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OF COUNSEL:  
BARRON & STADFELD

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October 18, 2011

Scott Nickerson, Clerk  
Barnstable Superior Court  
Post Office Box 425  
Barnstable, Massachusetts 02630

Re: Torres et al v. Torres et al  
No: BACV2011-00433

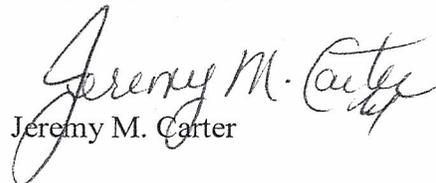
Dear Mr. Nickerson:

Enclosed please find the following documents for filing with your office relative to the above-entitled matter:

1. Defendant, Debtmerica, LLC, Motion to Dismiss;
2. Defendant's Memorandum in Support of Motion to Dismiss;
3. Plaintiff's Opposition to Motion to Dismiss;
4. Affidavit in Support of Plaintiff's Response and Opposition to Motion to Dismiss;
5. Index of Documents Relative to Rule 9A; and
6. Affidavit of Compliance with Rule 9A.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Jeremy M. Carter

JMC/jrg  
Enclosures

Cc: Jesse Torres, III  
Jennifer Adams  
Sophie Torres







Respectfully submitted,  
Debtmerica, LLC  
By their attorney



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Jeremy M. Carter  
BBO #542118  
Wilkins and DeYoung  
270 Winter Street  
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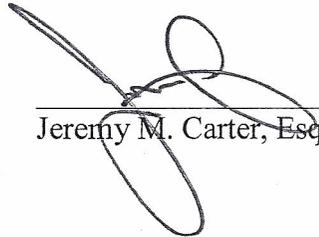
Dated: September 7, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Motion to Dismiss for Failure to State a Claim has been sent via first class mail, postage prepaid this 9 day of September, 2011 to the Plaintiffs:

Jesse E. Torres, III  
562 Waquoit Highway  
East Falmouth, MA 02536

Jennifer J. Adams  
562 Waquoit Highway  
East Falmouth, MA 02536



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Jeremy M. Carter, Esq.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT  
NO. BACV2011-00433

JESSE E. TORRES, III and )  
JENNIFER J. ADAMS, )  
Plaintiffs, )  
 )  
vs )  
 )  
SOPHIE J. TORRES, )  
JESSE E. TORRES, IV, )  
DEBTMERICA, LLC, and )  
DONALD F. TORRES, )  
Defendants. )  
\_\_\_\_\_ )

**MEMORANDUM OF LAW  
IN SUPPORT OF DEFENDANT, DEBTMERICA LLC'S,  
MOTION TO DISMISS**

**ISSUES**

Whether the Plaintiff has stated in any of its counts against the Defendant any cognizable claim against the Defendant.

**FACTS**

The Plaintiffs have filed a nineteen (19) count complaint against multiple Defendants. The counts that pertain to Defendant, Debtmerica, LLC, are counts 5 through 11, alleging Tortious Interference, Deliberate Interference, Malicious Intent, Conspiracy to Commit Fraud, Slander, Defamation of Character, and Intentional Infliction of Emotional Distress, between the Defendant, Debtmerica, LLC, and the Plaintiff, Jesse Torres, III.

The Defendant, is a corporation registered in the State of Nevada. It has its principal place of business in California and has not contacts with the Commonwealth of Massachusetts. According to the statements within the Complaint, the Plaintiffs allege that Defendant,

Debtmerica, intermingled support, used threats to stop financial aid in order to coerce Defendant, Sophie Torres to change her will.

The specific counts against the Defendant are as follows:

1. Count V alleges tortious interference by Debtmerica with a contract by and between Sophie Torres and Plaintiff, Jesse Torres, III. A review of the statements leading up to this Count does not reference any action taken by Debtmerica, which would constitute an tortious interference between Defendant, Sophie Torres and Plaintiff, Jesse Torres, III. The implication contained within the Count is that the Defendant intermingled support with the other Defendants to accomplish a tortious interference.
2. Count VI alleges the same cause of action as Count V but changes the reference of the “interference” from tortious to deliberate. It appears by way of pleading that the Plaintiff believes this interference rises to criminal culpability, which certainly cannot be pled here.
3. Count VII alleges a malicious intent but only references Debtmerica as intermingling support with the other Defendants. The Count suggests that there was a conspiracy but sets forth no information or allegations setting forth Debtmerica’s relationship to the conspiracy or its involvement with same. It is unclear what cause of action the Plaintiff seeks in this Count as malicious intent does not rise to a recognized cause of action.
4. Count VIII alleges conspiracy to commit fraud that does not set forth the specific fraud. Once again that Count only involves the Defendant, Debtmerica by saying it intermingled support with the other Defendants. It is unclear as to what conspiracy or fraud the Defendant, Debtmerica, is involved in under this Count.
5. Count IX alleges slander on the part of Defendant, Debtmerica, but does not indicate anywhere within the Complaint what statements were made by Debtmerica to constitute slander.

6. Count X alleges defamation against Defendant, Debtmerica, but fails to state what statements this specific Defendant made and how they were at fault and how they harmed the Plaintiff's reputation.

7. Count XI alleges intentional infliction of emotional distress by the Defendant, Debtmerica, against the Plaintiffs. This Count or any other statements contained within the Complaint does not set forth what actions this Defendant took to inflict emotional distress.

### ARGUMENT

The subject matter of the within Complaint is arguably an issue over a Will that the Plaintiffs drafted and had the Defendant, Sophie Torres, sign on or about April 24, 2009. Disregarding the circumstances under which this Will was created and ultimately executed, the claims against the Defendant, Debtmerica, LLC, simply cannot be sustained as pled.

A corporation or in this case a Limited Liability Company has no capacity to commit a tort. Tortious acts of its agents are not corporate acts. There is no reference within the Plaintiffs' Complaint that any of the Defendants were acting as an agent of Debtmerica, LLC. In fact, the Complaint attempts to establish the Defendant as its own legal person committing acts. There is no reference to the Defendant having any agent and thus the Defendant, Debtmerica, cannot be held responsible by itself. A corporation is liable for the torts of its agents done in its behalf or at the order of the stockholders or corporate management. See **Nims v. Mount Herman Boys School, 160 Mass. 177 (1893)**. There is no allegations that Debtmerica's agents committed any acts that the Defendant could be held responsible for and there is no allegation that any of the stockholders or corporate management instructed the Defendant to act in a certain way.

Further, a corporation is liable for torts of its agents acting within the scope of their authority in corporate business but is not liable for totally unauthorized acts or for the torts of

those agents committed at other times, simply because they are its agents or employees. There is no clear statement or understanding within the Complaint of how Debtmerica, LLC has committed the acts alleged. There is no reference to agents, times or how these acts were carried out.

The Defendant, Debtmerica, cannot by itself interfere with a contractual arrangement. Therefore, without more Count V must be dismissed.

Count VI alleges a deliberate interference by Debtmerica and under corporate law, Debtmerica cannot be held liable by itself without alleging an agent committed such an act.

Count VII does not reference a legal recognizable civil cause of action and therefore, the Plaintiffs cannot be allowed to go forward against Debtmerica under this Count.

Count VIII attempts to make the Defendant responsible for an act not committed by its agent or under a corporate order. Debtmerica is a Limited Liability Company and does not have the ability by itself to commit a conspiracy.

Count IX and X allege that Debtmerica made statements that both slandered and defamed the Plaintiffs. No statements have been referenced and the corporation alone cannot make such statements.

Lastly, Count XI alleges an intentional infliction of emotional distress which is again a specific count against an individual and attempts to portray the Defendant corporation as a person.

In sum, the allegations made against Debtmerica fail to state a cause of action for which relief can be granted. There is no reference that Debtmerica has any contacts with the Commonwealth of Massachusetts nor is there any statements regarding actions made by its agents or corporate board that rise to the counts set forth in the Plaintiffs' Complaint.

**CONCLUSION**

For the foregoing reasons, the Defendant, Debtmerica, LLC, requests that this Honorable Court dismiss all the Plaintiffs' counts against the Defendant.

Respectfully submitted,  
Debtmerica, LLC  
By their attorney



Jeremy M. Carter  
BBO #542118  
Wilkins and DeYoung  
270 Winter Street  
Hyannis, MA 02601  
(508) 771-4210

Dated: September 7, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Memorandum of Law has been sent via first class mail, postage prepaid this 9<sup>th</sup> day of September, 2011 to the Plaintiffs:

Jesse E. Torres, III  
562 Waquoit Highway  
East Falmouth, MA 02536

Jennifer J. Adams  
562 Waquoit Highway  
East Falmouth, MA 02536

  
Jeremy M. Carter, Esq.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT

\_\_\_\_\_  
JESSE E. TORRES III )

JENNIFER J. ADAMS )

Plaintiffs )

vs. )

SOPHIE J. TORRES )

JESSE E. TORRES IV )

DEBTMERICA, LLC. )

DONALD F. TORRES )

Defendants )  
\_\_\_\_\_

Civil Docket # BACV2011-00433

**PLAINTIFFS' RESPONSE AND OPPOSITION TO "DEFENDANT, DEBTAMERICA, LLC'S,  
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM"; REQUEST FOR HEARING**

The Plaintiffs, Jesse E. Torres III and Jennifer J. Adams, in the above-entitled matter, hereby oppose the Defendant Debtmerica LLC's Motion to Dismiss for Failure to State a Claim, dated September 7, 2011 with Certificate of Service Dated September 9, 2011, and requests a hearing on this matter.

**INTRODUCTION**

This motion is part of a trilogy of similar motions to dismiss brought by the Defendants' Counsel to delay answering the Plaintiffs' Production of Documents and Interrogatories served on the Defendants, that will clearly further support the Plaintiffs' claims.

A common theme expressed both in open Court and in the Pleadings by the Defendants' Counsel, is that the main part of this case was based on the Contract by and between the Defendant Sophie J. Torres and her son, the Plaintiff Jesse E. Torres III, dated April 24, 2009, and that these documents were signed under "*suspect circumstances*". These claims are continually made without benefit of any sworn affidavit by any of the Defendants or their Counsel, as is required by M.S.C.R. 9(A) a, 4. These statements can be taken in no other way than was their intention: to prejudice this

Honorable Court.

In order to bring forth the true facts and circumstances of the signing of said contract, the Plaintiffs requested that a sworn affidavit be written by the witnesses Drew and Gail Framson, in attendance at the time of its signing. Attached is their sworn, notarized Affidavit dated September 19, 2011, hereto marked as Exhibit "II". The Framsons were the long time neighbors and friends of the Defendant Sophie J. Torres and her late husband, Jesse E. Torres Jr. They were the witnesses for all of the documents in question signed by Mrs. Torres and were in attendance for several hours while the documents were explained in detail to Mrs. Torres. Additionally, they went with Mrs. Torres to the Notary Public to have their signatures notarized along with Mrs. Torres'. Mr. Framson is a retired Falmouth Police Officer who, along with his wife, states in part in said affidavit:

*"... The documents which we refer to, were Last Will and Testament of Sophie J. Torres, Health Care Proxy of Sophie Torres, and Transfer of Property Rights Document. Present were Sophie J. Torres, her son Jesse Jr. [III] Jennifer Adams and ourselves. We distinctly recall that Jesse Torres Jr [III] took painstaking and methodical care to slowly read each document word for word for Sophie Torres. Sophie Torres was continuously asked by Jesse Torres Jr. [III] if she understood what was being read aloud. We further recall that Sophie Torres was given a copy to read along with. This took place at Sophie Torres kitchen table, and she asked questions and was answered by her son. Sophie neither objected to anything presented to her, and was in fact, jovial, lucid and happy throughout.*

*... The Notary also signed and placed a seal on the documents. Again, Sophie Torres was in our opinion fully aware what she had signed, quite happy what she had done, and had complete understanding. There is no doubt in our minds that she did this freely."*

The Honorable Judge Christopher J. Muse was, in our opinion, on point when he stated during the hearing of First Amendment Issues in this action, words to the effect, *a Son, Grandmother, Grandson and Uncle, something doesn't sit right*. We pray that the Court will look beyond the inelegance of our Pro Se pleadings and see the true facts of this case, many clearly set forth in the numerous documents attached to this action. The Plaintiffs as Pro Se, are fully aware that the extent of the claims they are bringing forth, which include RICO claims, make the believing of the claims difficult. We, the Plaintiffs, lived through them and we can hardly believe them.

However, the facts contained in our pleadings and Complaint are true facts, and well

documented, while the claims of “*suspect circumstances*” continually stated by Counsel for the Defendants are clearly untrue. If given an opportunity to present the facts to this Court and complete our Discovery, our claims will be as undisputed as the occasion under which the aforementioned contract was signed. Further, the actions of the Defendants will be shown for what they were, indefensible, criminal and civil acts against the Plaintiffs that lead to the greatest loss of all to the Plaintiff Jesse E. Torres III. This loss was not his money or even the many years his life has most likely been shortened, but rather the loss of his sons to the allure of corruption surrounding the Defendant Donald F. Torres.

These motions brought by Counsel for the Defendants have been successful in delaying the discovery of the mailing address of the Defendant Donald F. Torres, so that he may continue to avoid being served. Further, we assert that the Counsel for the Defendant Sophie J. Torres is well aware that there is no defense available to avoid a Motion for Summary Judgment by the Plaintiffs against said Defendant (hereafter referred to as Mrs. Torres) and as such, said Motion for Summary Judgment will more likely than not, be allowed by this Honorable Court. Of specific note is that the Defendants' motions have been successful in delaying these proceedings, as this case and its discovery have been suspended until their motions are ruled on by this Court.

The Defendant Debtmerica's argument is based on assumptions and innuendos rather than facts. The Defendant, through Counsel, then attempts to loosely make fit case law to support these assumptions, yet the only case offered by the Defendant in support of their motion is *Nims v. Mount Herman Boys School*, 160 Mass. 177 (1893), a non-profit corporation and a ruling on non-related claims.

In support of this opposition, the Plaintiffs reallege and reassert paragraphs 1 through 134 of their Complaint, which are incorporated herein by reference and all attachments to said complaint as if specifically attached hereto.

## **I. ISSUES**

It is clearly demonstrable that Debtmerica, LLC (hereafter referred to as Debtmerica) is merely

an alter ego for its primary shareholder Defendant Jesse E. Torres IV (hereafter referred to as Jesse IV). In this case it is clear that the Court should ignore the legal protection provided a corporation and pierce the corporate veil. There is a history of questionable corporations used as thin veils to cover the actions of, and the assets of, the Defendant Jesse IV both here and overseas. Additionally, as discovery has been forestalled, it is impossible at this time to determine just how deep the co-mingling of funds is between the Defendants, including but not limited to, by and between Defendants Jesse IV and Debtmerica, and what expenses of Jesse IV have been paid by Debtmerica in this action. Before disavowing him, the Plaintiff Jesse E. Torres III (hereafter referred to as Jesse III) has had numerous discussions with his son, the Defendant Jesse IV, on moving the Defendant Jesse IV's, and his various corporation's, assets offshore, which include the assets of Defendant Debtmerica, (these discussions occurred specifically before settling the indictment with the Attorney Generals Office of the State of New York). Further, the Defendant Jesse IV did discuss with the Plaintiff Jesse III, the qualifications of the Plaintiff's partner of thirty (30) years, CPA, Jeffery S. Cooper. Further Plaintiff Jesse III specifically discussed with Defendant Jesse IV, Mr. Cooper's knowledge of the formation and administration of offshore corporations and financial accounts.

Debtmerica, simply put, is a front for the Defendant Jesse IV, and as such is also liable for the actions of its "agent", co-defendant, Jesse IV, as is clearly stated in the Plaintiffs' claims of "intermingled support" by Debtmerica's Founder, Managing Partner and Chief Executive Officer, the Defendant Jesse IV, who at all times had, and has full control of Debtmerica. The Defendant Jesse IV is not just an agent of Debtmerica, he *is* Debtmerica and as such Debtmerica should not be allowed by this Court to hide his assets and actions from the Plaintiffs.

## **II. CLOSED CORPORATE HISTORIES**

Debtmerica is a closely held corporation founded by the Defendant Jesse IV and his partner Harry H. Langenberg, of which all, or the vast majority of, stock is held by these same two individuals. Debtmerica is but one in a series of questionable business ventures and corporations founded by

these two parties, starting just days after September 11, 2001, with their "*Commemorative Coin Company*" founded to exploit the September 11 tragedy. It was soon forced to close down, as said corporation and said parties were sued individually and corporately by the New York Fire Department for copyright violations, as well as other questionable acts. The Plaintiff Jesse III did help "*bail out*" this corporation to help his son. Next was Lending Point Mortgage Corporation, formed to exploit the unqualified mortgage market, and funded in part as a simple "*Mortgage Company*" by the Plaintiff Jesse III. Lending Point, after becoming one of the country's largest brokers of sub-prime mortgages, was all but closed by what has become one of our Country's greatest financial disasters. Next, Debtmerica was formed to exploit the wreckage left by the sub-prime mortgage business and to ostensibly "*help*" the now debt-ridden mortgage-buyers who had been put into their predicament by companies like the above-mentioned Lending Point Mortgage Corporation. Of note is that Debtmerica recently settled their indictment with the New York Attorney Generals Office for the sum of one-hundred-seventy-five-thousand dollars (\$175,000) plus twenty-five-thousand-dollars (\$25,000) in costs to avoid criminal prosecution. The most recent addition to the growing list of corporations founded by the Defendant Jesse IV is Prime Advantage Funding Corporation, which is claimed to be an offshore funding corporation, apparently owned in its entirety by Defendant Jesse IV and is allegedly used to move personal and corporate assets offshore.

### **III. RICO CONSPIRACY COUNTS**

We assert that Counsel for the Defendant has made prejudicial statements in open Court, not pertaining to issues before the Court, in an attempt to make light of the RICO charges and death threats in the Complaint of this matter. He appears to want the Court to ignore the attached documentation from the Baja Mexico Attorney Generals office, including the equivalent of a warrant issued, as well as the prison sentences served by named family members, the California DEA investigation which included stake outs and surveillance, the California State Police investigation and the fact that one of the parties of the investigation put a gun to his head and committed suicide while

under investigation. All of the above is well documented, including the known associations with Hells Angles and the extortion attempts and death threats against the Plaintiffs that led to the loss of their five-hundred-thousand-dollar (\$500,000) home and the Heart Failure of the Plaintiff Jesse III, which will statistically shorten his life. This heart failure also caused him to incur an amount of eighty-thousand-dollars (80,000), more or less, in medical bills. With all this evidence before the Court, the Defendants, through Counsel, egregiously attempt to dismiss these facts as the ramblings of a Pro Se Plaintiff, and now again attempt to delay these proceedings with frivolous motions, as it appears to be the only tactic they have.

It is a fact that the Defendant Jesse IV and his Great Uncle, Defendant Donald F. Torres, do spend many days annually at the home of Defendant Donald F. Torres in Baja California North, Mexico. It is a fact that Defendants Donald F. Torres and Jesse IV have traveled to Vietnam and that Defendant Jesse IV visits former Eastern Block countries on a regular basis. It is a fact that the deceased, James Kimberly Torres, did serve drug related prison sentences in California. It is a fact that James Kimberly Torres did keep many illegal firearms including a fifty (50) caliber Desert Eagle Pistol, rifles, shot guns and automatic weapons at his former home in Descanso, California. It is a fact that Donald F. Torres keeps numerous illegal weapons in his home bedroom closet in Baja California, Mexico. It is a fact that Defendant Donald F. Torres was at all times present and was aware of, the extortion threats made by his son, which included death threats directed by him, against the Plaintiffs. It is a fact that Defendant Donald F. Torres "bragged" to Plaintiff Jesse III about how he was imprisoned in Mexico for passing counterfeit Pesos. It is a fact that the day after the Plaintiff Jesse III disavowed his son, the Defendant Jesse IV, that Mrs. Torres did breach her contract with Plaintiff Jesse III and put in motion the eviction of the Plaintiffs from the properties to whom the property rights had been permanently transferred. This was orchestrated directly by the Defendants Jesse IV and Donald F. Torres with the intermingled support of the Defendant Debtmerica.

#### **IV. HISTORY OF THE PARTIES**

There were numerous questions stated during the hearing of posting Court records on the Internet in this case by the Honorable Christopher J. Muse, that can certainly affect this motion and this case, and as such we will try to answer those questions herein.

The Plaintiffs were not always impoverished, nor forced to represent themselves Pro Se. They are now in this predicament due to the specific actions of the Defendants which are now at issue in this case.

The Plaintiff Jesse III is a Senior Computer Scientist of thirty-five (35) years whose last non-personal employment was at the Proximation Think Tank in that capacity. The Think Tank was funded by the eleventh (11<sup>th</sup>) employee of Microsoft, billionaire Greg Whiten. A main obligation of said Think Tank, was its responsibility for the development of the parallel processing languages and Operating System for what was the world's largest super computer, built for the United States Government at Los Alamos. This Super Computer was to be used in considerable part, to simulate nuclear explosions so that we no longer have to physically test them.

The Plaintiff Jennifer J. Adams has a Masters Degree in Mechanical Engineering and was employed by JPL/NASA as an engineer for the Deep Space Network, responsible for the design, manufacturing and installation of the three (3) seventy (70) meter antennas located in California, Australia and Spain. These antennas allow continuous radio communication with spacecraft used to bring us the images from deep space we now routinely see in the media.

On or about September 1999, Plaintiff Jesse III called his attorneys at Bingham and Dana and asked them to prepare a 505B offering memorandum to sell shares in a new technology he had developed. The entire offering was purchased before the 505B offering was even discussed, as numerous attorneys at Bingham Dana and the firm itself purchased all of the available stock with the exception of some stock that was withheld for the Plaintiff's Banker, Richard Weir, V.P. Of Rockland Trust.

Prior to the "dot com bust", it was nearly impossible to hire computer programmers in the

United States, as they were in such great demand. As the Plaintiff Jesse III had just finished a project utilizing approximately one-hundred-sixty (160) programmers in India, he formed a computer software corporation and started looking for available resources closer to home. Mexico appeared to have the answer with a large untapped staff of well-trained programmers in the same timezone as the United States. The Mexican Government provided tours and meetings with numerous Universities and Science Centers in Mexico, many of whom offered to teach the Plaintiff's new technology. After being the guest of the Mexican Government on and off for several months, the Plaintiff Jesse III did buy a home in the same "Campo" as his uncle, the Defendant Donald F. Torres, and did begin its remodeling in Baja California North, Mexico. This was before he realized the criminal nature of his family members and the extent of their illegal activities. It was also at the same time as the "dot com bust", which forced the closing of the newly formed computer software corporation.

When it became known that the Plaintiff Jesse III may be available for employment, he received a call from the above-mentioned Greg Whitten to help with his new company Proximity, LLC, in New Mexico. Mr. Whitten had hired many of the Physicists away from Los Alamos and was contractually obligated to assist with the implementation of the Operating System and Parallel Processing Languages for the above-mentioned Super Computer.

After a nearly year long obligation, the Plaintiff Jesse III did return to his home in Mexico to complete his life's work, a second generation of the Internet. It was at this time, while both the Plaintiffs were in Mexico, that the numerous extortion attempts accelerated, and threats on the lives of the Plaintiffs began. After being advised by California DEA officers that they could not protect the Plaintiffs in Mexico and that they should return to the United States, the Plaintiffs were forced to abandon their home in Mexico and move to the mountains of Southern California. These actions did cause the heart failure of Plaintiff Jesse III which almost guarantees that numerous years of his life have been lost.

## **V. EXCEPTIONS TO DEFENDANT'S "FACTS"**

The Defendant's Counsel has stated as fact statements that can only be viewed as “disturbing”. Is it because the Plaintiffs are Pro Se that the Defendant through Counsel expected to set forth as fact specific items from within the Complaint of this action that do not exist and were not plead by the Plaintiffs? How does one defend against arbitrary statements that have nothing to do with the facts now before this Court, and yet are somehow in the Defendant's pleadings as if they were stated by the Plaintiffs? For example, the Defendant through Counsel claims that Count VI alleges the same cause of action as Count V and then states that the Plaintiffs are now filing a criminal complaint therein. Upon review of these two counts, even a Pro Se litigant can see that they are completely different and there are no criminal charges made therein..

## **VI. UNDISPUTED FACTS**

Counsel for the Defendant Debtmerica argued in the section entitled FACTS of the Defendant's Memorandum, in paragraphs 1 through 7, that a fact at issue is the definition of the meaning of the “*Intermingled Support*” of Debtmerica. While this fact alone, argued by the Defendant's Counsel, is a basis to deny their motion, as it presents a disputed fact, the extent as to exactly how deep the involvement of Debtmerica was, is only obtainable through discovery and/or trial by the trier of fact. For example, Production of Documents and Interrogatories have been served on the Defendants Jesse IV and Debtmerica and should ascertain items such as, who is paying for the legal fees of this matter? Was the in-house Counsel of Debtmerica used to provide legal advice to any of the Defendants other than Debtmerica? Were Debtmerica's assets used for travel or communication with other Defendants? Who pays for the numerous trips to and from California to Baja California, Mexico? Who paid for trips to Vietnam and former Soviet Block countries? Who paid for the attorney to change the Will of Sophie J. Torres? Who pays the bill for the credit card used by the Defendant Sophie J. Torres? Are the assets of Defendants Jesse IV, Donald F. Torres and Debtmerica intermingled? Are these assets further intermingled with the other shell corporations of the Defendant such as Lending Point Mortgage Corp and/or Prime Advantage Funding Corp? Are there any other shell corporations? These are just a few of the questions that must be answered to ascertain the facts in this matter and

the extent to which Debtmerica is involved.

The Plaintiffs ask that the Court take notice that not one statement is made in the Defendant's Motion or supporting Memorandum that denies that support, financial or otherwise, was provided by Debtmerica or that denies that there was commingling of funds by Debtmerica with the other Defendants.

In the interest of judicial economy, the seven (7) paragraphs below are to include by reference, the above two paragraphs and the fact that each Count referenced did reassert and reallege paragraphs 1 – 134, 24 pages of single spaced defined bad acts from the Complaint of this action, including conspiracy and RICO charges against the Defendants and that only the trier of fact can determine which are substantive or supportive of the claims against all or specific Defendants. Further, it is clear that Defendant Debtmerica is a closed shell corporation which the Defendants use to hide their assets as well as use to pay their private expenditures and intermingle their personal funds and the funds of their other closed shell corporations and/or organizations.

1. Count V makes claim for Tortious Interference by Defendants Jesse IV, Donald F. Torres and with the intermingled support of Debtmerica. In Count V, it is clearly set forth that it was the intention of the Defendants to intentionally damage the Plaintiffs' contractual and business relationships. The actions of the Defendants was clearly set forth in the Plaintiffs' Complaint, including the bad acts of the agent of Debtmerica, Defendant Jesse IV.
2. Count VI makes claim for Deliberate Interference by Defendants Jesse IV, Donald F. Torres with the intermingled support of Debtmerica. While the actions of the Defendants certainly rise to a criminal level, no such criminal claim is made against them in the Plaintiffs' Pleadings in this Count as is claimed by Counsel of the Defendant Debtmerica. In Count VI, it is clearly set forth that the Defendants did Deliberately and Intentionally interfere with the contractual relations of the Plaintiffs, and this act has its roots in inducing breach of contract. The actions of the Defendants was clearly set forth in the Plaintiffs' Complaint, including the bad acts of the agent of Debtmerica, Defendant Jesse IV.

3. Count VII makes claim for Malicious Intent by Defendants Jesse IV, Donald F. Torres and with the intermingled support of Debtmerica. As is charged in Count IV, there was a clear intention to do injury to the Plaintiffs and malice was both expressed and implied. The actions of the Defendants was clearly set forth in the Plaintiffs' Complaint, including the bad acts of the agent of Debtmerica, Defendant Jesse IV.
4. Count VIII makes claim for Conspiracy to Commit Fraud by Defendants Jesse IV, Donald F. Torres, Sophie J. Torres and with the intermingled support of Debtmerica. As is charged in Count VIII, it is clearly set forth that the Defendants did conspire together, and did enter into an agreement in order to take away, by illegal acts, the benefits of a contract and did so for the purpose of inflicting harm on the Plaintiffs. The actions of the Defendants was clearly set forth in the Plaintiffs' Complaint, including the bad acts of the agent of Debtmerica, Defendant Jesse IV.
5. Count IX makes claim for Slander by Defendants Jesse IV, Donald F. Torres and with the intermingled support of Debtmerica. As is charged in Count IX, it is clearly set forth that the Defendants did slander the Plaintiffs by making numerous false statements which were intended to be, and were harmful to the reputation of the Plaintiffs. The actions of the Defendants was clearly set forth in the Plaintiffs' Complaint, including the bad acts of the agent of Debtmerica, Defendant Jesse IV.
6. Count X makes claim for Defamation of Character by Defendants Jesse IV, Donald F. Torres and with the intermingled support of Debtmerica. As is charged in Count X, the Defendants did make intentional false statements that harmed the Plaintiffs' reputation; decreased the respect, regard, and confidence in which the Plaintiffs were held; and did induce disparaging, hostile, or disagreeable opinions or feelings against the Plaintiffs. The actions of the Defendants were clearly set forth in the Plaintiffs' Complaint, including the bad acts of the agent of Debtmerica, Defendant Jesse IV.
7. Count X makes claim for Intentional Infliction of Emotional Distress by Defendants Jesse IV,

Donald F. Torres and with the intermingled support of Debtmerica. As is charged in Count X, it was the clear and premeditated intentions of the Defendants to inflict Emotional Distress. The actions of the Defendants was clearly set forth in the Plaintiffs' Complaint, including the bad acts of the agent of Debtmerica, Defendant Jesse IV.

## VII. STANDARDS FOR CONSIDERING A RULE 12(B)(6) MOTION TO DISMISS

The Defendant Debtmerica's Motion to Dismiss fails to meet the rigorous standards required by Rule 12(b)(6): "A court may grant the radical relief of dismissal only if the plaintiff can set forth no set of facts which would entitle [them] to relief." Coraccio, 415 Mass. at 147. It is well established that "[t]he rules of pleading in Massachusetts are generous. A cause may not be dismissed for failure to state a claim upon which relief could be granted 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Spence v. Boston Edison Company, 390 Mass. 604, 615 (1983) (citations omitted).

These "generous and indulgent criteria" reduce "a plaintiff's obstacle in surmounting a rule 12(b)(6) motion to dismiss for failure to state a claim to a minimal hurdle," and mean that a "plaintiff is to be given the benefit of any doubt . . . and must prevail over the motion unless it appears with certainty that he is entitled to no relief under any combination of facts that could be proved in support of his claims." Brum v. Town of Dartmouth, 44 Mass. App. Ct. 318, 321-22 (1998) (citations omitted, emphasis in original).

The sufficiency of the claims raised in the plaintiff's complaint is examined by accepting the allegations, and such reasonable inferences as may be drawn therefrom, as true. See Eyal v. Helen Broadcasting Corp., 411 Mass. 426 , 429 (1991)

Further, the Court may also look to materials outside of the pleadings to satisfy itself that it has subject matter jurisdiction without converting the motion for summary judgment. See Flynn v. Ohio Bldg. Restoration, Inc., 260 F. Supp. 2<sup>nd</sup> 156, 161 (D.D.C. 2003). (This paragraph hereafter referenced

as Ohio Bldg. Restoration, Inc.)

The Defendant Debtmerica has not come close to meeting this high burden.

### **VIII. ARGUMENT**

In support of this argument, the Plaintiffs reallege and reassert the section above entitled UNDISPUTED FACTS, which is incorporated herein by reference, as if specifically argued herein.

At this time, as is clearly set forth above, it is impossible to determine where Jesse IV ends and Debtmerica begins, and as such, their Motion to Dismiss should be denied as a matter of law as there are many facts in dispute that can only be determined by the trier-of-fact. Cites omitted.

The subject matter of the Complaint is much more than the Will of the Defendant Mrs. Torres dated April 24, 2009 as stated by the Defendant's Counsel in their ARGUMENT. The Defendant through Counsel continually attempts to disregard in their pleadings, and in open Court, the eleven (11) years of terror inflicted on the Plaintiffs by the Defendants, even though the Plaintiffs' pleadings contain numerous documents from various country's criminal agencies supporting their claims. It is clear that the Defendants, financed by the Millionaires, Defendants Jesse IV and Debtmerica, are willing to expend any amount of money to continue their well documented attack against the Plaintiffs. The Plaintiffs reallege that these attacks originate from the Defendant Donald F. Torres through, and with the monies and bad acts of, Defendants Jesse IV and Debtmerica.

The criminal actions that started eleven (11) years ago directly caused the loss of the Plaintiffs' five-hundred-thousand-dollar (\$500,000) home, the life-shortening heart failure of Plaintiff Jesse III and eighty-thousand dollars (\$80,000), more or less, of medical bills incurred directly from said heart failure. In this action now before the Court, the Defendants through Counsel now attempt to prohibit the Plaintiffs from receiving any of the monies owed them in the amount of over one-million-six-hundred-forty-thousand-dollars (\$1,640,000).

It is undisputed that Donald F. Torres and his Son, the late James Kimberly Torres, did conspire to extort funds from the Plaintiffs and that the equivalent of a Mexican warrant was issued for the

arrest of James Kimberly Torres. It is undisputed that James Kimberly Torres did put a gun to his head and take his own life while under investigation by the California State Police and DEA, arguably to avoid a third-strike conviction in California.

It is undisputed that on the strong recommendation of California DEA agents after investigating James Kimberly Torres and his association with Hells Angles, that the Plaintiffs did return to the United States where they could be protected. This forced the Plaintiffs to abandon their home in Baja California North, Mexico and move to the only home available to them in the mountains of Big Bear, California. It is argued that this move to high-altitude, caused solely by the bad acts of the Defendant Donald F. Torres and his deceased son, James Kimberly Torres, did cause the heart failure of Plaintiff Jesse III and the expected shorting of his life by many years as well as incurring eighty-thousand-dollars (\$80,000), more or less, in medical expenses.

It is undisputed that Mrs. Torres is now ninety (90) years old, and is also obvious in the pleadings and the Contract attached to her Will, that she was and is loved by her Son, Plaintiff Jesse III. It is also clear in the complaint that Mrs. Torres was not an angel when she was thirty-five (35), and while she is blessed with both a sound mind and body, she is not now an angel at ninety (90). It is clear in the pleadings and supporting documents, and is a fact that Mrs. Torres was responsible for illegally using the funds of her late husband's family trust for her own benefit, and did so without the consent of the other heirs. It is a fact that Mrs. Torres did ignore her late sister, Lillian R. Souza/Sousa's request to leave her property to the niece she had raised. Instead, through litigation in the Barnstable Probate Court where she was sued by approximately fifteen (15) of her family members, she was successful in obtaining the majority of the assets from her late sister's estate.

It is a fact that the day after Plaintiff Jesse III disavowed his son, after enduring eleven (11) years of terror, that Defendants Donald F. Torres, Jesse IV, Mrs. Torres and Debtmerica did conspire and make funds available the very next day to cheat Plaintiff Jesse III from the monies he is contractually entitled to, by breaching the contract between Mrs. Torres and her son, Plaintiff Jesse III.

The Plaintiffs intend to amend, with leave of Court, their complaint specific to the Defendant

Debtmerica, naming its agent as Jesse E. Torres IV and as such, the Defendant Debtmerica's motion cannot be considered at this time for dismissal. See Sherman v. Hallauer (1972, CAS Fla) 455 F2d 1236.

Debtmerica, simply put, is one of numerous suspect closed shell corporations used to hide the actions and assets of the Defendant Jesse IV. In the Defendant Debtmerica's motion and attached Memorandum, the Counsel for the Defendants presents upside down logic in that the corporation is primary, as if its two (2) known shareholders bring it to the status of a Public Corporation with no agent defined in the Plaintiffs' Complaint. The true fact is that the corporation, Debtmerica, is merely a shell being used to hide the suspect actions of the Defendant Jesse IV, and possibly other parties and other intermingled closed corporations and as such should not be afforded corporate protections and its corporate shield should be pierced. See Robert Evans vs. Multicon Construction Corporation & Others (1991) 30 Mass App. Ct. 728

There are numerous facts in dispute as stated above that will only be clarified during the discovery process or by the adjudication by the trier of fact. It is far too early during this case and its discovery to determine just how deeply there has been a commingling of, and usage of funds by and between the Defendants Jesse IV and Debtmerica, or the hiding of expenses within Debtmerica by Jesse IV and/or the other Defendants and/or the closed corporations named above. A Rule 12(b)(6) motion must be based only on an analysis of the facts in the complaint, facts from which the Court must draw all possible inferences favorable to the plaintiffs. See Coraccio, 415 Mass. At 147. Based only on a consideration of those facts and all favorable inferences to be drawn from them, the Plaintiffs have shown that the Defendant Debtmerica's Motion to Dismiss should be denied.

The Defendant Debtmerica through Counsel has made numerous references to the term "*intermingled support*" which we have set forth above. We assert that the Defendant Debtmerica through Counsel interprets this term differently than the Plaintiffs and as such is a fact whose meaning should be determined by the trier of fact. Therefore, the Defendant's Motion to Dismiss should be denied. See Coraccio Id.

The Defendant Debtmerica through Counsel has made numerous references to the fact that no agent of Debtmerica has been defined. The Plaintiffs argue that it is both clear and implied that Defendant Jesse IV is at minimum the acknowledged agent of Debtmerica, and further Jesse IV and his straw company, Debtmerica are a single entity where Debtmerica is used to hide the actions and assets of Jesse IV as well as the actions defined above. Even if we were to assume that the Defendant's arguments were correct, it is an easily corrected error to specifically name Jesse IV as the agent of Debtmerica if the Court deems it is required, and as such, should not be considered by the Court as a reason to dismiss the Plaintiffs' Complaint. See Sherman v. Hallauer Id.

Specific notices by the Plaintiffs, which include Production of Documents and Interrogatories, have been served on Defendants Debtmerica and Jesse IV, and will prove or deny many of their claims against the status of Debtmerica. These notices will prove or deny if Defendant Debtmerica is simply a straw corporation and whether or not it is being used to launder illegal funds known to be a source of income to the family of Defendant Donald F. Torres. Defendant Debtmerica should not be allowed to hide the assets of Defendants Jesse IV and Donald F. Torres or other individuals or corporations from the Plaintiffs. Additionally, Debtmerica and its assets should be liable for any and all claims against the Defendants Jesse IV and/or Donald F. Torres. See Coraccio Id.

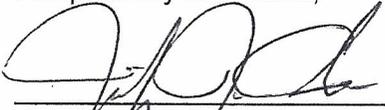
The Plaintiffs Complaint in Count VIII specifically contains a claim of conspiracy and as in all suits involving conspiracy, agreement is rarely out in the open, and proof of conscious complicity may depend upon the careful marshaling of circumstantial evidence and the opportunity to cross-examine hostile witnesses and therefore is not proper for a motion to dismiss, See Ferguson v. Omnimedia, Inc., 469 F.2d 194, 198 (1<sup>st</sup> Cir. 1972) and Hub Assoc. v. Goode, quoting Nat. Bank & Trust Co. of Chicago, 529 1257, 1261 (7<sup>th</sup> Cir. 1876).

## VIII. CONCLUSION

For all of the reasons stated above, this Court should deny the Defendant Debtmerica, LLC's Motion to Dismiss for Failure to State a Claim. Alternatively, if the Court is inclined to grant Defendant

Debtmerica, LLC's motion on the basis of failure to state a claim, the Plaintiffs then respectfully request leave to amend their claim to plead additional facts and more detailed allegations in support thereof.

Respectfully submitted,



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East Falmouth, MA 02536  
(617) 840-7880  
[jadams@jetiii.com](mailto:jadams@jetiii.com)

Respectfully submitted,



Jesse E. Torres III, Pro Se  
562 Waquoit Highway  
East Falmouth, MA 02536  
(617) 291-0862  
[jtorres@jetiii.com](mailto:jtorres@jetiii.com)

Dated September 20, 2011

**CERTIFICATE OF SERVICE**

I, Jesse E. Torres III, hereby certify that on September 20, 2011, I have served the Defendants Sophie J. Torres, Jesse E. Torres IV and Debtmerica, LLC, through their attorney of record, at his address on record with this Court, a true copy of this document by postage prepaid U.S. Mail.

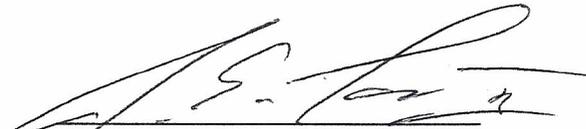
  
Jesse E. Torres III

EXHIBIT "II"

DREW M. FRAMSON  
GAIL L. FRAMSON  
64 FAIRFIELD STREET  
REHOBOTH, MA 02769

AFFIDAVIT

Under the Pains and Penalties of Perjury we do hereby state the following:

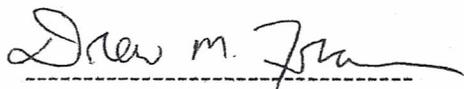
We are husband and wife, and formerly owned and resided at #5 Carriage Shop Road, Waquoit, MA 02536. We lived next to our next door neighbors Jesse and Sophie Torres for over 10 years. We consider the Torres Family to be good friends, and are also very good friends with Jesse Torres Jr. their son and his companion Jennifer Adams. Jesse Torres Sr. passed away in 2007, leaving his widow Sophie Torres living alone.

Upon Jesse Sr, passing away, The Torres's son Jesse Jr aka "Jet" and Jennifer Adams both moved from their Mexico home to live with Sophie Torres. Although elderly, Sophie Torres is extremely vibrant, active and of complete sound mind. This was especially true in April of 2009. On April 24, 2009, we were both asked to come next door, at 562 Waquoit Highway, Waquoit Ma, the Torres household, to witness several legal transactions between Jesse Torres Jr. and his mother Sophie.

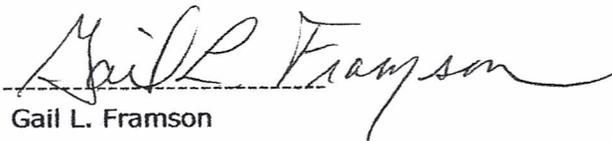
The documents which we refer to, were Last Will and Testament of Sophie Torres, Health Care Proxy of Sophie Torres, and Transfer of Property Rights Document. Present were Sophie Torres, her son Jesse Jr, Jennifer Adams and ourselves. We distinctly recall that Jesse Torres Jr. took painstaking and methodical care to slowly read each document word for word for Sophie Torres. Sophie Torres was continuously asked by Jesse Torres Jr. if she understood what was being read aloud. We further recall that Sophie Torres was given a copy to read along with. This took place at Sophie Torres kitchen table, and she asked questions and was answered by her son. Sophie neither objected to anything presented to her, and was in fact, jovial, lucid and happy throughout.

At the completion of Jesse Torres and Sophie Torres review of the paperwork, we recall all driving together to United Parcel Service Store (UPS) on East Falmouth Highway, Falmouth for Notary Service and signing of the documents. At the UPS Store, a Notary Public was on duty, and in addition to Jesse Torres Jr and Sophie Torres signing, we signed as witness to the transactions. The Notary also signed and placed a seal on the documents. Again, Sophie Torres was in our opinion fully aware what she had signed, quite happy what she had done, and had complete understanding. There is no doubt in our minds that she did this freely.

Signed Under The Pains and Penalties of Perjury, This 19th Day of September 2011



Drew M. Framson



Gail L. Framson

EXHIBIT "II"

*Kathleen E. Vieira*  
-----  
Notary

My Commission Expires:

*3/16/2012*

KATHLEEN E. VIEIRA  
NOTARY PUBLIC  
Commonwealth of Massachusetts  
My Commission Expires March 16, 2012

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT

\_\_\_\_\_)
   
 JESSE E. TORRES III )
   
 JENNIFER J. ADAMS )
   
 Plaintiffs )
   
 vs. )
   
 SOPHIE J. TORRES )
   
 JESSE E. TORRES IV )
   
 DEBTMERICA, LLC. )
   
 DONALD F. TORRES )
   
 Defendants )
   
 \_\_\_\_\_)

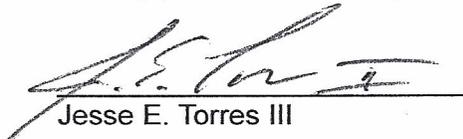
Civil Docket # BACV2011-00433

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS' RESPONSE AND OPPOSITION TO "DEFENDANT, DEBTAMERICA, LLC'S, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM"; REQUEST FOR HEARING**

**VERIFICATION ATTESTATIONS**

**Plaintiff** Jesse E. Torres III:

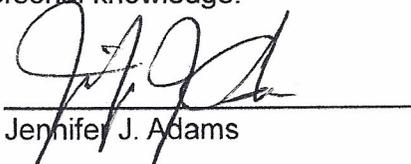
I Jesse E. Torres III of Barnstable County, Massachusetts did personally prepare the "Plaintiffs' Response and Opposition to Defendant Debtmerica's Motion to Dismiss for Failure to State a Claim; Request for Hearing" and I do herein swear, under the pains and penalties of perjury, that the facts contained therein, are true to the best of my personal knowledge.

  
 \_\_\_\_\_  
 Jesse E. Torres III

9/20/2011  
 \_\_\_\_\_  
 Date

**Plaintiff** Jennifer J. Adams:

I Jennifer J. Adams of Barnstable County, Massachusetts did review "Plaintiffs' Response and Opposition to Defendant Debtmerica's Motion to Dismiss for Failure to State a Claim; Request for Hearing" and I do herein swear, under the pains and penalties of perjury, that the facts contained therein, are true to the best of my personal knowledge.

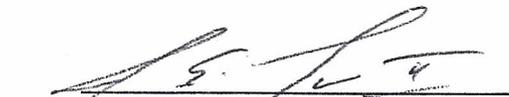
  
 \_\_\_\_\_  
 Jennifer J. Adams

SEPT. 20, 2011  
 \_\_\_\_\_  
 Date

Dated: September 20, 2011

**CERTIFICATE OF SERVICE**

I, Jesse E. Torres III, hereby certify that on September 20, 2011, I have served the Defendants Sophie J. Torres, Jesse E. Torres IV and Debtmerica, LLC, through her attorney of record at his address on record with this Court, a true copy of this document by postage prepaid U.S. Mail.

  
\_\_\_\_\_  
Jesse E. Torres III



PITNEY BOWES  
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MAILED FROM ZIP CODE 02601



WILKINS AND DEYOUNG  
ATTORNEYS AT LAW  
270 WINTER STREET  
HYANNIS, MASSACHUSETTS 02601

TO: Jesse Torres III  
Jennifer Adams  
562 Wagonit Highway  
East Falmouth, Ma 02536

REC'D 10/19/2011

