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**FILED**  
 Superior Court Of California  
 County Of Los Angeles

JUN 26 2014

Sherri K. [Signature] Executive Officer/Clerk  
 By [Signature] Deputy

PROSKAUER ROSE LLP  
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Attorneys for Proskauer Rose LLP

**BY FAX**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

DR. GARY K. MICHELSON and KARLIN  
 HOLDINGS LIMITED PARTNERSHIP,

Plaintiffs,

v.

PROSKAUER ROSE LLP, and Does 1-20,  
 inclusive,

Defendants.

) CASE NO. BC384760  
 ) (Assigned to the Hon. Mark Mooney, Dept. 68  
 ) for all purposes)

) **NOTICE OF MINUTE ORDER AND**  
 ) **RULING DENYING PLAINTIFF'S**  
 ) **APPLICATION FOR**  
 ) **RECONSIDERATION**

) Date: April 17, 2014

) Trial Date: None

) Complaint Filed: February 1, 2008

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 20, 2014, the above-entitled Court issued a Ruling  
3 on Plaintiff's Application for Reconsideration and a Minute Order denying plaintiffs' application  
4 for reconsideration argued on April 17, 2014. True and correct copies of the Ruling on  
5 Plaintiff's Application for Reconsideration and the Minute Order are attached and marked as,  
6 respectively, Exhibits A and B.

7  
8 Dated: June 25, 2014

PROSKAUER ROSE LLP

9  
10 By: 

Lary Alan Rappaport

11 Attorneys for Proskauer Rose LLP  
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06/27/2014

# EXHIBIT A

06/27/2014

ORIGINAL FILED

JUN 20 2014

LOS ANGELES  
SUPERIOR COURTSUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELESDR. GARY K. MICHELSON and KARLIN  
HOLDINGS LIMITED PARTNERSHIP,

Plaintiffs,

vs.

PROSKAUER ROSE, LLP and Does 1  
through 20, inclusive,

Defendant

Case No. BC 384760

RULING ON PLAINTIFF'S  
APPLICATION FOR  
RECONSIDERATION

Defendant's motion for summary judgment/ or in the alternative summary adjudication was heard by the court on October 9, 2013. After due considering of the arguments of counsel, the court granted defendant's motion. On January 21, 2014, the court heard plaintiff's motion for reconsideration. The court found that plaintiff's motion failed to meet his burden under Code of Civil Procedure §1008 in that it failed to show new or different facts, circumstances or law in support of the motion. Nevertheless, pursuant to the court's inherent power to reconsider its prior rulings, the court set the matter for hearing and permitted further briefing. ( See, *Le Francois v. Goel* (2005) 35 Cal.4<sup>th</sup> 1094.) The court advised counsel that it would only consider

1 evidence that was part of the record at the time of the hearing on the motion for summary  
2 judgment and that the court would not consider new evidence.

3 On April 17, 2014, the court heard arguments of counsel on plaintiff's application for  
4 reconsideration. After due consideration of those arguments, and the briefs submitted by the  
5 parties, the court rules as follows:

6 Plaintiff's request for reconsideration is denied.

7 A review of the evidence submitted in support of and in opposition to the motion for  
8 summary judgment reveals sufficient evidentiary support for the court's prior ruling.

9 The primary issue in this case from which all plaintiffs' claims derive is the extent to which Dr.  
10 Michelson relied upon misrepresentations allegedly made by defendant Proskauer Rose. It is  
11 essential therefore, to determine *exactly what* those representations were and *when* were they  
12 received by plaintiff. The issue of plaintiff's reliance on Proskauer Rose was squarely raised by  
13 defendant in their motion for summary judgment. Indeed it was listed as Point One in  
14 defendant's motion. (Defendant's Motion for Summary Judgment, "Michelson Cannot Prove  
15 That He Relied on Proskauer, page 12). Defendant submitted sufficient evidence to establish that  
16 communications from defendant to plaintiff were filtered through plaintiff's attorney, Jeffer  
17 Mangle, that he never spoke to anyone from Proskauer, and that he relied upon parties other than  
18 Proskauer. (See defendant's Statement of Undisputed Facts Numbers 7, 8, 9, 10, 13, 15, 16, 17,  
19 20, 22, 21, 42.) The burden was therefore shifted to plaintiff to establish plaintiff's reliance on  
20 representations of Proskauer. This plaintiff failed to do. The declaration submitted by Dr.  
21 Michelson in opposition to the motion states no more than he received drafts of Proskauer's  
22 opinion letters (Michelson Declaration ¶ 17). This assertion nevertheless begs the question as to  
23 what exactly did plaintiff rely upon. The evidence submitted established that Jeffer-Mangles  
24 reviewed the drafts and asked for revisions. It therefore became a significant foundational issue  
25 as to what exactly plaintiff ultimately received.

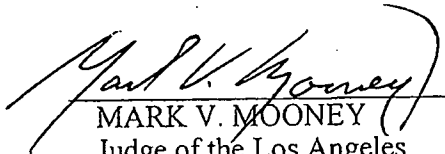
06/27/2014

1 Plaintiff steadfastly resisted all attempts to inquire as to what was transmitted from  
2 Jeffer-Mangels to plaintiff based upon the attorney-client privilege. This court (and the Court of  
3 Appeals) sustained plaintiff assertion of the attorney-client privilege, while also admonishing  
4 plaintiff that continued assertion of the privilege may result in significant problems of proof.  
5 There is a gap in the evidence as to what went out from Prokauer Rose and what was received  
6 and relied upon by plaintiff. Plaintiff argues in its motion for reconsideration this gap is filled by  
7 the presumption that the letters addressed to Dr. Michelson were in fact mailed to him at his  
8 home address. This presumption is rebutted by Dr. Michelson's own testimony. Plaintiff  
9 testified in deposition "Everything went through Jeffer-Mangles." Plaintiff also argues that  
10 Jeffer-Mangles was no more than a conduit and simply passed on the opinion letters. This  
11 assertion is contrary to the evidence submitted in connection with the motion for summary  
12 judgment, and not otherwise supported by any admissible evidence.

13 The attorney client privilege is one of the most important rights in our system of  
14 jurisprudence. This court recognized the importance of this right in denying defendant's earlier  
15 motion to compel. However, in the course of litigation it becomes incumbent on parties to make  
16 choices when they have placed certain matters at issue. The most significant issues in this case  
17 are exactly what were the representations made by Proskauer that were relied upon by Michelson  
18 and when did Michelson receive them. When challenged by way of motion for summary  
19 judgment, the court found plaintiff's evidence failed to establish these foundational issues.

20 Defendant to submit proposed order and judgment.

21 Dated this 20<sup>th</sup> day of June, 2014

22  
23   
24 MARK V. MOONEY  
25 Judge of the Los Angeles  
Superior Court

06/27/2014

EXHIBIT B



# EXHIBIT B

06/27/2014

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/14

DEPT. 68

HONORABLE Mark V. Mooney

JUDGE

A. WILLIAMS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. SCOTT, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC384760

Plaintiff  
Counsel

NO APPEARANCES

DR GARY K MICHELSON ET AL  
VS  
PROSKAUER ROSE LLPDefendant  
Counsel

## NATURE OF PROCEEDINGS:

## COURT'S RULING ON MOTION FOR RECONSIDERATION

On April 17, 2014, the court heard argument of counsel on plaintiff's application for reconsideration. After due consideration of those arguments, and the briefs submitted by the parties, the court rules as follows:

Plaintiff's request for reconsideration is denied.

A Copy of the court's Ruling on Plaintiff's Application for Reconsideration is filed this date and sent to counsel as addressed below.

## CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Ruling on Plaintiff's Application For Reconsideration and minute order dated 6-20-2014 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid,

Page 1 of 3 DEPT. 68

MINUTES ENTERED 06/20/14 COUNTY CLERK
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06/27/2014

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/14

DEPT. 68

HONORABLE Mark V. Mooney

JUDGE

A. WILLIAMS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. SCOTT, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am BC384760

Plaintiff  
CounselDR GARY K MICHELSON ET AL  
VS  
PROSKAUER ROSE LLPDefendant  
Counsel

NO APPEARANCES

## NATURE OF PROCEEDINGS:

in accordance with standard court practices.

Dated: 6-23-2014

Sherri R. Carter, Executive Officer/Clerk

By: 

A. Williams, Judicial Assistant

Dale F. Kinsella  
Jennifer J. McGrath  
KINSELLA WEITZMAN ISER  
KUMP & ALDISERT LLP  
808 Wilshire Blvd., 3rd Floor  
Santa Monica, California 90401Paul Spagnoletti  
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DAVIS POLK & WARDWELL, LLP  
450 Lexington Avenue  
New York, New York 10017

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/14

DEPT. 68

HONORABLE Mark V. Mooney

JUDGE

A. WILLIAMS

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. SCOTT, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC384760

Plaintiff

Counsel

NO APPEARANCES

DR GARY K MICHELSON ET AL

VS

Defendant

PROSKAUER ROSE LLP

Counsel

## NATURE OF PROCEEDINGS:

David M. Lederkramer  
Elise A. Yablonski  
Gerald W. Sawczyn  
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Lary Alan Rappaport  
Michael H. Weiss  
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2049 Century Park East, 32nd Fl.  
Los Angeles, California 90067

**PROOF OF SERVICE**

I am and was at the time of the service mentioned in this declaration employed in the City of Los Angeles and County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Proskauer Rose LLP, 2049 Century Park East, Suite 3200, Los Angeles, California 90067-3206.

On June 25, 2014, I served the foregoing document described as:

**NOTICE OF MINUTE ORDER AND RULING DENYING PLAINTIFF'S  
APPLICATION FOR RECONSIDERATION**

on the interested parties in this action by placing a true and correct copy thereof in a sealed envelope addressed as follows:

Dale F. Kinsella  
Patricia A. Millett  
Jennifer J. McGrath  
KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP  
808 Wilshire Boulevard, 3rd Floor  
Santa Monica, California 90401  
Telephone: (310) 566-9800  
Facsimile: (310) 566-9850  
Email: dkinsella@kwikalaw.com  
pmillett@kwikalaw.com  
jmcgrath@kwikalaw.com

☒ (By Personal Service)

☒ By causing such envelope to be delivered by messenger to the office of the addressees.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 25, 2014, at Los Angeles, California.

  
\_\_\_\_\_  
PATTY J. HAYS