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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DLA PIPER LLP (US), Plaintiff,	Index No. 650374/2012
- against -	IAS Part 63
ADAM VICTOR, Defendant.	Hon. Ellen Coin
	SUPPORTING AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LARRY HUTCHER, being duly sworn, deposes and says:

1. I am a member of Davidoff Hutcher & Citron, counsel for the defendant/counterclaim plaintiff Adam Victor ("Victor") herein, and as such, am fully familiar with the facts and circumstances of this matter. I submit this affidavit in support of the instant application seeking leave to file and serve an amended pleading asserting new causes of action against plaintiff/counterclaim defendant DLA Piper LLP (US) ("DLA Piper").

2. As will be more fully set forth hereafter, Victor's application should be granted since, among other reasons, it is based on newly discovered evidence which demonstrates shockingly egregious conduct by DLA Piper warranting the new counterclaims.

"Churn that bill, baby!"

3. It is hard to imagine that sophisticated lawyers associated with a reputable firm would use the cynical and unethical phrase "Churn that bill, baby!" as a rallying cry, but this is the exact mantra that the lawyers at DLA Piper adopted when it came to performing services for Victor and his company, Project Orange Associates, LLC ("POA"). Their conduct

knows no shame or boundaries.

4. While many disheartened and aggrieved clients, as well as a large portion of the general public, have long suspected that attorneys in general churn time, inflate bills, create unneeded work, or expend time performing useless tasks, that claim has always been difficult, if not impossible to prove. That is no longer the case!

5. Until now, there probably has never been a written admission where members of a law firm have flatly acknowledged they have engaged in such reprehensible and damning conduct. As described herein, the written admissions by DLA Piper attorneys concerning churning perhaps reflect the most egregious conduct by a law firm in any fee matter. These admissions provide a window into a culture of avarice and ruthlessness that casts a pall not only on DLA Piper, but on the entire legal profession.

6. It would be one thing for such a preeminent law firm to have acted in this manner, and then voluntarily address it by reducing its fees or apologizing. Not only did that not occur, DLA Piper's wrongful conduct was compounded by their continuing to seek recovery for fees that were the direct result of churning and unnecessary work. This makes DLA Piper's conduct even more reprehensible.

7. Because of this newly discovered evidence, Victor seeks leave to amend his counterclaims in the proposed form annexed as Exhibit 1 hereto.

8. The amended counterclaims contain three new causes of action - for fraud, for violation of New York Judiciary Law § 487, and for violation of New York General Business Law § 349(h), as well as a request for punitive damages in the amount of $22.47 million, which represents 1% of DLA Piper's reported revenue for 2012 based on the written proof of DLA Piper's serious misdeeds.

Statement of Facts

9. DLA Piper instituted this action seeking to recover $678,762.69 in unpaid legal fees by summons and complaint dated February 9, 2012 (the "Complaint" or "Cpl"). Cpl ¶¶ 17-19. A copy of the Complaint is annexed as Exhibit 2 hereto.

10. In his original counterclaims (the "Counterclaims"), Victor set forth what he believed to be a pattern of DLA Piper inflating bills to him and then being coerced into paying them personally on a regular basis. Counterclaims (at Ex. 3), ¶¶ 18-30.

11. In discovery, DLA Piper has produced no less than 246,019 pages of documents including numerous internal emails among DLA Piper partners. Based on the recently discovered evidence, Victor can now show conclusively that DLA Piper had knowledge of intentional fraudulent overbilling.

* * * *

12. Without any hyperbole, the emails produced by DLA Piper shock the conscience.

13. In an email sent on May 20, 2010 by Erich Eisenegger to Christopher Thomson and Jeremy Johnson (all DLA Piper attorneys working on POA), Eisenegger writes "**I hear we are already 200k over our estimate-that's Team DLA Piper!**" (emphasis added). A copy of this email is annexed as Exhibit 4 hereto.

14. Christopher Thomson replied to this email later that evening on May 20, 2010, writing to Messrs. Eisenegger and Johnson:

> What was our estimate? But Tim [Walsh] brought Vince [Roldan] [two other DLA Piper attorneys working on POA] in to work on the objection for whatever reason, and now Vince has random people working full time on random research projects in **standard "churn that bill, baby!" mode. That bill shall know no limits.**

(emphasis added). Exhibit 5 hereto.

15. Rather than be horrified by this blatant admission of fraudulent overbilling, or even admonish their colleague for his utter disregard of their professional duties, Messrs. Eisenegger, Thomson, and Johnson continued the email thread, with each joking about how many attorneys were over-staffed on the POA file and how little work those attorneys actually accomplished. Exs. 6, 7 & 8.

16. To wit, Mr. Johnson wrote "Didn't you use 3 associates to prepare for a first day hearing where you filed 3 documents?" Ex. 6.

17. Mr. Thomson responded, "And it took all of them 4 days to write those motions while I did cash collateral and talked to the client and learned the facts. Perhaps if we paid more money we'd have more skilled associates." *Id*. Ex. 7.

18. Meanwhile, Mr. Johnson joked that "It's a Thomson project, he goes full time on whatever debtor case he has running. Full time, 2 days a week." *Id*. Ex. 8.[1]

19. I first reviewed the egregious admissions discussed herein on March 5, 2013. As the Rules of Professional Conduct dictate, as soon as I learned of DLA Piper's offending conduct, I notified both Victor and DLA Piper's counsel the very next day.

20. These abominable admissions cast a pall not only on DLA Piper, but the entire legal profession.

21. Given the brazen misconduct by DLA Piper, it is unlikely that the conduct complained of herein is limited to Victor's case, but is instead part and parcel of a larger corrupt culture of ruthlessness and avarice within the firm where this type of conduct is not even

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[1] To the best of our knowledge, we are not aware of DLA Piper adjusting any bill as a result of this activity.