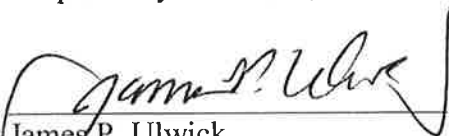


Dated: July 5, 2016

Respectfully submitted,



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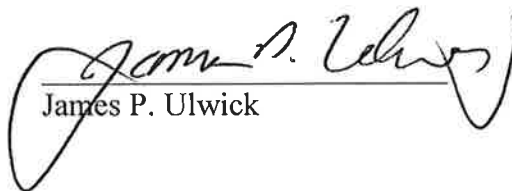
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Counsel for Defendant Bruce Patner

REQUEST FOR HEARING

Defendant Patner requests a hearing on this motion.



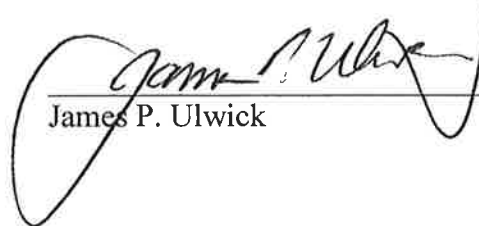
James P. Ulwick

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July, 2016, a copy of Defendant Patner's Motion to Dismiss, as well as the memorandum in support thereof and all exhibits thereto, was sent via electronic and first class mail to:

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James P. Ulwick

Quan-En Yang et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
G & C Gulf Inc., et al.,	*	MONTGOMERY COUNTY
Defendants.	*	Case No. 403885V
* * * * *	*	* * * * *

**MEMORANDUM IN SUPPORT OF
DEFENDANT PATNER'S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

Defendant Bruce Patner, by his undersigned counsel, submits this memorandum in support of his motion to dismiss the Third Amended Complaint for failure to state a claim against him.

I. INTRODUCTION

This lawsuit concerns the claims of potentially thousands of people against hundreds of different defendants, but no claim by the sole named plaintiff against Defendant Patner.

In or around May 2016 – before any attorney had entered an appearance on behalf of Defendant Patner and before Defendant Patner had responded to any complaint in this matter – the Court approved a settlement among defendant G&C Gulf Inc. ("G&C") and the members of the putative plaintiff class; it appears that the Court certified a *settlement class* of plaintiffs to resolve the claims against G&C, the one defendant against whom all the members of the plaintiff class – including Plaintiff Yang -- had a claim. The members of the putative plaintiff class, however, do not share claims against the remaining defendants and – importantly for purposes of this motion to dismiss – Plaintiff Yang does not state (or have) a claim against Defendant Patner.

While Plaintiff Yang arguably states a claim against Defendant G&C, and apparently believes that he has a claim against whomever may own the Walgreen's parking lot from which he was towed, he makes no factual allegations against Defendant Patner. The Third Amended Complaint contains no allegation that Plaintiff was towed from a property that Defendant Patner owns nor any allegation that Defendant Patner was involved in any way in the incident of which Plaintiff Yang complains. Indeed, the Third Amended Complaint contains no allegation concerning a single, specific incident involving Defendant Patner; instead, it makes general conclusory assertions that are inadequate to state a claim. Accordingly, Plaintiff Yang's claims against Defendant Patner must be dismissed.

Moreover, because the Third Amended Complaint fails to identify any party who *does* maintain a claim against Defendant Patner, the entire complaint must be dismissed as to him. *See, e.g., In re MicroStrategy, Inc. Securities Litigation*, 115 F.Supp.2d 620, 664 (E.D. Va. 2000) ("In addition, insofar as Plaintiff Schwartz lacks standing to bring a claim against Ingari personally, and she is the sole claimant and class representative on the Section 20A count, Count III of the Complaint must be dismissed as to Defendant Ingari"). Plaintiff Yang's attempt to bring claims against parties with whom he has had absolutely no dealing should not be allowed to proceed.

For all of these reasons, this Court should dismiss the Third Amended Complaint for failure to state a claim against Defendant Patner upon which relief may be granted.

II. LEGAL STANDARDS

On a motion to dismiss for failure to state a claim under Maryland Rule 2-322(b)(2), a defendant asserts that, even if the allegations of the complaint are true, the plaintiff is not entitled

to the requested relief as a matter of law. *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 555 (1999). *See also Lubore v. RPM Assocs.*, 109 Md. App. 312, 322 (1996). A motion to dismiss should be granted where the complaint does not disclose a legally sufficient cause of action. *Rossaki v. NUS Corp.*, 116 Md. App. 11, 18 (1997). To survive a motion to dismiss, the plaintiff must allege facts with specificity, and the court should not consider wholly conclusory charges in a complaint. *See Khalifa v. Shannon*, 404 Md. 107, 115 (2008) (when evaluating the sufficiency of a pleading, "[m]ere conclusory charges that are not factual allegations may not be considered") (citation and quotations omitted)); *see also Bobo v. State*, 346 Md. 706, 708-09 (1997); Md. Rule 2-305 ("A pleading that sets forth a claim for relief . . . shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought." (emphasis added)). "Further, while the words of a pleading will be given reasonable construction, when a pleading is doubtful and ambiguous, it will be construed most strongly against the pleader in determining its sufficiency." *Bobo*, 346 Md. at 709.

II. FACTUAL ALLEGATIONS¹

In a section entitled "Facts Applicable to the Named Plaintiffs [sic]," Plaintiff Yang describes an incident that occurred on December 12, 2014 in a parking lot outside a Walgreen's Pharmacy in Rockville, Maryland. Third Amended Complaint, ¶¶ 31-53. Plaintiff Yang asserts that after he parked his car in a Walgreen's parking lot, he walked across the street to use a bathroom in a grocery store, then returned to Walgreens, purchased a pack of cookies, and discovered that his car had been towed from the Walgreens parking lot. *Id.* at ¶¶ 31, 32, 35-37. Plaintiff Yang alleges that G&C had an agreement with Walgreens pursuant to which G&C was

¹ Defendant Patner assumes the truth of the well-pleaded factual allegations in the Complaint *solely for the purposes of this motion*. Defendant Patner reserves the right to dispute those factual allegations should the case proceed past this motion to dismiss.

allowed to tow unauthorized cars from the Walgreen's parking lot and that, in fact, G&C towed his car. *Id.* at ¶¶ 33, 38-39, 41. He asserts that G&C would not release his car to him until he paid a total of \$136.42. *Id.* at ¶¶ 47-49. He never asserts, however, that Defendant Patner had anything to do with the incident. *See id.* at ¶¶ 31-58.

In a completely separate section of the Third Amended Complaint, Plaintiff Yang describes the "Facts Applicable to the Named Defendant [sic]." *See id.* at ¶¶ 68-84. This section contains conclusory assertions that Defendant Patner and Defendant Blair Shopping Center, LLC ("The Tower Companies") entered into a contract with G&C to "patrol the Parking Lots owned, managed or controlled by them, and to tow any unauthorized vehicle from those lots." *Id.* at ¶ 68. The section is identical to a section of the same name in the Second Amended Complaint, except that The Tower Companies have been added to each allegation. *Compare* Third Amended Complaint, ¶¶ 68-84 *with* Second Amended Complaint ¶¶ 67-82. There is no allegation concerning specific properties owned by Defendant Patner, no allegation concerning a towing incident from one of Defendant Patner's properties, no identification of any party who had a car towed from one of Defendant Patner's properties, and no allegation that Plaintiff Yang has been damaged in anyway by Defendant Patner. *See* Third Amended Complaint ¶¶ 68-84. Instead, the section tracks the elements of the claims contained in the Third Amended Complaint and makes conclusory assertions that Defendant Patner (and now The Tower Companies) have engaged in the requisite behavior. *See, e.g., id.* at ¶ 72 ("Patner and The Tower Companies knew and had reason to know that G&C undertook the acts alleged herein, including but not limited to: (1) systematically failing to provide Class members with the immediate and continuous opportunity to retake possession of their vehicles; (2) systematically failing to obtain the authorization required by section 21-10A-04(a)(5) of the Maryland Towing Act and § 30C-4(c)

of the MC Tow Law, in connection with the towing of Class members' vehicles; and (3) systematically failing to provide a receipt compliant with the MC Tow Law, § 30C-8(e).")

IV. PLAINTIFF YANG FAILS TO STATE A CLAIM AGAINST DEFENDANT PATNER

The Third Amended Complaint contains no allegation concerning a specific incident involving Defendant Patner. Rather, Plaintiff Yang makes factual allegations supporting a claim against a *different* property owner, *see id.*, ¶¶ 31-53, and only general conclusory assertions concerning Defendant Patner. *Id.* at ¶¶ 68-84. Indeed, the changes Plaintiff made in conjunction with adding The Tower Companies as a defendant in the Third Amended Complaint underscore the conclusory nature of the allegations against Defendant Patner: when Plaintiff Yang added The Tower Companies to his Third Amended Complaint, he merely added "The Tower Companies" to each of the paragraphs concerning Defendant Patner. *Compare* Third Amended Complaint, ¶¶ 68-84 *with* Second Amended Complaint ¶¶ 67-82.). Plaintiff Yang saw no need to make any other change to those allegations and for good reason: None of those paragraphs contain any specific factual allegations. *See* Third Amended Complain, ¶¶ 68-84.

Without any factual allegations, Plaintiff Yang cannot maintain a direct claim against Defendant Patner. *Bobo v. State*, 346 Md. 706, 708-09 (1997). Moreover, because Plaintiff Yang is the only named representative identified in the Third Amended Complaint, the putative plaintiff class cannot maintain a claim against Defendant Patner. *See Godfredson v. JBC Legal Group, P.C.*, 387 F.Supp.2d 543, 552 (E.D.N.C. 2005) ("This court does not, at present, rule upon plaintiffs' motion for certification as a class action, because that motion is not yet ripe for decision. However, because plaintiffs have failed in alleging the instant RICO claim to present a party with standing to bring the claim, or even to establish the requisites of a case or controversy as required to invoke the jurisdiction of this court, this court finds that it is appropriate to dismiss

Count IV of the complaint, alleging a RICO violation, for failure to state a claim"); *In re MicroStrategy, Inc. Securities Litigation*, 115 F.Supp.2d 620, 664 (E.D. Va. 2000) ("In addition, insofar as Plaintiff Schwartz lacks standing to bring a claim against Ingari personally, and she is the sole claimant and class representative on the Section 20A count, Count III of the Complaint must be dismissed as to Defendant Ingari").² For this fundamental reason, the claims against Defendant Patner must be dismissed.

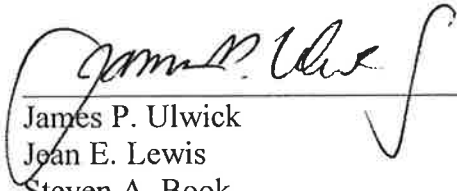
V. CONCLUSION

For the foregoing reasons, this Court should dismiss the claims against Defendant Patner.

² Defendant Patner does not agree with the presumption in the Third Amended Complaint that because the Court certified a settlement class for purpose of adjudicating the claims against Defendant G&G, the putative plaintiff class is certified for all purposes. Indeed, the analysis of the putative plaintiff class's claims against the property owner defendants differs entirely from the analysis of the plaintiff class's claims against G&G: *All* of the plaintiffs maintained claims against G&G; by the very terms of the Third Amended Complaint, however, *different* members of the putative plaintiff class assert claims against *different* members of the putative defendant class. The fact that every member of the proposed plaintiff class does not have claims against every member of the proposed defendant class raises substantial questions of due process. Indeed, Plaintiff Yang's apparent general strategy – to proceed as the named representative of a class of plaintiffs who have claims against *different* defendants against a class of defendants represented by someone against whom he has no claim – is flawed at a fundamental level. For purposes of this motion, however, it does not matter whether the plaintiff class is certified. In either case, the facts that (i) Plaintiff Yang does not have a claim against Defendant Patner and (ii) no other plaintiff is identified in the Third Amended Complaint, are fatal to all of the claims against Defendant Patner.

Dated: July 5, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James P. Ulwick", written over a horizontal line.

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