UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANN MCNAMARA and RICHARD MCNAMARA,

Plaintiffs,

-against-

HOME DEPOT U.S.A., INC., YOTRIO CORPORATION, ADVANTAGE SOLUTIONS, ADVANTAGE SALES & MARKETING, INC., ADVANTAGE SALES & MARKETING, LLC.

Defendants.

----------x

CIVIL ACTION NO.: 16-cv-03768

EXPERT WITNESS DISCLOSURE PURSUANT TO FRCP §26

Plaintiff, ANN MCNAMARA, by and through his attorneys at NAPOLI SHKOLNIK, PLLC does hereby disclose the identity of Edmond Provder, M.D., an expert who plaintiff expects to call at the time of trial.

i. Complete statement of opinions:

Response: Dr. Edmond A. Provder's opinions are contained within his signed narrative report attached hereto as Exhibit "A."

ii. The facts or data considered by the witness:

Response: The facts or data considered by Dr. Edmond A. Provder's are contained within his report.

iii. Any exhibits that will be used:

Response: Under separate cover, such exhibits will be exchanged.

iv. Qualifications

Response: Dr. Edmond A. Provder's CV is annexed hereto as Exhibit "B."

v. Other cases:

Response: Dr. Edmond A. Provder's is annexed to as Exhibit "B".

vi. Compensation:

Response: Dr. Edmond A. Provder's expenses and fees to date are: Hourly fee is $550.00; Trial testimony fee is $4,750.

Dated: New York, New York
October 25, 2017

Yours, etc.,
NAPOLI SHKOLNIK, PLLC
Attorneys for Plaintiffs

By: _____

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EXHIBIT A

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Additional Locations
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EMPLOYABILITY AND EARNING CAPACITY EVALUATION

on

Ann Bridget McNamara

Prepared for the Law Offices of Napoli Shkolnik, PLLC

August 22, 2017

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OAS

EMPLOYABILITY AND EARNING CAPACITY EVALUATION

on
Ann Bridget McNamara
SS# XXX-XX-7133

Ms. McNamara was examined for the purpose of a comprehensive vocational evaluation, findings of employability, an assessment of any transferable skills learned from past occupations, evaluation of her earning capacity in the local labor market, and a determination as to the feasibility of her receiving vocational rehabilitation services.

She was evaluated at our New York City office on 7/25/17 for two hours.

Ms. McNamara attributes her condition to an accident that occurred on 5/25/15 which resulted in injuries to her head and ribs. This has resulted in a traumatic brain injury with cognitive limitations.

CONFIDENTIALITY ISSUES

Ms. McNamara was evaluated by the undersigned in compliance with the ethics of a Certified Rehabilitation Counselor, the American Board of Vocational Experts, and IARP Forensic member.

She was informed that the purpose of the evaluation was to assess her ability to return to work as a Registered Nurse, specifically to provide an assessment of how her medical impairments and resultant functional limitations impact on her occupational disability, employability, and earning capacity and that the information gathered in the evaluation would be included in a written report and forwarded to her attorney.

Ms. McNamara was advised that this office abides by all federal laws dealing with medical records and that they would be confidential. She was told that once the report had been completed, it was our office policy to either send the records back to the referring attorney or shred the file.

She was told that any verbal information obtained in this forensic evaluation was not confidential. The evaluee indicated not recalling seeing me as a treating rehabilitation counselor at any time outside this forensic evaluation. She was advised that because this was a forensic evaluation, and that no rehabilitation counselor - client relationship exists or was implied, that this office would not be providing direct rehabilitation services to her.

Ms. McNamara was told that no conclusions would be reached during the evaluation session as it was necessary to complete a review of all of the documents, the standardized vocational diagnostic interview, and observations which will be contained in a report with my final vocational opinions. Ms. McNamara seemed to understand these parameters and agreed to continue.

DISCLOSURE

Ms. McNamara was advised that this evaluation is held in accordance with the most recent (2017) Professional Code of Ethics of the Commission on Rehabilitation Certification. She was advised that the evaluation was being conducted within the parameters of litigation and that any information obtained during the evaluation was not confidential.

In addition, Ms. McNamara was advised that this one-time evaluation was forensic in nature and that no client-counselor relationship was implied; that no direct rehabilitation services would be provided to her by Occupational Assessment Services, Inc; and that an unbiased evaluation of her post-injury employability, earning capacity, and access to the labor market was the only purpose of this evaluation.

She was also told that Occupational Assessment Services fully complies with the laws concerning medical records and these would be kept confidential. Once the case is resolved, the corporate policy is to destroy the file by shredding the case records. Ms. McNamara indicated an understanding of these rules of procedure and conduct and agreed to continue.

DISCLAIMER

This evaluation occurred in the context of an ongoing forensic matter. Discovery and other processes may reveal new information not available at the time of this evaluation. Therefore, the Vocational Expert/Rehabilitation Counselor retains the right to modify vocational opinions later in a matter consistent with new documentation presented.

At the onset of this current evaluation, the evaluee was reminded of the nature and purpose of the current evaluation. Ms. McNamara was made aware that the ethical and professional obligation was to provide a balanced, fair examination without regard to the Party who retained him.

I have no personal interest with respect to the parties involved, nor any interest that might prevent me from providing an unbiased opinion. My compensation is not contingent on the analyses, opinions, or conclusions of this report, but are based on the time expended on the services provided to the referring attorney in connected with this case.

PURPOSE OF REFERRAL

Ms. McNamara was referred for a comprehensive vocational evaluation to assess the effect of her handicapping conditions on her vocational capacity, employability, loss of access to the labor market, and earning capacity.

The information used to formulate the vocational opinions in this report are based on the specific facts about Ms. McNamara.

The Vocational Evaluation consisted of a standardized Vocational Diagnostic Interview to assess the level of the individual's vocational functioning and the effect of her exertional impairments on her vocational capacity.

The specific manner in which Ms. McNamara's vocational disabilities may impede her ability to perform Sedentary, Light, Medium, Heavy, and Very Heavy types of occupations,(App. A) as they exist in the labor market, are explored in this report.

The results of the evaluation served as a foundation to assess Ms. McNamara's employability, transferable skills, earning capacity, and vocational rehabilitation potential.

The vocational opinions expressed in this report are based on the various assumptions made in this report. These opinions were formulated using sound vocational principles for job-person matching and job placement.(App. B12)

Vocational experts familiar with the methodology employed and the career and rehabilitation theory cited in this report can replicate the findings by applying the assumptions, methodology, and supporting analysis.

REFERRAL QUESTIONS

The vocational evaluation focused on answering the following questions:

1. What is Ms. McNamara's vocational capacity?
2. Could she return to her prior work as a Registered Nurse and perform the full range of required work activities?
3. Has her prior work as a Registered Nurse provided her with any transferable skills that could be used to perform work requiring less physical capability?
4. If she has no transferable skills, what other types of jobs could she perform on a sustained, competitive basis?
5. What is her residual earning capacity?
6. What effect have Ms. McNamara's physical and cognitive impairments had on her work life?
7. What is the feasibility of Ms. McNamara participating in a vocational rehabilitation program?

VOCATIONAL EVALUATION METHODOLOGY

The Employability and Earning Capacity Evaluation used the RAPEL method which consists of five sections:

Rehabilitation Plan - Based on the injured person's vocational and functional limitations, vocational strengths, emotional functioning, and cognitive capabilities. Also this may include testing, counseling, rehabilitation technology, job analysis, job coaching, and vocational placement. Also considered are reasonable accommodations.

Access to the Labor Market - Computer programs, transferability analysis, disability statistics, and evaluator's work experience.

Placeability - Likelihood the evaluee will be successfully placed in competitive employment. Consideration is made of disability statistics, employment data (if any) for specific medical conditions, community economic situation (local unemployment rate), and availability of jobs.

Earnings Capacity - Based on the above information, a comparison is made regarding the evaluee's pre-incident ability to earn and post-incident earning capacity. Also considered are his earnings by education, and computer analysis based on worker traits.

Labor Force Participation - Evaluee's work life expectancy. Consideration is made regarding part-time versus full-time work, time lost due to the injury, medical treatment or follow-up, earlier retirement, etc.

This methodology is described by Roger Weed and Timothy Field in Rehabilitation Consultant's Handbook, 4th Revised Edition. The RAPEL methodology has been used by Vocational Experts for more than 25 years and has been peer reviewed numerous times. In order to use this peer reviewed methodology generally accepted in the field of Rehabilitation counseling and commonly used in the discipline of rehabilitation counseling by rehabilitation and career professionals and vocational experts in litigation and non-litigation settings, the evaluation consisted of seven parts: (App. B13)

1. The initial section involves *collecting data and facts specific to Ms. McNamara* by reviewing the medical records and medical restrictions, as well as other documents that describe the evaluee's condition. This data provides background information to better understand the evaluee and her medical treatment and to make a determination as to the nature, extent, permanency, and functional limitations of her medical condition.

2. The second section consists of performing a standard Vocational Diagnostic Interview to obtain information on the evaluee's background, formal or informal education, past employment and earnings history, medical condition, medical treatment, and residual functional capacity.

3. A vocational analysis is performed on Ms. McNamara's past relevant work as a Registered Nurse. This consists of classifying the evaluee's occupations using standard government codes from the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")(App. B1) and O*Net (App. B2) to determine the physical demands, Worker Functions, Specific Vocational Preparation (SVP), skill level, and the General Educational Development (GED) of Ms. McNamara's employment. From these government publications, information

is obtained regarding the skills and competencies, the aptitudes, and the job temperaments required for job performance. This data helps the vocational expert to determine the evaluee's pre-injury vocational capacity.(App B3)

4. Using the Vocational Diagnosis and Assessment of Residual Employability (VDARE) process, a peer reviewed widely accepted methodology, a Transferability Skills Analysis is performed using the OASYS computer program, which uses the classic method (Work Field, SVP, MPSMS). Ms. McNamara's work history is analyzed to determine her skills, aptitudes, and skill level.(App.B7) Such government publications as the Dictionary of Occupational Titles, O*Net - 2010 codes (974 occupations), the Guide For Occupational Exploration, and the Classification of Jobs 2000 (App B1, B2, B5, B6) are used to analyze the skills inherent in Ms. McNamara's past jobs. This information is used to make a determination regarding Ms. McNamara's ability to transfer her skills learned from her previous employment or education to other employment, within her vocational capacity, in the competitive labor market. This involves *synthesizing data and information* with an emphasis on her ability to return to work.

5. A Labor Market Access (LMA) analysis was conducted though the development of the evaluee's pre and post injury worker trait vocational profile made to determine Ms. McNamara's ability to enter the labor market given her skill level and vocational capacity.(App. B7) This involves *identifying the reasonable consequences and problems* related to the evaluee's work ability and noting jobs, if any, the evaluee can perform.

6. A review is made of all of the materials and a *vocational expert opinion* is formulated as to Ms. McNamara's post-injury vocational capacity, transferable skills, employability, earning capacity, and the feasibility of her receiving vocational rehabilitation services.

7. If the individual is found to be employable given the results of the vocational evaluation, research is conducted regarding the evaluee's residual earning capacity and the number of such jobs in the local labor market using state and federal government statistics such as OES (Occupational Employment Survey) - State and Local, OOH (Occupational Outlook Handbook 2013-2014) - National or private labor studies to determine whether jobs exist that Ms. McNamara can perform within her vocational capacity and the current wage rates for these occupations. This is the standard type of Labor Market Information used and relied upon in the field of Rehabilitation Counseling.

VOCATIONAL EVALUATION ASSUMPTIONS

The vocational opinions regarding Ms. McNamara's employability, earning capacity, and vocational rehabilitation potential expressed in this report are based on the assumptions that:

1. The records reviewed were complete and accurately reflect Ms. McNamara's physical condition and medical treatment.

2. The evaluee was cooperative and complied throughout the vocational evaluation process.

3. The evaluee did not intentionally exaggerate or give false information regarding her physical or psychological symptoms.

4. The history and information given during the standardized vocational diagnostic interview was truthful and accurate to the best of the evaluee's ability. That there is no significant discrepancy between the evaluee's claimed disability and the objective findings of the vocational evaluation.

5. Her pre-accident vocational functioning is estimated within at least the average to above average range based on her educational and occupational history.

6. Ms. McNamara's physical and cognitive conditions and resultant reduction of vocational capacity are permanent.

7. No opinion is reached by this expert as to the causality of Ms. McNamara's medical condition.

EARNING CAPACITY ASSESSMENT

Several factors were specifically considered during this vocational evaluation to determine Ms. McNamara's loss of earning capacity. Earning capacity is defined as what a person is able to earn, expected earnings is defined as what a person is expected to earn, and actual earnings are what a person actually earned (Horner & Sleznick, 1999).(App. B33) Earning capacity considers the ability of an individual to select an occupation they are qualified to perform or will be qualified for in the future. The person's ability to earn money is considered their earning capacity.

Consideration was made regarding such factors as the ability to apply previously learned skills, cognition, medical prognosis, future career prospects given the injured persons vocational capacity, pre-existing and acquired vocational handicaps, work motivation, and demonstrated earnings history.(App. B17)

The purpose of the evaluation is to investigate how these factors impact on Ms. McNamara's ability to work on a sustained, regular, competitive basis and earn money given her residual functional physical and mental capacity.

The analysis of a person's earning capacity is a four-part process:

1. Subject - Specific factors: medical issues, psychological issues, education, training and specialty skills, work history, and acquired experience and skills.

2. Data from Examination - Vocational Interview.

3. Labor Market Research - Dictionary of Occupational Titles, O*NET, State and Federal Government wage information.

4. Earning Capacity Opinion.

COMPETITIVE EMPLOYMENT EVALUATION

The purpose of this employability evaluation is to assess the evaluee's ability to perform competitive employment. Competitive employment, as defined in 34 CFR 361.5(b)(10), means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled. A job that is set aside for the person with disabilities is not competitive and the employer is looked at as beneficent. The person must be able to produce work at a level that is acceptable to an employer. For example, if 80 widgets are required to be assembled in one hour, the person is expected to meet this quota.

FORMULATION OF OPINIONS

The vocational opinions expressed in this report are given within a reasonable degree of certainty or probability as a Rehabilitation Counselor and Vocational Expert.

Since Kerner v. Flemming, 283 F.2d 916 (2d Cir. 1960), Vocational Experts, who are professionals educated, trained, and skilled in job placement and knowledgeable about labor market conditions, have been asked to formulate vocational opinions about specific job opportunities of a person based on their age, education, background, work experience, and medical condition.

The vocational opinions in this report are based on my education, training, experience, and the information contained in various traditional vocational sources, [App B] including private, federal and state government publications. The current knowledge and methods used in the field of forensic vocational rehabilitation were applied in determining Ms. McNamara's employability and earning capacity.

In addition, the opinions are based on the information available to me at the time of my evaluation, including medical and other records, the evaluee's history as obtained from the standardized vocational interview, the vocational evaluation testing results, my professional clinical judgment, labor market research, and the conclusions made.

The opinions reached in this report rely on the quality, accuracy, and honesty of the evaluee's reported history, complaints, symptoms, and functional capacity, as well as cooperation with any vocational testing administered.

If any of the oral or documentary information provided is false, fictitious, fraudulent, incomplete, or misleading, it may change the conclusions and opinions reached in this employability evaluation. The opinions expressed are ***case specific*** to this evaluee. Should there be ***additional*** information that becomes available at a later time for my review that

significantly changes my vocational opinions, I reserve the right to modify my opinions and issue a supplemental report.

RECORDS REVIEWED

The following hospital records were reviewed:

North Shore University Hospital (11/11/05) states "Stuck with needle."

Glen Cove Hospital (2/4/10) states "Vomiting, gastroenteritis, adrenal insufficiency."

North Shore University Hospital (9/1/11) states "Headache s/p tick bite."

North Shore University Hospital (10/15/12) states "Left hand injury."

Syosset Hospital (3/31/13) states "Left eye laceration."

Syosset Hospital (5/25/15) states "Fall, rib contusion, head injury."

North Shore LIJ (6/2/15) states "Fall, concussion."

The following physician records were reviewed:

Dr. Pachilakis - Neuropsychological Evaluation (8/10/15) states "Notable for weaknesses in attention/working memory, processing speed, and memory. Executive functioning is variable, with intact performance of high level problem solving tasks which require a heightened task engagement and focus. Given that concussion is understood to be a temporary neurological condition, it is expected that post-concussive cognitive sequelae should resolve over time."

Dr. Fisher (8/5/15-10/5/15) includes vision therapy treatment records and states "Convergence insufficiency, deficits of pursuits and saccades, visual field defects, light sensitivity, concussion."

Dr. Khan (9/10/15-11/3/15) states "Anxiety, depression, post concussive syndrome."

Dr. Nelson (1/11/13-8/21/15) states "Post concussive syndrome, adrenal insufficiency, chronic fatigue, major depression."

Dr. Trazzera (6/11/15-6/25/15) states "Syncope and collapse, panic disorder, concussion without loss of consciousness, anxiety, adrenal insufficiency. Neurocognitive rehabilitation suggested. Cognitive training and vestibular imbalance training. Continue to refrain from work. Continue cognitive rest and avoidance of situations which may cause a fall again."

Dr. Pachilakis/Long Island Transitions (9/15/15-12/8/15) psychotherapy and cognitive rehabilitation treatment records.

Long Island Transitions (8/5/15-12/10/15) physical and speech therapy treatment records.

Long Island Vestibular Rehabilitation & Balance Therapy (7/7/15-7/16/15) treatment records.

The following diagnostic records were reviewed:

Dr. Knopp (6/15/15) on MRI of the brain states "Unremarkable MRI examination of the brain."

GENERAL DESCRIPTION

Ms. McNamara was on time for the evaluation, neatly groomed and attired. She is wearing sunglasses and is accompanied by her husband, Richard McNamara, and son, Christopher, age 26.

She states being 5 feet, 3 inches in height and weighs 160 pounds.

Ms. McNamara reports losing about 20-30 pounds since her accident.

BACKGROUND INFORMATION

She is 54 years of age, born 10/20/62 in Hempstead, NY. She is married and resides in a house (109 Cove Neck Road, Oyster Bay (Nassau County), New York 11771; Telephone 516-236-7618) with her husband, mother, age 87, and son, age 26.

EDUCATIONAL AND TRAINING BACKGROUND

Ms. McNamara graduated from Syosset High School in 1980 where she took business classes at a vocational school, as well as a general course of study.

From 1981 to 1985, she attended Syracuse University where she received a Bachelor of Science Degree in Consumer Studies.

From 2002 to 2004, she attended Malloy College, receiving a BSN in Nursing. She reports graduating with Honors.

Ms. McNamara has been licensed as a Registered Nurse in the State of New York (2005). She is certified in Advance Life Support.

Ms. McNamara has not received any private or public vocational rehabilitation services through the NYS Vocational Rehabilitation.

WORK HISTORY

From 2008 to 5/25/15, Ms. McNamara was employed as a Registered Nurse for Emblem Health in New York City. This involved doing utilization review. This work is best

described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT") (App. B1) on page 61 as follows:

REGISTERED NURSE (medical services)

NURSE. Provides general nursing care to patients in hospital, nursing home, infirmary, or similar health care facility: Administers prescribed medications and treatments in accordance with approved nursing techniques. Prepares equipment and aids physician during treatments and examinations of patients. Observes patient, records significant conditions and reactions, and notifies supervisor or physician of patient's condition and reaction to drugs, treatments, and significant incidents. Takes temperature, pulse, blood pressure, and other vital signs to detect deviations from normal and assess condition of patient. May rotate among various clinical services of institution, such as obstetrics, surgery, orthopedics, outpatient and admitting, pediatrics, and psychiatry. May prepare rooms, sterile instruments, equipment and supplies, and hand items to SURGEON (medical ser.) 070.101-094; OBSTETRICIAN (medical ser.) 070.101-054, or other medical practitioner. May make beds, bathe, and feed patients. May serve as leader for group of personnel rendering nursing care to number of patients.

It is given the code number 075.364-010. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Sedentary Work as it involved telecommuting. It is classified as skilled work. She worked eight hour shifts, five days a week. She reportedly earned $84,652 per annum.

From 4/15 to 5/25/15, she was employed as a Hospice Nurse for Hospice Care Network. She did five cases per week on weekends and nights, earning $200 per case, or $1,000 per week.

Sedentary Work is defined by the DOT, page 1013, as exerting up to 10 pounds of force occasionally (up to one-third of the time), and/or a negligible amount of force frequently (one-third to two-thirds of the time), or constantly (two-thirds or more of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary Work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are Sedentary if walking and standing are required only occasionally (up to one-third of the time) and all other Sedentary criteria are met..

Every job requires a worker to function, to some degree, in relation to Data, People, and Things. The DOT has identified and defined these "Worker Functions," and the fourth, fifth, and sixth digits of the occupational DOT code reflect these relationships to Data (D), People (P), and Things (T). This occupation has been assigned the following relationships:

D3 - Compiling: Gathering, collating, or classifying information about data, people, or things. Reporting and/or carrying out a prescribed action in relation to the information is frequently involved.

P6 - Speaking-Signaling: Talking with and/or signaling people to convey or exchange information. Includes giving assignments and/or directions to helpers or assistants.

T4 - Manipulating: Using body members, tools, or special devices to work, move, guide, or place objects or materials. Involves some latitude for judgment with regard to precision attained and selecting appropriate tool, object, or material, although this is readily manifest.

The Department of Labor classifies occupations by Specific Vocational Preparation (SVP),[App B1] which is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific work situation.

This occupation requires an SVP level of 7, which includes jobs that take over two years and up to four years to learn.

The General Educational Development (GED)[App. B1] has been analyzed regarding those aspects of education (formal and informal) which are required of the worker for satisfactory job performance. The GED is composed of three divisions: Reasoning Development, Mathematical Development, and Language Development. Ms. McNamara's occupation has the following GED classifications:

Reasoning Development Level 5, which means a person must at least be able to "apply principles of logical or scientific thinking to define problems, collect data, establish facts, and draw valid conclusions" and "interpret an extensive variety of technical instructions in mathematical or diagrammatic form" and "deal with several abstract and concrete variables."

Mathematical Development Level 4, which means a person, utilizing algebra, must at least be able to "deal with system of real numbers; linear, quadratic, rational, exponential, logarithmic, angle and circular functions, and inverse functions; related algebraic solution of equations and inequalities; limits and continuity, and probability and statistic inference." Utilizing geometry, she must at least be able to work with "deductive axiomatic geometry, plane and solid; and rectangular coordinates." Utilizing shop math, she must at least be familiar with the "practical application of fractions, percentages, ratio and proportion, mensuration, logarithms, slide rule, practical algebra, geometric construction, and essentials of trigonometry."

Language Development Level 5, which means a person, when reading, must at least be able to "read literature, book and play reviews, scientific and technical journals, abstracts, financial reports, and legal documents." When writing, she must at least be able to "write novels, plays, editorials, journals, speeches, manuals, critiques, poetry, and songs." When speaking, she must at least be "conversant in the theory, principles, and methods of effective and persuasive speaking, voice and diction, phonetics, and discussion and debate."

Her vocational/educational goal was to go back to college to become a Nurse Practitioner.

She has not worked or looked for work since her accident.

Currently, Ms. McNamara is receiving $2,550 per month in Long Term Disability Benefits.

Ms. McNamara is receiving about $1,500 per month in Social Security Disability Benefits, having been found unable to perform any substantial gainful activity by the federal government.

This vocational information is consistent with the information contained in the standard occupational reference works listed in Appendix B.

ANALYSIS OF PAST WORK EXPERIENCE

An analysis of Ms. McNamara's past work history indicates that her main occupation was as a Registered Nurse which required Sedentary Physical demands.

Based on the job description given by Ms. McNamara, on a scale of unskilled (Specific Vocational Preparation 1-3), semi-skilled (Specific Vocational Preparation 4-6), and skilled or professional (Specific Vocational Preparation 7-9), her occupation would be classified as skilled.

Able to learn. Adapts style and tactics to fit circumstances. Avoids inappropriate involvement with patients. Confident in own abilities and judgment. Confronts problem behavior. Conscientious. Does more than is required in job. Employs computers. Establishes credibility. Expands and uses professional knowledge. Follows through on questions, requests and complaints. Has positive expectations of others. Interprets, converts and prepares information. Keeps own emotions from interfering with work. Makes connections and develops theories. Makes decisions. Manages financial resources. Makes flexible responses to individual needs. Manages material and facility resources. Manages time. Negotiates to arrive at a decision. Participates as a member of a team. Questions the status quo. Recognizes patterns and uses concepts to diagnose situations. Presents information. Responds quickly and decisively in a crisis. Sees causal relationships and inferences. Selects appropriate technology. Shows confidence. Serves patients. Sets limits and says no when necessary. Shows commitment to one's organization. Simplifies and clarifies difficult material. Solicits input and credits and cooperates with others. Solves problems. Systematically breaks apart complex problems. Tailors presentation and language to audience. Takes responsibility for problems and failings. Teach others new skills. Thinks creatively. Uses examples and humor. Uses machines to monitor/perform tasks. Works with cultural diversity.

Reading: Able to read and understand medical information from charts, doctors instructions, medical journals, etc. Must be able to understand medical terminology and pharmaceutical information. Reads information concerning patient history and any precautionary information

such as allergic responses to medications. Keeps up to date on medical information that applies to nursing care services.

Language: Explains medical procedures, treatments and other medical information to patient in a way that is readily understood. Able to correctly pronounce medical terminology, which requires knowledge of Latin root words. Must be able to transmit information quickly and accurately to other medical staff during medical emergency. Must be able to synthesize information at shift changes in order to advise on-coming shift of patients' current status, as well as medical orders to follow.

Mathematics: Able to understand metric form of measurement. Understands basic four forms of measurement, algebra, fractions, percentages, and ratios.

HEALTH CARING-MEDICAL

Treating people with physical and mental problems.

Bandaging. Bathing. Diagnosing. Examining. Injecting. Interviewing. Investigating. Monitoring. Prescribing. Taking Pulse. Treating.

According to Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, U.S. Department of Labor, Employment and Training Administration, 1993, COJ 2000 The Classification of Jobs, Fifth Edition, J. E. and T. F. Field, Elliott & Fitzpatrick, Inc., 1999, and Dictionary of Worker Traits, Volume I and Volume II, A. F. Kearns and R. E. Neeley, Vocational Research Institute, 1987, this occupation is found in the Worker Trait Group NURSING, and is coded 10.02.01. This occupation is given the ONET98 code: 32502 for Registered Nurses.

In analyzing aptitudes in occupations, the U.S. Department of Labor uses a five-point scale: 1 (highest 10 percent of the population), 2 (highest one-third of the population), 3 (middle one-third of the population), 4 (lowest one-third of the population), and 5 (lowest 10 percent of the population). Ms. McNamara's prior work contains the following aptitudes:

G-2 **Intelligence**: General learning ability.

V-2 **Verbal**: Ability to understand meanings of words and ideas associated with them.

N-3 **Numerical**: Ability to perform arithmetic operations quickly and accurately.

S-3 **Spatial**: Ability to comprehend forms in space and understand relationships of plane and solid objects.

P-3 **Form Perception**: Ability to perceive pertinent detail in objects or in pictorial or graphic material.

Q-2 **Clerical Perception**: Ability to perceive pertinent detail in verbal or tabular material.

K-3 **Motor Coordination:** Ability to coordinate eyes, hands, or fingers rapidly and accurately in making precise movements with speed.

F-3 **Finger Dexterity:** Ability to manipulate small objects and move the fingers rapidly and accurately.

M-3 **Manual Dexterity:** Ability of a person to work with the hands in a skillful manner, as well as work with the hands to perform placing and turning motions.

E-4 **Eye-Hand-Foot Coordination:** Ability to move the hand and foot coordinately with each other in accordance with visual stimuli.

C-4 **Color Discrimination:** Ability to perceive or recognize similarities or differences in colors, or in shades, or other values of the same color.

This occupation requires the following Temperaments or Situations to which the worker must adapt:

P - Dealing with people beyond giving and receiving instructions.

T - Situations requiring the precise attainment of set limits, tolerances, or standards.

J - Making generalizations, evaluations, or decisions based on sensory or judgmental criteria.

S - Performing under stress when confronted with emergency, critical, unusual, or dangerous situations or situations in which speed and sustained attention are make-or-break aspects of the job.

PRE-EXISTING INJURIES/ACCIDENTS AND/OR MEDICAL CONDITIONS

None reported.

COGNITIVE COMPLAINTS

Ms. McNamara reports experiencing impaired remote and short-term memory. She notes having diminished concentration.

Ms. McNamara notes difficulty reading due to problems retaining and remembering what she has read.

In addition, Ms. McNamara reports experiencing a shortened attention span and that she is easily distracted while performing tasks.

Ms. McNamara reports difficulties in word retrieval. She reports difficulty multi-tasking. She has an impairment in her organizational abilities. Ms. McNamara reports her thinking is slower now than prior to her accident.

Dr. Pachilakis - Neuropsychological Evaluation (8/10/15) states "Notable for weaknesses in attention/working memory, processing speed, and memory. Executive functioning is variable, with intact performance of high level problem solving tasks which require a heightened task engagement and focus. Given that concussion is understood to be a temporary neurological condition, it is expected that post-concussive cognitive sequelae should resolve over time."

She received some cognitive rehabilitation therapy from Dr. Pachilakis.

She received physical and speech therapy at Long Island Transitions (8/5/15-12/10/15) and vestibular and balance therapy at Long Island Vestibular Rehabilitation & Balance Therapy (7/7/15-7/16/15).

PHYSICAL COMPLAINTS

Ms. McNamara's current complaints include migraine headaches (2-3 times per week, lasting 1 hour to 2 days), pain in the right eye with difficulty focusing, and loss of right peripheral vision resulting in impaired eye-hand coordination. Ms. McNamara reports experiencing impaired balance. She reports no deficits in hearing. She wears reading and distance glasses. She has special prism glasses. In addition, she wears sunglasses as she is affected by fluorescent lighting and sunlight.

EMOTIONAL COMPLAINTS

Emotionally, Ms. McNamara reports feelings of anxiety, depression, difficulty dealing with others (says she feels people's energy and if it is negative, she has to leave), and difficulty dealing with stressful situations.

She complains of anger, as well as frustration, with respect to her chronic pain, functional restrictions, and restricted lifestyle.

Ms. McNamara has been treated by Dr. Lamarca, a psychologist, once every two weeks.

MEDICAL TREATMENT

Hospitalizations and Surgeries

Ms. McNamara was North Shore University Hospital (11/11/05) for tuck with needle; Glen Cove Hospital (2/4/10) for vomiting, gastroenteritis, adrenal insufficiency; North Shore University Hospital (9/1/11) for headache s/p tick bite; North Shore University Hospital (10/15/12) for left hand injury; Syosset Hospital (3/31/13) for left eye laceration; Syosset

Hospital (5/25/15) for fall, rib contusion, head injury; North Shore LIJ (6/2/15) for fall, concussion.

Physicians

Currently, she is treated on a monthly basis by Dr. Khan, a physiatrist (9/10/15-11/3/15) who states, "Anxiety, depression, post concussive syndrome."

Dr. Fisher and Dr. Han (8/5/15-10/5/15) state "Convergence insufficiency, deficits of pursuits and saccades, visual field defects, light sensitivity, concussion."

She is treated by Dr. Fox, a low vision specialist who has prescribed prism glasses.

Her family physician is Dr. Nelson (1/11/13-8/21/15) who states "Post concussive syndrome, adrenal insufficiency, chronic fatigue, major depression."

She was evaluated by Dr. Trazzera (6/11/15-6/25/15) who states "Syncope and collapse, panic disorder, concussion without loss of consciousness, anxiety, adrenal insufficiency. Neurocognitive rehabilitation suggested. Cognitive training and vestibular imbalance training. Continue to refrain from work. Continue cognitive rest and avoidance of situations which may cause a fall again."

Therapy Treatment

She received physical and speech therapy at Long Island Transitions (8/5/15-12/10/15) and vestibular and balance therapy at Long Island Vestibular Rehabilitation & Balance Therapy (7/7/15-7/16/15).

Pain Management Treatment

None reported.

Orthotic and Positioning Devices

She reports using prism glasses. At times, she will use a straight cane for external mobility. She has a shower chair, hand-held shower hose, and grab bars.

ACTIVITIES OF DAILY LIVING

Ms. McNamara is dependent in her ability to wash, dress, and bathe herself, requiring the assistance of her husband or son as she has fallen 13 times. She is able to feed herself. Ms. McNamara is unable to use a knife and fork in tandem.

Her daily activities include listening to music. She gets angry with herself when she cannot perform a task successfully.

Ms. McNamara reports she owns a computer at home. She reports not using it as she is easily annoyed.

She is unable to perform the shopping and household chores which are performed by her husband and son.

Ms. McNamara denies involvement in any hobbies, sports, or special interests. Prior to the accident, she would go walking with her dogs, go to the gym, and read.

RESIDUAL FUNCTIONAL CAPACITY SELF-ASSESSMENT

Ms. McNamara gives the following as her current physical capacity: able to sit 60 minutes, able to stand 15-20 minutes noting anxiety about falling, able to walk 10 minutes noting impaired balance, able to climb stairs using the hand rail, able to lift and carry 5-10 pounds but notes dropping items, and able to use both hands to grasp and manipulate objects but notes "dropping a lot of things," especially with the right hand. The dominant hand is the right. Ms. McNamara is able to bend, noting dizziness.

She has a New York State driver's license. Ms. McNamara has driven only one time since her accident due to an inability to focus. Her husband or son transport her to medical appointments.

TRANSFERABILITY SKILLS ANALYSIS

Transfer of skills involves an assessment of skills that a person used on one job which can be interchanged or substituted into another job to be used to determine the employability of the person. Skills are learned by doing. In the context of Social Security Disability, transferable skills are defined as the assessment of work functions acquired from performance of skilled or semi-skilled jobs which can be applied to meet the requirements of other skilled or semi-skilled jobs. This process is based on a synthesis of information from an evaluee's background history including medical, psychological, educational, social and vocational information. Using acquired skills has been proven to be the most cost-effective means of returning an injured worker back to gainful employment. Transferable skills can make the difference between a person working or not working. The Transferability of Skills Analysis (TSA) is the foundation to identify similar or related jobs that are consistent with or equal to the worker's capabilities and functional restrictions. The seven step process of Transferability of Skills Analysis involves Identifying jobs in a person's work history, Select an occupational code with title (using the DOT or O*Net), Profile the jobs, Create an unadjusted vocational profile, Create the residual functional capacity profile, Finding related or similar jobs, and locating jobs in the local labor market.

Ms. McNamara's work history was analyzed using The Vocational Diagnosis and Assessment of Residual Employability (VDARE) process, which is an organized or systematic way to assess transferable work skills and vocational potential for work. The VDARE process uses the evaluee's work history as the basis to build an assessment of the

evaluee's vocational functioning. The analysis takes into account the factors of physical demands, working conditions, general educational development, specific vocational preparation, aptitudes, work activities, and work situations.

Research was conducted regarding the level and types of skills, aptitudes, and physical demands required of each job. A transferability of skills analysis was performed to determine which occupations in the labor market she could perform within her vocational capability.

Based on this process, Ms. McNamara's past employment as a Registered Nurse is skilled work and has many transferable skills to other occupations.

However, the results of the vocational evaluation indicate that Ms. McNamara's vocational capacity is so compromised that she cannot perform work requiring Sedentary Physical demands on a sustained basis. Even though she may have transferable skills, they cannot be used for Ms. McNamara to be competitively employed.

ASSISTIVE TECHNOLOGY

Rehabilitation Counselors recognize that the use of Assistive Technology or Rehabilitation Technology increases the ability and work choices available to a person with an impairment. Assistive Technology is defined by the Technology-Related Assistance for Individuals with Disabilities Act of 1994 (PL 103-218) is "any item, piece of equipment, or production system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capacities of individuals with disabilities."

In some cases, Assistive Technology is not always the answer; however its use can create options which otherwise might not be available.

In this case, I considered what Assistive Technology could assist Ms. McNamara in being competitively employed.

VOCATIONAL REHABILITATION ASSESSMENT

The Federal and State Government have combined to fund and service disabled persons, The Rehabilitation Act of 1973. This act redirected the vocational rehabilitation program making its first priority to provide services to severely disabled individuals. The Workforce Investment Act and Rehabilitation Act Amendments of 1998 provided funding for a "one-stop delivery system" for individuals needing help in securing employment.

The purpose of vocational rehabilitation is to provide training and other services when the injured person can be reasonably expected to perform full-time, competitive, gainful work requiring at least Sedentary Physical demands. The New York State ACCES-VR ((Adult Career and Continuing Educational Services - Vocational Rehabilitation) can provide such services as individual vocational counseling, vocational technical training, educational services, on-the-job training, assistive technologies, and job placement assistance.

The vocational rehabilitation process has six phases with the injured person receiving the services that are best suited for them:

Phase 1. Injured worker is assisted by the counselor to return to their same job using such techniques as work evaluation and work hardening.

Phase 2. Vocational Rehabilitation Counselor works with the employer to accommodate the employee and return them to work with the same employer in a different job.

Phase 3. Injured worker is placed into a job in the same industry.

Phase 4. Counselor identifies worker's transferable skills, aptitudes, and interests and attempts job placement in all industries.

Phase 5. When the worker cannot be placed directly in alternative employment, placement in training or educational programs is required with selective job placement services provided once the program has been completed.

Phase 6. When the worker's vocational capacity is reduced below that of Sedentary type work and they do not meet the minimum physical capacity to receive vocational rehabilitation services.

State Vocational Rehabilitation services are usually provided at no cost to Social Security Disability recipients or to an injured worker. Receiving vocational rehabilitation services, may be based upon the person's resources.

Due to Ms. McNamara's reduced vocational capacity, she is not a candidate for vocational rehabilitation services and fits into Phase 6.

RESIDUAL EARNING CAPACITY

The establishment of the residual earning capacity involves determining:

A. What jobs a person is capable of doing,
B. How likely it is that the individual can find employment in those jobs, and
C. The pay scale for the types of jobs the person is capable of doing.

The functional limitations imposed by Ms. McNamara's injuries are the major determinants of the opportunities, or lack thereof, available to her for vocational alternatives.

Functional limitations may affect an individual's job and earnings potential in one or more ways.

1. The limitations may make it impossible, or at least difficult, to perform certain necessary job tasks.

2. The limitations may limit mobility and make it difficult for the individual to get to and from the job site.

3. The limitations may make it impossible, or at least difficult, to perform job tasks at a competitive rate, which is the level of production acceptable to an employer.

4. The limitations may interact with the work environment in such a way as to make performance difficult, uncomfortable, or dangerous.

5. There may be increased danger or risk to oneself because of the physical limitations and the difficulty of performing certain functions.

6. The limitations may affect the work or safety of co-workers or the public.

7. The limitations may impair one's competitive ability, thereby impeding normal progress up the "organizational ladder" or the chance of getting a job in the open labor market.

All of these elements need not exist in every case of functional limitations. In some cases, there may be other factors that would hinder job performance or labor market competitiveness. To the extent they are present, however, the elements will generally affect the individual's ability to obtain and retain employment, may affect the types of jobs potentially available, or may affect future raises, promotions, and/or job mobility.

Because of this injury, Ms. McNamara has suffered severe vocational limitations.

EMPLOYABILITY AND EARNING CAPACITY OPINION

This evaluation was completed utilizing the peer reviewed, and RAPEL methodology. This evaluation has been completed within industry standards. Unless otherwise noted, or where assumptions are stated, all opinions expressed herein are provided within a reasonable degree of vocational and rehabilitation certainty.

Based on the results of the vocational evaluation performed on Ms. McNamara and the conclusions made, as well as her approaching advanced age, Bachelor's Degree in Nursing, and past work experience of skilled work as a Registered Nurse, the following are my opinions, as a Vocational Expert, regarding her rehabilitation plan, access to the labor market, placeability, earning capacity, and labor force participation.

Vocational Handicaps

It is my expert opinion, based on the evaluation, that Ms. McNamara demonstrates significant handicaps which impede her employability. These handicaps include:

Sitting
Standing

Walking
Bending
Stooping
Kneeling
Squatting
Lifting and Carrying
Manual and Finger Dexterity
Grasping and Manipulating
Reduced Physical Stamina and Endurance
Impaired Vision
Impaired Memory
Impaired Concentration

Rehabilitation Plan

An assessment was made regarding Ms. McNamara's potential to receive vocational rehabilitation services. In order to formulate this opinion, consideration was made regarding Ms. McNamara's approaching advanced age, Bachelor's Degree in Nursing, past work experience of skilled work as a Registered Nurse, transferable skills, training, and vocational capacity secondary to her medical condition. Due to Ms. McNamara's reduced vocational capacity, she is not a candidate for vocational rehabilitation services.

Access to the Labor Market

The OASYS computer analysis was performed regarding Ms. McNamara's approaching advanced age, Bachelor's Degree in Nursing, past work experience of skilled work as a Registered Nurse, work attributes, transferable skills, current vocational capacity, and the effect of her medical condition on her ability to access the labor market.

Given Ms. McNamara's severe limitations and reduced vocational capacity, she is precluded from accessing the labor market.

Placeability

Given her approaching advanced age, Bachelor's Degree in Nursing, and past work experience of skilled work as a Registered Nurse, it is my expert opinion that Ms. McNamara could not be competitively placed in the job market on a full-time, competitive basis.

Earning Capacity

This individual's head and rib injuries with residual severe pain and physical, cognitive, and emotional limitations present a severe impact on her ability to obtain and maintain employment.

Based on the results of the Vocational Evaluation performed on her and the conclusions made, as well as her approaching advanced age, Bachelor's Degree in Nursing, and past work

experience of skilled work as a Registered Nurse, the following are my opinions, as a Vocational Expert, regarding Ms. McNamara's employability and earning capacity:

1. Ms. McNamara is unable to perform her past relevant work as a Registered Nurse and Case Manager.

2. Ms. McNamara's reported past earnings of $84,652 per annum as a Utilization Review Nurse and $1,000 a week as a Hospice Case Manager Nurse best represent her pre-injury earning capacity.

3. Ms. McNamara is unable to transfer her skills to other types of semi-skilled or skilled occupations.

4. Ms. McNamara is unable to perform any Sedentary, Light, Medium, Heavy, or Very Heavy Work existing in the local or national economy on a sustained, full-time, regular, competitive basis.

5. Ms. McNamara is unemployable for any job existing in the competitive labor market.

6. In her present state, Ms. McNamara has sustained a total loss of earning capacity over her work life due to her multiple impairments.

7. At the present time, Ms. McNamara is not a candidate for vocational rehabilitation services due to her reduced vocational capacity.

8. Due to her multiple injuries, she has sustained **a total loss of $2,423,736 ($2,019,780 earnings loss at $134,652 per annum for 15 years of work life expectancy using the social security retirement age of 67, plus $403,956 for 20% fringe benefits).** This figure is an **estimate.** It has not been reduced to present value. It does not take into account the discount rate, the inflation rate, or have taxes been subtracted. **THIS DOES NOT REPLACE A FORENSIC ECONOMIC EVALUATION.** (App. B15, B16)

	Amount of Loss
Pre-Injury Earning Capacity Loss	**$2,019,780**
Loss of Fringe Benefits	**$403,956**
LOST EARNING CAPACITY	**$2,423,736**

Labor Force Participation

In formulating my opinion regarding Ms. McNamara's employability and earning capacity, I considered the various factors which affect an injured person's work life expectancy in the competitive labor market. I considered that it may take her longer to find a job and that she

may be unemployed longer between jobs. Ms. McNamara may require time off for medical treatment and may have difficulty keeping a job. Lastly, her limitations may force her to retire earlier than planned.

Prepared by:

Edmond Provder
Certified Rehabilitation Counselor
Diplomate, American Board of Vocational Experts

5-POINT PHYSICAL DEMAND SCALE

Sedentary Work involves:

- EXERTING 10 pounds of force occasionally, and/or a negligible amount of force to lift, carry,
- push, pull, or otherwise move objects, including the human body.
- SITTING most of the time, walking and standing occasionally.

Light Work involves:

- EXERTING 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects.
- Even if weight exertion is negligible, WALKING OR STANDING to a significant degree, and/or
- SITTING most of the time but with pushing and/or pulling of arm or leg controls, and/or
- Working at a production rate pace entailing constant pushing and/or pulling of materials.

Medium Work involves:

- EXERTING 20 to 50 pounds of force occasionally, and/or up to 10 to 25 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.

Heavy Work involves:

- EXERTING 50 to 100 pounds of force occasionally, and/or up to 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects.

Very Heavy Work involves:

- EXERTING in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20
- pounds of force constantly to move objects.

U.S. Department of Labor's Dictionary of Occupational Titles, Fourth Edition, Revised 1991, page 1013

Occasionally = up to ⅓ of the time

Frequently = ⅓ to ⅔ of the time

Constantly = ⅔ or more of the time

Appendix B

VOCATIONAL RESOURCES CONSULTED

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Employability - Glossary of Terms

Aptitude - the specific capacities or abilities required of an individual in order to facilitate the learning of or carrying out of some task or job duty.

Disability - any physical, mental, or emotional condition that is chronic or long-lasting, which is severe enough to limit the individual's functioning and which results in a handicap to productive activity.

Earnings Loss - the individual's expected loss of earnings, if any, which results from the injury. Loss of earnings is based on history whereas loss of earnings capacity is projected into the future.

Earnings Capacity - ability of individual to obtain and hold the highest paying of jobs to which he might have access. Access is determined by worker traits, work skills and amount of training.

Employability - exists if a person possesses skills, abilities, and traits necessary to perform a job; the kinds and types of jobs which a person with a disability might be able to perform.

Essential Functions - (an Americans with Disabilities Act and 1973 Rehab. Act term) fundamental job duties of the employment position the individual with a disability holds or desires.

Exertional Level - physical abilities necessary for certain types of jobs; includes sedentary, light, medium, heavy, and very heavy.

Functional Limitations - results from physical, mental, and emotional disabilities which adversely affects the workers capacity to function at a job.

Handicap - the effect of the disability on the ability to perform gainful work.

Illiteracy - inability to read or write; generally little or no formal education.

Intelligence Quotient - (IQ) it is a measure of general intelligence obtained by testing.

Job Description - narrative description of activities and requirements of a job; does not necessarily accurately reflect what a worker will actually do in that job.

Limited Education - some ability in reasoning, arithmetic, and language skills, but not enough to perform semi-skilled or skilled job; generally the 7th to 11th grades according to definition by the Social Security Administration.

Labor Market Access - (LMA) a method for determining the employability and loss of access to the labor market of an individual with a disability. Utilizes the Vocational Diagnosis and Assessment of Residual Employability process (VDARE) to determine residual functional capacity.

Loss of Access - generally related to the loss of access to the labor market. Persons with injuries may suffer a reduction in the numbers of jobs which are available to them as a result of reduced work life expectancy (such as earlier retirement, or part-time rather than full time work) or due to functional limitations which prevent the client from choosing certain occupations.

Marginal Education - ability in reasoning, arithmetic, and language skills sufficient to perform simple, unskilled types of jobs; generally, 6th grade & below.

Mental Limitation - retardation and learning disabilities are grouped as a functional limitation, although the casual circumstances are quite different; both refer to a hindrance or negative effect in the learning and performance of activities and to other overt manifestations of inadequate mental function.

Mobility Limitations - function of getting from one place to another is limited; may be caused either by physical disability or environmental barriers.

Non-Exertional Impairment - does not limit physical exertion and does not directly affect ability to sit, stand, walk, lift, carry, push, or pull; does have impact on ability to work.

Employability - Glossary of Terms

Pain Limitation - pain refers to an unpleasant sensation characterized by throbbing, aching, shooting or other unpleasant feelings associated with bodily injury or disorder. When pain is continuing, unremitting, uncontrollable, and severe, it may constitute a severe functional limitation to normal living.

Partial Disability - exists if the individual cannot perform some or all of the work for which he or she was fitted prior to the injury.

Physical Demands - the physical requirements made on the worker by the specific job worker situation.

Placeability - economic conditions and employer attitudes are such that a person can actually be placed in a job; the difficulty in placing a person with a disability in a job.

Psychometric Instruments - standardized instruments which measure correlative mental functioning of a cognitive, psychomotor, or effective nature purported to be important to specific job performance utilizing abstracted tasks.

Residual Functional Capacity - a disabled person's remaining physical and mental work potential and capacity.

Sheltered Workshop - It provides transitional and/or long-term employment in a controlled and protected working environment for those who are unable either to compete or to function in the open job market due to their handicap.

Skill Level - level of knowledge of work activity and degree of judgment required to perform a certain job; includes unskilled, semi-skilled, and skilled.

Temperament - personal traits consisting of the individual's characteristic mode or inclination of emotional response.

Total Disability - exists if the individual is unable to return to preinjury employment and unable (due to an injury) to obtain employment with similar livelihood.

Transferability of Skills - skills that were used in one job can be interchanged or substituted into another job; used to determine the employability of a person.

VDARE Process - (Vocational Diagnosis and Assessment of Residual Employability) uses client's work history as a basis upon which to build an assessment of client vocational functioning capabilities.

Vocational Assessment - process by which vocational expert determines loss of vocational functioning due to a disability and helps clients to correlate their characteristics as workers with the characteristics of occupations.

Vocational Rehabilitation Services - services designed to enable a handicapped person to secure and retain employment.

Wage Loss Analysis - a procedure which addresses the amount of wages lost to a worker as a result of an injury.

Work Tolerance - ability to sustain a work effort for a prolonged period of time, ability to maintain a steady flow of production at an acceptable pace and acceptable level of quality, ability to handle a certain amount of pressure.

Work Samples - a well defined work activity involving tasks, materials, and tools which are identical or similar to those in an actual job or cluster of jobs. It is used to assess an individual's vocational aptitude, worker characteristics, and vocational interest.

Worker Trait - the requirements made of the worker in terms of aptitudes, general educational development, vocational preparation, physical demands, and personal traits.

Resources: Vocational Evaluation and Work Adjustment Standards With Interpretive Guidelines and VEWAA Glossary, Copyright, 1977. All rights reserved by the Vocational Evaluation and Work Adjustment Association.

EXHIBIT B

PROFESSIONAL QUALIFICATIONS OF EDMOND A. PROVDER

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EDUCATION

1971	B.S. Rehabilitation Counseling, Pennsylvania State University
1973	M.Ed. Rehabilitation Counseling, Pennsylvania State University
1977-1987	Rehabilitation Counseling Doctoral Candidate, 60 credits, N.Y.U.
2003	University of Florida/Intelicus Life Care Planning Program for Catastrophic Case Management, 128-post graduate hours

PROFESSIONAL EXPERIENCE

Vocational Expert/Life Care Planner — *August 1981 to Present*
Occupational Assessment Services

Evaluate the vocational potential and employability of able-bodied and disabled individuals through interviewing, reviewing records, and/or administration of vocational testing to provide a vocational appraisal as to the individual's ability to work in the competitive labor market. Develop and implement Life Care Plans for catastrophic individuals. Consult with industry and government agencies regarding Americans with Disabilities Act. Provide initial assessment, vocational evaluation, counseling, case management, and job-placement services to assist industrial-disabled and able-bodied clients return to gainful employment, given their residual functional capacity.

Vocational Expert/Physician Life Care Planning — *December 2011 to Present*

Evaluate the employability and earning capacity of disabled individuals through interviewing, reviewing records, and/or administration of vocational testing to provide a vocational appraisal as to the individual's ability to work in the competitive labor market.

Director/Rehabilitation Counselor/Phoenix Rehabilitation Center — *July 2007 to December 2010*

Develop Rehabilitation Center for poor, physically disabled children in the Vidigal Favela in Rio de Janeiro Brazil which involved community coordination, volunteer recruitment, fund raising, and government liaison.

Vocational Consultant — *June 1997 to September 2000*
Social Security Administration — *October 1977 to September 1985*

Provided impartial vocational testimony in Social Security Disability hearings as to claimants' ability to perform substantial gainful activity, given their residual functional capacity.

Supervisor Vocational Facilities — *December 1979 to December 1981*
Mount Sinai Hospital — *July 1974 to August 1978*

Supervised and administered the Sheltered Workshop and Vocational Evaluation Programs, which included the provision of supervision, counseling, work adjustment services, and job placement services to the physically disabled, mentally ill, visually impaired and industrially disabled.

Vocational Consultant — *February 1975 to December 1979*

Administered and developed vocational rehabilitation programs for South Beach Psychiatric Center, Staten Island Association for the Visually Handicapped and the Contemporary Guidance Service.

Rehabilitation Counselor/Federation of the Handicapped — *March 1973 to July 1974*

Provided individual and group counseling, vocational evaluation, work adjustment, and job placement services to severely physically disabled, visually impaired and developmentally disabled clients.

PROFESSIONAL AFFILIATIONS

Certified Rehabilitation Counselor (#18792); Diplomate, American Board of Vocational Experts (#00448)
Certified Life Care Planner (#0501)

Professional Member of ABVE, IARPS, AREA, NAFE, RESNA

OAS

Prices Effective October 1, 2015

FEES FOR BASIC SERVICES

Vocational Analysis - Household Services & Loss Earnings Evaluation For Automobile Accident Cases (with $100,000 to $300,000 policies).....	$2000.00

MATRIMONIAL CASES:

VOCATIONAL EVALUATION.....	*$4,000.00*
VOCATIONAL TESTIMONY	*$4,000.00*

WRONGFUL TERMINATION EMPLOYMENT; AGE & SEX DISCRIMINATION CASES:

VOCATIONAL EVALUATION.....	*$5,000.00*
VOCATIONAL TESTIMONY.....	*$5,000.00*

SOCIAL SECURITY DISABILITY AND WORKERS' COMPENSATION:

VOCATIONAL EVALUATION.....	*$ 750.00*
VOCATIONAL TESTIMONY.....	*$ 750.00*

VETERAN'S DISABILITY (TDIU)

VOCATIONAL EVALUATION.....	*$ 1000.00*

LONG-TERM DISABILITY / RAILROAD, FEDERAL WORKERS' COMPENSATION:

VOCATIONAL EVALUATION.....	*$4,750.00*
VOCATIONAL TESTIMONY	*$4,750.00*

Fee & Payment Policy:

1. *A retainer is required upon case referral: Vocation Evaluation ($3,000.00); Life Care Plan ($5,000.00).*
2. *Vocational interviews conducted at sites other than OAS offices will be charged an additional $500.*
3. *Travel more than 30 miles roundtrip from office WILL incur travel time@ hourly rate & expenses.*
4. *The report will be forwarded upon payment of balance owed on final bill.*
5. *Once a report is completed, review of additional records, supplemental records, opposing expert reports and deposition reviews will be charged at the $550.00 hourly consultation rate (this includes telephone consultation and assistance in preparation for cross-examination) this fee is due upon receipt and must be paid prior to any testimony or depositions to be scheduled.*
6. *A turnaround of less than THREE WEEKS is considered "rush service", Vocational Evaluation rush will incur an additional $750.00 fee and a Life Care Plan rush will incur an additional $1,500.00 fee.*
7. *The fee for testimony and depositions must be paid in advance and all agreements must be signed.*

NOTE: Rush testimony requests of Vocational or Life Care Planning requested 3 Business Days (72hours) or less prior to trial will incur an additional Testimony Preparation Fee of..... $1,000.00

OAS reserves the rights to change the above-mentioned fees.

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FEES FOR BASIC SERVICES

Prices Effective October 1, 2015

PERSONAL INJURY, MALPRACTICE, AND PRODUCT LIABILITY LITIGATION

Employability and Loss-of-Earning-Capacity Assessments:

VOCATIONAL EVALUATION INCLUDING LOSS OF HOUSEHOLD SERVICES.,	
LOSS OF FRINGE BENEFITS (TOTAL LOSS)	*$5,000.00-$5,500.00*
WRONGFUL DEATH	*$4,000.00*
LOSS OF HOUSEHOLD SERVICES EVALUATION	*$2,500.00*

Life Care Planning Services:

MODIFIED LIFE CARE PLANS (Non-Catastrophic) – includes Vocational Evaluation, Life Care Plan Charts, Local Research, Medical Life Care Plan Recommendation Form, and Cost Summary Chart
PER CASE ..... *$7,000.00 to $9,000.00*

LIFE CARE PLANS (Catastrophic) – includes Vocational Evaluation, Life Care Plan Charts, Local Research, Medical Life Care Plan Recommendation Form, and Cost Summary Chart
PER CASE ..... *$9,000.00 to $12,500.00*

Testimony, Deposition, Consultation:

VOCATIONAL TESTIMONY (includes case preparation & trial exhibits)	*$5,500.00*
LIFE CARE PLANNING TESTIMONY (includes case preparation & trial exhibits 10-15 charts)	*$6,500.00*
DEPOSITIONS - 2 HOURS (includes case preparation & exhibits)	*$2,220.00*
3 HOURS (includes case preparation & exhibits)	*$2,750.00*
Video tape trial deposition vocational	*$5,500.00*
Video tape trial deposition Life care plan	*$6,500.00*
CONSULTATION - PER HOUR	*$ 550.00*

Fee & Payment Policy:

1. *A retainer is required upon case referral: Vocation Evaluation ($3,000.00); Life Care Plan ($5,000.00).*
2. *Vocational interviews conducted at sites other than OAS offices will be charged an additional $500.*
3. *Travel more than 30 miles roundtrip from office WILL incur travel time @ hourly rate & expenses.*
4. *The report will be forwarded upon payment of balance owed on final bill.*
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OAS reserves the rights to change the above-mentioned fees

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Additional Locations
New York City
Toms River, NJ
Miami, FL

TESTIMONY AND DEPOSITION LIST 2013 – EDMOND A. PROVDER

Jan13	Robert Veal	Dep	Peter MacIsaac	NJ	
Jan13	Theresa Pitner	MRS-L-1130-10	Jeffrey Krompier	NJ	Judge Coburn
Jan13	Natasha Aeriel	ESX-L-4320-08	John Michalski	NJ	Judge Vichness
Jan13	Linda Gross	ATL-L-6966-10	David Freeman	NJ	Judge Higber
Jan13	Anthony Cammarota	PAS-L-4759-10	Edward Capozzi	NJ	
Feb13	Jose Salazar	BER-L-6618-09	Raymond Carroll	NJ	Judge Powers
Mar13	Veselko Lisicia		Marc Saperstein	NJ	Judge Conte
Mar13	Maria Marin Perez		Adam Slater	NJ	Judge LaConte
Mar13	Colleen Curran	de bene esse	Jeffrey Scott	PA	
Apr13	Kelvin Graves	2011-55706	Stephen Boutros	TX	Judge Benndt
May13	Suzanne Belluardo	UNN-L-0022-11	David Freeman	NJ	Judge Hely
May13	Penni Minor		Linda Turley	TX	
Jun13	Hillary Aiges	BER-L-9768-10	Evan Baker	NJ	Judge Conte
Jun13	Froilan Sosa		David Panitz	NJ	
Jun13	Angel Ruiz		Martin Herdyer	NY	Judge Greco
Jun13	Denise Castelli	Dep	Hugh Turk	NJ	
Jul13	Patricia VanFurichard	Dep	Rosemarie Arnold	NJ	
Aug13	Petro Barabash	Dep	David Frohn	NJ	
Sep13	Marjorie Cordes	Dep	Elizabeth Rhodes	Austin, Texas	
Sep13	John Redmond	18400013512	Jennifer Barna	NJ	Judge Humphrey
Oct13	Shmuel Guzman	BER-L-7227-10	Jack Wurgaft	NJ	Judge Polifroni
Oct13	Charles Williams		David Henry	NY	Judge Freeman
Nov13	Grandvill Lawes	Dep	Ramon Segarrao	FL	
Nov13	Daniel Cito	Dep	David Mazie	NJ	
Nov13	Ramont Davis	Dep	Linda Turley	NJ	
Nov13	Baby Shajan	22355/2008	A Paul Bogaty	NY	Judge Lebowitz
Dec13	Sheila Miranda	MID-L-933-12	John P. Nulty	NJ	Judge Kravanich
Dec13	Kanishk Reddy	Dep	Edward Mayer	NJ	
Dec13	Aaron Ortiz		Alan Brill	NY	
Dec13	Loida Hernandez	Dep	Steven Greene	NJ	

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TESTIMONY AND DEPOSITION LIST 2014 – EDMOND A. PROVDER

Jan14	Diana Tafur		Marc Saperstein	NJ	Judge Bannon
Jan14	Dennis Clune	Dep	Steven Yost	NJ	
Jan14	Jennifer Zeliff	BER-L-8591-11	Mark Herforth	NJ	Judge Wilson
Feb14	William Gary Sutton	Dep	Francis Wilson	NJ	
Feb14	Elizabeth Zea	Dep	George Baxter	NJ	
Feb14	Katherine Coutts	MRS-L-1173-10	David Shivas	NJ	Judge Brenan
Mar14	Marjorie Cordes		Todd Kelly	TX	Judge Weimann
Apr14	Khannuh Janjua	Dep	David Freeman	NJ	
Apr14	Rafaela Arias	Dep	William Pagan	NJ	
May14	Michael Tersigni	Dep	Paula Bliss	NJ	
May14	Larysa Kutko	Dep	Donald Discepolo	NJ	
May14	Rolanda Morgan Word		Ralph Drabkin	NY	Judge Partnow
May14	Carlos Cano		Ken Silverstein	NY	Judge Pitts
Jun14	Shirley Thompson	video be bene esse	Stephanie Mitterhoff	NJ	
Jul14	Christopher Pagan	Dep	Matthew Powell	FL	
Jul14	Michael Tersigni		Paula Bliss	MA	Judge Stearns
Jul14	TaKahya Little	Dep	Jeffrey Strauss	NJ	
Jul14	Sherry Huff Berry		Flyod Goldsman	NJ	Judge Gregory
Aug14	Julia Gran			NY	Judge Sherman
Aug14	Haley Tyrell	Dep	Hugh Turk	NJ	
Aug14	Adalberto Ramos	Dep	George Rios	NJ	
Sep14	Michelle Massi		Floyd Goldsman	NJ	Judge Farrington
Sep14	Marie Elaine Jimenez	Dep	Sean Jez	TX	
Sep14	Tammy Ross	video de bene esse	Andrew Ballerini	NJ	
Oct14	Carlo Ceglie	HUD-L-1377-77	Robert C. Papa	NJ	Judge Arre
Oct14	Raheel Malik	Dep	David Freeman	NJ	
Oct14	Betty Espinosa	Dep	William Pagan	NY	
Oct14	Jessica Blechar	Dep	Steven Greene	NJ	
Oct14	Carlos Rodriguez		Henry Davoli	NY	Judge Ruiz
Nov14	Jessica Blechar		Steven Greene	NJ	Judge Farrington
Dec14	Matthew Keefe	BER-L-250-11	Rosemarie Arnold	NJ	JudgeDeLaCruz

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TESTIMONY AND DEPOSITION LIST 2015 – EDMOND A. PROVDER

Jan15	Jonas Penros	Dep	Coreen Silverman		
Jan15	Han Su Chin		Raymond Carroll	NJ	Judge Lisa Firkc
Feb15	Myles Reid	Dep	Christopher Norman	NJ	
Feb15	Susan Williams	BUR-L-2284-12	Saul Steinberg	NJ	
Feb15	Christopher Harvey	Dep	William Paulus	NJ	
Mar15	Carla Rangel	Dep	Keith Purdue	TX	
Mar15	Jose Rangel	Dep	Keith Purdue	TX	
Mar15	Kerri Housour	Dep	Roberto Flores	TX	
Mar15	Carlissa Robinson		Joel Savit	NJ	
Mar15	Jennifer Marcario		Paul V. Orecchia	NJ	
Mar15	Pia Torain	Dep	Lisa A. Lehrer	NJ	
Apr15	Jennifer Metcalf	Dep	Roberto Flores	TX	
Apr15	Robert Triebe	Dep	Mindy Michael Roth	NJ	
May15	Anthony Langone		Alan Brill	NY	Judge Onofry
May15	Soraya Rodriguez	Dep	Raymond Eisdorfer	NJ	
Jun15	Isrrael Pineda	Dep	John Escamilla	TX	
Jun15	Bryon Bajakian	BUR-L-2991-12	Douglas Anton	NJ	Judge Baldwin
Jul15	Anna Parafiniuk	Dep	Paul A. Garfield	NJ	
Jul15	Maria Diaz	CACE-14-017760	Teresita Perez	FL	Judge Gates
Jul15	Walter Garcia		Alan Shapey	NY	Judge Tarantino
Aug15	Claudia Minier	de bene esse	Michael Percario	NJ	
Sep15	Badahur Singh		Paul Melletz	NJ	Judge Hurd
Sep15	Ferdaws Amiri	Dep	Roberto Flores	TX	
Sep15	Ilyas Yonisi	Dep	Roberto Flores	TX	
Sep15	Paul Nese	Dep	Stephen Sullivan	NJ	
Oct15	Delores Stewart		Sherman Kerner	NY	
Nov15	Beth Baldinger	Dep	Michael Lettieri	NJ	
Nov15	Rah Gadhok	Dep	Cheryl Barth	NJ	
Dec15	Kevin Connors	Dep	Patrick Black	NJ	

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TESTIMONY AND DEPOSITION LIST 2016 – EDMOND PROVDER

Jan16	Edward Reynolds	de bene esse	Michael Pearsall	NY	
Jan16	Stephen Buckley	Dep	Scott Parsons	NJ	
Jan16	Myles Reid		Christopher Norman	MD	Judge Davey
Feb16	Jose Torres	de bene esse	Mariano Morales	NJ	
Feb16	Martha Prendes	Dep	Cyril Moody	FL	
Mar16	Dennis Lamond	Dep	Jennifer Deiter	NJ	
Mar16	Edwin Ortiz	304857/11	Mitchell Berman	NY	Judge Sherman
Mar16	Dale Westreich		Laurence Greenberg	NY	Judge Goodrin
Apr16	Konstantinos Lavidas	de bene esse	Paul Schlemmer	NY	
May16	Cait Hutton	Dep	Harold Geer	NJ	
Jun16	Barbara Doerbecker		Edward Capozzi	NJ	Judge La Conte
Jun16	Ana Periera	Dep	Bruce Nagel	NJ	
Jul16	Alphea Powell	302898/2011	Alan Russo	NY	Judge Thompson
Jul16	Vasilios Vikatos	Dep	Paul O'Connor	NJ	
Aug16	Aziz Matar	Dep		NJ	
Aug16	Paulette Calendar	Dep	Raymond McElfish	CA	
Sep16	Hussein Agiz	MID-L-4520-13	Bruce Nagel	NJ	Judge Bergman
Sep16	Jose Candelaria	Dep	Bruce Froman	NJ	
Oct16	Christian Worthy	Dep	Richard Ansell	NJ	
Oct16	Alexander Son	Dep	David Freeman	NJ	
Oct16	Yesmin Galarza	de bene esse	Juan Perez	FL	
Oct16	Victor Gonzalez	de bene esse	Nicholas Schroter	NJ	
Nov16	John Mireles	Dep	Luke Bickham	TX	
Nov16	Michael Henderson	Dep	David Hobbs	TX	
Nov16	Maia Murphy	141003065	Joel Plainfield	PA	Judge TBD
Dec16	Alan Newton		John Schutty	NY	Judge Weinstein
Dec16	Hardee Ramirez	Dep	Paul Garfield	NJ	

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TESTIMONY AND DEPOSITION LIST 2017 – EDMOND PROVDER

Jan17	Essam Eliraky	de bene esse	Frederick Schreck	NJ	
Jan17	Pasquale Mastriani	Dep	David Freeman	NJ	
Jan17	Angel Mazza	Dep	Jeffrey Warden	NJ	
Jan17	Frederick Tromans	de bene esse	Christopher Musmanno	NJ	
Jan17	Ana Gomez		William Schwitzer	NY	Judge Everett
Jan17	Genesis Espinosa		William Pagan	NY	Judge Reddin
Jan17	Jose Bauta	Dep	Raymond McElfish	NY	
Feb17	Christine Coupet Benjamin	Dep	Reginald Rutishauser	NJ	
Feb17	Manuel Garza	Dep	Manuel Maltos	TX	
Feb17	Ellen Mullen	Dep	Lynette Siragusa	NJ	
Feb17	Thomas Gallagher	ESX-L-2761-13	Richard Mazawey	NJ	Judge Casey
Feb17	Alexander Son		David Mazie	NJ	Judge Vena
Mar17	Patrick Grosso	Dep	Charles Crocco	NJ	
Apr17	Debra Powell	Dep	Steven Haddad	NJ	
Apr17	Diane O'Connor (Def)	Dep	Eric Apjohn	NJ	
Apr17	Christopher Vokoun	de bene esse	Mark Edwards	TX	
Apr17	Leonard Hoffman		Pat James Crispi	NY	Judge Edwards
Apr17	Brenda Lewis	3469/10	George Mahoney	NY	Judge Lane
May17	Aviv Peretz	Dep	David Freeman	NJ	
May17	James Couch	Dep	Rand Nolen	TX	
Jun17	Mary Dodson	Dep	Sundeep Grewal	TX	
Jun17	Leah Bullock	Dep	John Escamilla	TX	
Jun17	Merletha McKisset	Dep	Donald Discepolo	NJ	
Jun17	Daniel Durando (Def)	33753/08	Michael DeSantis	NY	
Jun17	Mark Horvatich		William Gammon	TX	Judge Unkmen
Jun17	Elizabeth Rota		Frank Zazzaro	NJ	Judge Padavano
Jul17	Jeffrey Peck (Def)	de bene esse	Juan Perez	FL	
Jul17	Matthew Flores	de bene esse	Mark Davis	NJ	
Jul17	Arthur Samora		Raymond McElfish	CA	Judge Flurer
Jul17	Scott Parsons	Dep	Scott Parsons	NJ	
Jul17	Tristian Dodds	Dep	Stanley Cramb	TX	
Jul17	Russell Dodds	Dep	Stanley Cramb	TX	

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EDMOND PROVDER

Publications

Edmond A. Provder has not authored any publications for the past ten (10) years.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 25, 2017, the foregoing was sent via Email and by mail to:

Lewis, Brisbois, Bisgaard, & Smith LLP
Attorneys for Defendant
HOME DEPOT USA, INC.,
77 Water Street, Suite 2100
New York, New York 10005
(212) 232-1300

Lewis Johs Avallone & Aviles, LLP
Attorneys for Defendant
ADVANTAGE SOLUTIONS, ADVANTAGE SALES & MARKETING, INC.,
ADVANTAGE SALES & MARKETING, LLC
One CA Plaza, Suite 225
Islandia, NY 11749
Mark R. Aledort, Esq

LAW OFFICE OF ANDREA G. SAWYERS
RICHARD A. HARRIS
Attorneys for Defendant Yotrio Corporation
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
(631) 501-3100
Matter No.: 0980943RAH

Dated: New York, New York
October 25, 2017

NAPOLI SHKOLNIK, PLLC

By: _____
Joseph P. Napoli
360 Lexington Avenue, 11th Floor
New York, NY 10017
(212) 397-1000
jnapoli@napolilaw.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

ANN MCNAMARA and RICHARD MCNAMARA,

Plaintiffs,

-against-

HOME DEPOT U.S.A., INC., YOTRIO CORPORATION, ADVANTAGE SOLUTIONS, ADVANTAGE SALES & MARKETING, INC., ADVANTAGE SALES & MARKETING, LLC.

----------x

EXPERT WITNESS DISCLOSURE PURSUANT TO FRCP §26

NAPOLI SHKOLNIK, PLLC
Attorneys for: Plaintiffs
360 Lexington Avenue, 11th Floor
New York, New York 10017
(212) 397-1000

The undersigned attorney hereby certifies, pursuant to 22 NYCRR §130-1.1-a, that I have read the within papers and that to the best of my knowledge and belief they are not frivolous as that term is defined in 22 NYCRR § 130-1.1(c).

Attorney name: Joseph Napoli, Esq.

PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRY

that the within is a (certified) true copy of an duly entered in the office of the clerk of the within named court on 2017.

☐ NOTICE OF SETTLEMENT

that an order of which the within is a true copy, will be presented for settlement to the HON. one of the judges of the within named Court, at on 2017__ at ____ O'clock ___.M.

Dated,

Yours, etc.
NAPOLI SHKOLNIK, PLLC