1	IN THE SUPERIOR COURT OF THE S	
2	IN AND FOR THE COUN	<b>FY OF KING</b>
3	JAYAKRISHNAN K. NAIR, A Single Person,	NO. 17-2-16243-4 SEA
4	Plaintiff,	
5	r lamtin,	
6	vs.	COMPLAINT FOR LEGAL MALPRACTICE
7	RICHARD J. SYMMES, Individually and on Behalf of the Marital Community Comprised of RICHARD J. SYMMES and JANE DOE	
8		
9	SYMMES, and SYMMES LAW GROUP, PLLC, a Washington Professional Limited	
10	Liability Company,	
11	Defendants.	
12		
13	The Complaint of Plaintiff JAYAKRISHNA	N K. NAIR alleges as follows:
14	I. <u>PARTIE</u>	<u>S</u>
15	1.0 Plaintiff JAYAKRISHNAN K. NAII	R, who is also known as "Jay" Nair,
16	is a person of the full age of majority and permanen	t legal resident of the United States,
17	who resides in Redmond, King County, Washingtor	1.
18	1.1 Defendant RICHARD J. SYMMES i	is a nerson of the full age of majority
19		
20	who, upon information and belief, resides in King C	County Washington. It is unknown
21	whether Defendant SYMMES is married or a single	person. Plaintiff thus refers to
22	Defendant SYMMES's unknown spouse as "JANE	DOE SYMMES" pending
23	discovery, as any acts and/or omissions relevant her	eto may have been done on behalf
24	of that marital community.	
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ļ	Complaint for Legal Malpractice BR	IAN J. WAID

1	1.2 Defendant SYMMES LAW GROUP, PLLC, is a Washington	
2	professional limited liability company, which maintains its principal place of business	
3	in Seattle, King County, Washington. At all times relevant to this action, Defendant	
4	SYMMES acted as an employee and/or principal of SYMMES LAW GROUP, PLLC.	
5	Therefore, Defendant SYMMES LAW GROUP, PLLC is jointly and severally liable	
6		
7	for all acts and omissions of Defendant SYMMES pursuant to respondeat superior	
8	and/or RCW 18.100.070.	
9	II. JURISDICTION AND VENUE	
10	2.0 Jurisdiction and venue are proper in this Court because the acts and/or	
11 12	omissions of the Defendants arose in King County, Washington, within the meaning of	
13	RCW 4.12.020(3), and because Defendants reside and/or maintain their principal place	
14	of business in King County, Washington.	
15	2.1 Pursuant to KCLCR 82, this case is properly assigned to the Seattle Case	
16	Assignment Area because Defendants reside and/or maintain their principal place of	
17	business in the Seattle Case Assignment Area, and Plaintiff NAIR's claims arise out of	
18 19	Defendant SYMMES' representation of him in the United States Bankruptcy Court for	
20	the Western District of Washington in Seattle, Case no. 15-12626, entitled In re: Nair.	
21	III. FACTS	
22	3.0 Plaintiff Nair is the co-founder of a biotech startup, Ratner Biomedical	
23	Inc., and also a real estate entrepreneur. At the time of his bankruptcy filing on April	
24	29, 2015, Mr. Nair owned five cash-positive investment properties and other assets.	
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1	3.1 In October 2014, Mr. Nair learned that First Tech Credit Union "FTCU,"
2	which held a second-position deed of trust on one of Mr. Nair's five investment
3	properties, in the amount of \$100,000 and a then-current balance of approximately
4	\$72,000, had initiated foreclosure proceedings against that one property.
5	3.2 At that time, Mr. Nair subscribed to a prepaid legal insurance company
6 7	known as "ARAG." Mr. Symmes' had contracted with ARAG to offer ARAG-paid
8	and/or below-market legal fees to ARAG members. Mr. Symmes' listing on the ARAG
9	Legal Center for Members, appeared under the Legal Issue heading "Real Estate and
10	
11	Home Ownership" and Type of Issue heading "Foreclosure." The website of Mr.
12	Symmes' law firm, Symmes Law Group, PLLC, markets itself with "Stop Foreclosure.
13	Stop Collections. End Your Stress. BE DEBT FREE!" and "Seattle Bankruptcy
14	Attorney Who Gets Debt Relief Fast."
15	3.3 When his personal attempts to resolve the non-judicial
16	foreclosure proceeding failed, Mr. Nair found Mr. Symmes' listing with ARAG. On or
17 18	about April 15, 2015, Mr. Nair retained Mr. Symmes and the Symmes Law Group,
10	PLLC, to assist him in resolving the foreclosure through the ARAG prepaid legal
20	insurance plan, at a rate of \$187.50 per hour.
21	3.4 Upon acceptance of representation of Plaintiff Nair, Defendant Symmes
22	undertook a duty of competence to Nair, to meet or exceed the standard of care
23	applicable to a reasonably prudent Washington attorney representing a client in the
24	same or similar situation as Nair.
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1	3.5 At the time Mr. Nair first retained Mr. Symmes, Mr. Nair had	
2	approximately two weeks remaining in which to resolve the foreclosure and thus	
3	preserve Nair's ownership interest in the investment property. He also had ample cash	
4	resources readily available to pay off the FTCU debt in full, including \$20,000 in cash	
5	in liquid accounts, and \$100,000 in a 401k. Mr. Nair could have taken money out of the	
6		
7	401k and re-deposited it within 60 days without any tax penalty. Mr. Nair also alerted	
8	Mr. Symmes to his (Nair's) financial circumstances, including the fact that he had	
9	approximately \$6,000,000 in real estate investments and privately held shares in the	
10	Ratner Biomedicl startup.	
11		
12	3.6 Mr. Nair relied heavily on Mr. Symmes' professed expertise in	
13	defending foreclosures and representing clients in bankruptcy proceedings.	
14	3.7 Mr. Symmes was aware of Mr. Nair's lack of knowledge about	
15	bankruptcy and that Mr. Nair relied on Symmes' recommendations as to how he ( <i>i.e.</i> ,	
16	Nair) should proceed.	
17	3.8 Mr. Symmes advised Mr. Nair to file Chapter 13 bankruptcy, and	
18	advised him against using his 401k funds because of the potential 10% tax penalty.	
19		
20	3.9 Defendant Symmes and Symmes Law Group, PLLC filed Mr. Nair's	
21	Chapter 13 bankruptcy petition on April 29, 2015.	
22	3.10 Mr. Nair was not eligible for relief under Bankruptcy Code §109(e),	
23	when Defendant Symmes filed Nair's Chapter 13 bankruptcy petition.	
24	3.11 Defendant Symmes knew, or reasonably should have known, that Mr.	
25		
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1	Nair was not eligible for relief under Chapter 13 of the Bankruptcy Code.
2	3.12 On July 16, 2015, the Chapter 13 Bankruptcy Trustee objected to
3	confirmation of Mr. Nair's Ch. 13 plan, citing among other problems, the fact that Mr.
4	Nair did not qualify for Ch. 13. The Objection furthermore pointed out that Mr.
5 6	Symmes had not served the Ch. 13 plan on Mr. Nair's creditors, and that the Ch. 13
7	plan as submitted was not confirmable.
8	3.13 Thereafter, on July 26, 2015, the Chapter 13 Bankruptcy Trustee moved
9	to dismiss Mr. Nair's Chapter 13 bankruptcy petition, in part because Mr. Nair was not
10	eligible for Ch. 13 relief. The Trustee also pointed out other defects, including the fact
11 12	that Mr. Symmes' \$3,500 flat fee for Ch. 13 services was not reasonable.
13	3.14 Upon service of the Chapter 13 Bankruptcy Trustee's motion to dismiss,
14	Mr. Symmes could, and should, have advised Mr. Nair to agree to dismiss the
15	bankruptcy case, rather than convert the case to either a Chapter 7 bankruptcy
16	liquidation, or a Chapter 11 case. Defendants Symmes instead advised Mr. Nair to
17	convert his case to Chapter 11 rather than Chapter 13. Mr. Nair followed Mr. Symmes'
18 19	advice and Mr. Symmes thus filed a motion to convert Mr. Nair's bankruptcy case to a
20	Chapter 11 case on August 11, 2015. The Court granted the Trustee's motion to
21	convert to Chapter 11 on September 2, 2015.
22	3.15 Defendant Symmes did not provide Mr. Nair with the material
23	information necessary to enable Mr. Nair to give informed consent to the conversion
24	from Ch. 13 to Ch. 11, particularly considering the risk to Mr. Nair that he might lose
25	

## BRIAN J. WAID

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1	control of the Ratner Biomedical start-up company, as well as the administrative and	
2	other time-consuming and costly burdens imposed on the Debtor-in-Possession in a Ch.	
3	11 case.	
4	3.16 After conversion of Mr. Nair's bankruptcy to a Chapter 11 business	
5	reorganization, Mr. Nair repeatedly asked Mr. Symmes to have the bankruptcy	
6		
7 8	dismissed; however, Symmes told Nair that he (Nair) could not dismiss the bankruptcy	
9	and, if he were to file a motion to dismiss, the creditors and the US Trustee might move	
10	to convert the case to a Chapter 7 liquidation.	
11	3.17 On or about October 5, 2016, the Bankruptcy Court converted Mr. Nair's	
12	bankruptcy from a Chapter 11 case to a Chapter 7 case.	
13	3.18 Plaintiff Nair thereupon terminated his attorney-client relationship with	
14	Defendant Symmes effective on or about October 14, 2016.	
15	3.18 On or about January 27, 2017, Plaintiff Nair retained Attorney Shashi	
16	Vijay to represent him as replacement counsel in the bankruptcy proceeding.	
17	3.19 On April 5, 2017, Ms. Vijay succeeded in negotiating a settlement with	
18	the Bankruptcy Trustee, which allowed Nair to dismiss the bankruptcy proceeding filed	
19 00	by Defendant Symmes.	
20 21	IV. CAUSE OF ACTION: LEGAL MALPRACTICE	
21		
23	4.0 Defendant Symmes breached the duty of care he owed to Mr. Nair, in the	
24	following respects:	
25	A. Advising Nair to file bankruptcy, because the extraordinary costs and	
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1		adverse consequences to Nair from filing bankruptcy were not warranted
2		at the time;
3	B.	Advising Nair to file bankruptcy rather than stop or delay the foreclosure
4		by FTCU by other lawful means;
5 6	C.	Advising Nair to file bankruptcy, thus placing Mr. Nair's control of
7		the Ratner Biomedical start-up company, adequately communicating that
8		risk to Mr. Nair and without having adequately investigated the company
9		and the ramifications a bankruptcy would have on the company;
10	D.	
11	D.	Advising Nair to file Chapter 13 bankruptcy, considering that Mr. Nair
12		was quite obviously not eligible for relief under Chapter 13;
13	E.	In response to the Chapter 13 Bankruptcy Trustee's motion to dismiss,
14		advised Nair to convert the Chapter 13 case into a Chapter 11
15		reorganization, rather than have it dismissed;
16	F.	Rejecting Nair's request that Symmes dismiss the Ch. 11 case, and
17		advising Nair that he could not do that.
18	G.	Charging an unreasonable \$3,500 flat fee for the Chapter 13 filing,
19		particularly considering that: (i) Mr. Nair was not eligible for Chapter
20 21		13; (ii) Symmes did not submit a confirmable Ch. 13 plan on behalf of
21		
23		Nair, and; (iii) Symmes did not serve the creditors with the Ch. 13 plan.
24	H.	Such other breaches of the standard of care as may be proven through
25		discovery and/or at trial.
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Complaint for Legal Malpractice

1		4.1 Plaintiff Nair sustained damages as a result of Defendant
2	Symmes' bre	aches of the standard of care, including but not limited to damage to his
3	credit rating	and his interests in the Ratner Biomedical start-up company, fees and
4	expenses paid to Symmes Law Group, PLLC, mitigation expenses, and such other	
5 6	damages as may be established through discovery and/or trial of this case.	
7	4.2	Defendant Symmes Law Group, PLLC is jointly and severally liable to
8	Plaintiff Nair	as respondeat superior.
9		V. PRAYER FOR RELIEF
10	WHF	REFORE Plaintiff prays for judgment in his favor and against the
11		jointly and severally, awarding him the following relief:
12	A.	All damages sustained by Plaintiff because of Defendants' acts and/or
13	A.	
14		omissions;
15 16	В.	Legal interest, including pre-judgment interest, on all damages to the
10		fullest extent authorized by Washington law;
18	C.	All taxable costs and disbursements;
19	D.	Such other and different relief as the Court may deem just and equitable.
20	DAT	ED: June 26, 2017.
21		WAID LAW OFFICE
22		BY: /s/ Brian J. Waid
23		BRIAN J. WAID WSBA No. 26038
24		JESSICA M. CREAGER WSBA No. 42183
25		Attorneys for Plaintiff
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