STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: May 15, 2014)

SEAN POPE, FRANK MANFREDI and EMMY KMET, on behalf of themselves and all persons similarly situated,	:	
Plaintiffs,	:	
v.	:	**C.A. No. PB 13-3634**
CITY OF PROVIDENCE, by and through its Treasurer, JAMES J. LOMBARDI, III; HOUSING AUTHORITY OF THE CITY OF PROVIDENCE, PAUL A. TAVARES, Individually and in his Official Capacity as Executive Director, STEPHEN J. O'ROURKE, Individually and in his Official Capacity as Executive Director, HOUSING AUTHORITY OF THE CITY OF PROVIDENCE BOARD OF COMMISSIONERS, NICHOLAS RETSINAS, Individually and in his Official Capacity as Chairman of the Board of Commissioners, THOMAS RYAN, NICHOLAS NARDUCCI, JOHN IGLIOZZI, KEVIN JACKSON, ROBERTO PATINO, GILBERTA TAYLOR, DOLORES CASCELLA, DOROTHY WATERS, HILLARY SILVER and ROGER GIRAUD, Individually and in their Official Capacities as Members of the Board of Commissioners for the Housing Authority of the City of Providence and MUTUAL OF AMERICA LIFE INSURANCE COMPANY,	:	
Defendants.	:	

DECISION

SILVERSTEIN, J. Before the Court is Defendant Mutual of America Life Insurance Company's (MOA) Motion to Dismiss Complaint pursuant to Super. R. Civ. P. 12(b)(6). MOA requests that the Court dismiss the Corrected Amended Class Complaint for Declaratory Judgment and Other Relief (Complaint) as against MOA for failure to state a claim. Plaintiffs[1] object to the Motion to Dismiss Complaint, arguing that the Complaint properly states a claim against MOA.[2]

I

Facts & Travel

Plaintiffs were all employees of the Housing Authority of the City of Providence (PHA).[3] Plaintiffs were paid wages and other compensation by the PHA on a weekly basis. Deducted from Plaintiffs' total compensation were contributions required to be made to Plaintiffs' retirement savings accounts. Additionally, PHA made employer contributions to the retirement accounts, which contributions were considered part of the Plaintiffs' total compensation. PHA was to remit these contributions to MOA, which in turn was to deposit the contributions into the Plaintiffs' respective retirement accounts established by the MOA Defined Contribution Pension

[1] Plaintiffs are Sean Pope (Pope), Frank Manfredi (Manfredi), and Emmy Kmet (Kmet). Pope, Manfredi, and Kmet brought this suit as a class action, on behalf of themselves and others similarly situated.

[2] Alternatively, Plaintiffs ask that the Court treat this as a summary judgment motion, as they allege that MOA relies on facts and documents outside the Complaint. If the Court were to convert the motion to a summary judgment motion, then the Plaintiffs would seek the opportunity to conduct discovery pursuant to Super. R. Civ. P. 56(f). The Court declines Plaintiffs' invitation to treat this as a summary judgment motion and, thus, will confine its analysis to the facts alleged in the Complaint.

[3] Plaintiffs Manfredi and Kmet were both still employed by PHA as of the commencement of this suit.

Plan (the Plan). Plaintiffs and all PHA employees were required to participate in the Plan as a condition of employment.

Additionally, the Plan provided that Plaintiffs could borrow funds from MOA. To obtain a loan, Plaintiffs were required to obtain a loan application from MOA. Subsequently, MOA was responsible for processing, approving and servicing the loan requests. The Plan dictates that the employees' retirement savings accounts were security for any loan. Repayment of the loan was to occur by PHA deducting substantially equal installments from employees' weekly compensation and then remitting said deduction to MOA to apply to the outstanding loan balance. According to the Plan, loans bore a rate of interest and were subject to fees and charges as determined by and payable to MOA. Additionally, the outstanding balance of the loan was secured by placing a hold on an equivalent amount in employees' retirement savings account.

Plaintiffs became aware that PHA was not timely transmitting the funds withheld from Plaintiffs' compensation to MOA, in order for MOA to deposit the funds into Plaintiffs' accounts. Sometime in January 2013, Plaintiffs informed both PHA and MOA of their concerns that the funds were not being forwarded promptly.

As a result of the failure to timely remit funds to MOA, Plaintiffs have filed a putative class action Complaint on behalf of themselves and similarly situated employees. The Complaint alleges/seeks a Declaratory Judgment (Count I), Violation of Rhode Island Minimum Wage Act (RIMWA) G.L. 1956 § 28-12-1, et seq. (Count II), Violation of RIMWA § 28-14-1, et seq. (Count III), Violation of Civil Recovery for Crimes and Offenses G.L. 1956 § 9-1-2 (Count IV), Conversion (Count V), Breach of Fiduciary Duty (Count VI), Breach of Covenant of Good Faith and Fair Dealing (Count VII), Breach of Contract (Count VIII), and Unjust Enrichment

(Count IX).[4] One of the originally named Defendants, City of Providence, by and through its Treasurer, James J. Lombardi, III, has been dismissed by agreement as to all claims against it. MOA now seeks dismissal of all claims made against it.

II

Standard of Review

"The sole function of a motion to dismiss pursuant to Rule 12(b)(6) is to test the sufficiency of the complaint." McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005) (quoting Rhode Island Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)) (internal quotations omitted). In determining whether to grant a Rule 12(b)(6) motion to dismiss, this Court "'assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs.'" Giuliano v. Pastina, 793 A.2d 1035, 1036 (R.I. 2002) (quoting Martin v. Howard, 784 A.2d 291, 297-98 (R.I. 2001)). However, "[a]llegations that are more in the nature of legal conclusions rather than factual assertions are not necessarily assumed to be true." Doe v. E. Greenwich Sch. Dep't, 899 A.2d 1258, 1262 n.2 (R.I. 2006). Furthermore, "[a] motion to dismiss a complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) should be granted only when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief under any set of facts that could be proven in support of the claim." Siena v. Microsoft Corp., 796 A.2d 461, 463 (R.I. 2002) (citing Bruno v. Criterion Holdings, Inc., 736 A.2d 99, 99 (R.I. 1999)).

The United States Supreme Court has adopted the view that a complaint must allege facts that "raise a right to relief above the speculative level[.]" Bell Atl. Corp. v. Twombly, 550 U.S.

[4] All counts are presumably alleged against all Defendants, as the Complaint uses the general term "Defendants" but never defines the "Defendants" in the Complaint. Count II does specifically identify certain defendants, but later in the count returns to the general usage of the term "Defendants."

544, 555 (2007). Under this federal standard, a plaintiff's factual allegations contained in a complaint must be specific enough to cross "the line from conceivable to plausible[.]" Id. at 570. For a motion to dismiss under federal procedure, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

Alternatively, our Supreme Court has found that "it is clear that the new Federal standard cannot be blended with the traditional Rhode Island standard." Chhun v. Mortg. Elec. Registration Sys., Inc., 84 A.3d 419, 422 n.5 (R.I. 2014). Instead, our Supreme Court left "the Twombly and Iqbal conundrum for another day." Id. at 423. Without further guidance, this Court will continue to ascribe to the traditional Rhode Island standard articulated above.

III

Discussion

A

Fiduciary Duty

Plaintiffs allege that MOA owed them a fiduciary duty to ensure the fair and proper administration of the Plan. Among Plaintiffs' allegations are that MOA should have ensured that timely retirement contributions and loan repayments were sent to MOA by PHA. Plaintiffs argue that MOA performed more than mere ministerial acts, including having discretionary authority, servicing the Plan, receiving contributions from PHA, maintaining individual accounts, and reviewing loan requests. Plaintiffs assert that these functions made MOA a fiduciary of Plaintiffs. In turn, Plaintiffs seek to hold MOA liable for breach of the alleged fiduciary duty under both the Declaratory Judgment count (Count I) and the Breach of Fiduciary Duty count (Count VI).

MOA responds to Plaintiffs' allegation by denying that any fiduciary relationship existed between MOA and Plaintiffs. MOA, recognizing that it must accept the allegations made by Plaintiff as true, argues that Plaintiffs have failed to properly assert facts which offer a basis to conclude that MOA is a fiduciary of Plaintiffs; but rather, Plaintiffs rely on "bare assertions" that amount to simple "legal conclusions."

"The elements of a claim for breach of fiduciary duty are '(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach.'" Dauray v. Mee, Nos. PB 10-1195, PB 11-2640, PB 11-2757, 2012 WL 4043292, at *36 (R.I. Super. Sept. 7, 2012) (quoting Chain Store Maint., Inc. v. Nat'l Glass & Gate Serv., Inc., No. PB 01-3522, 2004 WL 877599, at *13 (R.I. Super. Apr. 21, 2004)); 37 Am. Jur. 2d Fraud & Deceit § 31 (2010) (stating that the elements of a breach of fiduciary duty claim are "(1) the existence of a fiduciary relationship; (2) a breach of the duty owed by the fiduciary to the beneficiary; and (3) harm to the beneficiary").

"A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." See Restatement (Second) Torts § 874. Additionally, "'[a] 'fiduciary relation' arises whenever confidence is reposed on one side, and domination and influence result on the other'" or "'when there is a reposing of faith, confidence and trust, and the placing of reliance by one upon the judgment and advice of the other.'" Lyons v. Midwest Glazing, 265 F. Supp. 2d 1061, 1076 (N.D. Iowa 2003) (quoting Econ. Roofing & Insulating Co. v. Zumaris, 538 N.W.2d 641, 647-48 (Iowa 1995)). Fiduciary relationships can arise in a variety of situations, "including between lawyers and clients, guardians and wards, principals and agents, . . . corporate directors and officers [and] the corporation they serve . . . [and] to the extent that he or she acts as an agent for

an employer, an employee owes a fiduciary duty with respect to the subject of the agency relationship." Chain Store Maint., Inc., 2004 WL 877599, at *13 (internal citations and quotations omitted).

Viewing the Complaint in the light most favorable to Plaintiffs, the Court cannot conceive of any set of facts under which the Plaintiffs would be able to establish a fiduciary relationship between MOA and Plaintiffs. MOA cannot be considered a fiduciary of Plaintiffs for its role in the loan transactions. Taking what Plaintiffs allege as true—that MOA was responsible for granting or denying loan requests (Compl. ¶ 66), that MOA acted as the service provider and administrator of the loan program (Compl. ¶ 58), and that MOA charged fees as the service provider (Compl. ¶ 75)—still does not amount to anything more than a traditional lender and creditor situation. See Fraioli v. Lemcke, 328 F. Supp. 2d 250, 267 (D.R.I. 2004) ("[T]he existence of a fiduciary relationship is limited to the unusual case where the relationship [between the parties] goes far beyond that found in an ordinary business transaction."); see also Sovereign Bank v. Fowlkes, No. PB 08-4330, 2010 WL 331965, at *20 (R.I. Super. Jan. 25, 2010) ("[T]he First Circuit has previously noted that courts are split on whether a fiduciary relationship may exist between a bank and a borrower, no state or federal court in Rhode Island appears to have found such a relationship to exist.") (citing R.I. Hosp. Trust Nat'l Bank v. Bogosian (In re Belmont Realty Corp.), 11 F.3d 1092, 1101 (1st Cir. 1993)).

Likewise, Plaintiffs cannot establish the existence of a fiduciary relationship with MOA for MOA's role with the retirement savings accounts. MOA cannot be considered a fiduciary of Plaintiffs for receiving contributions and maintaining and servicing individual accounts (Compl. ¶ 66.) MOA is simply acting as a depository for funds sent to it by PHA to be held for Plaintiffs. See O'Toole v. Arlington Trust Co., 681 F.2d 94, 96 (1st Cir. 1982) (finding that bank's role as

depository of funds does not create a fiduciary relationship under ERISA). While Plaintiffs allege that MOA has discretionary authority over plan management (Compl. ¶ 66),[5] they do not set forth any factual circumstances to support this threadbare allegation, and it is more in the nature of a legal conclusion, to which the Court may not properly defer. See E. Greenwich Sch. Dep't, 899 A.2d at 1262 n.2.

Furthermore, simply because MOA is an insurer does not mean that it is automatically a fiduciary. While Plaintiffs would have the Court be guided by Skaling v. Aetna Ins. Co., 799 A.2d 997, 1012 (R.I. 2002), which found that "an insurance company has a fiduciary obligation to act in the best interests of its insured[,]" reliance thereon would be taking the Skaling decision out of context. In Skaling, the Court was dealing with an insurance company's refusal to pay its insured underinsured motorist benefits for injuries caused by a fall from a bridge in an attempt to rescue a car passenger. The factual distinctions between Skaling and the case at hand are stark. Initially, MOA's insured is PHA, whereas Plaintiffs, at best, might be considered beneficiaries of that relationship. Yet, in Skaling, the insured brought a direct action against his insurance company. Also, MOA has an annuity contract with PHA, whereas the agreement in Skaling was a policy for liability insurance. The distinctions show why the First Circuit stated that "fiduciary status is not an all or nothing proposition[.]" Beddall, 137 F.3d at 18. To take the language of Skaling and blindly apply it to all situations where an insurance company was involved would be

[5] While Plaintiffs assert that PHA was the Plan Administrator (Compl. ¶ 40), they seem to try to equate MOA's role in administration of the plan with the role of Plan Administrator. However, the Complaint never alleges that MOA is the Plan Administrator; rather, it alleges that MOA was the service provider and administered the Plan. The distinction between these classifications is great. As MOA recognizes, "[t]he plan administrator remains the plan fiduciary at all times." (MOA Mem. 11.) However, performing administrative tasks associated with servicing the Plan does not transform MOA into a fiduciary. See Beddall v. State St. Bank and Trust Co., 137 F.3d 12, 20 (1st Cir. 1998) ("Without more, mechanical administrative responsibilities (such as retaining the assets and keeping a record of their value) are insufficient to ground a claim of fiduciary status.").

shortsighted. See Heritage Healthcare Servs., Inc. v. Beacon Mut. Ins. Co., No. PB 02-7016, 2004 WL 253547, at *5 (Jan. 21, 2004) ("[T]he insurance company does not owe a fiduciary duty requiring it to act with the utmost good faith where the insured is disputing the treatment of the insured's claim to the company. However, when dealing with claims involving policyholders who are acting in their capacity as owners, courts generally treat policyholders as being entitled to the same fiduciary duty as owed to stockholders."). MOA does not owe Plaintiffs a fiduciary duty for its role with the Plan, and therefore, Counts I (Declaratory Judgment) and VI (Breach of Fiduciary Duty) are dismissed as against MOA.

B

Contract Related Claims

Plaintiffs assert that MOA breached a contract with Plaintiffs, as well as a duty of good faith and fair dealing that accompanied any such contract. Plaintiffs assert that these breaches caused them to sustain damages. MOA argues that Plaintiffs have failed to identify what contract, if any, MOA has allegedly violated. MOA additionally asserts that a breach of the duty of good faith and fair dealing requires a contract to which the covenant applies, and, accordingly, the claim is merely an extension of the claim for a breach of contract. Further, MOA claims that if the contract that Plaintiffs assert was breached was a contract between MOA and PHA, then Plaintiffs would need to assert how they are third-party beneficiaries. In the alternative, if the claimed contract is one between MOA and Plaintiffs, then the Plaintiffs need to identify how MOA breached the contract. Plaintiffs respond that they "have brought their claims on information and belief and should be entitled to conduct discovery into the language of the various contracts between them and MOA and/or the PHA and MOA." (Pls.' Mem. 7.)

A plaintiff claiming breach of contract must prove that "(1) an agreement existed between the parties, (2) the defendant breached the agreement, and (3) the breach caused (4) damages to the plaintiff." Barkan v. Dunkin' Donuts, Inc., 627 F.3d 34, 39 (1st Cir. 2010) (citing Petrarca v. Fid. & Cas. Ins. Co., 884 A.2d 406, 410 (R.I. 2005)). Here, Plaintiffs have broadly asserted that Defendants breached a contract with Plaintiffs and breached the implied covenant of good faith and fair dealing underlying a contractual agreement. Plaintiffs did not identify any contract that they purport to claim was breached by MOA. Rather, they seek to avoid dismissal and conduct discovery to determine if there is any such contract.

In F. Saia Rests., LLC v. Pat's Italian Food to Go, Inc., No. PB-12-1294, 2012 WL 2133511 (R.I. Super. June 6, 2012), this Court dismissed a breach of contract claim against certain defendants. There, the complaint alleged that all defendants breached a contract that was specifically identified. However, the agreement was attached to the complaint as an exhibit, and only certain of the defendants were parties to the agreement. Thus, the Court dismissed the breach of contract claim against the defendants that were not a party to the contract, finding that there was "no indication [certain defendants] were parties to either of those agreements." Id. at *6.

While the plaintiffs in Saia Rests. actually identified an agreement which they alleged was breached, Plaintiffs here have failed to identify any such agreement or whether MOA was a party to such an agreement. To succeed on a breach of contract claim, there must be an agreement which the defendant breached. See Barkan, 627 F.3d at 39. Therefore, this Court finds that Plaintiffs have not pled a claim upon which relief can be granted because it has failed to identify a crucial element of a breach of contract claim; the very existence of the breached contract. See Palazzo v. Alves, 944 A.2d 144, 155 n.17 (R.I. 2008) ("This conclusory and non-

specific allegation, however, does not even come close to alleging facts which would satisfy the criteria for a[] . . . claim."). Accordingly, Counts VII (Breach of the Covenant of Good Faith and Fair Dealing) and VIII (Breach of Contract) are dismissed.[6]

C

RIMWA Claims

Plaintiffs seek redress for violation of the RIMWA, specifically §§ 28-12-1, et seq. and 28-14-1, et seq. Plaintiffs allege that certain Defendants violated the RIMWA by failing to pay Plaintiffs all wages due to them. MOA argues that it cannot be liable under the RIMWA because they are not the Plaintiffs' employer, and therefore, the RIMWA does not apply to them.

While a private right of action exists pursuant to § 28-14-19.2, it is clear from subsection (d) of that section that "[a]n employer's responsibility and liability hereunder is solely to the employer's own employees." Sec. 28-14-19.2(d). Furthermore, § 28-14-3.1 deals with the failure to timely remit payroll deductions to third parties. Specifically, the statute provides that "[a]ny employer who violates the provisions of this section shall be liable to an employee in a civil action brought by the employee for any loss sustained by the employee as a result of a violation." Sec. 28-14-3.1(b). Therefore, MOA can only be liable to Plaintiffs under the RIMWA if MOA is the employer of Plaintiffs. However, the Complaint specifically identifies Plaintiffs as employees of PHA. (Compl. ¶¶ 2, 3, 4.) Plaintiffs do not allege that they are employees of MOA, and thus, Counts II (Violation of § 28-12) and III (Violation of § 28-14) are dismissed as against MOA.

[6] The Court finds it highly advisable—should the Plaintiffs want to replead their allegations against MOA—that they obtain and review copies of the alleged agreements and contracts before repleading. While this is especially pertinent to the breach of contract claims, it is as important to other claims as the contracts presumably give guidance to the roles that the parties were to assume with respect to one another.

D

Conversion and Unjust Enrichment

Plaintiffs seek to hold MOA liable for both conversion and unjust enrichment for the failure of PHA to timely remit payment of the funds deducted from Plaintiffs' compensation to MOA. Plaintiffs argue that the funds were converted because MOA wrongfully exercised control over the funds. Plaintiffs also allege that MOA was unjustly enriched because it benefited financially at the expense of the Plaintiffs. MOA rebuts Plaintiffs' allegations by arguing that Plaintiffs seek redress for the conduct of PHA that occurred prior to MOA's involvement. MOA suggests that these allegations are over-encompassing and that it cannot be liable under either theory.

Once a plaintiff establishes that he or she is entitled to possession of the personalty, then "the gravamen of an action for conversion lies in the defendant's taking the plaintiff's personalty without consent and exercising dominion over it inconsistent with the plaintiff's right to possession." Fuscellaro v. Indus. Nat'l Corp., 117 R.I. 558, 560, 368 A.2d 1227, 1230 (1977). Additionally, to recover for unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances "that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof." Bouchard v. Price, 694 A.2d 670, 673 (R.I. 1997).

Both causes of action require that the wrongdoer wrongly be in receipt of the personalty or benefit, whether it be by the wrongful exercise of control or the inequitable nature of allowing the wrongdoer to continue possession. See Bouchard, 694 A.2d at 673; Fuscellaro, 117 R.I. at 560, 368 A.2d at 1230. Here, MOA accepts the remittance of deducted funds from PHA and

applies the funds to Plaintiffs' respective accounts. The alleged wrongful conduct—PHA failing to remit payment in a timely manner—occurs before MOA ever becomes present. Therefore, MOA can never wrongly be in receipt of the funds or obtain a benefit from funds that it does not yet have. Accordingly, Counts V (Conversion) and IX (Unjust Enrichment) are dismissed as to MOA.

E

Civil Recovery for Crimes

Plaintiffs assert that MOA is liable under the civil liability for crimes and offenses provision of the Rhode Island General Laws. See § 9-1-2 ("Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender, and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made[.]"). Plaintiffs argue that MOA's actions "constitute violations of the criminal laws of the State of Rhode Island including R.I.G.L. § 28-12-1 *et seq.* [RIMWA] and 28-14-1 *et seq.* [Payment of Wages]." (Compl. ¶ 102.) MOA argues that Plaintiffs have failed to properly identify the criminality of which they accuse MOA of conducting.

Section 9-1-2 is the "enabling act giving a person injured as a result of a crime or offense a right of action where none existed at common law." Lyons v. Town of Scituate, 554 A.2d 1034, 1036 (R.I. 1989). Pursuant to § 9-1-2, a plaintiff can bring a cause of action even if no criminal complaint for the crime has been filed. See id. at 1036. "The purpose of § 9-1-2 is to provide an injured party civil remedies regardless of whether the defendant has been convicted of the underlying offense." Cady v. IMC Mortg. Co., 862 A.2d 202, 215 (R.I. 2004).

Plaintiffs specifically identify §§ 28-12-1, et seq. and 28-14-1, et seq. in the Complaint as the basis for the § 9-1-2 claim. Violations of these sections could be sufficient to find one civilly liable. See Mello v. DaLomba, 798 A.2d 405, 412 (R.I. 2002) (finding possibility of § 9-1-2 liability for potential violation of § 28-14-2). However, as established supra, Part III. C, MOA cannot violate either of these sections because it is not the employer of Plaintiffs. While the Complaint identifies both of these sections as two examples of alleged violations of criminal laws, it does not cite any other criminal violations by MOA. MOA cannot be expected to surmise what other criminal laws Plaintiffs believes it has violated. See Dellefratte v. Estate of Dellefratte, 941 A.2d 797, 798 (R.I. 2007) ("A viable complaint must give the opposing party fair and adequate notice of the type of claim being asserted, even if it does not plead the ultimate facts or precise legal theory upon which the claim is based.") (internal quotations omitted). Therefore, Count IV (Violation of § 9-1-2) is dismissed as against MOA.

IV

Conclusion

Based on the foregoing analysis, this Court grants MOA's Motion to Dismiss Complaint as to all counts. Counsel for MOA may present an order consistent herewith.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Pope v. City of Providence, et al.**
CASE NO:	**PB 13-3634**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**May 15, 2014**
JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
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