

QUAN-EN YANG, et.al.

* IN THE

Plaintiffs

* CIRCUIT COURT

v.

* FOR

G&C GULF, INC., et.al.

* MONTGOMERY COUNTY

Defendants

* CASE NO: 403885 V

* * * * *

**OBJECTION TO JOINDER
AND MOTION TO DISMISS**

VetCor of Wheaton LLC, (“VetCor”), a class defendant, by its attorneys, Stephen P. Kauffman, Terry L. Goddard, Jr., and Skeen & Kauffman, LLP, files this Objection to being Joined in this action, and Motion to Dismiss, pursuant to this Court’s Order dated February 6, 2018, because, as explained herein, VetCor had no legally cognizable connection to the tows out of which its alleged liability arises, and in support of this Objection to Joinder and Motion to Dismiss, states as follows:

1. According to a towing database compiled in connection with this action (the “Towing Database”), VetCor’s putative liability is alleged to have arisen as the result of two (2) tows (the “Putative Tows”) from a parking lot (the “Parking Lot”) located at 2130 University Blvd in Wheaton (the “Premises”).

2. The Putative Tows took place on **January 27, 2014**, and **August 7, 2014**. *See* relevant excerpt from the Database attached and incorporated as **Exhibit 1**.

3. On the dates of those Tows, that Lot was a part of the Premises that Smith-Chester, Inc., d.b.a. Kindness Animal Hospital (“Smith-Chester”) was leasing from 2130 Associates, Inc. (the “Landlord”). *See* ¶4, Affidavit of Peter R. DeFeo, VetCor’s Chief Development Officer and General Counsel, attached as **Exhibit 2**. (hereafter the “DeFeo Affidavit”)

4. In fact, the Database identifies the responsible party as Kindness Animal Hospital, which was, as noted, the name under which Smith-Chester was doing business as of the dates of the Tows. *See* ¶5, the DeFeo Affidavit.

5. On the dates of the Tows, VetCor did not occupy or manage the Premises, and had no interest in Smith-Chester, the Landlord, or G&C Towing, Inc. (the “Tow Company”), the company that performed the Tows. *See* ¶ 6 of the DeFeo Affidavit.

6. On **December 9, 2014**, more than **four (4) months after the last Tow attributed to VetCor occurred**, VetCor acquired the assets of Smith-Chester in an asset purchase. *See* ¶7 of the DeFeo Affidavit.

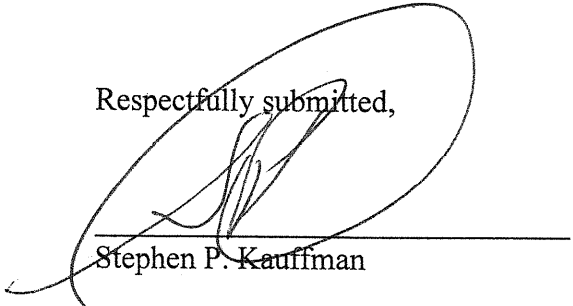
7. VetCor and Smith-Chester expressly agreed that **VetCor was not assuming Smith-Chester’s liabilities**. *See* ¶8 of the DeFeo Affidavit.

8. VetCor did acquire the Kindness Animal Hospital tradename on December 9, 2014 as part of the asset purchase, and registered the tradename with the SDAT on March 16, 2015. *See* ¶9 of the DeFeo Affidavit.

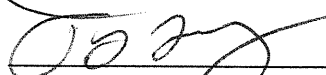
9. VetCor filed an opt-out letter on December 14, 2017, a copy of which is attached and labeled **Exhibit 3**.

For these reasons, VetCor respectfully submits that it has no potential liability for the Tows that are attributed to it, or any other tows that are the subject of this action, and should be dismissed as a class defendant.

Respectfully submitted,



Stephen P. Kauffman



Terry L. Goddard, Jr.
Skeen & Kauffman, LLP
911 N. Charles Street
Baltimore, MD 21201
(410) 625-2228

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 15th, 2018, copies of the foregoing document were sent via first class mail to the following:

Richard S. Gordon, Esquire
Benjamin H. Carney , Esquire
Ashley A. Wetzel, Esquire
Gordon Wolf & Carney Chtd.
100 West Pennsylvania Avenue, Suite 100
Towson, Maryland 21204

Deborah B Baum, Esquire
Clare Cavaliero Pincoski, Esquire
Pillsbury, Winthrop, Shaw, Pittman LLP
1200 Seventeenth Street, NW
Washington DC 20036-3006

Equity Residential
Two North Riverside Plaza 400
Chicago Illinois 60606

Arnold Polinger, Esquire
5530 Wisconsin Avenue, Suite 1000
Chevy Chase Maryland 20815

John F. McCabe, Jr., Esquire
Rees Broome, P.C.
7101 Wisconsin Avenue, Suite 1201
Bethesda Maryland 20814

Michael T Hamilton, Esquire
Marks, O'Neill, O'Brien & Courtney
600 Baltimore Avenue, #305
Towson, Maryland 21204

Philip R. Murray, Esquire
702 Russell Avenue, Suite 310
Gaithersburg, Maryland 20877

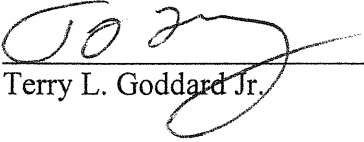
Tuckerman Station Condominium
8701 Georgia Avenue, Suite 300
Silver Spring, Maryland 20910

Amy Leete Leone, Esquire
Richard W Evans, Esquire
McCarthy Wilson, LLP
2200 Research Boulevard, Suite 500
Rockville, Maryland 20850

Gardner M. Duvall, Esquire
Patrick D. McKeivitt, Esquire
Whiteford, Taylor & Preston LLP
Seven Saint Paul Street, Suite 1500
Baltimore, Maryland 21202

Kentlands View Condominium
8701 Georgia Avenue, Suite 300
Silver Spring, Maryland 20910

Takoma Metro Shopping Center
6935 Laurel Avenue, Suite 100
Takoma Park, Maryland 20912


Terry L. Goddard Jr.

VetCor
Analysis of Class Action Tow Data

01/27/2014	540416	KINDNESS ANIMAL HOSPITAL	2130 UNIVERSITY BLVD	WHEATON Maryland 20902	2130 UNIVERSITY BLVD WEST	Lot 1
08/07/2014	546294	KINDNESS ANIMAL HOSPITAL	2130 UNIVERSITY BLVD	WHEATON Maryland 20902	2130 UNIVERSITY BLVD WEST	Lot 1



Handicap Parking Only	2007	Toyota	Corolla Base/S	White	MD	0	2A	692	01/27/2014 02:12 PM
Unauthori zed Parking	2006	Toyota	Camry Solara Base/S	White	MD	0	4	290	08/07/2014 09:27 AM

QUAN-EN YANG, et.al.

Plaintiffs

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* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY
* CASE NO: 403885 V

* * * * *

AFFIDAVIT OF PETER R. DEFEO

I, Peter R. DeFeo, by my signature subscribed at the end hereof, solemnly affirm under the penalties of perjury and upon personal knowledge as follows:

1. My name is Peter R. DeFeo. I am over 18 years of age, a citizen of the United States, competent to make this affidavit, and do so on personal knowledge.
2. I am the Chief Development Officer and General Counsel of VetCor of Wheaton LLC, a class defendant in this action.
3. It is my understanding that VetCor is alleged to be responsible for two (2) vehicles that were towed on January 27, 2014 and August 7, 2014 (the "Tows") from a parking lot (the "Lot") at 2130 University Blvd in Wheaton, Maryland (the "Premises").
4. On the dates of those Tows, that Lot was a part of the Premises that Smith-Chester, Inc. ("Smith-Chester") was leasing from 2130 Associates, Inc. (the "Landlord").
5. As of the dates of those Tows, Smith-Chester was doing business as Kindness Animal Hospital.



6. On the dates of those Tows, VetCor did not occupy or manage the Lot or the Premises, and had no interest in Smith-Chester, the Landlord, or G&C Towing, Inc. (the "Tow Company"), the company that I understand performed the Tows.

7. VetCor acquired the assets of Smith-Chester in an asset purchase transaction on December 9, 2014. A copy of the Bill of Sale for that transaction is attached to this Affidavit.


8. As part of that asset purchase transaction, VetCor and Smith-Chester expressly agreed that VetCor was not assuming Smith-Chester's liabilities.

9. VetCor did acquire the right to use the tradename Kindness Animal Hospital on December 14, 2014 as part of the asset purchase transaction, and registered the tradename with the SDAT on March 16, 2015.

10. I have also reviewed the Opt-Out letter filed on behalf of VetCor in this action. The Opt-Out letter incorrectly indicates the date of the asset purchase transaction was December 14, 2014. As stated above, the actual date of the transaction was December 9, 2014.

I solemnly affirm under the penalties of perjury that the contents of this affidavit are accurate, true, and complete.

2/15/18
Date



Peter R. DeFeo

BILL OF SALE AND ASSIGNMENT OF
ASSETS AND PROPERTY OF
SMITH-CHESTER, INC. D/B/A KINDNESS ANIMAL HOSPITAL

THIS BILL OF SALE AND ASSIGNMENT OF ASSETS AND PROPERTY is made, executed and delivered under seal as of this 9th day of December, 2014, by and among Smith-Chester, Inc. d/b/a Kindness Animal Hospital, a Maryland corporation (the "Seller"), Dr. Jeffrey W. Zolkiewicz, the shareholder who owns all of the outstanding capital stock in the Seller (the "Stockholder"), and VetCor of Wheaton LLC, a Delaware limited liability company (the "Buyer"). This Agreement is being delivered pursuant to Section VI (B) of that certain Asset Purchase Agreement, dated as of the 9th day of December, 2014 (the "Purchase Agreement"), by and among the Buyer, the Seller and the Stockholder. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Purchase Agreement.

W I T N E S S E T H:

WHEREAS, the Purchase Agreement provides for the Seller and the Stockholder to sell, transfer and assign the Assets to the Buyer; and

WHEREAS, the Seller, the Stockholder and the Buyer now desire to vest in the Buyer the Assets;

NOW THEREFORE, in consideration of the payment by the Buyer to the Seller and the Stockholders of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

The Seller and the Stockholder, intending to be legally bound, do hereby unconditionally and irrevocably convey, grant, sell, transfer, assign, release and deliver unto the Buyer, its successors and assigns forever, good and marketable title to all the Assets and all beneficial rights therein, together with all benefits and any other rights of any kind or nature necessary to effectively vest good and marketable title to such Assets in the Buyer.

TO HAVE AND TO HOLD the same unto the Buyer, its successors and assigns, forever.

The Seller and the Stockholder hereby covenant and agree that, without further consideration, at any time and from time to time, at the Buyer's request, to prepare, execute and deliver to the Buyer such other instruments of conveyance, assignment and transfer and to take such other action as the Buyer may reasonably request so as more effectively to convey, grant, sell, transfer, assign, release and deliver all or any portion of the Assets to the Buyer and its successors and assigns, and to assure and confirm to any other person the Buyer's ownership of the Assets, and to permit the Buyer to exercise any of the franchises, rights, licenses or privileges intended to be sold, conveyed, assigned, transferred and delivered by the Seller and the Stockholders to the Buyer pursuant to this Bill of Sale and Assignment of Assets and Property.

This Bill of Sale and Assignment of Assets and Property and the covenants and agreements herein contained shall be binding upon the Seller and the Stockholder, and their successors and assigns, and shall inure to the benefit of the Buyer, its successors and assigns.

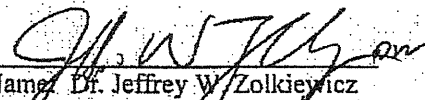
This Bill of Sale and Assignment of Assets and Property shall be governed by and construed under the laws of the State of Maryland.

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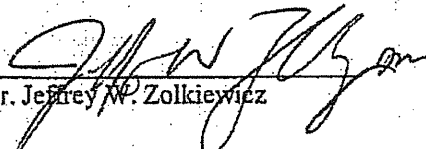
IN WITNESS WHEREOF, the Seller and the Stockholder have caused this Bill of Sale and Assignment of Assets and Property to be executed as of the date first above written.

SELLER:

SMITH-CHESTER, INC.
D/B/A KINDNESS ANIMAL HOSPITAL

By: 
Name: Dr. Jeffrey W. Zolkiewicz
Title: President

STOCKHOLDER:


Dr. Jeffrey W. Zolkiewicz

LAW OFFICES
OF
SKEEN & KAUFFMAN, L.L.P.
911 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201

STEPHEN P. KAUFFMAN
TELEPHONE (410) 625-2228
FACSIMILE (410)625-2292
EMAIL skauffman@skaufflaw.com

December 14, 2017

VIA USPS OVERNIGHT MAIL

Yang v. G&G Towing Exclusions
c/o Strategic Claims Services
P.O. Box 230
Media, PA 19063

Re: **VetCor of Wheaton, LLC**

Dear Sir/Madam:

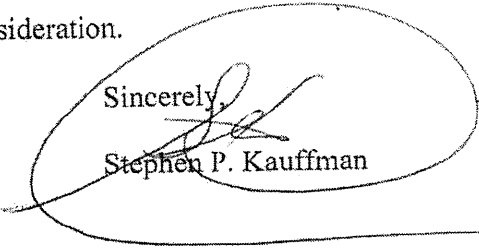
This firm has been retained to represent VetCor of Wheaton, LLC ("VetCor"), a member of the Defendant Litigation Class in *Yang, et. al. v. G&G Towing, Inc., et. al.*, a class action currently pending in the Circuit Court for Montgomery County, Maryland. **Please be advised that VetCor wishes to be excluded from the *Yang v. G&G Towing* settlement agreement, because, as explained below, VetCor was not responsible for the tows attributed to it.**

According to the towing database compiled in connection with this action, VetCor's putative liability is alleged to have arisen as the result of two (2) tows from a lot located at 2130 University Blvd in Wheaton (the "Premises") **on January 27 and August 7 of 2014.** (See attached spreadsheet, which incorporates data from database) On the dates of those tows, that lot was a part of the Premises that Smith-Chester, Inc., d.b.a. Kindness Animal Hospital (the "Tenant") was leasing from 2130 Associates, Inc. (the "Landlord").

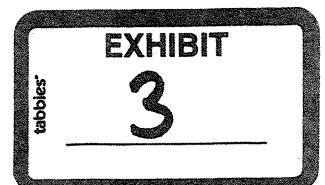
On December 14, 2014, more than four (4) months after the last tow attributed to VetCor, it acquired the assets, but **did not assume the liabilities** of the Tenant. VetCor never had a contract with G&G Gulf Towing, Inc., and was not responsible for any of the tows that are the subject of this class action.

Thank you for your kind consideration.

Sincerely,


Stephen P. Kauffman

Encl.
cc: James P. Ulwick, Esquire



VetCor
Analysis of Class Action Tow Data

01/27/2014	540416	KINDNESS ANIMAL HOSPITAL	2130 UNIVERSITY BLVD	WHEATON Maryland 20902
08/07/2014	546294	KINDNESS ANIMAL HOSPITAL	2130 UNIVERSITY BLVD	WHEATON Maryland 20902

2130 UNIVERSITY BLVD WEST	Lot 1	Handicap Parking Only	2007	Toyota	Corolla Base/S	White
2130 UNIVERSITY BLVD WEST	Lot 1	Unauthori zed Parking	2006	Toyota	Camry Solara Base/S	White

MD 0 2A 692 01/27/2014 02:12 PM 01/27/2014 03:08 PM 12044

MD 0 4 290 08/07/2014 09:27 AM 08/07/2014 01:27 PM 15033

QUAN-EN YANG, et.al.

* **IN THE**

Plaintiffs

* **CIRCUIT COURT**

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* **FOR**

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* **MONTGOMERY COUNTY**

Defendants

* **CASE NO: 403885 V**

* * * * *

ORDER

Upon consideration of the Objection to Joinder and Motion to Dismiss filed by VetCor of Wheaton, LLC (“VetCor”), all memoranda submitted in support and/or opposition thereof, and the arguments of counsel, this Court finds that VetCor did not own or manage the property when the tows attributed to it occurred, and accordingly, it is this ___ day of _____, 2018, ORDERED:

1. This action, as to VetCor, is dismissed, with prejudice,
2. The Clerk is directed to send a copy of this Order to all counsel, including Stephen P.

Kauffman, counsel for VetCor.

Judge
Circuit Court for Montgomery County