual harassment by Mr. Feinberg involving an adult KIPP alumna who was employed by KIPP Houston in 2004, which led to a financial settlement at the time.

38. The NYT article (again, sourced by KIPP) also stated that during WilmerHale's investigation, investigators "**uncovered**" the 2004 harassment allegation against Mike. Both publications are false and misleading. They failed to mention that Mike denied the allegation at the time and opposed KIPP's decision to settle. KIPP's counsel and board members insisted that the settlement was in KIPP's economic interest and should be resolved. Contrary to both the KIPP blog and the NYT article, the 2004 harassment allegation was fully known to KIPP executives and board members and had been fully resolved—at the direction of KIPP's board—a full 14 years earlier. WilmerHale did not "uncover" the incident, as the NYT article alleges, nor had they "presented" an incident unknown to KIPP. Rather, KIPP's board was aware of the 2004 allegation in real time and authorized a settlement for what was described at the time by the board and counsel as a "nuisance amount" (i.e. less than the cost of defense).

39. The basis for KIPP's termination of Mike in 2018 could not reasonably be a harassment allegation that was known and settled by KIPP in 2004: KIPP's only motivation for publicizing this 2004 incident was to further tarnish Mike's reputation.

### KIPP Continues its Campaign Against Mike.

40. The same day that KIPP fired Mike and published its blog post, KIPP informed its staff, many of whom were Mike's friends, not to contact Mike. For example, at around 5 p.m., Laurie Bieber, KIPP's Chief Advancement Officer, gathered her team and told them that they were not to have contact with Mike. She said that they were not to email, call, text or have any communication with him. Doubling down on the publications, Ms. Bieber and KIPP representatives later told others, "if you knew what I know you would understand why we had to do this," or words to that effect. Deanna Sheaffer, then a KIPP employee who reported to Ms. Bieber, recalls that KIPP employees were led to believe that if they reached out to Mike, they would lose their jobs. One KIPP employee was so fearful of losing her job by discussing Mike's termination at work that she visited Ms. Sheaffer at her home one Saturday. KIPP was determined to control the narrative surrounding Mike's termination, and they accomplished this in part by threatening the jobs of KIPP staff if they dared to speak with Mike.

41. Soon after publishing the blog and other statements, WilmerHale and KIPP initiated several more phone calls, this time with KIPP donors and others in the education community. During at least one of those calls, WilmerHale and KIPP admitted that Mike's denial of the child abuse allegation was also credible—a fact deliberately excluded from the blog and NYT article. So, where KIPP's published statements left the readers with a clear impression that Mike was guilty of sexually abusing a child, at least one of the phone calls between KIPP and its supporters and funders left an entirely different impression. KIPP's statements to the public omitted this critical information, leading thousands of readers to believe that only the accuser was credible, thereby supporting KIPP's decision to terminate Mike in 2018 for allegedly sexually abusing a child in 1998.

42. A few months after KIPP published its false statements, Mike voluntarily submitted to a polygraph examination which determined that he was truthful (with no deceptive criteria) when he denied the specific child abuse allegations.

There Are No Additional Allegations.

43. The WilmerHale investigation was conducted during the height of the #metoo movement, occurring just months after Harvey Weinstein was first publicly accused of sexual harassment. The KIPP-sourced *New York Times* story links Mike's fate directly to Harvey Weinstein's, stating "Mr. Feinberg is the latest in a cascade of prominent men to be forced out of jobs over sexual misconduct allegations since October, when dozens of women stepped forward to accuse the film producer Harvey Weinstein of sexual abuse."

44. The KIPP blog, which was emailed to many thousands of people, including the broader KIPP community, parents and alums, issued an open call to anyone to report:

We encourage anyone who has experienced, or has knowledge of, any abuse or harassment to contact Bruce Berman or Danielle Conley, partners at WilmerHale. Any contact will be entirely confidential.

Despite this community-wide notice and promise of confidentiality, it is Mike's understanding, and the understanding of KIPP board members and KIPP supporters, that not one additional allegation of sexual misconduct or harassment has been made against him.

KIPP's Public Statements After Mike's Termination Were False and Defamatory.

45. KIPP's statements were false, misleading, written to justify terminating Mike, and published to make sure he could never compete with KIPP. The statements were published in such a way that they created a substantially false and defamatory impression by omitting material facts or juxtaposing facts in a misleading way. Defendants have intentionally, and with complete knowledge of the effect of their libel and slander, ruined Mike's good reputation as an effective,

transformative, and successful educator. Because of KIPP's campaign of spreading false and misleading statements through their blog, website and emails, and verbal statements to individual members of the community, and by sourcing statements to the NYT, *Washington Post*, *Houston Chronicle* and others, Mike has been unable to obtain similar employment in the field to which he has dedicated his entire working life. Mike was not a public figure. His termination was private until KIPP dragged his name through the mud.

46. KIPP's decision to ruin Mike's reputation and humiliate him and his family was unnecessary and served no legitimate purpose. Mike has been damaged by way of lost wages and pension benefits, not from his employment termination, but by the false statements affecting his ability to be employed in the future. He has suffered severe emotional distress at the hands of KIPP and individuals working in coordination with KIPP. He brings these claims, not for financial gain, but to clear his good name.

### **CAUSES OF ACTION**

#### **Count One: Defamation**

47. Plaintiff incorporates by reference the facts and allegations contained in the preceding paragraphs.

48. The blog, NYT article, and oral statements made by KIPP and its board members were published statements concerning Mike that were defamatory. KIPP was negligent in making those statements and acted with actual malice. Even if partly true, the statements were published in such a way that they created a substantially false and defamatory impression by omitting material facts or juxtaposing facts in a misleading way.

49. KIPP: (1) published one or more statements; (2) that were defamatory concerning Mike; (3) while acting with actual malice, or negligence, regarding the truth of the statement(s).

**Count Two: Tortious Interference with Existing Contract and Prospective Relations**

50. Plaintiff incorporates by reference the facts and allegations contained in the preceding paragraphs.

51. Mike had established relationships that were personal to him, including with various supporters and donors of charter schools, with which KIPP willfully and intentionally interfered, proximately causing injury to Mike. Specifically, KIPP's interference caused Mike to lose his ability to finance educational endeavors and lose other employment opportunities. But for the false statements by KIPP, Mike would have entered into a business relationship with various financial supporters of education. KIPP's conduct was committed with conscious desire to prevent the relationships from occurring or committed knowing that such interference was certain or substantially certain as a result of their conduct. Mike suffered actual harm and damage as a result of the interference.

**Count Three: Intentional Infliction of Emotional Distress**

52. Plaintiff incorporates by reference the facts and allegations contained in the preceding paragraphs.

53. KIPP intentionally or recklessly published and allowed the publication of defamatory claims about Mike Feinberg. They thereby caused and allowed false claims about Mike to be circulated among his colleagues, friends, and family. These claims shock the conscience.

54. KIPP's actions proximately caused Mike to suffer severe emotional distress.

55. KIPP's conduct was extreme and outrageous.

56. No alternative cause of action—including those pled here—can provide a full remedy for the life-alteringly severe emotional distress caused by KIPP's actions.

**Count Four: Conspiracy to Defame**

57. Plaintiff incorporates by reference the facts and allegations contained in the preceding paragraphs.

58. KIPP Houston and KIPP Foundation were individually and together members of a combination of two or more persons who combined to destroy the reputation of Mike Feinberg by defaming him to his entire community.

59. This was a combination designed to accomplish an unlawful purpose or a lawful purpose by unlawful means.

60. KIPP Houston, the KIPP Foundation, and other individuals and entities had a meeting of the minds on the destruction of Mike's reputation and the means of accomplishing this destruction.

61. One or more of the members of this combination committed an unlawful, overt act to further the object or course of action.

62. Mike has suffered severe injury as a proximate result of these wrongful acts.

**CONDITIONS PRECEDENT**

63. All conditions precedent to Plaintiff's recovery, including those required by the Defamation Mitigation Act have been performed or occurred, or are otherwise excused.

**JURY DEMAND**

64. Plaintiff hereby demands trial by jury.

**REQUEST FOR DISCLOSURE**

65. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information described in Rule 194.2.



**PRAYER**

For these reasons, Plaintiff Michael Feinberg requests that KIPP Houston and KIPP Foundation be cited to appear and that he recover:

1. A judgment against Defendants;
2. Actual damages including mental anguish, loss of society, and lost earning capacity sustained by Plaintiff as set forth in this petition in an amount within the jurisdictional limits of this Court;
3. Exemplary and punitive damages;
4. Costs of court;
5. Attorneys' fees and costs;
6. Pre- and post-judgment interest; and
7. All other and further relief in law or in equity to which he may be justly entitled.

Respectfully submitted,

BUCK KEENAN LLP

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