

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

CASE NO. 06-21748-CIV-MARTINEZ-BANDSTRA

MARK J. GAINOR and ELYSE GAINOR,

Plaintiffs,

vs.

SIDLEY AUSTIN LLP, a Delaware
limited liability partnership, f/k/a/ BROWN
& WOOD, R.J. RUBLE, an individual,
ARTHUR ANDERSEN, LLP, an Illinois
limited liability partnership, MICHAEL S.
MARX, an individual, P. ANTHONY
NISSLEY, an individual, MERRILL
LYNCH & CO., INC., a Delaware
corporation, and MARK C.
KLOPFENSTEIN, an individual,

Defendants.

**DECLARATION OF GABRIEL P. SANCHEZ
IN SUPPORT OF DEFENDANT SIDLEY AUSTIN LLP'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

DECLARATION OF GABRIEL P. SANCHEZ

I, Gabriel P. Sanchez, declare as follows:

1. I am an attorney at the law firm of Munger, Tolles & Olson LLP, counsel of record for Sidley Austin LLP (successor in interest to Defendant Brown & Wood) ("Brown & Wood"). I have personal knowledge of the matters stated herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the Amended Complaint filed by Plaintiffs Mark and Elyse Gainor, dated March 2, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the transcript of the Deposition of Plaintiff Mark Gainor ("Gainor Dep."), taken in this litigation on March 1 and 2, 2007.

4. Attached hereto as Exhibit C is a true and correct copy of Plaintiff Mark Gainor's Responses to Defendant Brown & Wood's First Set of Rule 26.1G Interrogatories, dated January 11, 2007.

5. Attached hereto Exhibit D is a true and correct copy of Plaintiff Mark Gainor's Damages Summary ("Damages Summary") served in response to Defendant Brown & Wood's Interrogatory No. 6, dated January 11, 2007.

6. Attached hereto as Exhibit E is a true and correct copy of Plaintiffs Mark and Elyse Gainors' Election To Participate In IRS Settlement Initiative and accompanying seven-page Attachment To Form 13750 ("Statement to IRS"), dated January 20, 2006. Mr. Gainor verified that the document, identified at his deposition as Deposition Exhibit No. 10, bears Plaintiffs' signatures. (*See* Exh. B, Gainor Dep. at 147:14-148:4.)

7. Attached hereto as Exhibit F is a true and correct copy of MJG Partners' State of Georgia Partnership Income Tax Return for the year ending December 31, 1999, provided by Plaintiffs' counsel over the course of discovery.

8. Attached hereto as Exhibit G is a true and correct copy of the State of Georgia's Certificate of Fact certifying that on November 12, 1999, Gainor Medical U.S.A. Inc.

("GMUSA") merged with and into Lucor Special Investments, Inc. ("Lucor") (hereinafter "Certif. of Merger), provided by Plaintiffs over the course of discovery and dated December 2, 1999.

9. Attached hereto as Exhibit H is a true and correct copy of Plaintiffs Mark and Elyse Gainors' signed Member's Certificate ("Member Certif."), provided by Plaintiffs' counsel over the course of discovery and dated December 14, 1999.

10. Attached hereto as Exhibit I is a true and correct copy of the Job Arrangement Agreement between Arthur Andersen and Bryan Medical, Inc. ("Bryan Medical"), signed by Mark Gainor on behalf of Bryan Medical and dated September 9, 1999 ("Bryan AA Contract"). Mr. Gainor verified that the document, identified at his deposition as Deposition Exhibit No. 18, bears his signature. (*See* Exh. B, Gainor Dep. at 172:5-25.)

11. Attached hereto as Exhibit J is a true and correct copy of the Job Arrangement Agreement between Defendant Arthur Andersen and GMUSA ("Lucor AA Contract"), signed by Mark Gainor on behalf of GMUSA and dated September 9, 1999. Mr. Gainor verified that the document, identified at his deposition as Deposition Exhibit No. 17, bears his signature. (*See* Exh. B, Gainor Dep. at 168:15-169:8.)

12. Attached hereto as Exhibit K is a true and correct copy of the Loan And Collateral Account Agreement between Defendant Merrill Lynch and Bryan Medical ("Bryan Loan"), signed by Mark Gainor on behalf of Bryan Medical and dated September 28, 1999. Mr. Gainor stipulated that the document, identified at his deposition as Deposition Exhibit No. 53, bears his signature. (*See* Exh. B, Gainor Dep. at 547:4-6.)

13. Attached hereto as Exhibit L is a true and correct copy of the Loan And Collateral Account Agreement between Merrill Lynch and GMUSA ("Lucor Loan"), signed by Mark Gainor on behalf of GMUSA and dated October 18, 1999. Mr. Gainor stipulated that the document, identified at his deposition as Deposition Exhibit No. 52, bears his signature. (*See* Exh. B, Gainor Dep. at 547:15-23.)

14. Attached hereto as Exhibit M is a true and correct copy of the Stock Purchase Agreement between MJG Partners and Bryan Holdings for the sale of Bryan Medical (“Bryan Stock Purchase”), dated December 14, 1999. Mr. Gainor verified that the document, identified at his deposition as Deposition Exhibit No. 8, bears his signature. (See Exh. B, Gainor Dep. at 142:4-9.)

15. Attached hereto as Exhibit N is a true and correct copy of the Stock Purchase Agreement between MJG Partners and LSI Holdings for the sale of Lucor (“Lucor Stock Purchase”), signed and dated December 23, 1999. Mr. Gainor verified that the document, identified at his deposition as Deposition Exhibit No. 9, bears his signature. (See Exh. B, Gainor Dep. at 144:23-25.)

16. Attached hereto as Exhibit O is a true and correct copy of checks and invoice statements provided by Plaintiffs during the course of discovery reflecting payments to Arthur Andersen totaling \$392,000 by Bryan Medical from its Merrill Lynch account (account number 230-07G65) on January 6, 2000 (“Bryan Payments to Andersen”).

17. Attached hereto as Exhibit P is a true and correct copy of letters, checks and invoice statements provided by Plaintiffs’ attorneys during the course of discovery reflecting payments to Arthur Andersen totaling \$300,000 by Lucor from its Merrill Lynch account (account number 230-07G94) on January 6, 2000 (“Lucor Payments to Andersen”).

18. Attached hereto as Exhibit Q is a true and correct copy of letters and checks provided by Plaintiffs and Plaintiffs’ attorneys during the course of discovery reflecting payments to Brown & Wood (“Brown & Wood Payments”), dated January 25, 2000.

19. Attached hereto as Exhibit R is a true and correct copy of Lucor’s Merrill Lynch account statements for December 1999 and January 2000 (account number 230-07G94) provided by Plaintiffs during the course of discovery (“Lucor Account Statements”).

20. Attached hereto as Exhibit S is a true and correct copy of Bryan Medical’s Merrill Lynch account statement for December 1999 (account number 230-07G65) provided by Plaintiffs during the course of discovery (“Bryan Account Statement”).

21. Attached hereto as Exhibit T is a true and correct copy of a facsimile from Merrill Lynch to Plaintiff Mark Gainor provided by Plaintiffs during the course of discovery reflecting a fee and cost breakdown of Merrill Lynch's loans to Bryan Medical and Lucor ("Merrill Cost Breakdown"), dated January 3, 2000.

22. Attached hereto as Exhibit U is a true and correct copy of the Acknowledgment of Security Interest ("Bryan Security Interest"), provided by Plaintiffs during the course of discovery, signed by MJG Partners and dated November 1999.

23. Attached hereto as Exhibit V is a true and correct copy of the Acknowledgment of Security Interest ("Lucor Security Interest"), provided by Plaintiffs during the course of discovery, signed by Mark Gainor and dated December 22, 1999.

24. Attached hereto as Exhibit W is a true and correct copy of the LLC Security Agreement ("LLC Security") between GMUSA and Merrill Lynch, provided by Plaintiffs during the course of discovery and dated October 1999.

25. Attached hereto as Exhibit X is a true and correct copy of the Partnership Contribution Agreement between Plaintiff Mark Gainor and MJG Partners, contributing 100 percent ownership in Bryan Medical to MJG Partners, provided by Plaintiffs over the course of discovery and dated August 3, 1999 ("Bryan Partnership Contribution").

26. Attached hereto as Exhibit Y is a true and correct copy of the Partnership Contribution Agreement between Plaintiff Mark Gainor and MJG Partners, contributing 100 percent ownership in Lucor to MJG Partners, provided by Plaintiffs over the course of discovery and dated December 23, 1999 ("Lucor Partnership Contribution").

27. Attached hereto as Exhibit Z is a true and correct copy of the State of Georgia's Certificate of Existence, certifying that Bryan Medical is a Georgia domestic corporation, incorporated on June 22, 1995 ("Bryan Certif. of Ex."). This copy of a public record was provided by Plaintiffs over the course of discovery.

28. Attached hereto as Exhibit AA is a true and correct copy of the State of Georgia's Certificate of Existence, certifying that Lucor is a Georgia domestic corporation,

incorporated on November 5, 1999 ("Lucor Certif. of Ex."). This copy of a public record was provided by Plaintiffs over the course of discovery.

29. Attached hereto as Exhibit BB is a true and correct copy of the State of Georgia's Certificate of Existence, certifying that MJG Partners is a Georgia domestic limited partnership, formed on January 20, 1999 ("MJG Certif. of Ex."). This copy of a public record was provided by Plaintiffs over the course of discovery.

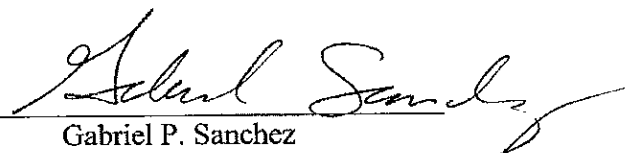
30. Attached hereto as Exhibit CC is a true and correct copy of the State of Georgia's Certificate of Organization, certifying that Bryan Holdings is a Georgia limited liability company, formed on December 2, 1999 ("Bryan Holdings Certif. of Ex."). This copy of a public record was provided by counsel for Defendant Mark Klopfenstein.

31. Attached hereto as Exhibit DD is a true and correct copy of the State of Georgia's Certificate of Organization, certifying that LSI Holdings is a Georgia limited liability company, formed on December 2, 1999 ("LSI Holdings Certif. of Ex."). This copy of a public record was provided by counsel for Defendant Mark Klopfenstein.

32. Attached hereto as Exhibit EE is a true and correct copy of the State of Georgia's Certificate of Existence, certifying that Gainor Medical Management, LLC is a Georgia limited liability company, formed on June 29, 1995 ("GMM Certif. of Ex."). This copy of a public record was provided by Plaintiffs over the course of discovery.

33. Attached hereto as Exhibit FF is a true and correct copy of the State of Georgia's Certificate of Existence, certifying that MJG Ventures, LLC is a Georgia limited liability company, formed on January 19, 1999 ("MJG Ventures Certif. of Ex."). This copy of a public record was provided by Plaintiffs over the course of discovery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 26 day of July, 2007, at Los Angeles, California.


Gabriel P. Sanchez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was sent via the Southern District of Florida's CM/ECF System and/or electronic mail to all counsel of record and by U.S. Mail to the pro se parties identified on the attached Service List this 26th day of July, 2007.

Respectfully submitted,

PODHURST ORSECK, P.A.
25 West Flagler Street, Suite 800
Tel. (305) 358-2800 / Fax (305) 358-238
kezell@podhurst.com

By: s/Katherine W. Ezell
KATHERINE W. EZELL
Fla. Bar No. 114771

And

MUNGER, TOLLES & OLSON, LLP
Jonathan E. Altman, Esq.
jonathan.altman@mto.com
Aaron M. May, Esq.
Aaron.may@mto.com
Gabriel P. Sanchez, Esq.
gabriel.sanchez@mto.com
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
(613) 683-9100/Fax (613) 683-5136

Attorneys for Defendant Sidley Austin, LLP

SERVICE LIST

Richard Benjamin Wilkes, Esq.
Richard W. Candelora, Esq.
Richard Benjamin Wilkes, P.A.
600 South Magnolia Avenue, Suite 200
Tampa, FL 33606
Tel. #: (813) 254-6060
Fax #: (813) 254-6088
E-Mail: rwilkes@rbwilkes.com
Attorneys for Plaintiffs

Stephen J. Anderson, Esq.
2002 Summit Blvd., Suite 1250
Atlanta, GA 30319
Tel. #: (404) 442-1800
Fax #: (404) 442-1820
E-mail: Anderson@andersondailey.com
Attorneys for Mark C. Klopfenstein

Richard A. Morgan, Esq.
E-mail: richard.morgan@bipc.com
Kelly A. McGovern, Esq.
E-mail: kelly.mcgovern@bipc.com
Buchanan Ingersoll & Rooney, PC
Bank of America Tower, 34th Floor
100 Southeast Second Street
Miami, FL 33131
Tel. #: (305) 347-4080
Fax #: (305) 347-4089
Attorneys for Mark C. Klopfenstein

Bennett Falk, Esq.
E-mail: bfalk@bressler.com
Coren Harris Stern, Esq.
E-mail: cstern@bressler.com
Bressler, Amery & Ross
2801 S.W. 149th Ave.
Miramar, FL 33027
Tel #: (954) 499-7979
Fax #: (954) 499-7969
Attorneys for Merrill Lynch & Co., Inc.

Douglas E. Whitney, Esq.
McDermott Will & Emery
227 West Monroe Street
Chicago, IL 60606-5096
Tel. #: (312) 372-2000
Fax #: (312) 984-7700
E-mail: dwhitney@mwe.com
Attorneys for Arthur Andersen, LLP,
P. Anthony Nissley and Michael S. Marx

Michael G. Austin, Esq.
McDermott Will & Emery
201 South Biscayne Boulevard, Suite 2200
Miami, FL 33131
Tel. #: (305) 347-6517
Fax #: (305) 347-6500
E-mail: maustin@mwe.com
Attorneys for Arthur Andersen, LLP,
P. Anthony Nissley and Michael S. Marx

Jocelyn d. Francoeur, Esq.
McDermott Will & Emery, LLP
227 W. Monroe St., Suite 4400
Chicago, IL 60606-5096
Tel. #: (312) 372-2000
Fax #: (312) 984-7700
E-mail: jfrancoeur@mwe.com
Attorneys for Arthur Andersen, LLP,
P. Anthony Nissley and Michael S. Marx

Stuart E. Abrams, Esq.
Frankel & Abrams
230 Park Avenue, Suite 3330
New York, NY 10169
Tel. #: (212) 661-5000
Fax #: (212) 661-5007
E-mail: sabrums@frankelabrams.com

R.J. Ruble
1517 Avalon Square
Glen Cove, NY 11542