High Hand Justice Court
55 E. Civic Center Drive,
County of X, State of Y

Heartless Debt Collector, LLC	)	
Plaintiff,	)	
	)	Case No. 000000000
vs.	)	
	)	
Joe Consumer, Defendant	)	

RESPONSE TO PLAINTIFF'S REQUEST FOR ATTORNEY'S FEES

Comes now Defendant, pro se, and hereby submits the following Response to Plaintiff's request for attorney's fees.

Introduction

Like most of the pleadings emanating from plaintiff in this matter, the "Affidavit of Attorney Fees" is a peculiarly flawed document, ambiguous about key provisions, blatantly wrong and deceptive about others, and merely inadequate in other respects. The fee request must be denied in its entirety both because of its complete lack of evidence and because plaintiff has unclean hands.

Who Is the Affiant?

It seems strange to be objecting to an affidavit because it is unclear who is making the affidavit, but in this case, and considering the general way plaintiff's counsel has conducted this case, there is a substantial question as to by whom the affidavit supposedly was created. It appears that this ambiguity was created by plaintiff as a means to foist a higher attorney hourly rate upon defendant, to justify an improper contingent fee, or to cover up for the complete lack of evidentiary support for the request for fees. For whatever reason, it is impossible to determine from the affidavit who the affiant is, and accordingly defendant does object.

Paragraph 1 of the affidavit states that the "undersigned" is "*the plaintiff's attorney"*

(singular) in Pima County. The signature block, however, contains two names, that of Really Bad Guy, State bar # xoxoxo, and Super Bad Guy, State Bar # baah. The actual signature of the undersignee is utterly illegible and provides no clue as to which of the people identified in the signature block signed the affidavit, if either of them did. Significantly, the sworn part of the affidavit does not include a name or any other identifying information, or any personal reference to education, experience, or personal accomplishment in any way and so this affidavit is fatally defective even in the simple requirement of identifying by whom it was sworn. It is significant also that the "undersigned" identifies himself or herself as the singular attorney for plaintiff when every pleading coming from plaintiff in this case has borne two signatures, proof positive that plaintiff's attorney was not a single individual. Defendant objects and moves that the affidavit be stricken from the record and the attorney's fee request be denied for lack of any evidentiary basis.

The Supposed Attorney Hourly Rate Alleged in Plaintiff's Attorney Fee Affidavit Is Wrong

Defendant has had significant conversations primarily with Really Bad Guy, and it would appear from defendant's perspective at least that Really Bad Guy did at least the lion's share of the actual work involved in this case on behalf of plaintiff. The court can take judicial notice, based on Really Bad Guy's bar number, that he is not a senior attorney and is, in any event, substantially junior in experience to Super Bad Guy- apparently the principal in the firm representing plaintiff (Super Bad Guy & Associates). According to Super Bad Guy & Associates' website, Really Bad Guy graduated from law school in 2010. The records are incomplete as there are no time slips or other fundamental records, and the record as a whole does not provide the court a basis for determining who did what work or when it was done, and there is accordingly no basis for an award of attorney's fees even if the affidavit were accepted. See, *Schweiger v. China Doll Restaurant, Inc., 138 Ariz. 183, 188 (App.), 673 P.2d 927 (1983)* ("An attorney who hopes to obtain an allowance from the court should keep accurate and current records of work done and time spent."); and LRCiv. 54.2(e)(2)("The

party seeking an award of fees must adequately describe the services rendered so that the reasonableness of the charge can be evaluated.")

If Really Bad Guy was the actual undersigned, as defendant believes[1] then allegation **Number 5** "[t]he affiant maintains an office for the purposes..." is unlikely to be true, and the hourly rate of $250.00 per hour stated in allegation **Number 8** would seem to be grossly overstated if not outright fraud. Likewise, a junior associate's standing and experience to evaluate the reasonableness of charging a contingent fee (**Number 9**) is dubious at best, as would be his knowledge of what is a customary and reasonable (the "current standard") fee in the area of collections for the State of Arizona. An affidavit is required by the Rules of Civil Procedure to provide an affirmative basis for establishing the affiant's personal knowledge of the matters testified about, and this affidavit fails to provide such a basis regarding those matters even if it were possible to determine whose affidavit it was.

As has been pointed out, there are no time slips or fundamental records showing when any time was expended, and, very peculiarly, plaintiff does not appear to have included in the calculations any of the time which actually involved defendant or the court. The question of whose affidavit this is is accordingly impossible to verify in any way other than the testimony of Really Bad Guy or Super Bad Guy. This lack of accountability must be deliberate in a firm that, according to the affidavit, maintains a computer, not to mention a staff.

To put it bluntly, it appears that Really Bad Guy did the work in this matter and plaintiff seeks to charge for it at the rate charged by Super Bad Guy. In any event, the factual basis for any claim of attorney's fees is inadequately established, and defendant objects to any award of attorney's fees whatever on that basis.

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1 Defendant believes this because Really Bad Guy was the only person to whom he spoke at Super Bad Guy & Associates, because RBGuy was the person appearing by telephone at conferences including the court, and because the brief in support of plaintiff's motion revealed a lack of understanding of the difference between an open account and an account stated, which is unlikely in a senior attorney, even for a brief that was hastily drafted.

Upon What Basis Is Plaintiff Seeking Attorney's Fees?

Another thing peculiarly left unclear by plaintiff's motion for attorney's fees is upon what basis plaintiff is seeking attorney's fees. It claims in its brief to be seeking fees pursuant to ARS Section 12-341.01, but it does not even mention any of the standards required by the Arizona Supreme Court for determining how much, if anything, to award as attorneys fees. **See, *Assoc. Indem. Corp. v. Warner*, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985)**. Thus the claim for attorney's fees must be denied on that basis as well, for it is the fee applicant's burden to demonstrate a right to any fees under applicable legal standards.

Plaintiff does request fees in the amount of its supposed contingency rate of 23.75%. Defendant notes the lack of documentary evidence regarding the existence of such an agreement, if any, and objects on that basis. The affidavit claims that the unknown affiant has actually expended 4.2 hours in pursuit of a judgment on a collection action for $7,728.03. In exchange for 4.2 hours of *some* (if any) attorney's time, plaintiff seems to be asking for attorney's fees of at least $1,835. Even at the grossly inflated rate of $250 per hour claimed by the unknown affiant, the contingency fee would obviously be paying for something other than the attorney's time spent on the case at bar. Fees awarded under ARS Sec. 12-341.01 are designed to reduce the burden of legal fees on a plaintiff, not to reward contingent fee-seeking lawyers or offset risks to the law firms presented by other litigation.

Plaintiff argues, strangely, that “in commercial litigation between fee-paying clients” there is no need to determine the reasonable hourly rate prevailing in the community for similar work because the rate charged by the lawyer to the client is the best indication of what is reasonable, *citing Schweiger v. China Doll Restaurant, Inc., supra.* However, the unknown affiant's testimony establishes that Heartless Debt Collectors, Inc., is not a “fee-paying” client.

The affidavit establishes that the fee arrangement is *contingent* upon fees actually collected from defendant, and any fee paid will be paid by defendant. Plaintiff cannot be said to be a "fee-paying client," therefore, and it was incumbent on plaintiff to provide evidence of community standards for similar work.[2] Its failure to do so deprives the court of an evidentiary basis for decision, and the request must be denied on that basis as well.

No doubt the awareness of its extravagant fee is why plaintiff has taken the trouble to try to establish the hours it worked *or will conceivably* work on the case and an inflated hourly rate. Unfortunately, it really does neither. The affidavit does not establish an appropriate hourly rate for the attorney time spent on this case. The unknown affiant claims his or her fee is $250 per hour, but the record does not establish which lawyer did what work in this case work or provide the court any real basis in education, experience or accomplishment for an evaluation of the hourly fee allegedly charged. There is no evidence as to how often the unidentified affiant receives the rate of $250 per hour he or she claims she gets for collection work on a fee-paid basis, or even if he or she ever has. There is no evidence in the record that anyone has ever paid that rate to the unknown affiant, for what work that rate is theoretically charged, or to whom it is or has been charged. And there is no evidence that anyone has ever *paid* that rate.

Defendant also wonders if any paying client has ever paid plaintiff's unidentified attorney that hourly rate for "*anticipated and estimated post judgment services*." Here the affiant has really larded up the records, seeking $250 per hour for such things as "instructing on skip trace efforts" and "reviewing skip trace efforts," garnishing wages, preparing orders and

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2 The China Doll court also noted that in cases where fees are not paid on an hourly basis, such as public rights and contingency fee litigation, the most popular formula for calculating fees is the lodestar analysis. Id. at 931 n. 5. The lodestar analysis is used where fees are not actually paid on an hourly basis and where the prevailing party does not have an agreement with counsel setting the attorneys' billing rate for the representation. Id.

appearing at supplemental hearings as well as engaging in significant negotiations with defendant by phone. It seeks payment for everything but the yearly Christmas party, but none of it has happened, and perhaps none of it will. The Arizona Supreme Court has explained that the purpose of awarding fees to a successful litigant is "to mitigate the burden of the expense of litigation to establish a just claim or just defense," not to provide the lawyer with a payment bonus. ***In re Struthers, 179 Ariz. 216, 877 P.2d 789, 795 (Ariz. 1994)(citing A.R.S. §12-341.01(B)***. As the Supreme Court stated in ***Pennsylvania v. Delaware Citizen's Counsel for Clean Air, 478 U.S. 546, 565-66 (1986)***(a case brought under the Clean Air Act) and considering its earlier decision in ***Blum v. Stenson, 465 U.S. 886, 897-901 (1984)***:

> As explained by the Pennsylvania Court, in ***Blum***, the Court found that "[w]hen . . . the applicant for a fee has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product is *presumed* to be the reasonable fee" to which counsel is entitled.

Whatever else plaintiff is doing, it has not carried its burden of showing the claimed rate and number of hours are reasonable, and it is seeking extravagant pay for minimal work.

<u>The Doctrine of Unclean Hands</u>

Why, then, is plaintiff including unworked hour in the record and seeking them from this defendant? The unknown affiant would know best, of course, but it appears to defendant that it amounts to nothing more than simple attempted theft. Or else to justify the award of a contingency fee that plainly rewards the lawyer for matters other than fee-generating activities or work on the case at hand. Unsurprisingly, plaintiff offers no case law in support of its larcenous fee application. Defendant's research has turned up no cases confronting facts like these, either; it would appear that no other fee applicant has been bold enough to seek fees for work conceivably to be done at some time in the unspecified future, by lawyers whose identity

is unknown, on records devoid of any verifiable detail. In civil rights litigation, where fee-shifting statutes have been much litigated, the courts have established that fee applications must be based on fees actually earned by the lawyer. See, discussion of ***Pennsylvania v. Delaware Citizen's Counsel for Clean Air, 478 U.S. 546 (1986),*** *above.*

Defendant therefore invokes the doctrine of unclean hands, as well as the complete absence of appropriate evidence presented, as a basis for denial of plaintiff's fee request. Although it is not precisely clear what plaintiff is doing, it is clear that it is seeking to impose the cost of unearned fees on defendant in an underhanded way. Like the affidavit of Leslie Liar, submitted in support of plaintiff's case in chief, the unknown affiant's affidavit and fee request are clearly deceptive and manipulative at best, are not candid with the court or defendant, and would not survive scrutiny under Rule 11. The court should not reward this sort of behavior.

CONCLUSION

For all the reasons stated above, defendant requests that plaintiff's request for fees be denied in its entirety.

By: _____
Joe Consumer, Defendant pro se
address