

# App. 15

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

IN RE:	)	
FAITH ELYZABETH ANTONIO,	)	Case No. 8:20-bk-07637
Debtor	)	Chapter 7
	)	
DGP PRODUCTS INCS, DBA	)	
NUMERIC RACING	)	
Plaintiff	)	Adversary Case No. 8:20-ap-00537-CPM
vs.	)	
	)	
FAITH ELYZABETH ANTONIO,	)	
Defendant	)	
_____	)	

**DEFENDANTS CLOSING ARGUMENT BRIEF**

1. On April 2, 2020, DGP Products, Inc. d/b/a Numeric Racing (“**Plaintiff/DGP**”) filed its complaint in Pasco County Circuit Court. In response, Defendant Faith Elyzabeth Antonio (hereinafter “**Defendant/Antonio**”) filed a motion to dismiss and objected to Plaintiff’s subpoenas, stating that the whole claim was frivolous and that she was never an employee of DGP (Compl. ¶¶ 52-53, 57 (Def. 134)). The State Court Action remains pending on an unanswered Amended Complaint used to impermissibly correct a deficient pre-suit civil theft notice.

2. Plaintiff brings this dischargeability proceeding with allegations that Defendant was engaged in full-time employment, as a manager of DGP who exercised complete control over DGP’s accounting and financial records, for a period of four years (Compl. ¶¶ 10-11, 65). Instead of responding with a motion to dismiss, an Answer was filed thirteen days after Plaintiff filed its Complaint to Determine Dischargeability in this Bankruptcy Court. Defendant was shocked considering she moved to dismiss Plaintiff’s State Court claims and has stood firmly asserting that the claims are frivolous and that she was never an employee of DGP. Defendant denied and demanded strict proof of all Plaintiff’s claims (Doc. 5 ¶¶ 8-82 (Def. 135)).

3. Plaintiff did not have standing when it filed the State Court Complaint and failed to demonstrate it had standing to sue in this Bankruptcy Court, a constitutional requirement that must exist from the commencement of litigation.<sup>1</sup> This Court said, “The issue of whether you’re an employee or not is not relevant to your opportunity to take money.” [Tr. 2.15.23, 33:2-4]. The employment issue is relevant, the issues go hand in hand. When they are together, they are part of one problem involving the liability creating the conduct which the Defendant is accused of.

4. A point that has completely frustrated Defendant. Plaintiff must prove that Antonio had the opportunity to do the things that they allege she had done at every single date and time of every single transaction listed in the Complaint. Plaintiff must prove that Antonio was at the helm of DGP’s operations as a manager, in a full-time capacity that would give her the opportunity to take money or the things that she is accused of taking. Simply put, assuming facts not in evidence is akin to assuming Defendant is guilty until and unless she proves herself innocent. There is a miscarriage of justice when we assume and speculate without concrete evidence.

5. The trial that began on March 14, 2022 and ended on February 15, 2023 mirrored Plaintiff’s incomprehensible and impermissible shotgun pleadings (Compl. ¶¶ 62, 70, 76). The trial was a rambling, dizzying array calculated to confuse the Defendant and this Court. We can’t forget the first day of trial when Plaintiff exclaimed, “Today is D-Day. We have the evidence to show what these transactions, broken down, really were used for. What goods did she purchase? What items did she purchase?” [Tr. 4.25.22, 33:24-25, 34:1].

6. At the conclusion of trial, Plaintiff left us with the same questions since it failed to and didn’t bother to present any evidence to show what the transactions, broken down, were

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<sup>1</sup> See *E.F. Hutton & Co., Inc. v. Hadley*, 901 F.2d 979, 984-85 (11th Cir. 1990). Also see *Lexmark Int’l., Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125, 134S.Ct. 1377, 188 L.Ed.2d 392 (2014); *Resnick*, 693 F.3d at 1324 (citing *Focus on the Family v. Pinellas Suncoast Transit Authority*, 344 F.3d 1263, 1273 (11th Cir. 2003)).

really used for in support of its claim for exception to discharge under §§ 523(a)(4) and (6) of the Bankruptcy Code. In doing so, Plaintiff failed to meet an essential element to support its claim.

7. At trial, Plaintiff focused on its employment and wage issues that for two years Plaintiff objected to and refused to produce documents. At the same time, Plaintiff objected every time Defendant sought to elicit testimony and introduce evidence on the same issues, those objections were sustained, completely and unfairly restricting Defendant [Tr. 4.27.22, p. 96]. After refusing to produce any documents pertaining to the employment allegations, in its Brief, Plaintiff now writes, “Defendant’s employment relationship with DGP is important as it provided access to DGP’s books.” (Pl. Brief Pg. 4-5).

8. The games played by Plaintiff in this proceeding were done with intent to strip Defendant from a fair trial. This Court said the employment issues, “belong in another case. I prevented Ms. Antonio from exploring this. I said, if she’s got a counterclaim or some claim about fraud, she can bring it somewhere else... If we’re going to open up the can of worms, they’re coming out.” [Tr. 8.29.22, 102:13-23].

9. Plaintiff never bothered to ask Defendant about a single purchase or check listed in the Complaint or about the purchases on her credit card and bank statements that Geberth paid her back for during her three depositions or at trial. A necessary element to meet the burden to show the Court there was a personal benefit. Of course, Plaintiff does not want this Court to see her statements that could place Defendant in different locations or states at the time of question.

10. Plaintiff did not meet the burden to support its proof of claim totaling **\$172,000.00**, by a preponderance of evidence. (11 U.S.C.A. § 502; Fed. R. Bankr. P. 3001) [Tr. 3.14.22, 16:12-14]. Ten days before trial, Plaintiff filed its Notice of Removal (“**Removal Notice**”), reducing the alleged damages to **\$154,327.37**. The same transactions in the Removal

Notice appear in paragraphs 17-18, 21, and 25 of the Complaint, further stripping the Complaint of any viability.

11. Defendant was prejudiced by assuming Plaintiff could not prove these transactions instead of requiring DGP to submit evidence why each transactions appeared in the Complaint in the first place after conducting a prefiling investigation. Conclusory allegations are not entitled to the “assumption of truth.” *Resnick*, 693 F.3d at 1325.

12. In the Removal Notice, Plaintiff referred to its Response to Defendant’s Rule 9011 sanctions motion since Plaintiff disputed the withdrawn transactions in its Objection to Defendant’s Amended Motion for Summary Judgment, *see* Def. Ex. 134 (Doc. 702 fn at 2, (referring to Doc. 503)). If the transaction is attributable to DGP or its principal that’s a credibility concern for this Court when Plaintiff alleges the concealment occurred through QuickBooks trial accounts, all of which recorded transactions. (Compl. ¶ 47). If any of the checks are Plaintiff’s, why would Antonio conceal them like the Zeigler Transmission and FIS (Flooring Installation Services) checks that were handwritten by its principal.

13. Daniel Geberth (“**Geberth**”) is the sole owner and shareholder of DGP of the company he incorporated in 2011 (Compl. ¶ 9). Geberth hired, fired, and managed employees. He managed the company’s payroll through its QuickBooks program paying DGP’s employees by check (Def. 133, p. 135, 523). DGP complied with federal tax, state tax, and employment laws for its employees prior to 2015 and after 2019 (Def. 133, pp. 140-141; 642-648). Defendant was never listed because she was not an employee nor was she working for DGP.

14. Geberth had complete control over DGP’s bank accounts and finances. He permitted other individuals to sign company checks on his behalf. Geberth had extensive knowledge of DGP’s QuickBooks accounting software, which he regularly used. He was the sole

contact for DGP's accountant, Ashana Ramdial ("**Ramdial**") of Cohen & Grieb. Geberth signed DGP's tax returns every year<sup>2</sup> and was actively involved in all aspects of DGP's operations. [Tr. 4.29.22, 29:17-19]. Ramdial testified that she met Antonio briefly, but she couldn't even pinpoint the year offering, "'18, '19 or it could have been '20." [Tr. 4.27.22, 97:3-13, 98:8-9].

15. Plaintiff hired Brad Kanter of Kanter & Associates, Inc. ("**Kanter**"), as its expert, who testified that he was hired by the Solomon Law Group with Geberth being the one who paid his fees [Tr. 8.29.22, 138:1-8]. Kanter agreed that his fees were higher than usual. When asked to confirm if DGP made payments to his company from the period of February 3<sup>rd</sup>, 2021, to November 30<sup>th</sup>, 2021, in the amount of **\$157,799.99**, Kanter said, "I don't know the exact amount. Substantial." This was not a denial. [Tr. 2.13.23, 143:11-14; 8.29.22, 138:19-22].

16. Plaintiff now alleges Defendant embezzled **\$111,452.18**. For its calculation of damages, Plaintiff refers to the entry on DGP's bank statement without documentary evidence. If a Court can grant judgment to a Plaintiff in this manner, courts would be inundated with claims. Plaintiff's calculation includes a plethora of charges withdrawn at the summary judgment stage and at trial. E.g., Plaintiff seeks damages for the December 18, 2016 Sears & Roebuck charge of \$320.62, the charge was refunded on the same statement (PL. 107) (PL. Brief 1053-2, p. 3).

#### **GEBERTH'S RELATIONSHIPS PRIOR TO MEETING ANTONIO**

17. Geberth has the propensity of being generous to those who are in his life and becoming disgruntled when the relationship sours. In a December 2013 Facebook post referring to his ex-girlfriend, Amanda Wright ("**Wright**"), Geberth says, "It's a good feeling knowing someone can not spend 5 plus grand of your money a month anymore... It just disgusts me every time I have to look at my statements. F\*\*ng girl spent more money than me. I'm ready to smash this computer." (Def. 116, p. 43)

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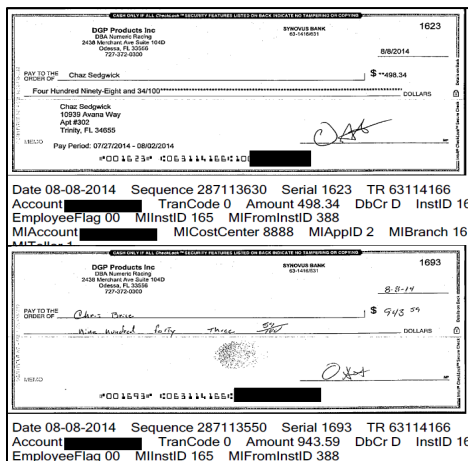
<sup>2</sup> Def Ex. Doc. 450 INT DGP 000393 CONFIDENTIAL 123145903663849 PG 2144 OF 2155 (Professional Fees)

18. Geberth explained that he was referring to a joint banking account he had with Wright who was a student at the time. A better theory is one that Geberth financially supported Wright during their dating relationship. Wright, a student, would not have the capability to contribute to a joint banking account. Further, Geberth contradicts his own written statement confirming it's 'his money' and 'his statements'. It's doubtful he would get so angry enough to smash a computer if the funds weren't his. Geberth confirmed that he never really bothered to look at his statements when other girlfriends were using his money. [Tr. 2.15.23,137:5-8/141:4-8]. Geberth took no issue with Wright's expenditures until the relationship soured.

CRIME SCENE: The check was cashed at Synovus Bank [REDACTED].

INTERVIEW: [REDACTED] (Victim). [REDACTED] advised his former employee, Christopher Brice, took check # 1693 from the office without his knowledge or permission. Christopher then forged the entire check, in the amount of \$943.59, and cashed it. [REDACTED] did not notice the missing money until recently when he was attempting to reconcile his account. [REDACTED] believes Christopher chose that amount so he [REDACTED] would not notice as it is similar to Christopher's normal weekly salary. [REDACTED] provided me with a photo copy of the check which he received from his bank. He also provided a photo copy of another check (# 1511) which was written to Christopher by [REDACTED] at an earlier date. [REDACTED] told me the comparison of the two checks is an example of the hand writing and signature differences. He also pointed out that the bank took a finger print on the check that Christopher cashed which [REDACTED] said is not common practice with his company checks. [REDACTED] advised the bank has the original checks, and he provided a written statement.

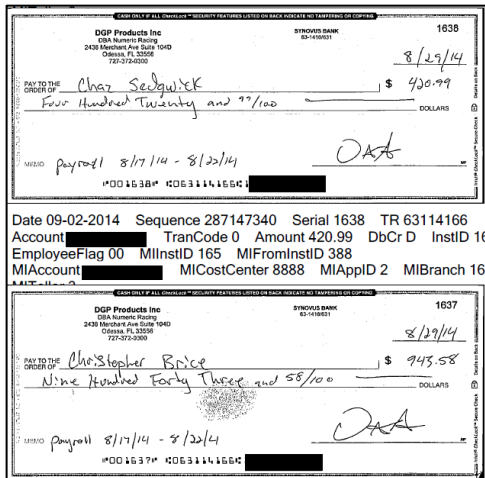
19. In the Pasco Sheriff's Report, dated December 1, 2014, Geberth alleged that his former employee, Christopher Brice ("Brice") of forging check 1693 dated August 8, 2014 from DGP's Synovus bank account ("DGP's Synovus") claiming he did not notice the missing money until recently when he was attempting to reconcile DGP's Synovus. Based upon the fingerprint, Geberth told the officer that it was not common practice for his employees to cash company checks. (Def. 106, the "Sheriff's Report") [Tr. 5.02.22, 66:5-9, 67:9-20].



20. Geberth explained, "because if I wrote them a company check, they're going to cash the company check. So, if I reimburse somebody for something that they bought and I write them a company check, they're going to cash it." [Tr. 2.15.23, 144:4-8]. His explanation offers no support to his statement alleging Brice forged a

check with an amount similar to his normal weekly salary. When asked if he can consider a missing weekly paycheck as forged, Geberth said, “I know this was back in 2014. **I can't remember anything.** Because you can't remember anything back to 2016. I don't know what the check is, I don't see the check, so how can I comment on the check? So show me the check.” [Tr. 2.15.23, 143:10-22].

21. Geberth became combative when Defendant attempted to elicit testimony regarding his accusations of forgery, complaining, “Okay. This is all irrelevant. This is before – way before I even met you,” even though he admitted meeting Defendant in May 2014. [Tr. 2.15.23, 158:3-4] (Def. 133, p. 403 of 2155). The relevance is the fact that whenever someone severs ties with Geberth, its routine for him to scour his financial accounts; then call credit card companies claiming fraud to obtain a refund and make criminal complaints because he is a scorned man. (Fed. R. Evid 406)



A theory why Geberth chose check 1511 as comparative evidence is to hide the fact that check 1637, dated August 29, 2014, is a handwritten check payable to Brice that contains the same fingerprint. Many of DGP’s checks paid to Brice contain a fingerprint and are handwritten; (Def Ex. 136 pp. 3-24). Geberth may have falsely accused Brice of forging checks, scorned that Brice left him to

operate the business on his own.

22. Geberth said he did not allow his employees to sign company checks but his testimony is inconsistent with evidence. Geberth’s statement to the officer is his admission that the signature is not his, a signature that consistently appears on DGP’s Synovus checks from May 2014 and December 2014, including to DGP’s vendors (Def. 136, pp. 3-26 (Doc. 1048-1)).



23. There was no effort by Plaintiff to have Brice or Sedgwick appear as witnesses at trial. Plaintiff failed to introduce both email and QuickBooks records for years 2014 and 2015. It is Plaintiff's burden to prove Antonio was working at DGP, had control of the debit card, and was creating entries in QuickBooks every single day from January 2015 through November 2019, without Geberth's knowledge and consent.

#### **DURING GEBERTH AND ANTONIO'S RELATIONSHIP**

24. Antonio and Geberth were involved in an "on again" and "off again" volatile dating relationship between May 2014 and November 2019. During this time, they lived separately to accommodate the fact that they had children from prior relationships. Unbeknownst to Defendant, Geberth suffered from a drug addiction that he concealed from her at the onset of their relationship. Both individuals suffered from their own health issues, creating a reliance on one another.

25. Geberth testified that Defendant was helping him with his business in 2014, claiming that he paid her personally at the time because he didn't know if he wanted to work with his girlfriend. A theory brought up the first time at trial and outside the scope of the Complaint. Defendant disputes this and denied that she made an arrangement with Mr. Geberth to receive \$500 a week [in] **cash payments** between August of 2014 and May of 2015, nor was she working. Plaintiff introduced the August 1, 2014 check and September 3, 2014 check in the amount of \$1,100 from Geberth's personal bank account ("**Geberth's Synovus**") implying that the checks were payment for work. (PL. 283) [Tr. 4:29:22, 9:6-11; 10:2-12].

26. This testimony was conclusory, self-serving, unsupported by documentary evidence and contradicts the fact that Geberth testified that he can't remember anything in 2014 in response to the August 2014 check forgery allegation against Brice. Instead, the amount is

consistent with the \$1,100 rent payment to Antonio's former landlord, Ash Farid (Def. 49). Geberth provided the same type of support to Antonio that he did with Wright.

***Plaintiff Attributed Alleged Forged Check 1797 As Defendants Wages At Trial***

27. Attempting to support Geberth's claims that he paid Defendant \$500 a week in cash, Plaintiff introduced **checks** totaling \$2,000 each from Geberth's Synovus. This includes check 1217, dated January 7, 2015; check 1219, dated February 5, 2015; check 1221, dated March 4, 2015; and check 1224, dated April 6, 2015 (Def. 42, 44, 46, 48).

Exhibit E- Forged Checks (Excluding Innisbrook)			
Date	Check No.	Payee	Amount
<b>2015</b>			
1/9/2015	1714	Bright House Networks	\$ 198.74
3/24/2015	1765	Bright House Networks	\$ 275.86
4/10/2015	1778	PHU Football Boosters ("for Christian Antonio")	\$ 100.00
5/6/2015	1797	Faith Antonio	\$ 900.00

Plaintiff reintroduced the May 2015 check 1225 from Geberth's Synovus paid to Defendant's landlord, Ash Farid, in the amount \$1,100 and then introduced check 1797 from DGP's Synovus, dated May 6, 2015, payable to Antonio in the amount of \$900.00, to tie the \$2,000.00 for the month of May (Def. 49; Pl. Ex. 280).

28. Plaintiff went to the trouble to introduce checks filed by Defendant from her subpoena to Synovus Bank instead of referring to its own exhibit 206 titled, DGP's Synovus Bank Acct. No. \*8642 Check Images, that contains check 1797. [Tr. 4.26.22, 10:11-22]. Likely done with intent to hide the fact that check 1797 is an alleged forged check containing Geberth's signature listed on Exhibit E of the Complaint. (PL. 206, p. 5)

29. In pure contradictory fashion, Plaintiff proffered that the relevance of the checks from Geberth's Synovus is, "just to show, Your Honor, the pattern of the finances that Mr. Geberth was giving Ms. Antonio and **how he made a clear distinction from the funds that he provided from his personal account as opposed to DGP for wages**. And in addition, how soon the financial contributions started." [Tr. 4.29.22, 12:1-6].

30. Geberth testified that he doesn't remember the date and month that Defendant underwent cosmetic surgery that he had personally paid for. When asked if he can recall the events in the summer of 2014, Geberth confirmed, "**I don't recall**. I would have to go back and look at all my records from my personal and business checking accounts to verify when the dates exactly were. So, **I don't recall stuff from eight years ago**." [Tr. 6.16.22, 16:10-22]. Geberth, suffering from a drug addiction would not have the ability to recall any agreements, if any, that he made with Defendant.

31. However, Plaintiff must have some idea the time Defendant had surgery when Plaintiff's line of question starts, "Between August of 2014, so this is after, right after your surgery..." Defendant testified that she had a hard surgery, that took three months (to recover from) so she stayed between Geberth's home and her own." [Tr. 4.25.22, 89:4-11; 90:1-7].

32. Defendant testified that the funds were in exchange for taking care of his household, stating, "he's taking care of me, and I take care of him. I was taking care of his household and his daughter, and he was taking care of me. It was a relationship. That's what he offered. That's what he said that he did with all of his girlfriends." When asked what kind of household things she did, Defendant responded, "Take care of his daughter. When he was intoxicated, sleeping for days, somebody had to take care of his daughter, clothe his daughter, all the things that a parent should be doing." [Tr. 4.25.22, **119:1-7**]. Plaintiff completely fabricates Defendant's testimony in its Brief saying, "Defendant herself states that Geberth was unable to tend to the day-to-day business matters because he was often under the influence of drugs." citing Tr. 4.25.22, **119:1-7**; 129:11-17. Defendant never said this.

33. Antonio had an "on again" and "off again" strictly personal, dating relationship with Geberth from May 2014 to November 2019. She was never an employee of DGP's and

never received pay in exchange for work. Antonio never had any job duties or work schedule, as she was never “employed” by DGP, as it falsely alleges in its Complaint.

34. Plaintiff really expects the Court to believe that Antonio, who has no known automotive or race car driving experience, no known managerial experience, started at DGP in January 2015 in a full-time managerial position without any formal training. According to the Sheriff’s Report, the investigation was still active after September 2015. It’s unthinkable that Antonio had full control over DGP’s financial accounts including DGP’s Synovus debit card one month after Geberth made at least one criminal complaint on December 4, 2014, and six months after Antonio and Geberth started dating.

01/09/2015	(Check)	1713	Bright House Networks	8234150310238609	Accounts Payable
01/09/2015	Check	1715	Jeffrey Geberth	Memo:ECP INCLEARING CHECK	Opening Balance Equity
02/17/2015	Check	1733	Jeffrey Geberth	ECP INCLEARING CHECK	Opening Balance Equity

35. Geberth testified that his father helped him run DGP, maybe that’s why Jeffrey Geberth received \$1,000 checks from DGP in January and February 2015. Both checks were categorized under Opening Balance Equity. (Def. 135, pp.532, 535 of 2155; Def. 136 pp. 27, 31; (Ck 1715, 1733)).

36. The entire trial was speculative in nature. For example, Plaintiff introduced “Timeline for those with limited Memory,” a document that Geberth admitted to destroying the original. Based solely on this document, Plaintiff wants this Court to believe their story that Antonio was a trusted employee of DGP involved [in] the management of the accounting and finance functions from 2015 through 2019. (PL. 2) [Tr. 4.29.22, pp. 47-49].

37. When DGP relies on QuickBooks in every aspect of its business, Plaintiff failed to introduce evidence within its possession from QuickBooks. There is no evidence of Antonio taking orders, paying bills, packing products, and posting advertisements from 2015 through 2019. If this work is completed through QuickBooks, Plaintiff failed to introduce evidence of

invoices, bill payments, reconciliation statements, and QuickBooks reports to back up this allegation.

**SYNOVUS BANK AND USE OF DEBIT CARD**

38. Geberth claimed that the first time the unauthorized transactions came to his attention was, “when I had my meeting when Ashana came to my house, that’s when I saw something was seriously wrong. November 11th is when -- that was when we ended things.” [Tr. 5.2.22, 121:11-16]. DGP never alleged that Synovus or American Express transactions were concealed by use of “fraudulent” QuickBooks accounts instead: Antonio’s early fraud was **overlooked** initially because the expenditures and disbursements appeared facially to be legitimate business expenses” (Compl. ¶15).

39. Geberth admitted that there was only one Synovus Bank debit card (the “**Synovus Debit**”). He admitted that he had sole and complete access of DGP’s Synovus between January 2015 and August 2015, confirming “no one else had access to my bank.” but then claimed that he gave it to Antonio because “I never needed to use it.” [Tr. 6.16.22, 149:7-9].

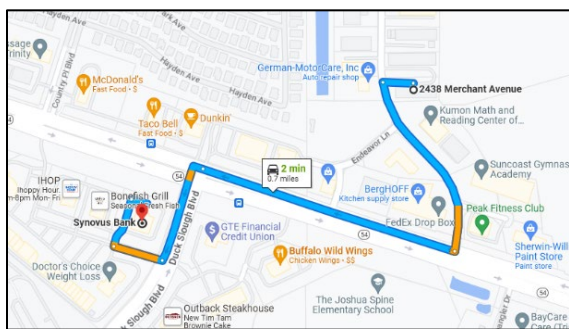
01-12	Check Card Purchase	Merchant Purchase Terminal 319838 STAPLES, INC TAMPA FL 01-10-15 7:03 PM XXXXXXXXXXXX2237	124.87
01-12	POS Purchase	POS Purchase Terminal 04359135 NNT SEARS ROEBUCK 132 TAMPA FL 01-10-15 7:25 PM SEQ # 501119009026	2.73

40. Plaintiff claims that during the first few days of her employment with DGP, Antonio began making wrongful charges on DGP’s account(s), including at Staples, Home Depot, and Lowe’s (Compl. ¶¶ 15, 19-22, 23-26). Instead, charges on Geberth’s Synovus link him to the purchases, especially since he used both business and personal cards at the same location on the same date. E.g., Plaintiff seeks damages for the Staples, Tampa purchase for \$124.87, posted on January 12, 2015. (PL. Brief (1053-1, p. 1)). The transaction date and time January 10, 2015 7:03pm appears under vendor. In Geberth’s Synovus, he made a purchase at Sears Roebuck in Tampa with a transaction date and time January 10, 2015 at 7:25pm (Def. 49, p. 9/ PL. 40).

41. Questionably, Geberth said there was no reason for him to go to Target or CVS in Palm Harbor when there are plenty of purchases in Palm Harbor in Geberth's Synovus, including CVS, Winn-Dixie, and Walmart (Def. 42-43, Bates 570, 575, 593, 594) [Tr. 5.2.22, 84:1-10]. Geberth wants us to believe that he was an absentee boyfriend as well. Plaintiff seeks damages for charges that are found throughout Geberth's Synovus, including Exxon Mobil Trinity, Verizon, The Freaki Tiki, and Target Odessa. (Def. 42-49).

42. Geberth falsely testified that he rarely visited the Synovus Bank located at 10820 State Rd 54 in Trinity, Florida (hereinafter "**Synovus Trinity**"). He said he was able to determine which ATM withdrawal was withdrawn by Antonio because he never particularly went to his bank, claiming, "it was an inconvenience for him to drive a couple miles down the road." [Tr. 5.2.22, 55:1-4; 57:5-18; 58:4-20; 97:4-13].

43. DGP was operated at 2438 Merchant Avenue in Odessa, Florida in a 3,000 square foot warehouse (the "**Merchant Ave Warehouse**"). Geberth testified that he worked at the warehouse until January of 2016, when he "moved everything to my home." The Merchant Ave



Warehouse was a ten-minute drive from his home located at 15328 Black Gold Loop in Odessa, Florida. The Synovus Trinity and the Merchant Ave Warehouse were located within a two-minute drive. [Tr. 4.29.22, 28:11-25].

44. Aspen Geberth testified under oath that she had witnessed Antonio coming to work in her home from 11:00 to 12:00 and would leave between 5:00 to 6:00, during the years 2014 through November 2018. She further claimed that Geberth and Antonio would "only be together during the week during those working hours." [Tr. 4.28.22 Excerpt, 5:15-24; 6:2-7]. An impossible feat since Geberth confirmed that his company was operated at the Merchant Ave

Warehouse until January 2016. When a witness is put on the stand, they should be able to corroborate their testimony with other witnesses.

45. Kanter never explained exactly how he used “scientific methods” to identify checks were for Antonio’s personal benefit. In his report he said he did not have the opportunity to interview the Defendant and he testified that Antonio did not make herself available even though he appeared at her depositions on November 18-19, 2021 and February 13, 2022 and assisted Plaintiff’s counsel. [Tr. 2.13.22, pp. 100-104]

46. Plaintiff seeks damages for check 1714 and 1765 to Bright House Networks for \$198.74 and \$275.86. (PL. Brief (1053-3, p. 1)). The account number ending 8609 listed on the memo line on Check 1714 appears throughout DGP’s Synovus (Def. 136, pp. 8, ck. 1599, p. 17, ck. 1647; p. 33, ck. 1744). On Intuit account 9457 (“**Intuit 9457**”), Bright House Networks appears as a bill entry with account ending 8609 on February 27, 2014 and March 13, 2014, prior to the date Geberth and Antonio had met. (Def. 133, p. 394-395 of 2155). The Import Administration entries on Intuit 9457 reveal entries that date back to the year 2012.

2016-05-17 10:41:28 AM PDT	Import Administration	Added Bill 8234150310238609	Bright House Networks	3/13/2014	\$190.11
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47. Defendant testified that she ended her relationship in May 2015 after she “found out he was emailing escorts for sexual services.” [Tr. 4.25.22, 108:3-13]. Geberth testified that he reviewed his personal Capital One credit card (“**Geberth’s Capital One**”) and disputed charges he claims were fraudulently made by Antonio after the breakup. He testified that he wouldn’t have looked beyond Capital One Card account giving support that Defendant did not have the Synovus Debit.. Geberth combed through his accounts and called his credit card companies claiming fraud on anything that he thought was related to Antonio. Just like Geberth did when he parted ways with Brice and Sedgwick. It’s his modus operandi. [Tr. 5.2.22, 72:8-19; 74:2-3].

TRANSACTIONS FOR ASPEN S GEBERTH #1034 (CONTINUED)		
13	31 JUL SUNCOAST GYMNASICS ACODESSAFL	\$71.25
14	01 AUG SUNCOAST GYMNASICS ACODESSAFL	\$9.75
15	01 AUG COLDSTONE #22008TRINITYFL	\$4.12
16	03 AUG PAPAYA CLOTHING FLOTAMPAPFL	\$46.97
17	03 AUG CANDY BARRELTAMPAPFL	\$5.34
18	03 AUG LE MACARON FRENCH PASTOSPREYFL	\$2.41
19	03 AUG ICING #3472TAMPAPFL	\$44.67
20	03 AUG VICTORIA'S SECRET 0850TAMPAPFL	\$49.45
21	03 AUG BATH & BODY WORKS 1063TAMPAPFL	\$16.05
22	03 AUG SUBWAY 00557306TAMPAPFL	\$7.37
23	03 AUG CHARLOTTE RUSSE 79TAMPAPFL	\$28.55
24	03 AUG PACSUN #0330TAMPAPFL	\$16.95
25	04 AUG CLAIRE'S #6859TAMPAPFL	\$27.82
26	04 AUG VICTORIA'S SECRET 1559TAMPAPFL	\$60.89
27	04 AUG CHEESECAKE TAMPATAMPAPFL	\$22.16
28	04 AUG LOVE CULTURE INTRNLPLZTAMPAPFL	\$16.32
29	04 AUG USA*Fantasy Photo BootsSALEMNH	\$5.00
30	06 AUG MARCOS PIZZA - TRINITYNEW PORT RICHL	\$28.83
31	07 AUG TARGET 00022095ODESSAFL	\$4.55
32	07 AUG TARGET 00022095ODESSAFL	\$119.80
<b>Total for Aspen S Geberth #1034</b>		<b>\$790.70</b>

48. When the Court reviews Geberth’s Capital One, Geberth’s daughter, Aspen, had unrestricted shopping sprees as an authorized user on a card listed in her name. A fourteen-year-old girl was spending around \$1,000.00 a month, on an account Geberth paid using autopay (PL. 279). Aspen testified that she was with

Defendant for the August 3, 2014 charges located in Tampa, Florida that are listed on the July 2014 statement even though Antonio was recovering from cosmetic surgery.

49. Aspen’s card use reflects the same purchases Antonio is accused of making including Target, McDonalds, PacSun, Happy Nails, Chick-Fil-A [DGP13835], Pretty in Paint, Busch Gardens [DGP13823], Walmart, and JoAnns [DGP13830] (PL. 279). After Aspen’s card was removed from her possession in 2015, she said she used “a Synovus at one point, and then one was like a deb -- like a credit card kind of thing.” [Tr. 4.28.22, 40:10-5]. The same transactions purchased by Aspen began appearing on DGP’s Synovus.

50. After allegedly accusing Defendant of making fraudulent purchases on his Capital One Card, Geberth claims he reconciled with Antonio in August 2015, because she “left him hanging with the business.” Kanter testified that he didn’t examine Geberth’s financial accounts, but he could have reviewed DGP’s Synovus between May and August 2015, an undisputed period when Geberth and Antonio were not together. [Tr. 2.13.23, 106:13-25/107:1-16].<sup>3</sup>

08-21	Check Card Purchase	Merchant Purchase Terminal 478930 SHOOTERS WORLD LLC TAMPA FL 08-19-15 XXXXXXXXXXXXX2237	500.00
08-24	ATM Withdrawal	Cash Withdrawal Terminal T38816 10820 STATE ROAD 54 TRINITY FL 08-24-15 5:17 PM XXXXXXXXXXXXX2237	600.00
08-27	Check Card Purchase	Merchant Purchase Terminal 478930 SHOOTERS WORLD LLC TAMPA FL 08-25-15 XXXXXXXXXXXXX2237	500.00

<sup>3</sup> In DGP’s Synovus June 2015 statement, Geberth makes purchases at Exxon Mobil Trinity; Lowe’s Tampa, New Port Richey, and Lutz; Target Odessa and Trinity, Petco Odessa, Home Depot.com, Verizon around the same time of the June 24, 2015 BMG Orlando charge for Geberth’s hair transplant.



51. For example, Shooter’s World, a gun range Geberth admitted being a member of, appears on DGP’s Synovus, dated August 25, 2015. Geberth had the debit card in his possession before and after the \$600 ATM withdrawal that Plaintiff claims is a withdrawal made by Defendant for “wages.” An amount Kanter testified that he accounted for in the W-2’s he created for DGP. (PL. 46) [Tr. 6.14.22, 23:16-17].

Merchant Purchase Terminal 478930 SHOOTERS WORLD LLC TAMPA FL 02-28-16 XXXXXXXXXXXXX2237
Merchant Purchase Terminal 407105 HARBOR RELOADING AND S CLEARWATE FL 02-29-16 XXXXXXXXXXXXX2237
Merchant Purchase Terminal 478930 BUCKLE 225 TAMPA FL 02-29-16 6:57 PM XXXXXXXXXXXXX2237
Merchant Purchase Terminal 319310 HOLLISTER #548 8089 CITRTAMPA FL 02-29-16 7:12 PM XXXXXXXXXXXXX2237
Merchant Purchase Terminal 319838 AMERICAN EAGLE TAMPA FL 02-29-16 7:20 PM XXXXXXXXXXXXX2237
Merchant Purchase Terminal 319140 VICTORIA'S SECRET STORESTAMPA FL 02-29-16 7:29 PM XXXXXXXXXXXXX2237
Merchant Purchase Terminal 316808 MACY'S 832 78 01 CITTAMPA FL 02-29-16 7:47 PM XXXXXXXXXXXXX2237
Merchant Purchase Terminal 407314 RACK ROOM SHOES #0324 TAMPA FL 02-29-16 7:59 PM XXXXXXXXXXXXX2237
Merchant Purchase Terminal 469216 STARBUCKS 11115 O DESSA Odessa FL 02-29-16 XXXXXXXXXXXXX2237

52. On February 28, 2016, Geberth used the Synovus Debit at the Shooter’s World gun range in Tampa, Florida. The next day he visited Harbor Reloading & Supply, a web search showed this is a gun supply store in Clearwater, one of the towns Geberth claimed he never went to. That same day there is a shopping spree in Tampa, Florida where he visits American Eagle, Hollister, Victoria Secret. (PL. 52-53 DGP00308-9). Consistent with the purchases made by Aspen on her Capital One card.

53. Kanter could have used Geberth’s charges at Shooter’s World, Lumber Liquidator’s, Sherwin Williams, and Pinch A Penny to search through DGP’s Synovus to determine that Geberth definitely had the Synovus Debit in his possession. E.g., Shooters World: 8/21/15, 8/31/2015, 3/01/16; Pinch A Penny: 9/29/15, 12/15/15, 2/22/16; Sherwin Williams, 10/21/15, 1/06/16, 2/22/16; Dick Sporting Goods, 11/30/15, 12/07/15; Lumber Liquidators, Lutz; 12/21/15, 12/24/15, 1/06/16, 1/19/16, 2/03/16; Sunshine Primary Care, 2/25/16. The withdrawals are not Defendants.

54. Plaintiff improperly testified to suggest that the Amazon charges were deleted and continued this misrepresentation in its Brief stating, “other emails were used to set up her multiple PayPal and Amazon accounts.” Marca Schulz “deleted several Amazon Payments”.

(Brief p. 10-11). Facts that are not in evidence and are completely fabricated. In Intuit 3849 General Ledger, Amazon Payments is a merchant payment processor; a method of payment Numeric Racing still accepts as reflected on its website. (Def. 133, p. 1964 of 2155).

55. On October 14, 2017, Geberth bought his daughter a vehicle at Lokey VW in Clearwater, Florida, using DGP Synovus Check 1959. The handwritten check contradicts Plaintiff's pleading that DGP required that all [authorized] checks be prepared and issued through this QuickBooks software process (Compl. ¶32; PL. 206, p. 20). On DGP's Intuit 3849 General Ledger, the Lokey VW entry was last modified on August 17, 2018, and categorized under Opening Balance Equity (Def. 133, p.1996 of 2155/ Def. 136, p. 71 of 99).

Aspen Car	Opening Balance Equity	-5,032.14	9,894.57	5,032.14 No	08/17/2018 10:29:25 AM	Synovus Bank	Lokey VW
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### CAPITAL ONE AUTO LOAN

56. Plaintiff feigned confusion about the Capital One Auto loan that appears on Exhibit B of the Complaint even though the Complaint specifically says: auto loan payments to Capital One Auto Finance. (Compl. ¶ 21). Plaintiff said, "what we are including in the Complaint is not related to an auto. It's a Capital One credit card auto payment that we now removed... whatever this – and Capital One Auto – **we never received any documentation regarding a vehicle.**" and shifted the blame to Defendant. [Tr. 5.2.22, 129:21-24, 130:1-7, 131:2-19]. This Court could review her Bankruptcy schedules to see if she held a Capital One credit card. No type of Capital One credit card purchases is listed on the Removal Notice.

57. Geberth did not agree with Plaintiff's May 9, 2022 Notice regarding the Capital One issue, representing: It is unknown whether Defendant applied the payments from DGP's Synovus account to her son(s) 2008 Ford Mustang or her mother's 2018 Hyundai Elantra. (Doc. 911, ¶ 29). He testified, "No, it's not unknown because we subpoenaed Capital One Auto. **There was no auto loans in your (Antonio's) mother's name or anybody in your family's name.**"

Geberth immediately impeaches himself saying, “That Capital One Auto loan, you and your mother just opened that up recently. And that was May of ’22.” [Tr. 2.15.23, 100:6-25; 101:1-8].

58. Geberth belligerently contradicted himself and said, “We've gone through this. I've got -- we subpoenaed -- we tried to subpoena Capital One, we tried to subpoena in all different names, and **the only loan that came up was the one that your mother just did recently in 2020 and that was not this payment.**” [Tr. 2.15.23, 100:6-25; 101:1-8]. Plaintiff received the subpoena but does not want to disclose unfavorable records. Geberth repeatedly denied his involvement even though he added Capital One Auto as a vendor in Intuit 3849 on May 2018, (Def. 131 (400-3, p. 51: 2018-05-09 04:50:40 PM PDT)) [Tr. 5.2.22, 127:10-16/ Tr. 6.14.22, 160:5-8/ Tr. 2.15.23, 98:18-22; 100:18-21; 101:2-6; 113:2-7; 124:9-25; 125:1-5].

<p>reason to stay in this shitty ass relationship. NOT ONE! All you do is cost me money, complain, and complain about me. You would think that after all the money I spend on you and things I do for you and family I would get much better treatment. Boob job, dinners out, your teeth, vacation, paying for and fixing your families cars. I do a lot for you. Got your kids better jobs. I spent \$1700.00 on your son's transmission that I know wasn't paid back and it's not like I'm not asking</p>
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59. The Court asked Geberth if he ever told anyone he bought Antonio’s son or a car and he said, “Not that I recall,” even though his statements appear on several emails, including the Redline Racing email. (Def. 7) [Tr. 2.15.23, 116:6-10]. Geberth used DGP’s Synovus to buy the 2008 Ford Mustang for Antonio’s son, just as he did for his daughter, who are the same ages. It was no mistake; Geberth listed the Zeigler Transmission check and the Capital One Auto loan because he wants payback for all the gifts he gave Defendant and her family.

60. Plaintiff’s expert testified that he calculated \$43,608.32 was allegedly embezzled from DGP’s Synovus offering an unsupported opinion that did not clarify facts and issues of common understanding.<sup>4</sup> Kanter did not examine DGP’s financial records, whatsoever. [Tr. 8.29.22, 33:9-17; 35:4-9; Report TR03401].

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<sup>4</sup> See, e.g., *In re Scientific-Atlanta Inc. Securities Litig.*, No. 1:01-CV-1950-RWS, 2009 WL 4281256, at \* 2 (N.D. Ga. Nov. 24, 2009); *Whelan v. Royal Caribbean Cruises, Ltd.*, 976 F. Supp. 2d 1322, 1327 (S.D. Fla. 2013).

### AMERICAN EXPRESS ALLEGATIONS

61. DGP alleged that Antonio was making unauthorized charges on an American Express business card (“AMEX”) that Geberth admitted that he gave Antonio consent to use. Somehow Geberth could not recall if DGP had an AMEX account prior to 2016 although payments appear prior to 2016. (Def. 133, 463 of 2155). He said he initially reviewed the AMEX statements monthly but hadn’t looked at them for years. [Tr. 5.02.22, 18:3-5; 19:7-10] If so, then why does Plaintiff seek damages from charges on the very first AMEX statements, including April 2016 and May 2016? (PL. Brief, 1053-2, pp. 1-2 (PL. 99-101)).

62. The AMEX statements, titled: American Express Business Gold Rewards, are evidence that Antonio and Geberth both had online access to DGP’s AMEX account, and both made payments each month (PL. 99-143). Geberth had the ability to see every transaction, had knowledge of Antonio’s purchases and acquiesced to her use of the Numeric Racing AMEX card in her name. Geberth admitted that American Express and Synovus transactions were automatically downloaded into QuickBooks but claimed that he had no access to view the statements. Antonio’s use of the AMEX card does not create or establish an employment relationship. There was no reason for Geberth to tell her “for business purposes only” if she wasn’t working for DGP.

63. Kanter testified that it was to his understanding that Antonio embezzled \$29,331.76, based upon the transactions that were removed in the Removal Notice. There is no data in his report to support his findings that the charges are for Antonio’s benefit. The fact that Numeric Racing name is listed on the card, means anyone can use the card, even Geberth.

64. Plaintiff’s expert did not examine DGP’s American Express statements, otherwise he would have found Geberth’s account number changed from 81005 to 82003 sometime between September and October 2017, giving the strong possibility that Geberth’s card was lost

and further evidence that he may have used the AMEX

DANIEL A GEBERTH	Account Ending 7-81005
DANIEL A GEBERTH	Account Ending 7-82003

card that listed both Numeric Racing and Faith Antonio. (PL. 116-117).

65. There is no doubt that Kanter did not examine DGP's financial statements otherwise he would have caught the change in the account number since he included snippets of DGP's AMEX statements to his report listing 82003 (Supp. Report: p. 40-44). Kanter only provides an analysis with a chart in his report, stating "the results showing how much money was charged by each person." This statement would give a reader a prejudicial presumption that Defendant had made 1383 personal purchases in the amount of \$126,804.84 instead of highlighting the fact that Geberth passed the majority of expenses through the Numeric/Faith AMEX card. (Report at p. 23)

#### **GEBERTH'S ADDICTION**

66. Geberth testified that he had been addicted to pain pills from 2008 'til 2014 and he didn't really have a recollection of the stuff that he was doing, including buying a vehicle during the weekend of his birthday, in October 2014. [Tr. 4.29.22, 14:3-6, 25; 15:1-11].

67. Plaintiff alleged from June 19, 2015 through June 24, 2015, Defendant effected a series of payments from DGP's Synovus to BMG Orlando, an entity unknown to DGP, totaling \$5,000.00 (Compl. ¶17). In the Removal Notice, Plaintiff excused this by saying a Google search of "BMG Orlando" directs the searching party to various modeling agencies in Orlando and the juice is not worth the squeeze" with respect to this particular transaction. (Def. 134, Doc. 720).

68. Plaintiff admitted BMG Orlando was attributed to Geberth's hair transplant procedure at Bosley Medical Group, so there is no juice to squeeze, especially when BMG Orlando occurs on Geberth's July 2015 Synovus statement. \$4,014 of a \$9,050 charge is refunded then appears on DGP's Synovus around the same time (Def. 52). Geberth may have

failed to remember his breakup with Antonio between May and August 2015. There is no other explanation why a myriad of transactions from this time period was listed in the Removal Notice.

69. Kanter testified that Geberth's drug addiction was relevant because "the addiction can put someone in a position that they're – can be taken advantage of, that they may not be of sound mind..." [Tr. 8.29.22,11:20-25]. It's not the brightest idea for Kanter to support his findings based on his interview after Geberth admits to having memory issues related to his addiction.

70. Defendant objects to Plaintiffs improper and prejudicial argument that it is "undisputed that Defendant was keenly aware of Geberth vulnerability. A vulnerability Defendant took full advantage of." (PL. Brief p. 3). Antonio testified that she was not aware of Geberth's drug addiction until her doctor alerted her during a visit related to the surgery. She said, "the doctor pointed out that Mr. Geberth, in concern, was flushed face. He (Geberth) was talking and exhibiting signs of being under the influence, which includes talking like you have cotton balls in your mouth, mumbles, and he had drool coming out of his mouth. I thought it was from his lack of sleep that he used to tell me that it was nothing but him not being able to sleep and that's why he was tired all the time." [Tr. 4.25.22, 86:2-12].

71. Defendant brought to Geberth's attention all the stuff that he was doing while suffering from his addiction, one Geberth admits that he was shocked at what he was doing." [Tr. 4.29.22, 14:1-8]. Obviously, there was never an intent to take advantage of Geberth, especially when Antonio did not do the things she is accused of. We don't know if drug addiction could possibly affect a person's memory, perception, and the ability to narrate events.

72. Geberth admitted that he was prescribed Vyvanse, a drug commonly used to treat memory related issues, between 2015 and 2019. When asked how he can be certain for each date and time (of the alleged unauthorized transaction) what he was doing or where he was at,

Geberth did not respond, instead said, “well, I’m not on the medication right now and I still misplace my phone and keys.” [Tr. 6.16.22, 82:7-25; 83:1-2].

**PLAINTIFF’S EXPERT BRAD KANTER OF KANTER & ASSOCIATES**

73. Plaintiff bore the burden and failed to satisfy the admissibility of Kanter’s testimony under Rule 702 in *Daubert v. Merrell Dow Pharm, Inc.*, 509 U.S. 579 (1993) by a preponderance of the evidence. Kanter was tendered as an expert in forensic analysis, forensic accounting, and QuickBooks over Defendant’s objection.

74. Kanter was not qualified to testify competently regarding the matters he addressed at trial. Kanter used an unreliable methodology to support his conclusion. His use of the Forensic Accounting/Investigation Methodology (“FAIM”) in support of his analysis did not meet generally accepted accounting principles (“GAAP”) required for admissibility.

75. When asked why there are no QuickBooks reports, general ledgers or journals mentioned in his report, Kanter admitted that his “review of the financial information was not in any credible general accepted accounting principles reliability,” and confirmed “that the type of fraud theory testing found in FAIM is a type of testing not everyone uses.” [Tr. 8.29.22, 10:16-18/ Tr. 2.13.23, 57:2-9]. Many Court have excluded experts who use the “fraud triangle theory.”<sup>5</sup> Kanter did not include any sources or support to establish the reliability of his methodology and fails to provide any type of support for his assertion. The court in *Broyles* noted although the “fraud triangle” theory existed for fifty years, it could not locate a court admitting “fraud triangle” expert testimony and found the “fraud triangle” to use improper character evidence and any probative value of the test is far outweighed by the danger of unfair prejudice.

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<sup>5</sup> See *Broyles v. Cantor Fitzgerald & Co.*, No. 10-857, 2016 WL 3251448 at \*3 (M.D. La. June 13, 2016). Also see *Kremsky v Kremsky*, No. 16-4474, 2017 WL 663091 (E.D. PA. Feb 17, 2017).

76. In his assessment, Kanter impermissibly examines if Antonio “perceived” and “rationalized” something that is an inquiry into her subjective beliefs and impermissible expert testimony.” An expert witness cannot speak to the subjective belief of a [party] ...” because “[s]uch testimony amounts to little more than [a] ‘subjective belief or unsupported speculation,’” and is not permitted under Rule 702. Kanter concludes, “The pressure in our professional opinion is evident by the pattern of gifts and overall spending which appears inconsistent with a person having a lifestyle funded primarily by government funded disability income.” Listing dental repair, breast implants, family gifts, and Innisbrook Resort to support his conclusion. A statement that contradicts allegations that Defendant was an employee of DGP and receiving wages.

77. His unprofessional conclusion that “Antonio collected Social Security Disability Income during the scope period” is based on Geberth’s disgruntled complaints in the Redline Email. Geberth complained, “You would think that after all the money I spend on you and things I do for you and family I would get much better treatment. Boob job, dinners out, your teeth, vacation, paying for and fixing your families cars.”

78. Kanter is not certified in QuickBooks contradicting Plaintiff’s Response filed on October 2021. He admitted that he did not take the steps to complete any of the training provided by QuickBooks with the excuse that Kanter & Associates doesn’t feel like the training from QuickBooks is adequate. [Tr. 6.17.22, 114:16-21; 115:2-6/ Tr. 2.13.23, 19:2-19]. Therefore, Intuit would not even consider Kanter as a QuickBooks expert.

79. Kanter does not indicate, in any way, that his opinions are supported by reliable sources or sources that are accepted within the industry. He relies on his experience as a CPA and Enrolled Tax Agent and does not explain “how that experience leads to the conclusion reached,



why that experience is sufficient basis for the opinion, [or] how that experience is reliably applied to the facts.” This Court cannot simply take Kanter’s word for it.<sup>6</sup>

2019-12-06 05:12:51 PM PST	Numeric Racing	Added Deposit	t10387	Bigcommerce
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80. Kanter simply recites data entries and does not provide a reliable opinion of any wrongdoing. His calculation of damages is non-existent, a deficiency that cannot be corrected at trial. He claims to have identified two accounts set up on BigCommerce, falsely calling this platform a merchant account site and suggesting multiple accounts were set up to create parallel accounts. To create an appearance that Defendant is operating multiple sites. (Report, p. 44). Kanter should have found that DGP was refunded one of the \$225 charges on December 6, 2019 if he actually did any sort of forensic examination. (Def. 131, (400-2), p. 117).

Transaction History		
July 08, 2016 through July 08, 2016		
DGP Products Inc. dan@numericracing.com		
Date	Description	Status
07/08/2016	Bank Deposit to PP Account ID: 63G69064JU4221005	Pending
07/08/2016	General Payment: Tabithaann Antonio ID: 32G57656M44272538	Completed

81. Kanter includes the transaction history from DGP’s PayPal account showing the \$480.00 transfer to Antonio’s sister that Plaintiff made relevancy objections to obstruct Defendant’s attempt to elicit testimony. A

charge Plaintiff’s seeks damages for. (PL. Brief 1053-1 p. 4) [Tr. 8.30.22, 44-48]. When asked what email address is DGP’s PayPal account listed under, Kanter could not give an answer even though a screenshot appears as an exhibit in his report with Geberth’s email, dan@numericracing.com. (Supp Report p.33). Plaintiff’s method of using screenshots of complete records is with intent to distort and hide the truth to align with Geberth’s fabricated story.

<sup>6</sup> *United States v. Frazier*, 387 F.3d 1244, 1261 (11th Cir. 2004). (“The trial court’s gatekeeping function requires more than simply ‘taking the expert’s word for it.’”); *Padgett v. Kmart Corp.*, No. CV 315-048, 2016 WL 3746671, at \*4 (S.D. Ga. July 8, 2016) (“A district court must do more than ‘take the expert’s word for it’” ...)

**PLAINTIFF’S EMAILS ARE NOT ORIGINAL EMAILS**

82. Kanter focused on emails that have no relevancy to an examination of DGP’s financial accounts. For the first time at trial Plaintiff introduced (over Defendant’s repeated objections) unauthenticated email purportedly written by Antonio that Plaintiff admitted to filing after the close of discovery on April 4, 2022.<sup>7</sup> (PL. 266) [Tr. 8.29.22, 109:2-9].

83. Under oath, Geberth said, **“But all of my old emails that were currently on the Workspace email, got deleted, and I had to ask them to try to restore them, which they weren’t able to restore them.”** GoDaddy noted that Plaintiff’s emails were removed on January 11th, 2022, and in response to this note, Geberth admitted, **“The only ones I had left were on my computer.”** Geberth confirmed that, **“the actual – the original emails were deleted.** The email addresses were not deleted. [Tr. 5.02.22, pp. 171-172; 175-176; 177-178].

84. Geberth did not have the ability to produce metadata for any emails dated prior to January 11<sup>th</sup>, 2022 and Plaintiff did not have the ability to produce metadata for any of the emails introduced at trial, including for the Narcissist, Geberth said, **“I’m sure if I give it to Bill, the IT guy, he could pull all the information up off of it.”** [Tr. 5.02.22, 179:5-10; 181:7-23].

85. After Geberth basically confirmed that Kanter would not have been able to retrieve any original emails from a 365 server, Kanter still testified that he used a forensic email collector program to access the emails, “so we do not get the email data directly from a person; we get it from the hosting site, so that we know we get it unaltered.” When asked if the emails are the original, he confirmed, **“yeah, they’re just the organic emails from that server.”** [Tr. 6.17.22, 116:24, 118:8-13/ Tr. 8.29.22, 119-134/ Tr. 8.30.22, 28:1-5]

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<sup>7</sup> (Report, Ex 25, TR03365, Pg. 131; Ex 34, TR03389)). Under Rule 37, “[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence ... at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1).

86. Kanter did not demonstrate any email was pulled from the Microsoft Server at trial. He shows the Court the program then spends time going through emails from Plaintiff's exhibit 266 instead of any original emails he claims he had the ability to access. Emails that were admitted over objection still reflect Dan Geberth to Dan Geberth (PL. 266). Kanter was not tendered as a forensic document examiner and has no credentials. If he had an IT background, Geberth would have said that Kanter could pull up the information, not William Kent, the Solomon Firm's IT guy.

87. Plaintiff complains that Defendant has not offered a single email then comes to Court pretending to demonstrate an ability to pull emails off DGP's server. (PL. Brief, p.17). Obviously, Antonio was unable to since Plaintiff has refused to produce a single email. If Plaintiff had the ability, all original emails including metadata should have been produced prior to the close of discovery. A party satisfies its obligations under Rule 34(b)(2)(E)(ii) when it produces emails in a PDF format accompanied by a load file containing metadata and searchable text, all which DGP failed to do.<sup>8</sup> The last-minute tender of documents does not cure any prejudice. It is often recognized that refusal to produce evidence shows that an asserted claim or defense is meritless.

88. The Court even acknowledged that any emails that contain from Geberth to Geberth is not an original email [Tr. 5.2.22, 143:8-13; 149:9-12]. Plaintiff's emails are inadmissible as a business record based on Federal Rule of Evidence 803(6). Defendant objects to Plaintiff's exhibits 31, 32, and 266 are unauthenticated, inadmissible hearsay.

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<sup>8</sup> The contemporaneous requirement of Rule 803(6) requires that a record be "made at or near the time" of the event recorded. ESI retrieved from computer files must be the same as the original one that had been entered into its computer.

*Geberth's Laptop*

89. Defendant believes Plaintiff intended to pass off Geberth's own laptop as hers. In Kanter's report, he wrote that his firm identified deleted emails from a laptop computer in evidence through forensic software called Autopsy version 4.17.0. Plaintiff attempted to portray a laptop owned by DGP was used by Antonio, one that she testified was a broken laptop owned by Geberth:

**PLAINTIFF:** But if they were your -- **didn't you just say that you would log in and save the passwords on the laptop?**

**ANTONIO:** I never said that it was this laptop. This was he -- this was my testimony the other day, that he got angry and he -- and enraged, and he took his laptop and slammed it on the ground, broke it, and then asked me to have it fixed for him, and it didn't get fixed. I had it in my possession during the time when we were breaking up, and then I shipped it back to him, so I didn't have to see him. [Tr. 4.27.22, 162-165]

90. Plaintiff asked, "**were there any passwords saved for Ms. Antonio's accounts on that computer?**" Kanter replied, "we didn't determine that, but believe information was not all there when we got the computer." When this Court asked if the laptop was DGP's laptop, Kanter said, "**Correct. It was just in Ms. Antonio's possession.**" Plaintiff confirmed that its expert purportedly pulled the emails by accessing it **from the server, through the laptop**. [Tr. 8.29.22, pp. 116-118; 143-147].

91. Kanter tries to divert from the issue, stating: "the emails that were confirmed were pulled from the server, not the laptop. So the laptop is irrelevant." Kanter then clarified that the autopsy search was done on DGP's laptop and the other software collecting platform was performed on Kanter & Associates' computer. He said it was his understanding Antonio "**had in her possession DGP's laptop which she relinquished at a later date.**" [Tr. 2.13.23, pp. 48-53].

## QUICKBOOKS ALLEGATIONS

### *Geberth Created Intuit Accounts 7356 and 0427 in 2020*

92. Plaintiff’s argument, “at every turn Defendant denied ownership of email addresses and further concocted stories in an attempt to convince the Court that Geberth somehow had accessed her email account and created fake Intuit accounts to frame her.” (PL. Brief p. 10). But Geberth did create fake Intuit accounts to frame her. During the February 26<sup>th</sup>, 2021 injunction hearing on Geberth’s Motion to Dissolve (Def 118, p. 34:5-13). Geberth testified:

“I contacted QuickBooks, to where I discovered she was currently using – **up until maybe a little over two months ago** – 11 fraudulent QuickBooks accounts that were recently shut down. And then she had gotten a bunch of free trial QuickBooks accounts of QuickBooks payroll. And that’s how I suspect she was forging the checks, because all the forged checks, or any check that she did to her advantage, **not one single one of those checks was printed in my QuickBooks accounting system.**” [Tr. 6.14.22, 72:16-25].

93. Intuit account 7356 (“**Intuit 7356**”) is a trial account created on August 19, 2020, listing Geberth as the Contact, using the email account faith@numericracing.com. (PL. 235). Geberth admitted this email address was updated on November 15, 2019, stating, “I’m pretty sure I changed the password, so you no longer had access to the (e)mail address.” The account was last modified on Antonio’s birthday, September 19, 2020, after Plaintiff filed its State Court Complaint. Geberth kept the faith@numericracing.com email active to impersonate her with QuickBooks trial accounts.

11/15/2019 11:07:09 AM / WCC / Client IP: GoDaddy Internal	Customer request to update email address faith@numericracing.com was successful
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94. When asked why Plaintiff had submitted emails to this Court listing the sender and receiver, ‘from Daniel Geberth to Daniel Geberth,’ he confirmed that the faith@numericracing.com email is still active to this day, admitting, “all the emails that are in Faith Antonio now are forwarded to Daniel Geberth at dan@numericracing.com, so if you want to test an email, send one to faith@numericracing.com. I guarantee you it will come right to my phone. And it’ll say it’s from Daniel Geberth.” [Tr. 5.02.22, 178:9-25; 179:1-10]

Created By	Jeff Ward, 12/4/2020 12:35 PM
Last Modified By	PDIUser PDIUser, 12/4/2020 1:11 PM
4-Dec-2021	American Express 3001

95. Intuit Account 0427 (“**Intuit 0427**”) is the payroll account created under the name Jeff Ward on December 4, 2020 but

lists Geberth’s name and email dan@numericracing.com in the Contacts section (PL. 237). Geberth’s AMEX ending in 3001 is listed for payment for the payroll services [INT DGP 000011].

96. The payroll account was created two months before the Injunction Hearing and does not appear to be a fictitious account. Geberth intended to create fictitious QuickBooks accounts to create the perception that Antonio was using QuickBooks in a scheme to defraud, including after the ending of their dating relationship. If any evidence is manufactured, such as Intuit Account ID 7356, none of it can be trusted.

***Intuit 3609 is DGP’s Merchant Stripe Account***

Other Accounts:	<a href="#">Related Accounts</a>
Primary Principal Owner:	<a href="#">DANIEL GEBERTH</a>
Contact Name:	DANIEL GEBERTH
Email Address:	<a href="mailto:admin@numericracing.com">admin@numericracing.com</a>

97. Geberth testified that he believed **Intuit 3609** was a fraudulent account based on the appearance of Antonio’s old cell phone, 727-278-7765, then he changed his mind. Plaintiff introduced the account

detail page in hopes that we would overlook the fact that Intuit 3609 is tied to Plaintiff’s merchant misappropriation allegations (Compl. ¶¶ 33, 38-39, Ex. F).

98. Kanter testified, as identified on page 49 of his report, that he could not make a determination with the evidence provided although Intuit produced every statement and credit card transaction from the QuickBooks Stripe account, including documents tying Geberth to the admin@numericracing.com email address. The only bank account attached to the Stripe merchant account is DGP’s Synovus. (Def. 133, 53-129 of 2155).

<a href="#">7125400515</a>	<a href="#">an1ymwd575167504</a>	03/28/2019 12:39 PM PDT	\$927.18	USD	8078	Sale	<a href="#">Aggregated</a>	Unknown	<a href="#">20171209</a>	STRIPE
<a href="#">7124521535</a>	<a href="#">an1y4mmj31102191</a>	03/28/2019 11:16 AM PDT	\$1,166.98	USD	5009	Sale	<a href="#">Aggregated</a>	Unknown	<a href="#">20171209</a>	STRIPE
<a href="#">7124396895</a>	<a href="#">an1y208h16375948</a>	03/28/2019 11:04 AM PDT	\$1,098.28	USD		Sale	<a href="#">Declined</a>	Unknown	<a href="#">null</a>	STRIPE

99. None of the payments were missing nor was there any possibility to divert payments. For example, referring to the March 28, 2019 deposit on the March 2019 statement, Plaintiff alleged \$1,098.28 was not deposited into DGP's Synovus (Compl. at Ex. F). According to Intuit's records, the March 28, 2019, transaction occurred at 8:04 am EST (11:04 am PDT) was declined. (Def. 133, p. 70).

100. It's unbelievable that Antonio is accepting orders all day and night when we

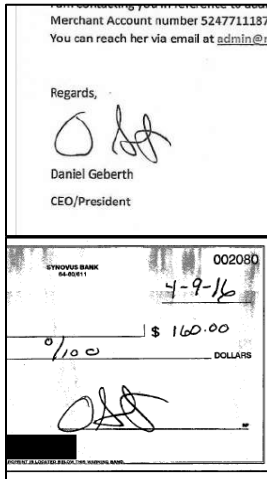
04/29/2019 7:14 AM PDT	\$369.99
04/26/2019 11:46 AM PDT	\$943.18
04/26/2019 11:32 AM PDT	\$524.99
04/25/2019 12:58 PM PDT	\$965.58
04/24/2019 9:49 AM PDT	\$949.58
04/24/2019 6:11 AM PDT	\$575.98
04/22/2019 12:51 PM PDT	\$1,279.98
04/22/2019 10:04 AM PDT	\$52.42
04/19/2019 8:41 AM PDT	\$418.58
04/18/2019 1:50 PM PDT	(\$131.04)

observe the times listed for each payment, i.e., 7:14 am PDT (**4:14 am EST**), 6:11 am PDT (**3:11 am EST**). DGP's customers placed orders through [www.numericracing.com](http://www.numericracing.com), the web address documented on the merchant account, meaning its unnecessary for DGP to have an employee

at Geberth's home to take orders (Def. 133, pp. 60-95).

101. Intuit 3609 and 3849 were active at the same time, an account that was determined not fraudulent. Geberth testified that he did not set up any QuickBooks accounts, but he is the contact that is listed as company admin and decision maker using email address [admin@numericracing.com](mailto:admin@numericracing.com) and [dan@numericracing.com](mailto:dan@numericracing.com). Both email addresses have the same Auth id 1330556655.

102. Defendant objects to Plaintiff's argument that, "it is undisputed that once an email is linked to the creation of an Intuit account, Intuit sends a confirmation email to the email that was used to create the account... Thus, only Defendant would have received the authenticating email to open the online Intuit account." (PL. Brief p. 11). A representative of Intuit is the only one who can testify on how its software program works, a burden Plaintiff failed to do. Plaintiff improperly testified to describe what the record reflects instead of calling a representative from Intuit to testify regarding the documents that Intuit produced. [Tr. 06.16.22, 200:18-25; 201:10-17].



103. Plaintiff alleged Defendant forged the signature on a letter to Intuit. Plaintiff intentionally failed to mention that this document is attached to Intuit 3609 Merchant Account Changes record (Def. 133, pp. 58-59) [INT DGP 172-173]. The letter can be mailed or faxed to Intuit for changes. There is no question a person can contact Intuit by phone or email to make account changes to an account. The signature on this letter is similar to Geberth's signature found on DGP's checks.

104. Antonio testified that she believed the QuickBooks accounts were linked to one another, pointing out that DETACHED\_7133266\_DGP (“**Intuit 3266**”) is listed as a Master Account on Intuit 3849. [Tr. 6.16.22, 198:9-12]. Intuit 3266 is a payroll account with records that exists from Intuit production that questionably is missing the account detail page. (Def. 133, pp. 146-155). Defendant believes the accounts are Payroll, Merchant, QuickBooks Online, and QuickBooks Desktop are mostly tied to one another.

#### ***QuickBooks Accounts That Are Related To Each Other***

105. Plaintiff introduced the account detail pages of twelve accounts with intent to make this Court believe that the accounts are separate accounts were all created by Antonio, but failed to introduce any evidence supportive of the representations made in the Complaint:

To conceal Debtor's unauthorized use of DGP funds to issue unauthorized checks, Debtor created multiple new/additional QuickBooks accounts, **using free trials versions of the software program to print checks with DGP's account information, whereupon Debtor then manually imported the charge** (with or without the actual check image) into DGP's authorized accounting software. (Compl. ¶ 36)

106. On February 13, 2023, Kanter testified that he didn't recall if he reviewed the audit trail from Intuit 6670 (“**Intuit 6670**”), then tried to cover his tracks by claiming that there are two different types of audit trails when referring to System Administration on the document instead of Import Administration. [Tr. 2.13.23, pp. 73-75]. That explanation does not fit the audit



trail from Intuit 9457 that contains both System Administration and Import Administration entries, nor does it support the fact Intuit provided one audit trail in response to this Court's order in November 2021 (Def. 131, (Doc. 400)).

107. Kanter testified in that manner because the audit trails do not fit within Plaintiff's allegations. Intuit 6670 audit trail does not contain any recorded activity during the 30 days this account was active. (Def. 133, pp. 166-176 of 2155). Remember, Plaintiff pled: Debtor was operating multiple unauthorized QuickBooks accounts, **all of which recorded transactions and all of which were unauthorized.**

108. Intuit account 9819 ("**Intuit 9819**") was created on January 31, 2017 and canceled on February 23, 2017 with no recorded activity involving checks. (Def. 133, pp. 184-212). Nor does Intuit account 0709 ("**Intuit 0709**"), created on March 28, 2017 and expired on April 28, 2017 (Def. 133, p. 177 -183). There is no recorded activity during the 30 days this account was active (p. 178). It appears Intuit account 6969 ("**Intuit 6969**") is a payroll account related to 0709 (pp. 156-164). Defendant was only trying to help her then boyfriend figure out how to transfer the Desktop program online, a method he most likely told her to use her email account prior to switching over to DGP's email like she did in Intuit 9457.

109. Geberth denied he contacted Intuit to request them to close the accounts after he filed the Complaint in State Court, but the Activity History on Intuit 7350 has an entry referencing a fraud call, dated November 5, 2020. [Tr. 6.14.22, 58:19-23]. On the Intuit account 3278 ("**Intuit 3278**") detail page, under Cases, the entry says: on July 7, 2020, Geberth called in with questions about having QuickBooks Desktop account and free trials set up in his name without his knowledge and the October 13, 2020 entry notes a fraud call. This Court can also find these entries in the Activity History in Intuit 3849 and 7350 (Def. 133, pp. 10, 41).

110. How do we know Geberth did not have access to any of the accounts that reflects the account was modified? Intuit 3849, modified on November 30, 2020; Intuit 9457, modified on May 2, 2020; Intuit 9819, modified on May 2, 2020; Intuit 6670, modified by data curation on May 2, 2020; Intuit 0709, modified by data curation on May 2, 2020; Intuit 5657, modified by data curation on December 15, 2020. There is no explanation why the Owner field was edited as reflected in Intuit 3849 Account History between May and July 2020 (Def. 133, p.12).

111. Plaintiff objected when Defendant attempted to raise the spoliation issues at trial and was interrupted with Plaintiff’s alternate theories, prejudicing Defendant. [Tr. 6.16.22, p. 92-93]. The duty to place a litigation hold can be determined by the Civil Theft demand letter if this Court is inclined to take judicial notice of the Pasco Complaint’s Exhibit C. At least one month prior to February 2, 2020 when Plaintiff reasonably anticipated litigation, it “[had] an obligation to make a conscientious effort to preserve [ESI] which [was] relevant to the dispute.”<sup>9</sup>

**GEBERTH’S INCONSISTENT TESTIMONY**

112. Geberth provided inconsistent testimony throughout trial about his knowledge of



the allegedly forged checks that also contradicts Plaintiff’s pleadings (Compl. ¶¶ 48-49).<sup>10</sup> He said, “It probably would have been sometime in 2018. **I would recall because I always file my tax returns.**” [Tr. 5.2.22, 117:2-11; 118:5-11, 17-20; 121:11-21]. Geberth never notified Synovus of any forged checks. Antonio testified that she

gave Geberth her credit card slips, it was his choice to print the checks in the manner he had wanted to.

<sup>9</sup> Point Blank Sols., Inc. v. Toyobo Am., Inc., No. 09-CV-61166, 2011 WL 1456029, at \* 11 (S.D. Fla. Apr. 5, 2011)

<sup>10</sup> General rule is that a party is bound by the admissions in his pleadings. Best Canvas Products & Supplies, Inc. v. Ploof Truck Lines, Inc., 713 F.2d 618, 37 Fed. R. Serv. 2d 582, 36 U.C.C. Rep. Serv. 1175 (11th Cir. 1983).

113. That “stamp” is found on other checks to Geberth’s vendors that were removed from the Complaint, including to his accountant at Cohen & Grieb. Check 1909 was not included in Plaintiff’s Exhibit 206. Plaintiff failed to introduce evidence that Antonio allegedly acquired with DGP’s funds a stamp or a photo editing program to affix “unauthorized” checks with the signature of DGP’s principal (Compl. ¶ 36).

114. Geberth lied by accusing Antonio of making the entries, saying, “no. you did,” contradicting his testimony during his deposition when referring to the May 9, 2018 edit on Plaintiff’s Check 1980 History of Modifications. (PL. 254). Geberth admitted, “it has my name on there and I put ‘uncategorized expense’ on there because I did not know when it was – when I met with my accountant, Ashana Ramdial, in August 2019. So I put ‘uncategorized expense’ on there because I didn’t know what this was for.” [Tr. 6.16.16, 42-45:23-25/ 6.14.22, 83:9-14]

115. His testimony conflicts with entries on the same document. The Court will find (1) on May 9, 2018, Geberth makes a direct edit; (2) on August 17, 2018, users Marca Schulz and Numeric Racing makes several indirect edits that does not result in any changes; (3) on November 26, 2018, Ramdial makes a direct edit to the entry, categorizing it into **Shareholder’s Distributions**; (4) on November 30, 2019 (after the breakup) user Numeric Racing makes an edit to categorize the entry to Ask My Accountant; and (5) on December 26, 2019, Ramdial edits to entry to Contract Labor. (PL. 254).

116. Plaintiff intended to rely on screenshots from its active QuickBooks hoping to

2018-05-09 06:29:13 PM PDT	Daniel Geberth	Edited Expense 2006
2018-05-09 06:28:06 PM PDT	Daniel Geberth	Edited Expense 2009
2018-05-09 06:25:57 PM PDT	Daniel Geberth	Edited Deposit
2018-05-09 06:24:29 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 06:19:43 PM PDT	Daniel Geberth	Edited Expense 2007
2018-05-09 06:18:44 PM PDT	Daniel Geberth	Edited Expense 2004
2018-05-09 06:18:28 PM PDT	Daniel Geberth	Added Vendor: Merrick Bank
2018-05-09 06:16:41 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 06:15:52 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 06:09:08 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 06:07:33 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 06:06:16 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 06:05:29 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 06:05:01 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 06:03:56 PM PDT	Daniel Geberth	Edited Expense 1980
2018-05-09 06:03:45 PM PDT	Daniel Geberth	Added Vendor: Credit One Bank
2018-05-09 05:39:22 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 05:39:10 PM PDT	Daniel Geberth	Added Vendor: Firestone
2018-05-09 05:38:15 PM PDT	Daniel Geberth	Edited Expense
2018-05-09 05:37:27 PM PDT	Daniel Geberth	Edited Expense 1977

hide the complete activity until Defendant tried to impeach Geberth with the Intuit 3849 audit trail. The Court can see Daniel Geberth adds the vendor, Credit One Bank, prior to editing

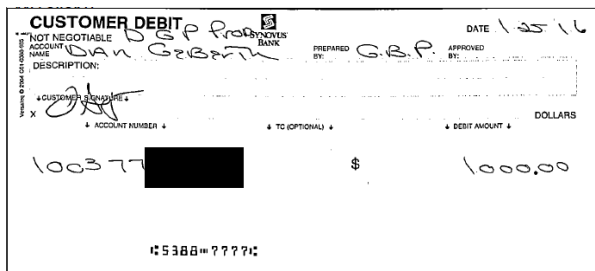
check 1980 paid to Credit One Bank. Geberth also added vendor, Merrick Bank prior to editing checks 2004 and 2007. (Def. 131 (400-3)).

**Marca Schulz**

117. Plaintiff impermissibly uses its brief to testify about Marca Schulz fails to cite any testimony. There are inconsistencies with the Marca Schulz name. On Intuit 3849 account detail page, the name is listed Marca Schulz. The entries list the username as M Schulz CPA, not Marca Schulz on Plaintiff’s Check 1925 History of Modifications. Check 1961 and 1980 lists Marca Schulz (Def. 133, p. 9 of 2155, PL. 248, p. 3; 249, p.13; 254, pp.15-16).

118. Geberth denied this was him, stating, “It wasn’t me. Like I said, you had my username and my login ID, and you also used the fake alias you created, Marca Schulz, CPA.” [Tr. 6.16.22, 103:2-6]. Plaintiff never subpoenaed the records for this user. Geberth may have intentionally altered records during his contact with Intuit.

119. The Court will find that Geberth was not being truthful after reviewing the



complete set of DGP’s checks to find handwritten bank withdrawal slips containing Geberth’s signature occur regularly throughout the years (Def. 136). Geberth routinely visited

Synovus Trinity and had the ability to make ATM Withdrawals and made large withdrawals during in-branch visits from DGP’s Synovus. Geberth did not follow his own company policy by handwriting checks.

**THE UNDERLYING MOTIVE OF A SCORNED MAN**

120. Geberth denied that he made an agreement that Defendant would handle his prescriptions to prevent him from abusing pills. An agreement that makes complete sense after Geberth admitted suffering an addiction to opioids for almost a decade. Geberth knew Defendant

didn't do the shopping, in the Redline Email, he complains, "My mother doesn't clean my house, cook for me or my kids, grocery shop and doesn't do my laundry. I know for a fact your mom does all that shit." Geberth gets angry when he has to do things that he demands of others. Speaking of his nephew, "He has done more for me in the last month than you and Aspen combined in the last year. He has certainly cooked more meals for me and I like having him here now compared to when I was sick. He will run errands for me when I ask and does it immediately. Goes to the grocery store if we need something." (Def. 7)

121. Whenever Geberth felt slighted, he would threaten Defendant just as Geberth did on May 28, 2019 when he accused her of filling a Percocet script that he claims that he didn't want filled. "Your monitor is also busted. I'm seriously f\*\*\*g pissed and **you're not making a fool of me**. If you don't return that script, I will also report it fraudulently filed." [Tr. 6.16.22]. Geberth was so angry he broke a monitor, just like he wanted to smash the computer when he reviewed his statements after his breakup with Wright.

122. He threatened, "Don't even think about sabotaging my website or anything else. I kept all the fraudulent shit you did with my books and will use it if I have to." The alterations by Geberth in QuickBooks in May 2018 are consistent with the alterations by Geberth in November 2019 after Antonio ended the relationship. Geberth alters ATM Withdrawals, listing them with Antonio's name when the ATM Withdrawals may have even been previously listed under Geberth's name or were blank. He had threatened Antonio every time she attempted to leave the relationship. It's fraud when you part ways with Geberth, just like he did with Brice and Wright.

2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1636		2/9/2017	\$2,006.94
2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1635		1/30/2017	\$600.00
2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1634		1/26/2017	\$600.00
2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1633		1/23/2017	\$600.00
2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1632		1/17/2017	\$600.00
2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1631		1/10/2017	\$600.00
2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1630		1/9/2017	\$600.00
2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1629		1/31/2017	\$634.48
2017-11-08 02:52:08 PM PST	Import Administration	Added Transfer	1628		1/11/2017	\$386.45
2018-06-02 03:22:27 AM PDT	Daniel Geberth	Edited Deposit	1468		1/12/2017	\$1,434.94
2018-06-02 03:22:00 AM PDT	Daniel Geberth	Edited Transfer	1650		1/30/2017	\$232.67
2018-06-02 03:20:26 AM PDT	Daniel Geberth	Deleted Transfer	1634		1/26/2017	\$600.00
2018-06-02 03:19:54 AM PDT	Daniel Geberth	Added Expense	14612	Faith Antonio	1/26/2017	\$600.00
2018-06-02 03:18:36 AM PDT	Daniel Geberth	Deleted Transfer	1633		1/23/2017	\$600.00
2018-06-02 03:18:20 AM PDT	Daniel Geberth	Added Expense	14611	Faith Antonio	1/23/2017	\$600.00
2018-06-02 03:17:00 AM PDT	Daniel Geberth	Deleted Transfer	1632		1/17/2017	\$600.00
2018-06-02 03:16:48 AM PDT	Daniel Geberth	Added Expense	14610	Faith Antonio	1/17/2017	\$600.00
2018-06-02 03:15:22 AM PDT	Daniel Geberth	Deleted Transfer	1631		1/10/2017	\$600.00
2018-06-02 03:15:06 AM PDT	Daniel Geberth	Added Expense	14609	Faith Antonio	1/10/2017	\$600.00
2018-06-02 03:13:52 AM PDT	Daniel Geberth	Deleted Transfer	1630		1/9/2017	\$600.00
2018-06-02 03:13:23 AM PDT	Daniel Geberth	Added Expense	14608	Faith Antonio	1/9/2017	\$600.00

123. On February 15, 2023 everyone in the courtroom had a taste of Geberth's rage. The same type of behavior Geberth exudes when he is doesn't get his way or when he is forced to do things that he doesn't want to do. The same crude and verbally abusive behavior Antonio was subjected to throughout their relationship as shown in the November 11, 2019 emails.

I will speak to you however I like and if you don't like it. You can go f\* yourself because you don't f\* me anyway. **Starting with all the money I spend on you and you won't even f\* me.** You don't do shit for me besides make me some gummies which I can find someone else to get me that stuff. That vacation was shit and you pissed me off so many times. **I had to leave the room one time and sat in the cathedral to calm down.** I can't think of one single reason to stay in this shitty ass relationship. NOT ONE! All you do is cost me money, complain, and complain about me. **You are one of the main reasons why I have been getting really angry all the time.** I have never physically abused you and never will I but I am not putting up with your shit anymore. **I will get angry as I please and have many reasons to.** Not having sex is one reason and you're a lame fucken duck now. You are barely fucken ever here. All the times you have to babysit your father. How many times you missed **because your always sick.**

124. The November 2019 emails are inconsistent with Plaintiff's allegations that Defendant was fired as an "employee." In Redline Email, Geberth said, "I will give you enough money if you choose to leave and be on your merry fucken way." (Compl. ¶50; Def. 7). At trial, Plaintiff never referred to November 11th as the day Antonio was fired. Instead referring to the date as "the breakup," and "the final breakup of November of 2019." [Tr. 4.25.22, 133:25; 134:1-2/ 4.26.22, 63:13-14/ 4.27.22, 162:21-22/ 6.16.22, 132:23-25; 133:2-3]. Even Plaintiff's Brief admits Defendant was not fired, saying, "had Geberth and Defendant not end their romantic relationship," and continues to distort facts saying, "forcing Geberth to reconcile DGP's books, there is no telling how much longer Defendant would have continued to pilfer DGP's coffers (PL. Brief p. 10, ¶ 1).

125. Remember, he threatened Antonio months prior, telling her, "you are not making a fool out of me." Geberth wanted a "return on investment" for the financial support and gifts that

he willingly provided Defendant and her family throughout the years because he thought she was being unfaithful because of the lack of intimacy; and because he could no longer control her.

126. Geberth writes: “I’m not paying for your stuff or anyone’s anymore. What the f\* for. I get absolutely nothing out of it. I just dropped over 8 grand on your teeth and a lousy vacation. It was lousy because you made it lousy. I can’t even get a \*\*\*\*\* for my efforts. What am I doing all of this for. You’re a user and don’t give shit in return. Wow! Dan just paid for my f\*d up teeth so I’m going to show him some appreciation and f\* him. (Def. 6).

127. Geberth starts to communicate in emails showing his intent to change the dating into an employment relationship, in The Narcissist email he writes, “Also the 5 grand I paid for your teeth is also part of your salary. It’s a 5-thousand-dollar bonus basically on top of what you also make. I sit in that office a lot when you are not here... Write checks out with your name on it and code them properly.” (Def. 116, p. 34)

128. Plaintiff claimed Antonio never asked permission or had a conversation about any of the charges, but Geberth admitted there was a conversation involving Dallas. Geberth said, “I wasn't there on the trip. She told me she was going with her daughter. And when I got the hotel reservations, there was four people on the hotel reservation. So, who were the other two people that went on this trip?” [Tr. Tr. 4.25.22, 55:2-7/ Tr. 6.16.22, p. 146-147 \*Referring to the SpringHill Suites, Dallas, Texas fee of May 5th of 2019]

129. This Court asked, “so it was okay for her to use the card for a non-business trip? Geberth responded, “If I was going, it would have been okay, because then I could have wrote it off as a business expense because all I would have had to have done is go and visit one Porsche dealership and I could have wrote the whole thing off.” [Tr. 6.16.22, 181:1-4, 12-20].

130. In the Redline Email, Geberth complained that Antonio was barely ever there because she “took a vacation to DC, a trip to NY.” He knew about the trips including the Dallas

trip and was completely fine with it until Antonio broke up with him. Geberth became paranoid and filed a lawsuit giving him access to search her accounts to find out what she was up to. He claimed, “I didn’t discover that she was cheating on me until May of 2020, so I planned on getting rid of her prior to May 2020 before I knew she was cheating on me.” [Tr. 6.16.22, 52:10-13; 53:4-6].

131. On the September 1, 2019 Advanced Auto invoice, Geberth wrote that he was planning it for a few months, “then when I was ready. Got out of it. 11-11-19 was that day.” Contradicting allegations that the breakup was due to theft. The invoice is evidence that Geberth used DGP’s accounts to buy parts for the Mustang. (Def. 62, p. 45-46). Geberth, an alter ego, is using his business to retaliate against his ex-girlfriend.<sup>11</sup>

132. Plaintiff had impermissibly asserted an entirely new claim in response to Defendant’s Amended Motion for Summary Judgment. A new theory that should have been disregarded but Plaintiff and its expert continued to prejudice Defendant by referring to this without proper discovery. The proper procedure is to amend the complaint. Fed. R. Civ. P. 15(a). The theory involving shifters using a DGP email account and shipping account is without merit especially with DGP’s refusal to produce email records. Who knows what else Geberth planned.

#### **GEBERTH ALTERS DGP’S RECORDS TO CREATE EMPLOYMENT**

133. Starting on November 12, 2019, Geberth edits or alters entries in QuickBooks and adds Defendant as an employee of DGP in its QuickBooks program on November 13, 2019 after Antonio made it clear that she was not willing to reconcile. Geberth admitted he threw everything into a complaint and said that this is a transaction that is Defendant’s. (Def. 131 (400-2 p.126-128; 11.13.19/ 4:07:03 PM PST)). [Tr. 5.2.22, 79:19-22].

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<sup>11</sup> “[A]n employer’s failure to articulate clearly and consistently the reason for an employee’s discharge may serve as evidence of pretext.” Hurlbert v. St. Mary’s Health Care Sys., Inc., 439 F.3d 1286,1298 (11th Cir. 2006).



134. Starting on November 29, 2019, in an effort to remove the Daniel Geberth username, the same entries are then edited or altered a second time using the Numeric Racing username. (Def. 131 (400-2 pp. 121-124)). Name changes that could impact reconciliations and other records to remove Geberth's name in support of his absentee owner story.

135. DGP impermissibly continues to edit or alter the same entries in its QuickBooks program throughout December 2019, three months prior to filing the State Court Complaint, including by Ramdial. (Def. 131 (400-2 p. 100-105, 112, 115, 117, 120)). The edits continue on February 28, 2020, one month prior to filing the State Court Complaint, including altering rules that the QuickBooks program relies on to automatically categorize entries after Plaintiff alleged Defendant had miscategorized expenses (Compl. ¶ 21, 41, 44).

#### *1099's Contained Alleged Unauthorized Transactions*

136. In Redline Email, Geberth complains, "I pay the taxes on all that money cause you haven't paid federal income tax in years." Plaintiff admitted sending 1099's to Defendant prior to filing the State Court Complaint. Geberth fraudulently attempted to transfer a tax liability to Defendant for his ATM Withdrawals, his charges, for DGP's charges, and for gifts and support to Antonio and her family members including the Capital One Auto loan by categorizing the entries under Contract Labor and listing the amount on 1099's.<sup>12</sup> The 1099's consisted of the same alleged unauthorized purchases and alleged forged checks that are listed in its Complaint. (Def. 133, p. 2126-2139).

137. In response to why she created 1099's to tax Defendant, Ramdial said, "per the client, it was expenses made by the company not related to DGP. If an expense is paid by the company that is not a company expense but it's for the employee, it would be additional income

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<sup>12</sup> Doc. 450: Intuit 3849 General Ledger: Geberth admitted Custom Ink and Big Frog was DGP's at trial (p. 2133), Veterinary Rehab: Geberth writes MY CATS THERE (p. 2127)

to the employee. But since Faith Antonio was not a W-2 employee, she would be a 1099 contractor, in which case any income would be reported on this 1099-Miscellaneous.” Ramdial admitted that Antonio was never declared as an employee of DGP and was not getting paid as W-2 or 1099 at the time. [Tr. 4.27.22, 108:11-13; 111:10-13].

138. On March 27, 2020, one week prior to filing the State Court Complaint, Plaintiff added vendor ‘Forged Checks’ and listed checks as Forged Checks. (Def. 131 (400-2 pp. 58-59). Geberth intended to transfer the tax liability to Antonio, when that did not work, the entries were altered in preparation of a lawsuit. Remember, Geberth said he paid the taxes. Not DGP. If Geberth passed personal expenses through Opening Balance Equity or Shareholder’s Equity just as he confirmed, he may have originally listed the amount as income on his tax return meaning DGP lacks standing. (Def. 133, 2057-2060). In a September 30, 2016 email with Ramdial that Geberth admitted he wrote, he told her any money that he took out, he coded it to Opening Balance Equity. (Def. 96, p. 28) [Tr. 6.16.22, 101-102].

139. Plaintiff not only failed to sufficiently plead its ownership through entrustment or earmarking, but when DGP listed all of the alleged unauthorized charges and checks on 1099’s as income, this activity contradicts embezzlement. Defendant cannot embezzle funds from herself. See, e.g., *Faw v. Wiles* (In re *Wiles*), 166 B.R. 975, 980 (Bankr. M.D. Fla. 1994). Geberth acquiesced to Defendants use of DGP’s accounts.

#### ***ATM Withdrawals and Alleged Forged Checks***

140. At every turn in this proceeding, Defendant had been stripped of any opportunity to defend herself. Plaintiff alleges that Antonio received regular and established wages but objected to and refused to produce any records. If Antonio had received wages from DGP, there was no reason to refuse to turn over records. Defendant has no idea what the alleged regular and established wage compensation was. In the Complaint, Plaintiff pled:

During Debtor's employment with DGP, Debtor made a series of ATM withdrawals from the Synovus Bank Account, without any authorization or justification. **A partial inventory of unauthorized ATM withdrawals** made by Debtor is attached hereto as Exhibit "D". (Compl. ¶ 28, in note 4)

141. To further confuse the issues, on March 4, 2022 ten days before the March 14, 2022 trial, Plaintiff filed its Notice of Removal, in Doc. 720, note 11, representing:

**Upon information and belief**, DGP submits that the ATM withdrawals for the years 2015 and 2016, listed at Exhibit D, represent wages paid to Debtor by DGP. ATM withdrawals which exceed the authorized wages are still being claimed as funds embezzled... [Tr. 5.2.22, 111:17-25, 112:1-3]

142. There is an absolute issue of credibility when Plaintiff makes allegations that Antonio made unauthorized withdrawals and then 2 years later removes all the ATM withdrawals upon "information and belief" claiming the withdrawals are Antonio's wages. Plaintiff's conclusory statements are based on "information and belief," that Antonio withdrew funds from DGP's Synovus for personal use or for wages, without providing any information to support that belief that it was Antonio who withdrew the funds. Plaintiff failed to plead misappropriation of funds with sufficient particularity. Plaintiff failed to provide this Court any facts to rely on when the information is within Plaintiff's control.<sup>13</sup> The withdrawal does not remove the prejudicial assumption that Antonio was the person who made the ATM Withdrawals.

143. Plaintiff never disclosed that the W-2's received by Antonio in September 2021 were created by Kanter. Documents that he testified consisted of the \$600.00 withdrawals even as he admits that he didn't find any cash deposits in Antonio's bank account. Don't forget that Geberth admitted that in 2019 he directed Antonio to go to the bank to withdraw money. He said, "I told you to go pull the money out for your brother and pay him. I was working from home." [Tr. 5.02.22, pp 147-148].

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<sup>13</sup> See Lab. Corp., 290 F.3d at 1310; Mukamal v. BMO Harris Bank N.A. (In re Palm Beach Fin. Partners, L.P.), 488 B.R. 758, 767 (Bankr. S.D. Fla. 2013).

144. Plaintiff and its expert committed fraud right under this Court's nose by creating tax documents during this proceeding after DGP admitted there were no employment records. Plaintiff previously stipulated that Antonio was not paid as an employee during 2015 as its basis why Antonio did not receive a 1099 for year 2015 and then we have Kanter testifying that he created W-2's, including for 2015. [Tr. 6.16.22, 91:3-16]. It's fraud to falsify records and there was no reason for Geberth to alter entries in QuickBooks since he had control of DGP.

145. Kanter created tax documents for DGP when Ramdial testified that she is currently still assisting DGP. Ramdial has extensive experience in the accounting field including as a tax processing specialist who mainly prepared and drafted tax documents such as 1099s and W-2's. She testified that she has consistently done tax return prep for DGP for about four or five years. [Tr. 4.27.22, 84:17-25].

146. Kanter testified that he only met Ramdial once. He said that he knew who she was but doesn't currently know what that relationship is. Contradicting himself when he also said he had a conversation with Ramdial but did not assist him at all with the examination. None of Plaintiff's witnesses can give a consistent response. [Tr. 6.16.22, 53:3-5/ Tr. 2.13.23, 18:14-22.].

#### **SOCIAL SECURITY DISABILITY IRRELEVANT TO EMBEZZLEMENT**

147. Speculation and conjecture do nothing but confuse the issues and create prejudice. Although this Court doesn't find it a big issue whether Antonio "was doing work-like things as an employee or work-like things as a girlfriend or work-like things as a friend. Work is work is work," [Tr. 5.02.22, 94:5-9]. Antonio's assistance was ministerial, just as Geberth admitted in the Redline Racing email that Antonio was barely there. Answering a few emails is not the type of work activity that expends an extraordinary amount of time.

148. Plaintiff points to emails from November 2019 with a signature stamp with the title manager to support the allegations that Debtor was a manager of DGP from years 2015

through 2019 (Def. Ex. 6-7). There is no evidence of when this manager title began to appear on the emails and the reasons why it appeared. In a male-dominated racing industry, maybe Geberth added the title so his customers would not give Antonio a hard time. All we can do is speculate.

149. Corporate Plaintiff focused on Antonio's receipt of disability payments, over Antonio's objections, that had no relevancy to embezzlement. Plaintiff claimed its relevant to its position that the reason why she received cash payments for wages, because Antonio was in the process of applying for disability benefits and then receiving the checks that imposes a limitation on income and assets [Tr. 4.25.22, 67:3-7].

150. Plaintiff's position contradicted Geberth's testimony stating that he did not know that Antonio had applied for disability, had no knowledge that she was approved for disability, and did not discover that she was receiving disability until he received the documents from the subpoenas to her bank in this proceeding. [Tr. 5.2.22, 91:4-15]. A fact now Plaintiff admits its Brief.

151. When Defendant attempted to elicit testimony from Geberth regarding Social Security and Antonio's disability, Plaintiff objected based on speculation and relevancy [Tr. 5.2.22, 92:25/93:1]. Debtor even voiced her concerns to this Court that Plaintiff is trying to build an employment case to try to get her kicked off disability. [Tr. 6.17.22, 72:10-17].

152. This line of questioning served no purpose other than to speculate, as this Court stated, that Antonio had asked her boyfriend to pay her under the table so that her benefits would not be reduced. [Tr. 4.25.22, 66:8-11]. If this held true, Debtor would have never accepted any checks from Geberth throughout the years of their relationship, including personal checks in 2014, 2015, and the alleged forged checks from DGP's Synovus.

153. Again, Debtor was not permitted to discuss employment related issues AT ALL at trial and then Plaintiff says, **“I need to establish whether or not a disability would have prevented her from doing the job that she was hired to do at DGP...well, we already know that because of the litigation of the case that she’s capable of doing all of those things.”** [Tr. 4.25.22, 76:20-25; 77:1-3]. [Tr. 4.25.22, 66-78, 04.27.22, 188-190]

154. Plaintiff basically complains that Antonio defended herself in a proceeding Geberth knew she had health issues and no money. Since DGP never proved standing, Defendant was forced to sift through records she has never seen before and defend herself against claims she said were frivolous from day one. In fact, we have all watched Antonio’s health worsen since she first appeared as pro se, in March 2021. If she was doing work activity between 2015 and 2019, she would probably be in a wheelchair by now. Plaintiff’s improper closing argument continues to outwardly show this Court DGP’s underlying motive (Brief p. 11).

155. Defendant respectfully moves this Court for leave or for an Order striking DGP’s Closing Argument Brief as the Brief represents yet another instance in which Plaintiff improperly utilize the process of filing pleadings with this Court for the purpose of launching scandalous attacks on Defendant. The argument is highly improper, unduly prejudicial, and had no relevance to the claims in this proceeding.<sup>14</sup>

#### **TIK TOK SIDESHOW AND AFFIRMATIVE DEFENSES**

156. Plaintiff waited six months after creating and filing the W-2’s before filing the Removal Notice withdrawing ATM Withdrawals ten days before trial most likely because

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<sup>14</sup> Rule 12(f) provides, in pertinent part, that “[u]pon motion made by a party . . . the court may order stricken from any pleading any . . . scandalous matter.” Fed. R. Civ. P. 12(f); see 5C C. Wright and A. Miller, Federal Practice and Procedure (Civil) 2d § 1382, at 465 (2004) (“‘Scandalous’ matter is that which improperly casts a derogatory light on someone, most typically on a party to the action.”) (footnote omitted); 2 Moore’s Federal Practice § 12.37[3] at 12-97 (“‘Scandalous’ generally refers to any allegation that unnecessarily reflects on the moral character of an individual or states anything in repulsive language that detracts from the dignity of the court.”) (footnote omitted).

Plaintiff hoped this Court would grant a default judgment based on unfounded TikTok allegations that had no relevancy to DGP claims.

157. It would also benefit Plaintiff to use scare tactics using past traumas and then make unfounded allegations that Debtor was posting to TikTok at the time of her deposition, in hopes for a default judgment. The issue with TikTok was important to Plaintiff, “because the remedy that they were seeking was the striking of [Defendant’s] pleadings.” [Tr. 4.25.22, 39:4-8].

158. On April 21, 2022, Plaintiff amended its Witness List to add Adam D. Sharp of E-Hounds Inc. after the discovery deadline, without leave, and three days before trial. A move that Debtor objected to and violates Fed. R. Civ. P. 37.. (Doc. 877) [Tr. 4.25.22, 13:22-24]. Plaintiff claimed that they didn’t know that “Adam Sharp would review a phone that had been factory restored and that there would be an issue. **Adam Sharp is the one that did the inspection of the phone, and we wouldn't know who he was, what he did, what he would have found until we received the report and learned that the phone had been cleaned.**”

159. Even though Antonio said she never had a discussion with Adam Sharp Plaintiff promised, “that we anticipate that **Adam Sharp** will not only testify as to what he did when he received the phone but also a conversation that he had with Ms. Antonio regarding the memory and the restoring of the phone to factory settings. And that will severely impact not just Ms. Antonio's credibility but the fact that she actively concealed and took steps to conceal the evidence that was on that phone.” [Tr. 4.25.22, 14:15-24; 15:3-10; 18:2-7; 39:9-16; 41:2-7, 13-17]

160. On April 27, 2022, Plaintiff ambushed Debtor with the appearance of Robert Rohr and Ernesto Rojas, after representing to this Court that Adam Sharp did the analysis, stating, “**at this point, we have Mr. Rohr, who is the gentleman who prepared the report, that can what he found or didn't find on the phone.**” Plaintiff did not alert this Court or Defendant by motion

or at trial of this swap and remained quiet hoping no one would realize. It is unknown why Plaintiff represented to the Court that it was Sharp who did the analysis when Robert Rohr is the individual whose name appears on the report dated April 4, 2022. (PL. 282).

161. There was a case heard in the Middle District Bankruptcy Court that is similar to the case at hand by Honorable Judge Paskay:<sup>15</sup>

E-Hounds, Inc., its President Adam Sharp and his Assistants (collectively the Computer Experts) were appointed as the independent Computer Experts charged with searching for and copying documents in the Solomon Firm's computer system on June 8, 2004. The Solomon Firm filed an Amended Affidavit by the Firm's technology manager, William Kent. The Kent affidavit asserted that the document recovery program, **Forensic Toolkit**, had not been used to search for and recover any documents related to the present adversary proceeding. However, the Computer Expert found evidence on the Solomon Firm's computers which proved that Forensic Toolkit had, in fact, been used to search for documents.

162. It's very hard to believe that Plaintiff had no idea who Adam Sharp is and that Kanter had any ability to use the Forensic Toolkit when Geberth testified that Bill the IT guy could pull metadata. Plaintiff never proved it had standing and then made unfounded allegations based upon a missed deposition that did not injure DGP.

163. Kanter testified that he believed he was independent and free of conflicts, but the conflict existed when he assisted DGP and Geberth and did not disclose this fact. Kanter did not disclose that Plaintiff's counsel was representing him in the case, *Kanter & Associates v. First USA Business Development* from 2017 until 2022. Kanter's was a paid advocate who used his credentials in a manner inconsistent with AICPA's Code of Professional Conduct. His testimony and report should be excluded and stricken from the record. [Tr. 2.13.23, pp. 21-24]

164. Just as Plaintiff asked the Court, Defendant wants to know, "what is the correct remedy for every time," Plaintiff, "misrepresents something to the Court that [she has] to then chase the truth," to show the Court that Plaintiff is the true deceptive party by knowingly

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<sup>15</sup> *Oscher v. Solomon Tropp Law Group, P.A.* (In re *Atl. Int'l Mortg. Co.*), 352 B.R. 503



distorting facts, switches unlisted witnesses, as it did with Adam Sharp and Robert Rohr. [Tr. 4.27.22, 26:12-17]. Striking Antonio's affirmative defenses prejudiced her.

### **PLAINTIFF FAILED TO MEET ITS BURDEN**

165. Plaintiff lacked standing and was not the real party in interest pursuant to Fla. R. Civ. P. 1.210. The demand letter, Re: Daniel Geberth v Faith Antonio by Geberth not DGP. Plaintiff did not adequately plead that it had met the conditions precedent in reference to the August 13, 2020 demand letter that has an unstamped, unsigned certified return receipt. (Compl. ¶54, Ex H).

166. Plaintiff fails to state a claim for relief as plead in the Complaint, a fact they pled that is relevant to all claims, based on allegations: 'for the benefit of others not entitled to thereto.' (Compl. ¶¶ 14, 18). The Bankruptcy Court in re Adams agreed Congress had used the phrase "personal, family, or household use" elsewhere in the Bankruptcy Code, it must mean something different when it limits the term to "personal use." "Personal" is defined as "[o]f or relating to a particular person; private." American Heritage Dictionary of the English Language (4th ed.2000).

167. Plaintiff's Brief is a continuation of an improper tirade to assault Defendant's credibility and character. Improper arguments and allegations of conduct is calculated to inflame and mislead the Court and serve no other purpose to divert this Court from the issues it should have been deciding. (PL. Brief, p. 5).

168. To permit Plaintiff to continue to file arguments and pleadings, without the Court's admonition, provides the Courts tacit approval of Plaintiffs long-established abusive practices. Plaintiffs tactics damage more than the target of their vicious and groundless rhetoric; they damage the judicial process itself, and this Court should not countenance them. Plaintiff complains of DGP's/Geberth's expense in claims that never belonged in a courtroom. A loss that

may lead an enraged scorned man to seek further harm, all on greed... a scorched earth, win at all costs method that destroys lives.

169. Geberth financially supported his ex-girlfriend for years; he knew of her health issues. This case is a perfect example of a strike suit gone awry. Geberth needed a scapegoat to take the blame for his indiscretions, his commingling of assets. He needed this Court to say Antonio was a manager and was working full time for four years so she can take the fall. Geberth knew the charges were his. Scorned, he wanted to take everything away from her. The damage is done. For Geberth, this is not about recovery, it's revenge.

170. For over two years, Antonio sat here and heard people talk about her day in and day out, judged her and prejudged her against the American way. Geberth has difficulty letting go of perceived past wrongs and net recovery is less important than making the alleged wrongdoer miserable. The Bankruptcy Court is a court of equity, "The clean hands doctrine 'applies not only to fraudulent and illegal transactions, but to any unrighteous, unconscientious, or oppressive conduct by one seeking equitable interference in his own behalf.' If one sat in truth, there was no necessity to go through such lengths as Plaintiff had in this proceeding.

171. Innocent people are robbed of justice when witnesses change their stories; when witnesses lie or say things that are not 100% accurate, whether intentional or unintentional; when lawyers coach their clients and have them alter their testimony; when you rely on testimony of people who have a motive to fabricate, or an ax to grind; when they take innocent facts and twist them to try and win their case; and when you take someone's word and there is no physical, forensic, or scientific evidence to back it up; especially when you pay for an expert to advocate for you and cherry pick the evidence, like they did here.