POMPANO SENIOR SQUADRON FLYING CLUB, INC., a Florida corporation,

Plaintiff,

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CARL KENNEDY, individually,

Defendant	
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IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY FLORIDA

CASE NO: CACE 20-005993 (08)

PLAINTIFF'S MOTION TO APPOINT SPECIAL MAGISTRATE FOR DISCOVERY AND REQUESTS FOR CONTINUANCES AND DELAYS

Plaintiff, Pompano Senior Squadron Flying Club, Inc. (Plaintiff "Club"), by and through their undersigned counsel, files this Motion to Appoint Special Master for Discovery and Continuances as to Defendant, Carl L. Kennedy, II (Defendant "Kennedy") and says:

- 1. Plaintiff Club pursuant to Rule 1.490, Fla.R.Civ.P., Moves this Court for the appointment of a special magistrate in this matter with for issues regarding discovery disputes, motions for continuance, and motions for extensions of time.
- As this Court is fully aware, this Court advised the parties that motions filed by the
 parties herein are to be set on special set hearings and not uniform motion
 calendar.
- 3. Plaintiff Club sued Defendant Kennedy for an accounting and preliminary discovery has unturned over \$340,000 of unaccounted for monies and expenditures by Defendant Kennedy during the time he was in charge of Plaintiff Club's finances, which has resulted in liens against Plaintiff Club's property and a lawsuit filed by an alleged creditor regarding a \$100,000 for which no documents

- exist, but the plaintiff therein alleges was requested, approved and accepted by Defendant Kennedy.
- 4. Plaintiff Club has attempted to continue to conduct discovery and move this case along expeditiously only to be met by dilatory tactics from Defendant Kennedy.
- 5. Since the inception of this case, Defendant Kennedy has filed five (5) separate Notices of Unavailability for a total of 95 days. Pursuant to the attached email from Defendant Kennedy to Plaintiff Club, Defendant Kennedy envisions that a Notice of Unavailability even prevents Plaintiff Club from communicating with Defendant Kennedy over even the most mundane items. See Email attached as Plaintiff's Exhibit Number 1.
- 6. In addition to those 95 days, Defendant Kennedy has sought and received continuances as to discovery responses totaling an additional 99 days. Thus, defendant Kennedy has delayed the proceedings herein for a total of 194 days more than one-half year of inactivity and delay.
- 7. In the interim, Plaintiff Club has been stymied from obtaining the necessary relief it has sought in this matter, from moving this case expeditiously, and given the totality of the circumstances a lack of due process.
- 8. While Plaintiff Club has attempted to extend courtesies to Defendant Kennedy as to his various reasons for continuances and delays, as the 4th District Court Of Appeal has stated, a Notice of Unavailability, is actually not a pleading recognized by statute or the Florida Rules Of Civil Procedure. See *Dileo v. Landman*, 987 S.2d 933 (Fla. 4th DCA 2008) (observing that a Notice of Unavailability is not provided for in any statute or under the Florida Rules of Civil Procedure and does not curtail a court's ability to control its docket).

9. In order to move this case more expeditiously, allow Plaintiff Club to be able to effectively conduct its discovery so as to determine the true amount of misappropriated funds and recover same, requests the appointment of a special master which will also add this Court with its judicial economy.

WHEREFORE, Plaintiff Club moves this Court for an Order granting the appointment of a special magistrate, an award of court costs and attorney fees, and any other relief this Court deems just and equitable.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via eportal this 24th day of March 2021, to Carl L. Kennedy, II, clktax@aol.com

/s/ Edward F. Holodak Edward F. Holodak, Esq. Attorney for Plaintiffs Fla. Bar No. 059234 EDWARD F. HOLODAK, P.A. 7951 SW 6th Street, Suite 210 Plantation, Florida 33324 Telephone: (954) 927-3436 pleadings@holodakpa.com

Exhibit 1

 From:
 Edward Holodak

 To:
 Carl Kennedy

 Cc:
 Tatiana Wilson

Subject: RE: PBFC v Kennedy - UNAVAILABILITY
Date: Wednesday, March 24, 2021 9:16:00 AM

Attachments: <u>image003.png</u>

Delio v Landman.pdf image004.png

Carl

While I respect your family issues, I was not asking you to attend a deposition or for anything other than dates in the next 45 days you can attend a deposition. A notice of unavailability does not mean I cannot communicate with you. I entered an agreed order giving you extra time to respond to discovery based upon same; however, the attached case from the 4th DCA says the pleading does not even exist under the Rules.

Please provide me dates as requested, or I will proceed accordingly.

Very truly yours,

Edward F. Holodak, Esq., B.C.S Admitted in Florida & Washington, D.C.

Edward F. Holodak, P.A. <u>7580 NW 5th Street</u> <u>Suite 15125</u> <u>Plantation, Florida 33317</u> (954) 927-3436



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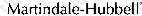
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From: Carl Kennedy <clktax@aol.com>
Sent: Tuesday, March 23, 2021 11:31 PM

To: Edward Holodak <edward@holodakpa.com> **Cc:** Tatiana Wilson <Tatiana@HOLODAKPA.COM> **Subject:** PBFC v Kennedy - UNAVAILABILITY

Mr. Holodak,

I advised you I am dealing with a serious family medical emergency at this time, please allow me to attend to it without needing to deal with non-emergency litigation purposes.

Therefore, to ensure I may deal with this private family matter as necessary without needing to respond to your emails or other litigation matters, I have filed a Notice of Unavailability for this period of time. Any communications from you following this email will be placed in a special "folder" until the family medical emergency with which I am dealing has been resolved and I am prepared to attend to my personal issues, including this lawsuit. Your anticipated understanding will be appreciated.

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