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COMPASSIONATE CARE HOSPICE GROUP, LTD., an Illinois corporation, and **COMPASSIONATE CARE HOSPICE OF CLIFTON, LLC**, *Plaintiffs*, - *vs.* - **COMPENSATION SOLUTIONS INCORPORATED**, a New Jersey corporation, and **STEVEN POLITIS**, *Defendant*s.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION : PASSAIC COUNTY CIVIL ACTION NO. L-5607-10 **AMENDED VERIFIED COMPLAINT**

Plaintiffs, Compassionate Care Group, Ltd. and Compassionate Care Hospice of Clifton, LLC (collectively, "CCH"), by and through their undersigned attorneys, for their amended complaint against defendants Compensation Solutions, Inc., and Steven Politis, allege and verify, under penalty of perjury, as follows:

THE PARTIES

1. Plaintiff Compassionate Care Group, Ltd is an Illinois corporation authorized to do business in the State of New Jersey, with a place of business at 200 Lanidex Plaza, Suite 2101, Parsippany, New Jersey.

2. Plaintiff Compassionate Care Hospice of Clifton, LLC is a New Jersey Limited Liability Company which is wholly-owned by Compassionate Care Group, Ltd., with a place of business at 200 Lanidex Plaza, Suite 2101, Parsippany, New Jersey.

3. Defendant Compensation Solutions, Inc. is a New Jersey corporation with an address of 200 Valley Road, Wayne, New Jersey ("CSI").

4. Defendant Steven Politis is Chief Operating Officer and Executive Vice President of CSI, and is, upon information and belief a resident of Pennsylvania.

JURISDICTION AND VENUE

5. This Court has jurisdiction, and venue is appropriate herein, because Passaic County is the place of business of plaintiff Compassionate Care Hospice of Clifton, LLC and defendant CSI, and pursuant to a forum selection clause in the agreement between plaintiff and defendant CSI specifying venue in this Court for litigation of any action arising out the contract between them.

FACTS

6. Hospice is a service provided to the terminally ill and their families to ease the physical and emotional trauma associated with the end of life.

7. CCH owns and manages community based-hospices throughout nineteen states, including seven hospice locations and three hospital-based hospice-care units in the State of New Jersey.

8. CCH has an excellent record in the area of employee retention. In order to keep the most qualified hospice care professionals on its staff, CCH offers industry-leading salaries and benefits.

9. CSI is a TPA, or Third Party Administrator, which also acts as a PEO, or Professional Employer Organization.

10. TPA's and PEO's act as administrative employers of record that relieve companies of many of the administrative burdens, such as payroll and employee benefits management, while providing superior benefits such as health care, workers' compensation and unemployment insurance, as well as human resources expertise, than many of its clients would be able to offer individually.

11. Such firms also handle the development and administration of employment policies and procedures; employee recruitment and disciplinary actions; record-keeping; unemployment; disability and workers compensation claims and administration.

12. In particular, PEO's typically utilize a legal and administrative procedure by which, pursuant to a written contract, their clients "transfer" certain aspects of their company-wide employee relationships to the PEO. The employees are then referred to as "co-employees."

13. Under co-employment, each PEO client entity has a right to direct and control work-site employees with respect to their duties with respect to the production and delivery of products and services, but the PEO directs and controls such employees in matters involving human resource management and compliance with employment laws.

The Agreement

14. From 2008 through 2009, defendant CSI pursued CCH and sought to enter into a contract with CCH to provide PEO and related services, pursuant to which

defendant CSI would administer and deliver employee compensation, insurance and other benefit on CCH's behalf in return for fees.

15. CCH was reluctant to enter into such an agreement, but defendant CSI pursued CCH's business aggressively, repeatedly assuring CCH management that once its services were in place, CCH would become a satisfied long-term customer.

16. Moreover, because of what it stated was this high level of confidence, defendant CSI made repeated concessions as to terms from its initial proposal to CCH.

17. For example, defendant CSI's original proposal included a provision requiring 90 days written notice of termination without. Because of CCH's skepticism about the suitability of a PEO for its business, however, CCH insisted on a 30-day termination term.

18. Stating that termination would be an irrelevant matter because of what it assured CCH would be its high level of satisfaction with its services, defendant CSI agreed to the 30-day termination clause and had the change made on its form contract (the "Termination Provision").

19. Ultimately, on April 5, 2010, CCH and defendant entered into an arrangement whereby defendant would, in return for the payment of substantial fees, provide payroll, employee insurance and benefits administrative services described specifically therein (the "Agreement"), a true copy of which is attached hereto as Exhibit A.

20. The services to be provided under the Agreement were, by its terms, to begin with the payroll dated May 15, 2010.

21. Because the Agreement did not begin with the tax year, i.e., on January 1, 2010, there was no transfer of employees to CSI, however.

22. In order to effectuate the purposes of the PEO relationship but without co-employment, therefore, CCH provided defendant CSI with full power of attorney with respect to CCH's tax and other liabilities.

23. Among the forms of compensation to be provided to CSI under the Agreement was a provision that CCH designate defendant as Broker of Record ("BOR") "on all benefits, workers compensation and retirement plans contemplated by this Agreement" (the "BOR Provision").

24. The BOR Provision was, because of the substantial volume of insurance business carried by CCH across its extensive multi-state operations, highly lucrative for defendant.

25. The BOR Provision included a severe and punitive penalty clause, which read as follows: "If CLIENT [CCH] fails to name and maintain CSI [as] designated BOR then it shall pay to CSI an additional $19.96 per participant per calendar week."

26. Because CCH has thousands of employees, i.e., "participants" in BOR-related insurance coverage, the charge of $19.96 "per calendar week" multiplied by the period of time during which such employees may be "participants" would aggregate, over a few or more weeks or months, to an astronomical sum.

27. CCH agreed to the BOR Provision, however, because the brokerage fees and commissions earned by the BOR were not paid by CCH but were paid to the broker by the insurance carriers themselves.

28. CCH therefore had no incentive to change the BOR designation at any time during which it would have any "participants" in a given insurance policy whose benefits and payroll were being administered by defendant.

Funding and Impoundment

29. A central function of the arrangement between CCH and CSI was the payment by CSI, on CCH's behalf, of funds deducted from salaries as well as CCH's contributions for payroll taxes, insurance premiums and other assessments.

30. In order to effectuate the funding of such payments as well as payment of contractually-authorized fees, the Agreement provided for the transfer of such funds from CCH to defendant by various means to ensure they were available to CSI on the date of disbursement.

31. CCH's practice, at the beginning of the Agreement, was to fund defendant's payment of CCH's statutory and other payroll obligations by check.

32. CSI requested, however, that CCH change its practice and make payment via "impoundment" of funds by CSI directly from CCH's bank account pursuant to an order left on file with CCH's bank.

33. CCH agreed to the impoundment procedure as an accommodation to CSI.

34. CCH and defendant established an arrangement for impoundments to ensure that no funds were impounded until designated CCH personnel were provided with the opportunity to review an Impound Statement submitted by CCH prior to each impoundment.

35. The Impound Statement itemized each charge and totaled the total amount to be impounded.

36. Prior to impoundment, the Impound Statements was emailed by defendant's chief financial officer to at least three, and typically as many as five, CCH staff and managers, including its general counsel, for review and approval on the date of the intended impoundment.

37. Although sent the same day of the intended impoundment, this notice served the purpose of providing CCH a last clear chance to review, request explanation of or reject any proposed charge.

38. Because impoundment was not the only manner in which CCH could fund its account with defendant to meet its fiduciary and statutory obligations, even a last-minute adjustment or stop order would not cause an insurmountable problem, while retaining in CCH the right as the client and principal to control seven-figure withdrawals from its bank account.

39. At no time did CCH authorize CSI to utilize the impound procedure to withdraw funds to pay penalties, liquidated damages or disputed charges.

40. During its relationship with CCH, CSI did not, until the events complained of herein, take the privilege of being able to impound funds directly from CCH's bank account lightly.

41. Defendant CSI understood, in fact, that it had no authority to make any specific impoundment without advance authorization from CCH.

42. Thus even with respect to a generally authorized purpose, such as payroll, if an unscheduled, extra or unusual impoundment was required, CSI recognized that it could not impound funds without explicit permission from CCH.

43. Such a particularized request concerning a typical, but unscheduled, impoundment – concerning a set of "extra" checks totaling only $9,089.45 – is set forth in a series of emails dated May 17, 2010, true copies of which are attached hereto as Exhibit B (the "May 17 Impoundment").

44. In the first May 17 Impoundment email, the Chief Financial Officer of defendant CSI writes as follows to CCH's Controller, copying two other CCH personnel including its general counsel, as follows:

> Hi Chris,
>
> There were additional transactions processed after the 5/14/2010 paycheck date, about $50k in reimbursed expenses and $39k in wages. These transactions are dated today, 5/17/2010.
>
> Attached is the cash requirements for these transactions, and an impound amount for taxes.
>
> We can initiate the impound ourselves now, as the set-up is completed with your bank.
>
> Please confirm back your authorization for us to impound the amount of $9,089.45 as noted on the attached.
>
> Feel free to call if you need to discuss.
>
> Regards,
>
> Tom

45. CCH's Controller responds by email, on the same date, that if in fact the additional transactions described were approved by CCH management, the impoundment is authorized.

46. CSI's Chief Financial Officer then writes a second email, explicitly addressing the approving officers – one of which was already copied on the original email – for such approval, writing,

> Dear Yutonya and Smita,
>
> Please review the attached impound amount for the 5/17/2010 extra checks, and let me know if I may pull the tax impound of $9,089.45.
>
> Thank you,
>
> Tom

47. Not until explicit authorization is received for this impoundment – a total of five emails sent to senior management at CCH – does CSI impound the $9,089.45 for additional taxes on a transaction already known to CSI to have been directed by CCH itself.

48. Relying on the level of conduct with respect to use of its impound privilege demonstrated by CSI's responsible, authorized executives and managers, CCH continued to allow defendant CSI to maintain that privilege for the sole purpose of servicing CCH's needs under the Agreement.

The amended Agreement

49. By June of 2010, however, CCH became dissatisfied with the service and pricing it was receiving from defendant CSI, particularly with respect to the costs it was bearing in connection with workers' compensation insurance and services.

50. On June 29, 2010, CCH provided defendant CSI with written notice, pursuant to the Agreement, of its intention to terminate all services being provided under the Agreement effective July 31, 2010.

51. On July 1, 2010, defendants responded to CCH by letter, stating, "We are in receipt of your letter dated June 29, 2010, notifying us of the termination of our services effective July 30, 2010" (the "July 1, 2010 letter"). A true copy of the July 1 letter which is attached hereto as Exhibit C.

52. Eager to win back CCH's business, the July 1 letter requested that CCH reconsider its decision and continued as follows:

> CSI would like to make a most generous and valuable proposition. We propose continuing on as your payroll benefit administrator, while returning your Workers' Compensation coverage to Liberty. This will allow you the opportunity to continue to take advantage of our "back office" for **no more** than the cost of a premium payroll and TPA service. . . .

53. The July 1 letter then went on to propose three alternative different bundles of reduced service defendant could provide to CCH at a lower fee level.

54. The first such option, labeled "Option 1," provided as follows:

> Option 1: Continue the same program and services currently provided, minus the workers' compensation coverage and administration. . . . all for the same cost as our premium payroll solution. By continuing to consolidate your programs and services with CSI, we can continue our full HR program in force for the same base fee of $3,800 per week. CSI would charge only $1.87 per week for each additional new employee (a further reduction of of 50% off our current rate). Competitors typically charge $250 to $600 per employee per year for a payroll/tax payment, web, and helpdesk solution for a company of your size.

55. Accepting Option 1, on July 7, 2010 CCH rescinded its blanket termination and entered into a new relationship identical in all respects to that set out in the Agreement except with respect to workers' compensation coverage and administration on the terms set out in Option 1.

56. CCH and defendant, therefore, came to a meeting of the minds with respect to a new agreement under which defendant provided to CCH all the services set

out in the Agreement minus the workers' compensation services, including both insurance and administration, set forth therein, effective August 1, 2010.

57. The foregoing agreement between CCH and defendant CSI constituted an amendment to the terms of the Agreement.

58. The terms of the new relationship, based on the original Agreement but without the workers' compensation component (the "amended Agreement") were confirmed in a letter transmitted by email, regular and certified from CCH's general counsel to the chief executive officer of defendant CSI on August 16, 2010, stating as follows:

> Compassionate Care Hospice hereby rescinds it authority for you to act as broker of record [BOR] on worker's compensation policies issued on behalf of Compassionate Care Hospice. . . .
>
> This letter serves to cancel all worker's compensation policies covering employees of "Compassionate Care Hospice" and "Compassionate Home Care" and all of its affiliates.
>
> This letter only serves to terminate the arrangement between Compassionate Care and Compensation Solutions, Inc. in regards to the handling, management and brokering of worker's compensation matters. All other terms of the original contract remain in effect. . . .

59. This August 16, 2010, letter, a true copy of which letter which is attached to the Verified Amended Complaint as Exhibit D, conformed that beginning in August 1, 2010, defendant CSI would not and did not provide workers' compensation administration services or act as broker with respect to workers' compensation coverage to CCH; CSI did not invoice CCH for such services; and CCH did not pay for such services.

The Termination by CCH

60. Nonetheless, CCH was not satisfied with CSI's services and the value delivered under the amended Agreement, and on November 2, 2010, unconditionally

terminated "the contract for all services" between CCH and CSI effective December 31, 2010. A copy of CCH's final termination letter is attached as Exhibit E.

61. Once again, however, CSI attempted to maintain its relationship with CCH. Its President, Susan Molosh, responded on November 4, 2010 with a two-page, single-spaced letter laying out her view of what CSI had accomplished for CCH over seven months and attaching a proposal to provide human resources services alone for CCH (the "November 4 letter"). A true copy of the November 4 letter is attached hereto as Exhibit F.

Defendant Politis Takes a Separate Tack with CCH

62. On November 5, 2010, however, defendant Steven Politis, CSI's general counsel and chief operating officer, wrote to CCH's chief executive officer (the "November 5 letter"). A true copy of the November 5 letter is attached hereto as Exhibit G.

63. On information and belief, defendant Politis was acting completely independently of defendant CSI's president, as well as without regard to CSI's proffered offer of human resources services in preparing the November 5 letter, which stated as follows:

> Be advised that there is a requirement for ninety (90) days written notice of a party's intent to cancel the Agreement executed between the parties. As such, the November 2, 2010, correspondence received from Compassionate Care Hospice's ("CCH") General Counsel . . . will serve as the beginning of the 90 day notice requirement.

64. Politis's claim in his November 5, 2010 letter that the termination period was 90, not 30, days was inconsistent with the parties' mutual understanding.

65. That claim was also inconsistent with the July 1, 2010 letter from defendant CSI, which explicitly acknowledged the first termination – which ultimately

resulted in the amended Agreement – and which stated, again, "We are in receipt of your letter dated June 29, 2010, notifying us of the termination of our services effective July 30, 2010" without any objection or reservation of rights with respect to the termination period.

66. The "90 days" claim by defendant Politis was also inconsistent with CSI's own statements in the November 4 letter, which stated, "It is with considerable dismay that we acknowledge your termination letter." This November 4, 2010 letter also contained a new proposal lowering fees additionally in order to maintain CCH business. The final paragraph of this proposal "CSI is prepared to begin this project immediately following the expiration of the program and upon receipt of CCH's approval … with a specific target date of January 1, 2011", thereby acknowledging the exact date of the termination.

67. By all indications, this new "90 day" claim was "based," despite its acknowledgment in two letters from CSI that the 30-day notice had been effective, on a typographical error in the Termination Provision, which appears twice in the original Agreement.

68. This error, made in both places, states – despite the extensive discussion between the parties regarding the termination notice period – that notice of termination other than for cause must be given "at least ninety (30) [*sic*] days" instead of "at least thirty (30) days."

69. In fact, the form provided by defendant had only been changed with respect to the description of the number of days in integers ("30"), and not as spelled out in words ("ninety").

70. This inconsistency had been overlooked by both sides in the rush to put the agreement into place in time for the second quarter payroll earlier that year.

71. Defendants' new position – that CSI would deem what ultimately amounted to the termination of defendant CSI's contract with CCH to be effective only after 90 days – was inconsistent with the parties' prior agreement, communications and conduct, including billing and payment for services over the summer; the history of negotiations concerning this term; the July 1, 2010 and November 4, 2010 letters from defendant CSI.

72. This new position by defendants, however, was of minor consequence compared to the next paragraph in defendant Politis's November 5, 2010 letter to CCH, which read as follows:

> I again direct your attention to the Agreement executed between the parties which calls for an automatic increase in CSI's administrative service charge to an additional weekly fee of $19.96 per employee. Therefore, the $19.96 fee was effective as of on or about August 25, 2010. CSI's finance department will forward the back-billing due from CCH within the next few days. . . .

73. This was a reference to the BOR Provision, which, CCH learned, had briefly, and inconsequentially, been technically breached due to an administrative error by CCH.

74. During the process of switching workers' compensation services back to its own staff from defendant, CCH had also changed the designation of BOR for those insurance programs for which defendant CSI was acting as broker and administrator to a broker other than defendant.

75. This was done by a new human resources manager at CCH who was unfamiliar with the BOR Provision.

76. As stated above, CCH had no reason, including any financial incentive, to change BOR's during a period in which its thousands of "participants" were being served by defendant CSI with respect to medical and dental insurance.

77. Upon learning of this error, CCH promptly had the BOR's returned to defendant CSI for those programs for which it was still under contract with CCH pursuant to the amended Agreement.

Defendants' Embezzlement of CCH Funds Via Impoundment

78. Shortly after his Friday, November 5, 2010 letter, on November 10, 2010, defendant Politis sent an email to the official email address of CCH's chief executive officer.

79. One was a letter, labeled "via email only," stating that it enclosed the second attachment, "the attached back-billing which shall be immediately impounded." The transmittal email and the two attachments are ("the November 10 email") hereto as Exhibit G.

80. The second PDF attachment to the email indicated that defendants were about to impound over half a million dollars from CCH's bank account, almost all in purported satisfaction of the BOR Provision.

81. Unlike every other Impound Statement sent from defendant CSI to CCH, the November 10 email was transmitted by Politis, contrary to CSI's regular practice of having its chief financial offer transmit each advice of impoundment by email.

82. The November 10 email was also not sent or copied to a single one of the regular recipients at CCH of impoundment advices, one of which was CCH's own general counsel.

83. Moreover, the email was sent by defendant to a dormant email address that defendant Politis knew, or should have known, was never used by CCH's chief executive officer.

84. Indeed, CCH learned of this massive defalcation by defendant only the next morning when defendant's chief financial officer, who was evidently blind-copied on the email sent by defendant Politis the previous day, passed it along to three of the usual CCH recipients of impound advices with the comment, "I noticed you weren't copied on this, so I am forwarding to you."

85. Defendant Politis also knew that CCH's chief executive officer delegated management of such matters within CCH's organization and, when corresponding by email, utilized his own personal email address.

86. Defendant Politis had, in fact, utilized this personal email address in previous correspondence with CCH's chief executive officer.

87. Moreover, the Agreement as amended provided that "any and all notices required under the terms of this Agreement shall be effected by hand delivery, in writing or by certified mail, return receipt requested."

88. The November 10 email or its attachments, however, were not delivered by hand delivery or certified mail.

89. As promised in that email, however, defendants did in fact impound, without authorization or approval, $518,001.88 from CCH's bank account, all but $2,475.00 of which it applied to satisfy its claim to penalties under the BOR Provision.

90. CCH management, in fact, swiftly determined that the change of BOR had been an administrative error within CCH, and within days re-designated defendant as BOR as required under the Agreement.

91. At no time was defendant deprived of any revenue, nor upon information and belief did it suffer any financial loss, as a result of the temporary misdesignation of these BOR's – the only ones relating to insurance coverage or administration being handled for CCH by defendant CSI – by CCH.

92. Thus any non-compliance by CCH of the BOR Provision was technical, promptly remediated and harmless, as defendant was once again BOR and for all practical purposes was in the same financial position it would have been had it never been removed as such.

93. Nonetheless, defendant Politis took the position that defendant CSI was entitled to "back bill" CCH pursuant to the BOR Provision in the amount of $19.96 per employee for the "applicable" period.

94. Defendants have subsequently refused, despite repeated demands and attempts through normal banking channels to reverse this unauthorized, fraudulent debit, to return these wrongfully impounded funds to CCH.

95. Upon information and belief, this wrongful impound was undertaken by or at the direction of defendant Politis.

96. Furthermore, defendants have unilaterally imposed other unauthorized and baseless charges on CCH, which, upon CCH's withdrawal of defendant's impoundment authorization, defendant has demanded CCH pay.

97. In particular, businesses such as CCH submit payroll withholding reports and payments to the Internal Revenue Service ("IRS") on a quarterly basis.

98. Because of the immense difficulty in switching to another payroll administrator, or even reinstituting internal payroll administration, in the middle of a quarter, CCH is in a position where it has virtually no choice but to continue to rely on the services of defendant for the remaining payrolls of this year in administering its payroll and withholding functions.

99. Aware of this fact, defendants have taken the position that any monies provided to CSI by CCH to fund, as required by the Agreement as amended and pursuant to defendants' fiduciary duties to CCH, CCH's statutory and other payroll obligations will be reduced by the amount of CSI's unilaterally-imposed charges, leaving a shortfall in CCH's satisfaction of its payroll withholding obligations.

100. As a result, defendants have stolen approximately $50,000 per payroll out of monies transferred to them by CCH to satisfy CCH's payroll obligations to pay themselves unauthorized fees, despite being on notice of the disputed nature of such charges and their obligations to remit all such funds to taxing authorities on behalf of CCH.

101. The total amount of funds wrongfully obtained by defendants now totals, at the time of this filing, approximately $715,486.16.

102. Defendants have made it clear that they will continue to steal funds that CCH transfers to defendant CSI for payroll obligations for the rest of 2010.

103. CCH has been damaged and continues to be damaged by defendants' unlawful conduct.

104. Pursuant to the Agreement, the parties agreed that a violation of the provisions thereof would cause irreparable injury for which there would be no adequate remedy at law and that, accordingly, its provisions could be enforced by injunction without a showing of irreparable injury or the existence of an inadequate remedy at law.

FIRST COUNT

Embezzlement

105. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

106. CCH authorized defendant CSI to withdraw funds from CCH's bank account solely for the purpose of payment by CSI of CCH's payroll tax other payroll liabilities.

107. CCH authorized defendant CSI to withdraw funds from CCH's bank account only after review and approval of such impoundments by designated staff and managements.

108. Defendant CSI did, in fact, regularly withdraw such funds and make such payments pursuant to such arrangements.

109. CCH entrusted CCH with such funds for purposes of satisfying CCH's payroll, insurance and other obligations only.

110. On November 10, 2010, however, without authorization for such withdrawal but wrongfully and unlawfully utilizing CSI's impoundment privileges which were meant to benefit CCH, defendants withdrew over $500,000 from CCH's account with no intention of utilizing such funds to meet CCH's payroll obligations, to satisfy a

bona fide fee owed to CSI by CCH or for any other legitimate, authorized or lawful purpose.

111. Defendant CSI retained the November 10, 2010 withdrawal, intending to appropriate and convert the funds to its own use and to deprive CCH of the use of those funds permanently.

112. Defendant CSI owed a duty of care respecting its use of bank impoundment withdrawal privileges for CCH's account.

113. Defendant CSI delegated its duty of care to defendant Politis, a corporate officer.

114. Alternatively, defendant Politis wrongfully directed, on his initiative, CSI's staff to take the above-alleged wrongful actions.

115. Defendant Politis breached his duty of care by the actions as alleged above.

116. CCH has sustained damages as a result of the actions of defendants.

SECOND COUNT

Breach of Contract

117. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

118. The Agreement between CCH, as amended in July of 2010, is an enforceable contract.

119. CCH had, at the time of the breach by CSI complained of herein, performed all its obligations under the Agreement as amended.

120. Defendant CSI anticipatorily breached the amended Agreement as set forth above including, *inter alia*, when it refused to make one or submitted one or more payments to the IRS and other recipients of withholding funds on behalf of CCH after the due date established by the IRS and others to whom CCH is obligated to make payments unless CCH paid to defendant unjustified fees and costs over and above the amounts CCH is obligated to pay to defendant under the Agreement.

121. CCH has suffered damages due to the defendant CSI's breaches of the Agreement.

THIRD COUNT

Breach of the Covenant of Good Faith and Fair Dealing

122. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

123. There is as a matter of law an implied covenant of good faith and fair dealing contained in the Agreement.

124. Defendants' position that CSI is entitled to approximately hundreds of thousands of dollars in penalty fees pursuant to the BOR Provision is based on a literal but bad faith reading of the BOR Provision, which states "If CLIENT fails to name and maintain CSI designated BOR then it shall pay to CSI an additional $19.96 per participant per calendar week."

125. In light of CCH's immediate remediation of any literal breach of the BOR Provision after learning of it, and the lack of damages suffered by defendant CSI arising from that breach, defendants' position that under the strict terms of the Agreement defendant CSI is still entitled to enforce the penalty terms of the BOR Provision

constitutes a breach of the covenant of good faith and fair dealing implied in the Agreement.

126. CCH has suffered damages due to the defendant CSI's breach of the covenant of good faith and fair dealing implied in the Agreement.

FOURTH COUNT

Declaratory Judgment of Non-Enforceability of Contractual Provision

127. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

128. As set forth above, a controversy exists between CCH and defendant CSI concerning the validity and enforcement of the BOR Provision.

129. Defendant, upon information and belief, suffered no financial or other damage whatsoever as a result of the brief period during which it was not designated as Broker of Record by CCH.

130. Notwithstanding that CCH's erroneous change of BOR to another broker was merely a technical breach of the Agreement, defendant has wrongfully sought to apply a penalty in the approximate amount of over $700,000, purportedly in satisfaction of charges incurred under the BOR Provision.

131. Plaintiff CCH is entitled to a declaration that the penalty clause contained in the BOR Provision is unenforceable in the circumstances herein by virtue of being a penalty clause and against public policy.

FIFTH COUNT

Reformation of Contract – BOR Provision

132. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

133. The text of the BOR Provision, as it reads in the Agreement, is the result of a mutual mistake by CCH and defendant CSI.

134. In particular, to the extent the BOR Provision can be read to provide a windfall to CSI in the event of a technical breach causing no damages to CSI or to impose a financial penalty unrelated to any damages suffered by CSI, the parties never intended to agree to such a provision.

135. Similarly, to the extent the BOR Provision can be read to require CCH to maintain CSI as BOR for all insurance coverage obtained by CCH, regardless of whether CSI is providing service or in fact acting as broker for such coverage, the parties never intended to agree to such a provision.

136. CCH has requested that defendants read the BOR Provision in its equitable, common-sense meaning but they have refused to do so, insisting on its literal interpretation so as to effectuate a windfall or disproportionate financial penalty never intended by the parties.

137. CCH is entitled to reformation of the Agreement to show the correct and lawful intention of the parties, to wit, that any liquidated damages payable under the BOR Provision be premised on a proportionate damages suffered by CSI, and that a technical breach by CCH of the BOR Provision timely remedied and causing no damages to CSI not be deemed a basis for invocation of the liquidated damages clause therein.

SIXTH COUNT

Specific Performance of Contract

138. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

139. CCH, as set forth above, has performed all its obligations under the Agreement as amended.

140. Defendants have combined their breaches of the Agreement with a methodology to extort money from CCH by requiring that CCH comply with defendants' bad-faith demands for payment of their spurious claims of contractual fees and penalties in order to process CCH's payroll.

141. Specifically, defendants now demand that all its claimed fees and charges, regardless of their legitimacy, be paid by CCH as a condition to CSI's performance of its contractual, fiduciary and statutory duties to CCH and its employees under the Agreement.

142. CSI has no choice but to comply with defendants' demands because, as set out above, cessation of CSI's administration and payment of CCH's myriad insurance, benefits and other claims, and the other services being provided by CSI under the Agreement as amended would cause significant damage to CCH and its employees between now and the New Year and could compromise CCH's contractual and statutory obligations, including fiduciary obligations, and expose CCH to significant sanctions and penalties.

143. Defendants' actions threaten to cause irreparable harm to CCH.

144. CCH is entitled to an order mandating that CSI perform all its obligations under the Agreement in return for timely payment of its regular fees as set forth therein

for the remainder of this calendar year, with any claim by CSI for additional payments or charges arising from its claimed breaches or other being held separate and apart for resolution herein or otherwise.

SEVENTH COUNT

Breach of Fiduciary Duty

145. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

146. CCH reposed faith, confidence and trust in defendant as CCH's payroll service provider, and relied on defendant CSI to act on CCH's behalf and in its interest.

147. Defendant CSI owed a fiduciary duty to CCH.

148. By the actions alleged above, CSI breached its fiduciary duty owed to CCH.

149. Defendant CSI owed a duty of care to CCH as a fiduciary.

150. Defendant delegated its duty to Politis, its corporate officer.

151. Politis breached that duty of care by his actions as alleged herein.

152. CCH has sustained damages as a result of the actions of defendants.

153. CCH has suffered damages as a result of defendants' breach of their fiduciary duties to CCH.

EIGHTH COUNT

Conversion

154. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

155. CCH reposed faith, confidence and trust in defendant as CCH's payroll service provider, and relied on defendant CSI to act on CCH's behalf and in its interest.

156. Defendant took possession of CCH's property, namely its money, by means of the improper November 10, 2010 withdrawal, without authority, justification or legal basis, and appropriated it for its own use.

157. Defendants thereafter exercised unauthorized dominion over the CCH's property, which was inconsistent with CCH's interest in it.

158. CCH has suffered damages as a result of the defendants' conversion of CCH's property.

NINTH COUNT

Constructive Trust

159. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

160. CCH had rightful title, possession and beneficial interest in the funds wrongfully withdrawn from its account by defendant CSI on November 10, 2010.

161. CCH did not intend that defendant CSI should have beneficial interest in those funds when CSI transferred them to itself without authorization.

162. Defendant CSI's means of obtaining such funds was wrongful.

163. Defendant CSI's would be unjustly enriched if not required to disgorge those funds and any proceeds or benefit derived from them.

164. CCH is entitled to the imposition of a constructive trust on any proceeds of defendants' fraud or any proceeds or benefit derived from them.

TENTH COUNT

Fraudulent Contracting of Debt or Incurring of Demand

165. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

166. The actions of defendants in connection with falsely fabricating unauthorized withdrawal requests and converting the funds of CCH in connection with their contractual duties constitute the fraudulent contracting of a debt or incurring of a demand in connection with a contract.

167. CCH is entitled to issuance of writs of attachment pursuant to N.J.S.A. 2A:26-1 and N.J.S.A. 2A:15-42(d).

ELEVENTH COUNT

Declaratory Judgment as to Interpretation of Contract – Termination Provision

168. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

169. As set forth above, a controversy exists between CCH and defendant ISC concerning whether the Agreement provides for termination without cause up 30 days' notice, as CCH contends, or 90 days' notice, as defendants now appear to contend.

170. Plaintiff CCH is entitled to a declaration that the Agreement provides for termination without cause upon 30 days' notice.

TWELFTH COUNT

Reformation of Contract – Termination Period Provision

171. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

172. The Termination Provision, as it reads in the Agreement, is the result of a mutual mistake by CCH and defendant CSI.

173. In particular, it is impossible and self-contradictory for the parties to have agreed that notice of termination other than for cause must be given "at least ninety (30) days [*sic*]" because the respective descriptions "ninety" and "30" as the number of days required for termination are inconsistent with each other.

174. CCH has requested that defendants read the Termination Provision to require 30 days' notice, as negotiated and as indicated in the integer format in the Agreement, but after initially acknowledging that CCH's 30-day notice of termination was valid they have changed their position and refused to do so, insisting and that the word "ninety" governs so as to effectuate a windfall never intended by the parties.

175. CCH is entitled to reformation of the Agreement to show the correct and lawful intention of the parties, to wit, that the Termination Provision should read and provide "thirty (30) days" instead of "ninety (90) days."

THIRTEENTH COUNT

Contractual Attorneys' Fees

176. Plaintiff CCH repeats and realleges the foregoing allegations as if fully set forth herein at length.

177. Pursuant to the Agreement, should litigation ensue between the parties, the prevailing party is entitled to attorneys' fees and costs.

178. CCH shall be entitled, upon resolution of the claims herein in its favor, to recompense of its attorneys' fees and costs arising therefrom.

WHEREFORE, plaintiff Compassionate Care Hospice Group requests that:

i. the Court enter an injunction placing a constructive trust on all proceeds wrongfully impounded by defendants; and

ii. the Court issue writs of attachment concerning such funds, regardless of the identity of such person as may be in control of them or any improper comingling thereof; and

iii. the Court order that such funds be paid into Court pursuant to R. pending the resolution of these claims; and

iv. the Court declare the BOR Provision unenforceable as an unlawful penalty provision or, in the alternative, reform the Agreement so as to effectuate the intention of the parties; and

v. the Court declare that the Termination Provision be read to require 30, and not 90, days' notice of termination or, in the alternative, reform the Agreement so as to effectuate the intention of the parties; and

vi. the Court order that defendants perform their obligations under the Agreement as amended and pursuant to the foregoing declarations or reformations or any of them, through and including December 31, 2010; and

vii. the Court order that defendants compensate plaintiff for its damages incurred as a result of their actions in an amount to be determined at trial

viii. the Court award reasonable costs and expenses, including attorneys' fees, pre and post-judgment interest; and

ix. awarding such other relief as shall be determined to be just.

Dated: December 6, 2010

Ronald D. Coleman

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Glen Rock, NJ 07452
(201) 612-4444
Attorneys for Plaintiff
Compassionate Care Hospice Group

AFFIDAVIT OF VERIFICATION

STATE OF NEW JERSEY)
)
COUNTY OF MORRIS)

Judith Grey, being duly sworn, upon her oath deposes and says:

I am the Chief Operating Officer of the plaintiff, Compassionate Care Hospice Group. I have read the foregoing Verified Complaint and testify that the statements of fact made therein are true to my personal knowledge.

Judith Grey
Chief Operating Officer
Compassionate Care Hospice

Sworn to and Subscribed before me this __ day of December, 2010.

NOTARY PUBLIC

MAUREEN ANGELA INNISS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 3/3/2015