

CAUSE NO. \_\_\_\_\_

<b>EQUAL ACCESS JUSTICE FUND, LP AND EAJF ESQ FUND LP</b>  <b><i>Plaintiffs,</i></b>  <b>v.</b>  <b>MCCLENNY MOSELEY &amp; ASSOCIATES, PLLC, MOSELEY LAW GROUP, INC., AND JOHN ZACHARY MOSELEY</b>  <b><i>Defendants.</i></b>	<b>IN THE DISTRICT COURT OF</b>   <b>HARRIS COUNTY, TEXAS</b>   <b>— JUDICIAL DISTRICT</b>
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**PLAINTIFFS' ORIGINAL PETITION**

Equal Access Justice Fund, LP, and EAJF ESQ Fund LP, hereinafter sometimes referred to as Plaintiffs file this lawsuit against McClenny Moseley & Associates, PLLC, Moseley Law Group, Inc., and John Zachary Moseley, Individually, collectively Defendants, and would show the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, Plaintiffs intend to proceed under Discovery Control Plan Level Three.

**II. PARTIES**

2. Plaintiff Equal Access Justice Fund LP ("EAJF") is a limited partnership formed under Delaware law and having an address of c/o Delaware Trust Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

3. Plaintiff EAJF ESQ Fund LP ("ESQ") is a limited partnership formed under Delaware law and having an address of c/o Delaware Trust Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

4. McClenny Moseley & Associates, PLLC, a Texas professional limited liability company, now known as MMA Law Firm, PLLC ("MMA"), is a professional limited liability corporation located at 1415 Louisiana Street, Suite 2900, Houston Texas 77002 and may be served with process through its agent for service of process CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201-3136.

5. Moseley Law Group, Inc., ("Moseley Law") is a Texas corporation with its principal place of business in Houston, Harris County, Texas. It may be served by and through its agent for service of process Ambar L. Balderas Istre, 19239 Bullard Creek Drive Cypress, TX 77433.

6. John Zachary Moseley ("Moseley") is an individual residing in Houston, Harris County, Texas and may be served at his residence located at 1214 West Dallas Street, Houston, Texas 77019 or at his place of business 1415 Louisiana Street, Suite 2900, Houston, Texas 77002.

### **III. CLAIMS FOR RELIEF**

7. The damages sought by Plaintiffs are within the jurisdictional limits of this Court. Plaintiffs seeks monetary relief in excess of \$1,000,000.

### **IV. FACTUAL BACKGROUND**

8. Plaintiff Equal Access Justice Fund LP (also referred to herein as "EAJF" or "Lender") made loans to Defendant MMA pursuant to that certain Loan Agreement dated September 30, 2021 (the "Initial Loan Agreement"), and pursuant to that certain Amended and Restated Loan Agreement dated as of March 10, 2022 (the "Amended Loan Agreement"), among McClenny Moseley & Associates, PLLC, McClenny Law Group, Inc., and Moseley Law Group, Inc., as Borrower, John Zachary Moseley, individually, and James McClenny, individually, as Guarantors, and EAJF, as Lender. Mr. Moseley will be

referred to herein as “Guarantor” or “Moseley” and McClenny Moseley & Associates, PLLC, will be referred to herein as “Borrower” or “MMA.”

9. The Initial Loan Agreement provides that EAJF will provide a credit facility to Borrower in the form of a loan in an amount equal to \$8,000,000 (the “Initial Loan”).

10. Pursuant to the Initial Loan Agreement, Borrowers agreed to make mandatory payments of the accrued interest then payable and owing on the Loan on the 10<sup>th</sup> day after the end of each calendar quarter beginning with the calendar quarter ending December 31, 2021 and continuing each calendar quarter thereafter until the Maturity Date. Following the Maturity Date, Borrowers agreed to make mandatory payments on the 10<sup>th</sup> day after the end of each calendar month in an amount equal to 20% of the Law Firm Proceeds for such calendar month as defined in the Initial Loan Agreement.

11. The Amended Loan Agreement provided that EAJF will provide a credit facility to Borrowers in the form of a loan in an amount equal to \$2,000,000 (the “Additional Loan”). The Amended Loan Agreement provides that the Additional Loan together with the Initial Loan shall be combined in a single loan with the principal amount of \$10,000,000. The repayment terms of the Amended Loan Agreement are substantially the same as the repayment terms of the Initial Loan Agreement.

12. Pursuant to an Amendment No. 2 to the Amended and Restated Loan Agreement dated November 10, 2022, EAJF made an additional loan to Borrowers in the amount of \$5,000,000.

13. Plaintiff EAJF ESQ Fund LP (also referred to collectively with Plaintiff EAJF as “Lender”) made loans to Defendant MMA pursuant to that certain Loan Agreement dated June 10, 2022 (the “ESQ Loan Agreement”), among McClenny Moseley & Associates, PLLC, McClenny Law Group, Inc.,

and Moseley Law Group, Inc., as Borrower, John Zachary Moseley, individually, and James McClenny, individually, as Guarantors, and ESQ, as Lender. Mr. Moseley will be referred to herein as “Guarantor” or “Moseley” and McClenny Moseley & Associates, PLLC, will be referred to herein as “Borrower” or “MMA.”

14. The ESQ Loan Agreement provides that ESQ will provide a credit facility to Borrower in the form of a loan in an amount equal to \$10,000,000 (the “ESQ Loan”).

15. Pursuant to the ESQ Loan Agreement, Borrowers agreed to make mandatory payments of the accrued interest then payable and owing on the Loan on the 10th day after the end of each calendar quarter beginning with the calendar quarter ending June 30, 2022, and continuing each calendar quarter thereafter until the Maturity Date. Following the Maturity Date, Borrowers agreed to make mandatory payments on the 10th day after the end of each calendar month in an amount equal to 20% of the Law Firm Proceeds for such calendar month as defined in the Loan Agreement.

16. The ESQ Loan Agreement, the Initial Loan Agreement, and the Amended Loan Agreement may be collectively referred to herein as the “Loan Agreements” unless required to discuss terms that differ between such loans.

17. These loans made pursuant to the Loan Agreements, as amended, are with full recourse to the Loan Parties, defined as the Borrower and Guarantor.

18. Pursuant to Section 10.1 of the Loan Agreements, the Obligations of Borrower shall be secured by valid, perfected, and enforceable Liens on all right, title, and interest of the Borrower in all of its real property, personal property, and fixtures, including all of the Law Firm Proceeds of all Cases, whether now owned or hereafter acquired, and all proceeds thereof, but

excluding any Excluded Property. The Borrower and Guarantor acknowledged and agreed that the Liens on Collateral shall be granted to the Lender and shall be valid and perfected first priority Liens.

19. Further, Borrower and Guarantor authorized the Lender to file UCC-1 financing statements to establish and perfect Lender's liens on all of Borrower's real property, personal property, and fixtures, including all of the Law Firm Proceeds of all Cases.

20. As of October 12, 2021, and August 1, 2022, EAJF perfected its security interest in all accounts, income, receipts, revenue and other assets described in that UCC Financing Statement filing no. 21-0044998138 filed of record with the Texas Secretary of State as to the Debtor, McClenny Moseley & Associates, PLLC. ESQ perfected its security interest in all accounts, income, receipts, revenue, and other assets described in that UCC Financing Statement filing no. 22-0037965357, filed of record with the Texas Secretary of State as to the Debtor, McClenny Moseley & Associates, PLLC. Lenders therefore have liens on the contingent interest / attorneys' fees contractually agreed to and/or earned by McClenny Moseley & Associates, PLLC, resulting from, arising out of, or related to the Collateral, including Law Firm Proceeds of Cases from any lawsuits and client settlements to which McClenny, Moseley & Associates, PLLC, is entitled by virtue of their engagement and fee agreements with clients.

21. Pursuant to the Loan Agreements, Borrower and Guarantor made certain representations and warranties on which Lender relied to make the loans at issue in this proceeding.

22. The Loan Agreements contain a list of matters which constitute Events of Default. Those matters include default in the payment when due of all or part of the principle or interest on the Loans of any fees or other

obligations payable under the terms of the Initial Loan Agreement and Amended Loan Agreement, default in the observance of covenants set forth in Section 7 of the agreements, any untrue representation or warranty, if any Collateral Document shall for any reason fail to create a valid and perfected first priority lien in favor of EAJF in any collateral covered by the Collateral Documents, and other matters as set forth in the Initial Loan Agreement and the Amended Loan Agreement.

23. Defendant Moseley Law and Moseley absolutely, unconditionally, and irrevocably guaranteed jointly and severally the timely performance of all present and future obligations under the terms of the Loan Agreements.

24. Defendant Borrower further agreed to indemnify Plaintiffs against all losses, claims, damages, liabilities, and expenses (including expenses of litigation) which Plaintiffs may pay or incur arising out of or relating to the Loan Agreements or any of the transactions contemplated thereby.

25. Recently, Plaintiffs learned that Defendants have defaulted on the Loan Agreements' terms and conditions. Plaintiffs provided notice to Defendants of such defaults. Defendants have not cured the defaults to date. Plaintiffs therefore file this lawsuit to enforce the terms of the Loan Agreements to protect their interests and enforce their contractual rights.

26. Pursuant to the Loan Agreements, the parties agreed to arbitrate any and all claims arising out of or relating in any way to the Loan Agreements, the breach, interpretation, validity or other matters related to the Loan Agreements.

## **V. CAUSE OF ACTION 1: BREACH OF CONTRACT**

27. Plaintiffs and Defendants have valid and enforceable written contracts in the form of the Loan Agreements. Plaintiffs fully performed all of obligations under the parties' contracts. Defendants have breached the parties' contracts in multiple ways. Defendants have breached various terms and conditions, representations and warranties, and committed other acts that constitute Events of Default as will be proved on final hearing. In addition, Defendants agreed to indemnify Plaintiffs. After notice, Defendants remain in default. Defendants' breaches have caused Plaintiffs legal damages within the jurisdictional limits of the Court for which Plaintiffs now sue.

## **VI. CAUSE OF ACTION 2: DECLARATORY JUDGMENT**

28. Plaintiffs have valid and enforceable security interests which constitute a first lien on all of Borrower's real property, personal property, and fixtures, including all of the Law Firm Proceeds of all Cases. Pursuant to the terms and conditions of the Loan Agreements, Plaintiffs' security interest constitutes a first lien on Borrower's assets as described including Law Firm Proceeds of all Cases as defined in the Loan Agreements.

29. Plaintiffs seek a declaration that the security interests are valid, enforceable, and properly perfected under the laws of the State of Texas. Further, Plaintiffs seek a declaration of rights under the Loan Agreements namely confirming that Plaintiffs' valid and perfected security interest constitutes a first lien in and to all of Borrower's assets, real property, personal property, and fixtures, including all of the Law Firm Proceeds of all Cases.

## **VII. REQUEST FOR APPOINTMENT OF RECEIVER**

30. Pursuant to Texas Civil Practices and Remedies Code Chapter 64, Plaintiffs seek appointment of a receiver over the property and assets of Defendants, including all real property, personal property, fixtures, and Law

Firm Proceeds of Defendants' Cases covered by Plaintiffs' security interests. Plaintiffs are creditors of Defendants and Defendants' property described herein is subject to Plaintiffs' security interests entitling Plaintiffs to appointment of a receiver. Tex. Civ. Prac. & Rem. Code 64.001(a)(2). Plaintiffs have a probable interest in or right to the property described, and the property is in danger of being lost, removed, or materially injured by competing interests of unsecured parties, competing lawsuits, and others whose claims are subordinate to Plaintiffs' perfected first lien security interest. Tex. Civ. Prac. & Rem. Code 64.001(b).

31. Alternatively, upon entry of judgment, Plaintiffs request appointment of a receiver pursuant to 31.002(b)(3) with the authority to take possession of the Defendants' nonexempt property, sell it, and pay the proceeds to Plaintiffs to the extent required to satisfy the judgment. Defendants' nonexempt property may include but is not limited to real property, personal property, fixtures, Law Firm Proceeds of Defendants' Cases, financial accounts, certificates of deposit, and money-market accounts held by a third party.

#### **VIII. MOTION TO STAY AND REFER TO ARBITRATION**

32. Section 11.15(a) of the Loan Agreements provides that the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any claim. Further, under Section 11.15(b) of the Loan Agreements, the parties agreed that any and all claims arising out of or relating in any way to the Agreements or breach thereof shall be submitted to final and binding arbitration before Judicial Arbitration and Mediation Services, Inc. ("JAMS").

33. Because the parties have agreed that the claims contained in this Original Petition are subject to arbitration, Plaintiffs request that the

Court stay this case and order the parties to arbitrate the disputes described herein. Tex. Civ. Prac. & Rem. Code 171.025. Upon final decision of the arbitrator(s), Plaintiffs request that the Court confirm the decision of the arbitrators and enter such decision as the order of this Court and issue such writs and processes as may be appropriate and necessary to enforce such decision. Tex. Civ. Prac. & Rem. Code 171.081.

### **PRAYER**

For the foregoing reasons, Plaintiffs pray that upon final decision, the Court grant Plaintiffs the following:

1. Stay this proceeding and refer this matter to arbitration in accordance with the parties' agreement(s);
2. Upon final decision and award of the arbitrator(s), confirm the decision of the arbitrator(s) as a final order of the Court;
3. Issue such writs and processes as may be appropriate and necessary to enforce the Court's order confirming the decision of the arbitrator(s);
4. Award Plaintiffs such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

**SPENCER FANE LLP**

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