

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(WEST PALM BEACH DIVISION)

CASE NO.: 09-CIV-ZLOCH/ROSEBAUM

JONATHAN E. PEARLMAN, ESQ., as Court-appointed
Receiver of Capital Consortium LLC, et. al.

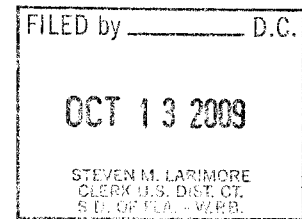
09CV81226

Plaintiff,

v.

DEVELOPMENT FUNDING AND SERVICES, LLC,
And DANIEL LAVAN

Defendants,



_____ /

DEFENDANT'S MOTION TO DISMISS

Defendant, Daniel Lavan ("Defendant"), by and through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 12, hereby files this Motion to Dismiss Plaintiff's, Complaint, and states as follows:

Background Facts

In his Complaint, Plaintiff, in exquisite detail, alleges an intricate conspiracy perpetrated by George Theodule, corporate entities under his direction and, even his law firm. See *Plaintiff's Complaint, paragraphs 11-57*. According to the Complaint, Theodule and his co-conspirators' nefarious activities culminated in a multimillion dollar real estate purchase in Orange County, Florida, from which Defendants were allegedly paid a brokerage commission. While Plaintiffs may sufficiently state facts evidencing Defendant, Development Funding and Services, LLC's (the corporate entity that was party to the closing of the subject real estate transaction) receipt of the disputed funds, Plaintiff fails to plead any facts that might suggest Defendant Daniel Lavan's possession of said monies.

Additionally and alternatively, even if the Plaintiff could establish facts justifying allegations of Mr. Lavan's personal receipt or use of the disputed funds at issue, because Plaintiff has failed to satisfy the mandatory notice requirements, the Court does not have personal jurisdiction over Defendants.

Argument and Authorities

Rudimentary jurisdictional allegation in paragraph ten of the Complaint, notwithstanding, Plaintiffs fails to allege any facts that link Mr. Lavan to the receipt of the now contested brokerage commission. In fact, documentation that has, by information and belief, been made available to Plaintiff, makes clear unequivocally establishes what parties received closing disbursements appurtenant to the relevant real estate transaction. See Closing Statement attached hereto as Exhibit "A".

Proximity to or relationship with a transferee cannot be the sole basis of a claim under Florida Statute 726.105. *Yusem v. South Florida Water Management District*, 770 So. 2d 746 (Fla. 4th DCA 2000) (Wife of fraudulent transferor was not herself a transferee despite her name appearing on joint account into which monies were deposited); see also, *Danzas Taiwan Ltd. v Freeman*, 868 So. 2d 537 (Fla. 3rd DCA 2004)(No fraudulent transfer where "transferee" did not receive funds). As such, Plaintiff's bare assertion that Mr. Lavan was a "controlling principal" of the corporate transferee is not enough to establish Mr. Lavan himself as a "transferee", and therefore a proper party to this action.

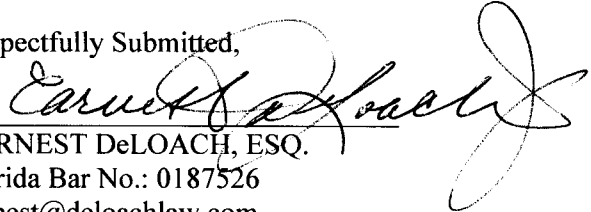
Additionally, because the Court cannot exercise *in personam* jurisdiction over Defendants, dismissal of the Complaint is warranted. As paragraphs 9 and 10 of the Complaint make clear, both Defendants conduct business and/or reside in Winter Garden, Florida – within the jurisdiction of the Federal District Court for the Middle District of Florida. Pursuant to 28 U.S.C. § 754, "a receiver appointed in one district may obtain jurisdiction over property located in another district **by filing in the district court of that district, within ten days after entry of his order of appointment, a copy of the complaint and his order of appointment.**" *Securities*

and Exchange Commission v. Vision Communications, 74 F.3d 287, 290 (D.C. Cir. 1996). (Emphasis added). According to paragraph 1 of the Complaint, Plaintiff was appointed Receiver by the Court in the underlying matter on December 28, 2008. As such, Plaintiff was to file the required documents in the Middle District of Florida on or before January 7, 2009. To date, Plaintiffs have failed to make the requisite filings. As a result, the Southern District's territorial jurisdictional has not been properly extended to include Defendants or the subject property – all of which reside in the Middle District – and the matter should be dismissed. *Id.*, see also, *Haile v. Henderson National Bank*, 657 F.2d 816 (6th Cir. 1981).

WHEREFORE, Defendants respectfully request this Court to enter an Order dismissing, with prejudice Plaintiff's Complaint, and further requests any and all other relief this Court deems proper.

Dated: October 8, 2009

Respectfully Submitted,


EARNEST DeLOACH, ESQ.

Florida Bar No.: 0187526

earnest@deloachlaw.com

DeLoach Law LLC

37 North Orange Avenue, Suite 500

Orlando, Florida 32801

(407) 926-4037 - telephone

(407) 926-4051 – facsimile

Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being sent via U.S.

Mail to on all counsel or parties of record on the attached service list.


EARNEST DeLOACH, ESQ.

SERVICE LIST

Case No. 09-CIV-81226-ZLOCH/ROSEBAUM

David P. Lemoie, Esq.
Florida Bar No. 188311
Genovese Joblove and Battista, P.A.
100 SE Second Street, 44th Floor
Miami, FL 33131
Tel: (305) 349-2300
Fax: (305) 349-2310
Attorneys for Plaintiff

EXHIBIT "A"

CLOSING STATEMENT

**DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A.
800 North Magnolia Avenue, Suite 1500
Orlando, Florida 32803**

SELLERS: FIVE CORNERS INVESTORS I, LLC, a Florida limited liability company ("Five Corners I"), FIVE CORNERS INVESTORS II, LLC, a Florida limited liability company ("Five Corners II"), CFD-REGENCY I, LLC, a Florida limited liability company ("CFD I"), CFD-REGENCY II, LLC, a Florida limited liability company ("CFD II"), and BW ASPIRE, LLC, a Nevada limited liability company ("BW Aspire")

BUYER: DOLCE REGENCY SUITES, LLC, a Florida limited liability company

MEMBERSHIP INTERESTS: All membership interests of Regency Suites I, LLC, a Florida limited liability company

LAND: The Real Property described in Exhibit "A", attached hereto and made a part hereof, and the buildings, fixtures and improvements thereon, owned, of record, by Regency Suites I, LLC

CLOSING DATE: August 29, 2008

A. CREDITS

	<u>CREDIT BUYER</u>	<u>CREDIT SELLERS</u>
1. Purchase Price of Membership Interests		7,754,759.40
2. Promissory Note, Collateral Assignment of Membership Interests, and Second Mortgage encumbering the Land	7,754,759.40	
TOTAL CREDITS	<u>7,754,759.40</u>	<u>7,754,759.40</u>

<u>B. COSTS, EXPENSES, PAYABLES, AND OTHER DISBURSEMENTS</u>	<u>AMOUNT</u>
1. Record Fourth Mortgage Deed and Security Agreement (20 pages)	171.50
2. Documentary Stamps on Promissory Note	27,141.66
3. Intangible Tax on Second Mortgage and Security Agreement	15,509.52
4. Costs and Expenses in connection with Modification of First Mortgage Deed and Security Agreement in favor of Regency Realty Group, Inc.	1,650,000.00
(a) Principal Reduction:	1,075,000.00
(b) Unpaid Interest through 12/31/07:	132,240.03
(c) Unpaid Interest from 1/1/08 through 8/29/08**:	314,176.41
(d) Unpaid Extension Fees:	33,872.40
(e) Unpaid Late Fees:	22,313.69
(f) Prepaid Interest from 8/30/08 through 12/23/08**:	62,353.97
(g) Lender's Attorneys' Fees - Rogers Towers, P.A.:	10,000.00
(h) Recording Fees in connection with Second Modification and Extension of Amended and Restated Consolidating Mortgage, Security Agreement and Financing Statement:	43.50

** if not paid on August 29, 2008 the interest charge for unpaid interest in line item 4(c) will be increased by a per diem of \$1,265.83 per day, and the interest charge for prepaid interest in line item 4(f) will be decreased by a per diem of \$537.53 per day. Such funds will be deducted and disbursed from the reserve for post closing expenses reflected in item B.34. below.

5. Pay off Lien in favor of Florida Precast Industries, Inc.	80,463.24	✓
6. Record Satisfaction or Release of Florida Precast Industries, Inc. Claim of Lien (2 pages)	18.50	
7. Pay off Lien in favor of Nile Underground Technologies, Inc.	41,154.04	✓
8. Record Satisfaction or Release of Nile Underground Technologies, Inc. Claim of Lien (2 pages)	18.50	
9. Pay off Lien in favor of Douglas Construction Company	1,553,723.82	✓
10. Record Satisfaction or Release of Douglas Construction Company Claim of Lien (2 pages)	18.50	
11. Pay off Lien in favor of Progressive Plumbing, Inc.	34,600.00	✓
12. Record Satisfaction or Release of Progressive Plumbing, Inc. Claim of Lien (2 pages)	18.50	
13. Disbursement to Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. ("Escrow Agent") of funds required to complete floors 3 through 5, which funds are to be disbursed by the Escrow Agent in accordance with the Escrow Agreement of even date herewith	1,300,000.00	
14. Record Certified Copy of Articles of Merger between Regency Suites I, LLC and Regency Suites II, LLC (5 pages)	44.00	
15. Pay 2007 Ad Valorem Real Property Taxes and Non-Ad Valorem Assessments, together with interest and costs in connection with Tax Sale Certificate issued in connection therewith	87,151.08	
16. Title Search Expense	150.00	
17. Title Insurance Premium for Owner's Policy in the amount of \$14,800,000.00 issued to Regency Suites I, LLC (no re-issue credit is available under applicable provisions of the Florida Administrative Code)	35,925.00	

18. Premium for Change of Partners, Members or Shareholders Endorsement		100.00
19. Furniture Fixture & Equipment Lay-Out Expenses to John Dottore Interior Design, Inc.		40,000.00
20. Architectural and Engineering Services to:		7,997.31
(a) AIP Design, Inc.:	2,271.68	
(b) Richard Lee Wu, Architect	4,025.63	
(c) Kimley-Horn and Associates, Inc.:	1,700.00	
21. Development Management Fee to Regency Suites I, LLC		178,778.00
22. Brokerage Commission to Development Funding & Services, LLC		197,000.00
23. Brokerage Commission to Charles Rutenberg Realty Orlando LLC		145,000.00
24. Return of Second 10% Deposits (Cancelled Sales) to Law Offices of Gabrielle Alexis, P.A.		700,000.00
25. Skyler Upfront Consulting Fee to Showcase Investment Group, Inc.		100,000.00
26. Legal / Professional Costs to:		87,481.39
(a) Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.:	114.10	
(b) Douglas K. Bischoff, P.A.:	45,000.00	
(c) Holland & Knight, LLP: (110077.00002)	4,281.80	
(d) Holland & Knight, LLP: (110077.00003)	4,893.50	
(e) Lowndes, Drosdick, Doster, Kantor & Reed, PA:	684.00	
(f) Robbins Equitas:	32,094.35	
(g) Rogers Towers: (Invoice # 415349)	35.34	
(h) Rogers Towers: (Invoice # 393569)	378.30	

27. Insurance to State Farm Florida Insurance Company	262.48
28. Property Owners Association Assessments to Regency Village Property Owners Association, Inc.	34,764.74
(a) Lot 16:	17,006.60
(b) Lot 17:	17,758.14
29. Consulting Fees to Peter Vorris	54,141.00
30. Consulting Fees to John Mansker	25,000.00
31. Accounting and Audit Fees to Joseph A. Pfaff, CPA, PA	15,250.00
32. First 50% on Sales Commission on Sold Units at Commission Rate of 10% to Millenium Executive Realty	500,000.00
33. Insurance to CNA	26,097.30
34. Reserve for Post Closing Expenses including, without limitation, attorneys' fees, consultants' fees, filing fees, long distance telephone charges, copying expenses, telecopier charges, courier fees, etc. to Dean Mead, and the balance to be held in escrow and disbursed pursuant to the terms of the Escrow Agreement (Payments under Fourth Mortgage) Dated August 29, 2008 between Sellers, RS Sale Holdings, LLC and the Closing Agent; in that connection, such funds shall deemed a part of the "Escrowed Funds" as defined and described in said Escrow Agreement.	61,900.00
35. Refund To Buyer	119.92
TOTAL	<u><u>7,000,000.00</u></u>

C. RECEIPTS

	<u>AMOUNT</u>
1. Total Due from Buyer	7,000,000.00
TOTAL RECEIPTS	<u><u>7,000,000.00</u></u>

D. DISBURSEMENTS

	<u>AMOUNT</u>
1. ORANGE COUNTY COMPTROLLER (Recording Fees, Documentary Stamps, Intangible Tax on Fourth Mortgage and Security Agreement)	42,822.68
2. REGENCY REALTY GROUP, INC. (Costs and Expenses in connection with Modification of First Mortgage Deed and Security Agreement)	1,650,000.00
3. FLORIDA PRECAST INDUSTRIES, INC. (Pay off Lien)	80,463.24
4. ORANGE COUNTY COMPTROLLER (Record Satisfaction or Release of Florida Precast Industries, Inc. Claim of Lien)	18.50
5. NILE UNDERGROUND TECHNOLOGIES, INC. (Pay off Lien)	41,154.04
6. ORANGE COUNTY COMPTROLLER (Record Satisfaction or Release of Nile Underground Technologies, Inc. Claim of Lien)	18.50
7. DOUGLAS CONSTRUCTION COMPANY (Pay off Lien)	1,553,723.82
8. ORANGE COUNTY COMPTROLLER (Record Satisfaction or Release of Douglas Construction Company Claim of Lien)	18.50
9. PROGRESSIVE PLUMBING, INC. (Pay off Lien)	34,600.00
10. ORANGE COUNTY COMPTROLLER (Record Satisfaction or Release of Progressive Plumbing, Inc. Claim of Lien)	18.50
11. DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A. (funds required to complete floors 3 through 5, which funds are to be disbursed by the Escrow Agent in accordance with the Escrow Agreement of even date herewith)	1,300,000.00

12. ORANGE COUNTY COMPTROLLER (Record Certified Copy of Articles of Merger between Regency Suites I, LLC and Regency Suites II, LLC)	44.00
13. ORANGE COUNTY TAX COLLECTOR (2007 Ad Valorem Real Property Taxes and Non-Ad Valorem Assessments, together with interest and costs in connection with Tax Sale Certificate issued in connection therewith)	87,151.08
14. FIRST AMERICAN TITLE INSURANCE COMPANY (Title Search Expense)	150.00
15. FIRST AMERICAN TITLE INSURANCE COMPANY and DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A. (Title Insurance Premium for Owner's Policy in the amount of \$14,800,000.00 issued to Regency Suites I, LLC and endorsement premium)	36,025.00
16. JOHN DOTTORE INTERIOR DESIGN, INC. (Furniture Fixture & Equipment Lay-Out Expenses)	40,000.00
17. AIP DESIGNS, LLC (Architectural Services / Invoice No. 08-03)	2,271.68
18. RICHARD LEE WU, ARCHITECT (Professional Services)	4,025.63
19. KIMLEY-HORN AND ASSOCIATES, INC. (Professional Services / Invoice No. 9424000-0907)	1,700.00
20. REGENCY SUITES I, LLC (Development Management Fee)	178,778.00
21. DEVELOPMENT FUNDING & SERVICES, LLC (Brokerage Commission)	197,000.00
22. CHARLES RUTENBERG REALTY ORLANDO LLC (Brokerage Commission)	145,000.00
23. LAW OFFICES OF GABRIELLE ALEXIS, P.A. (Return of Second 10% Deposits - Cancelled Sales)	700,000.00

24. SHOWCASE INVESTMENT GROUP, INC. (Skyler Upfront Consulting Fee)	100,000.00
25. ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A. (Legal Fees / Bill No. 194251)	114.10
26. DOUGLAS K. BISCHOFF, P.A. (Legal Fees)	45,000.00
27. HOLLAND & KNIGHT, LLP (Legal Fees / Account Nos. 110077.00002 and 110077.00003)	9,175.30
28. LOWNDES, DROSDICK, DOSTER, KANTOR & REED, PA (Legal Fees / Invoice Number 531958)	684.00
29. ROBBINS EQUITAS (Legal Fees)	32,094.35
30. ROGERS TOWERS (Legal Fees / Invoice Nos. 415349 and 393569)	413.64
31. STATE FARM FLORIDA INSURANCE COMPANY (Insurance)	262.48
32. REGENCY VILLAGE (Property Owners Association Assessments for Lot 16 and Lot 17)	34,764.74
33. PETER VORRIS (Consulting Fees)	54,141.00
34. JOHN MANSKER (Consulting Fees)	25,000.00
35. JOSEPH A. PFAFF, CPA, PA (Accounting and Audit Fees)	15,250.00
36. MILLENIUM EXECUTIVE REALTY (First 50% on Sales Commission on Sold Units at Commission Rate of 10%)	500,000.00

37. CNA (Insurance)	26,097.30
38. DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A. (Reserve for Post Closing Expenses including, without limitation, attorneys' fees, consultants' fees, filing fees, long distance telephone charges, copying expenses, telecopier charges, courier fees, etc., with the balance, if any, to be held in escrow, as specified in B.34. above.)	61,900.00
39. DOLCE REGENCY SUITES, LLC (Refund to Buyer)	119.92
TOTAL DISBURSEMENTS	<u><u>7,000,000.00</u></u>

E. MISCELLANEOUS

1. The Purchase Price for the Membership Interests (\$7,754,759.40) as reflected on page 1 of this closing statement reflects the purchase price of \$6,030,000 as provided in the Membership Interest Purchase Agreement, as adjusted pursuant to paragraph 1(d) of the Membership Interest Purchase Agreement.

2. Buyer has instructed Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. (the "Closing Agent") to disburse the funds in the amount of \$178,778.00 for Development Management Fees reflected in item D.20. of the "Disbursements" section of this Closing Statement by wire transfer directly to Law Offices of Gabrielle Alexis, P.A. Trust Account in accordance with the wire transfer instructions attached hereto as Exhibit "B".

3. Seller has instructed the Closing Agent to disburse the funds described in item no D.21. of the "Disbursements" section of this Closing Statement totalling \$197,000.00 directly to Development Funding & Services, LLC pursuant to the following wire transfer instructions:

Bank Name:	Wachovia Bank
ABA No.:	063107513
Account Name:	Development Funding & Services, LLC
Account No.:	2000031883744
Special Instructions:	Re: Regency Suites / Notify Dan Lavan at 407-952-6055.

4. Buyer has instructed the Closing Agent to disburse the funds in the amount of \$700,000.00 for the Return of the Second 10% Deposits (Cancelled Sales) reflected in item D.23. of the "Disbursements" section of this Closing Statement by wire transfer directly to Law Offices of Gabrielle Alexis, P.A. Trust Account in accordance with the wire transfer instructions attached hereto as Exhibit "B".

5. Buyer has instructed the Closing Agent to disburse the funds in the amount of \$100,000.00 for the Skyler Upfront Consulting Fee reflected in item D.24. of the "Disbursements" section of this Closing Statement by wire transfer directly to Law Offices of Gabrielle Alexis, PA Trust Account in accordance with the wire transfer instructions attached hereto as Exhibit "B".
6. Seller has instructed the Closing Agent to disburse the funds described in item no D.27. of the "Disbursements" section of this Closing Statement totalling \$9,175.30 directly to Holland & Knight, LLP pursuant to the following wire transfer instructions:

Bank Name: Wachovia Bank
ABA No.: 063000021
Account Name: Holland & Knight LLP
Account No.: 2090002390441
Special Instructions: Re: Regency Suites / Payment of Invoices for Account Numbers 110077.00002 and 110077.00003

7. Seller has instructed the Closing Agent to disburse the funds described in item no D.33. of the "Disbursements" section of this Closing Statement totalling \$54,141.00 directly to Peter Vorris pursuant to the following wire transfer instructions:

Bank Name: Transportation Alliance Bank
ABA No.: 124384657
Account Name: Peter Vorris
Account No.: 851191871
Special Instructions: Re: Regency Suites / Payment of Invoice No. 4-RS

8. The Closing Agent (as "Escrow Agent"), is authorized and directed to disburse to Buyer, outside of closing, the interest earned on the escrowed funds deposited with the Escrow Agent pursuant to the terms of that certain Escrow Agreement dated August 12, 2008.
9. The Closing Agent assumes no responsibility for the accuracy of the information furnished to it and upon which the prorations and figures shown in this Closing Statement were based.
10. This Closing Statement has been examined and approved by Buyer and Sellers as of the date hereof, and the Closing Agent is hereby authorized and directed by Buyer and Sellers to make disbursements and close the subject transaction on the basis hereof.
11. This document may be executed in counterparts, each of which will be deemed an original, and all of such counterparts together shall constitute one and the same instrument. For purposes of this document, signatures delivered by facsimile or e-mail transmission shall be as binding as originals upon the parties so signing.

"BUYER"

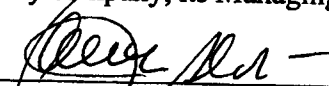
DOLCE REGENCY SUITES, LLC, a Florida limited liability company

By: 
George Theodule, Managing Member

"SELLERS"

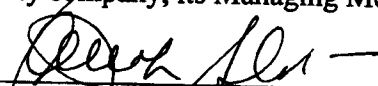
FIVE CORNERS INVESTORS I, LLC, a Florida limited liability company

By: ASI HOLDINGS, LLC, a Florida limited liability company, its Managing Member

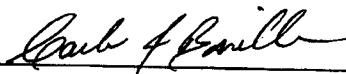
By: 
Joel K. Slater, Managing Member

FIVE CORNERS INVESTORS II, LLC, a Florida limited liability company

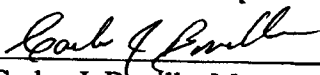
By: ASI HOLDINGS, LLC, a Florida limited liability company, its Managing Member

By: 
Joel K. Slater, Managing Member

CFD-REGENCY I, LLC, a Florida limited liability company

By: 
Carlos J. Bonilla, Manager

CFD-REGENCY II, LLC, a Florida limited liability company

By: 
Carlos J. Bonilla, Manager

BW ASPIRE, LLC, a Nevada limited liability company

By: _____
David Brett-Williams, Manager

"BUYER"

DOLCE REGENCY SUITES, LLC, a Florida limited liability company

By: 
George Theodule, Managing Member

"SELLERS"

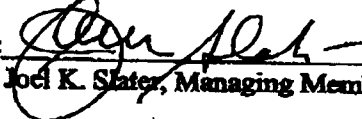
FIVE CORNERS INVESTORS I, LLC, a Florida limited liability company

By: ASI HOLDINGS, LLC, a Florida limited liability company, its Managing Member

By: 
Joel K. Slater, Managing Member

FIVE CORNERS INVESTORS II, LLC, a Florida limited liability company

By: ASI HOLDINGS, LLC, a Florida limited liability company, its Managing Member

By: 
Joel K. Slater, Managing Member

CFD-REGENCY I, LLC, a Florida limited liability company

By: 
Carlos J. Bonilla, Manager

CFD-REGENCY II, LLC, a Florida limited liability company

By: 
Carlos J. Bonilla, Manager

BW ASPIRE, LLC, a Nevada limited liability company

By: 
David Brett-Williams, Manager

EXHIBIT "A"

Lots 16 and 17, REGENCY VILLAGE REPLAT, according to the Plat thereof as recorded in Plat Book 52, Page 4, Public Records of Orange County, Florida.

EXHIBIT "B"

WIRING INSTRUCTIONS

Bank Name:	WACHOVIA BANK 801 NE 167TH STREET NORTH MIAMI BEACH, FL 33162
ABA No.:	063000021
Account Name:	LAW OFFICES OF GABRIELLE ALEXIS P.A.
Account No.:	2000043533176