IN AND FOR THE SUPERIOR COURT OF DELAWARE

MARK LILLARD,	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. N24C-10-001 DJB**
	)	
OFFIT KURMAN, P.A.,	)	
Defendant.	)	

Date Submitted: May 5, 2026
Date Decided: August 24, 2026

Memorandum Opinion

***On Defendant's Motion to Dismiss* – GRANTED**

***Plaintiff's Motion to Require Segregation of Alleged Individual and LLC Obligations Consistent with Delaware Entity Liability Principles before further Adjudication* – DENIED AS MOOT**

Mark Lillard, Plaintiff, *pro se*

Kristin Swift, Esquire, and *Scott Stanley*, *Esquire*, Kaufman Dolowich LLP, Wilmington, Delaware, attorneys for Defendant.

BRENNAN, J.

I. INTRODUCTION

Mark Lillard (hereinafter "Plaintiff") filed this *pro se* action against Offit Kurman, P.A. (hereinafter "Defendant") alleging claims for legal malpractice, breach of fiduciary duty, and negligent supervision.[1] This dispute arose from the legal representation Defendant provided Plaintiff. Pending before the Court is Defendant's Motion to Dismiss.[2] For the following reasons Defendant's Motion is **GRANTED**.

II. FACTS

The following facts are drawn from the Complaint and are accepted as true for purposes of resolving the Motion to Dismiss. On December 14, 2023, Plaintiff, personally and on behalf of his Limited Liability Corporations, Fain Auto Sales, LLC; IMC of Delaware, LLC; Lillard Land Holdings, LLC; Cordova Auto Group, LLC; and Shippuden Transport, LLC; retained Defendant following a meeting with Anthony Delcollo (hereinafter "Delcollo"), a partner at Offit Kurman's Delaware office.[3] This representation was memorialized in a written engagement letter, signed by Plaintiff.[4] The agreed representation encompassed the following matters on behalf of both Plaintiff as an individual and his business entities: *Polaris Acceptance*

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[1] *Lillard v. Offit Kurman, P.A.,* N24C-10-001 DJB Docket Item (hereinafter "D.I.") 1.
[2] D.I. 76.
[3] D.I. 69, ¶ 6, D.I. 80, p. 9.
[4] D.I. 69, ¶ 6.

v. Fain Auto Sales, LLC, N23C-10-053 JRJ; *Polaris Acceptance v. IMC of Delaware LLC*, N24-04-126 JRJ5; *Fain Auto Sales, LLC v. Marlin,* K24C-02-026 NEP;[5] *Polaris Acceptance v. Fain Auto Sales, LLC*, 2023-1293 JRJ8 and 2023-1137 JRJ, on behalf of Fain Auto Sales and IMC of Delaware, LLC;[6] *Wilmington Savings Fund Society, FSB v. Cordova Auto Group LLC*, N23J-042899 on behalf of Cordova Auto Group, LLC, Fain Auto Sales, LLC, Lillard Land Holdings, LLC, and Shippuden Transport, LLC; *Fain Auto Sales, LLC v. Harmon*, K24C-01-010 JJC7;[7] *Wilmington Savings Fund Society, FSB v. Fain Auto Sales, LLC*, N23J-0427410; Justice of the Peace Actions JP13-014105 and JP13-23-014193 on behalf of Fain Auto Sales, LLC: *Wilmington Savings Fund Society, FSB v. Lillard Land Holdings LLC and Mark W. Lillard*, N23J-0427511 on behalf of Lillard Land Holdings, LLC; and *Polaris Acceptance, G.P. v. Mark Lillard* in Illinois Civil Action 2024 L 00167212 on behalf of Plaintiff individually.[8]

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[5] Defendant pursued this action against the employees of and on behalf of Fain Auto Sales, LLC. D.I. 69, ¶¶ 22, 32-36, 110.

[6] Plaintiff references the "Polaris" suits which Defendant represented Mr. Lillard and his
companies Fain Auto Sales, LLC and IMC of Delaware LLC. D.I. 69, ¶¶ 37, 40, 181.

[7] Plaintiff references "Harmon" vaguely throughout the Amended Complaint which likely refers to the above captioned case whereby Defendant represented Plaintiff's business Fain Auto Sales, LLC. D.I. 69, ¶ 106.

[8] Plaintiff references "the Illinois" action throughout the Amended Complaint which likely refers to the above captioned case whereby Defendant represented Plaintiff's business Fain Auto Sales. D.I. 69, ¶¶ 34-35, 127-128; D.I. 80, pp. 3-4.

The representation began to deteriorate almost immediately. Although, Defendant was retained on December 14, 2023, concerns soon arose regarding its handling of the matters and Defendant's billing practices. In particular, Plaintiff believed that Defendant failed to adequately address forgery claims he had brought to the firm's attention on December 18, 2023, and he also disputed charges reflected on the initial invoice received and raised objections concerning the bill.[9] In response to Plaintiff's concerns, Defendant agreed to apply an eight-hour credit to Plaintiff's bill; according to Plaintiff that credit was never applied.[10]

By January 5th, 2024, Defendant had provided Plaintiff with a comprehensive update regarding the representation.[11] The communication addressed an allegedly fraudulent check, which Defendant indicated it would pursue, as well as potential claims for slander and defamation arising from social media activity.[12] Although Defendant billed Plaintiff for these activities, Plaintiff alleges Defendant did not take any further action to pursue either matter.[13] Per Plaintiff, Defendant similarly failed to pursue recovery from several of Plaintiff's former business associates concerning contracts for which Plaintiff remained personally liable.[14] Plaintiff further alleges

[9] D.I. 69, ¶¶ 10-13.
[10] *Id.*, ¶ 13.
[11] *Id.*
[12] *Id.*, ¶ 14.
[13] *Id.*
[14] *Id.*, ¶ 22.

that, despite having billed for reviewing a list of individuals provided by Plaintiff for the purpose of sending out demand letters, no such letters were ever sent.[15]

Plaintiff's billing concerns continued. Between January 5th and February 16th, 2024, Plaintiff contacted both Defendant's billing department and Delcollo regarding the accumulated charges reflected in his invoices.[16] Per Plaintiff, during those discussions Delcollo acknowledged the firm's block billing practice.[17] It is alleged that on February 16, Delcollo explained that he would commission a higher percentage of any invoices paid within thirty days.[18] Plaintiff cites this conversation as the cause of him having felt pressured to pay, despite his unresolved concerns regarding the charges.[19]

On February 22, 2024, Plaintiff again contacted Defendant's billing department and received a total amount billed to date, which he alleges differed from the amount Delcollo had previously provided.[20] One week later, Plaintiff raised broader concerns regarding both Defendant's billing and representation, including untimely motion practice, drafting errors, and Delcollo's purported failure to adequately supervise the associates working on Plaintiff's matters which forms the

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[15] *Id.*, ¶ 23.
[16] *Id.*, ¶¶ 15-16.
[17] *Id.*, ¶ 16.
[18] *Id.*, ¶¶ 18-19.
[19] *Id.*, ¶¶ 19-20.
[20] *Id.*, ¶ 26.

underlying basis of Plaintiff's negligent supervision claim.[21] Plaintiff complained of Defendant having assigned two newly hired associates (hereinafter "the new associates") to perform work on his cases without having adequately overseen their performance.[22]

In April 2024, Defendant, on Plaintiff's behalf, filed a racial discrimination counterclaim in the *Polaris Acceptance v. Mark Lillard* litigation.[23] On May 7, 2024, Plaintiff alleges he learned that Defendant failed to present a previously discussed proposed settlement offer in the Tesla Realty litigation.[24] Three days later, Plaintiff learned of a scheduled deposition in the WSFS litigation within the following weeks to come; Plaintiff complains that despite Defendants having received earlier notice, this was his first notice.[25] On May 16, 2024, Plaintiff again raised concerns with Delcollo regarding Defendant's lack of communication and responsiveness, after which Delcollo responded by informing Plaintiff that Defendant was withdrawing from the representation.[26]

Plaintiff initially filed this civil action on October 3, 2024.[27] On March 4, 2025, in a separate legal action, Defendant filed a debt action in Superior Court

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[21] *Id.*, ¶ 29.
[22] *Id.*, ¶ 197.
[23] *Id.*, ¶ 37.
[24] *Id.*, ¶¶ 44-47.
[25] *Id.*, ¶¶ 49-50.
[26] *Id.*, ¶¶ 52-53.
[27] D.I. 1.

against Plaintiff seeking payment for the outstanding legal bills that remained unpaid.[28]

III. PROCEDURAL HISTORY

Plaintiff filed his initial *pro se* Complaint on October 3, 2024.[29] On October 29, 2024, Defendant filed multiple, separate motions to dismiss in lieu of a response. Specifically, Defendant filed a Motion to Dismiss Claim for Breach of Fiduciary Duty,[30] a Motion to Dismiss Claim of Legal Malpractice,[31] a Motion to Dismiss Claim of Negligent Supervision,[32] and a Motion to Dismiss Claim of Breach of Contract.[33] On November 1, 2024, notice was sent to Plaintiff setting November 18, 2024, as the deadline to respond.[34] No response was docketed by the deadline and, given Plaintiff's *pro se* status, the Court reached out to the parties for scheduling.

Following correspondence with the parties, defense counsel requested full briefing be limited to the motion to dismiss Plaintiff's legal malpractice claim.[35] On December 4, 2024, the Court entered a scheduling order on the legal malpractice

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[28] *Id.*, ¶ 55; *Offit Kurman v. Lillard*, N25C-03-120 CLS.
[29] D.I. 1.
[30] D.I. 9.
[31] D.I. 10, 12.
[32] D.I. 11.
[33] D.I. 13.
[34] D.I. 14.
[35] D.I. 19 (confirmation email only docketed; entire email correspondence in possession of the parties and Chambers and can be docketed upon request of any party).

action.[36] Pursuant to the Order, Defendant's Opening Brief was due no later than December 20, 2024, Plaintiff's Answer was due no later than January 17, 2025, and Defendant's Reply Brief was due no later than January 30, 2025.[37]

Accordingly, Defendant filed its Opening Brief on December 19, 2024.[38] On January 21, 2025, Plaintiff filed his Answering Brief in opposition.[39] Defendant filed its Reply Brief on January 29, 2025.[40] On February 25, 2025, the Court heard argument and granted the motion, dismissed the legal malpractice claim without prejudice and afforded Plaintiff thirty days – by March 27, 2025 – to file an amended complaint.[41] At argument Defendant requested dismissal of Plaintiff's claims for breach of fiduciary duty, negligent supervision, and breach of contract based on Plaintiff's failure to respond to those motions. This request was denied given Plaintiff's stated confusion by Defendant only requesting briefing on the legal

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[36] D.I. 20

[37] *Id*.

[38] D.I. 22.

[39] D.I. 24.

[40] D.I. 25.

[41] D.I. 31. Following Plaintiff's acknowledgment that generative artificial intelligence (hereinafter "generative A.I.") was used in preparation of his legal filings, and the Court's review of Plaintiff's papers which revealed a number of incorrect case citations, the Court informed the parties that "[i]f any party uses Artificial Intelligence for a filing, that filing must have a certification asserting that all legal citations are true and accurate and have been verified to stand for the purported proposition for which it was cited." D.I. 29, 31.

malpractice claim. Defense was given leave to re-file all motions upon the filing of Plaintiff's amended Complaint.[42]

On March 26, 2025, Plaintiff moved for additional time to file his Amended Complaint, as his mother "suffered a severe life threatening cardiac event" and he was out of state as a result.[43] The Court granted this request that same day.[44] Plaintiff was given an additional thirty (30) days to file the Amended Complaint, or until May 4, 2025.[45]

On May 5, 2025, Plaintiff once again moved for additional time to file his Amended Complaint.[46] This time, Plaintiff requested additional time due to the passing of his mother on April 27, 2025, and limitations accessing File&Serve. Plaintiff's request was granted on May 5, 2025. Plaintiff's filing deadline for the Amended Complaint was extended until May 19, 2025.[47]

On May 21, 2025, Plaintiff belatedly filed his third Motion to extend time to file his Amended Complaint, styled as a "Motion for Leave to File Amended

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[42] D.I. 31, 38.
[43] *Id*.
[44] D.I. 32 and 33.
[45] *Id*. Defendant moved for clarity regarding the Order from the February 25, 2025, hearing. Ultimately, the Court clarified on the docket that Defendant's motion to dismiss the legal malpractice claim was granted without prejudice, to the extent it was not already clear. D.I. 34, 42, 46-47.
[46] D.I. 48.
[47] D.I. 49.

Complaint Out of Time," citing new discoveries concerning Defendant's conduct.[48] Defendant filed its Response in opposition to Plaintiff's Motion for Leave to File Amended Complaint Out of Time on May 28, 2025.[49]

On May 29, 2025, Plaintiff filed his fourth request for additional time to file his Amended Complaint, citing "continuous development of factual and evidentiary claims."[50] On May 30, 2025, Defendant filed its Response to Plaintiff's motion and moved to strike portions of the allegations Plaintiff put forth, as well as a Motion to Expedite.[51] This Court sent Plaintiff a letter requesting his response to Defendant's Motion to Expedite Hearing on June 17, 2025, which remained unopposed.[52]

On July 22, 2025, this Court Granted Plaintiff's fourth Motion for Enlargement of Time to File Amended Complaint, affording Plaintiff until July 24, 2025, to file, and Defendants thirty (30) days to respond.[53] Ultimately, Plaintiff filed his Amended Complaint on July 24, 2025.[54] Following multiple electronic mail communications with the Court, some of which *ex parte*, the Court cautioned the

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[48] D.I. 51.
[49] D.I. 53.
[50] D.I. 54.
[51] D.I. 56, 57.
[52] D.I. 60.
[53] D.I. 62, 63.
[54] D.I. 68, 69. The Court received several emails from Plaintiff on July 24, 2025, which expressed his dismay and concerns regarding the Order issued on March 12, 2025, discussing generative A.I as well as dissatisfaction with unsuccessful negotiations with Defendant and included the relevant correspondence between the parties. D.I. 65, 67.

parties that all such communication must include defense counsel and will be docketed.[55] On August 13, 2025, Defense counsel was permitted leave to serve Plaintiff electronically going forward.[56]

A Scheduling Order was set for Defendant's Motion to Dismiss the Second Amended Complaint[57] In accordance with that Order, Defendant filed its Second Motion to Dismiss and Strike Portions of Plaintiff's Amended Complaint on August 25, 2025.[58] Defendant filed its Opening Brief in support on September 22, 2025.[59] Plaintiff's response was due on October 22, 2025. Having received no response from Plaintiff by October 31, 2025, the Court once again mailed Plaintiff a letter regarding his past due response to Defendant's Motion to Dismiss.[60]

The Court received no further filings or correspondence from Plaintiff until November 7, 2025, when Plaintiff belatedly filed his Motion to Deny Defendants Second Motion to Dismiss and for Emergency Hearing on November 7, 2025.[61] On

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[55] D.I. 64.
[56] Defendant and defense counsel have offices located in the same building in Wilmington, Delaware. Defendant's request was made following several negative interactions that Plaintiff had with building security, which subsequently led to the head of building security's decision to ban Plaintiff from the property. Such restriction would therefore impede Plaintiff's ability to effect in-person service. D.I. 72, 73.
[57] D.I. 74, 75.
[58] D.I. 76.
[59] D.I. 80.
[60] D.I. 84.
[61] D.I. 85.

November 11, 2025, Defendant filed an Opposition to Emergency Motion.[62] On February 27, 2026, a status conference was held with the Parties and a hearing on Defendant's pending Motion to Dismiss was scheduled.[63] Oral argument was held on May 5, 2026.[64] The matter is now ripe for decision.

On May 12, 2026, Plaintiff filed a "Motion to Require Segregation of Alleged Individual and LLC Obligations Consistent with Delaware Entity Liability Principles before further Adjudication."[65] Defendant moved to Stay this motion on May 26, 2026.[66] The motion to Stay was **GRANTED** on June 2, 2026.[67]

III. STANDARD OF REVIEW

Under Superior Court Civil Rule 12(b)(6) a motion to dismiss will be granted "where the plaintiff cannot recover 'under any reasonably conceivable set of circumstances susceptible of proof.'"[68] Under that rule the Court will:

> (1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as "well pleaded" if they give the opposing party notice of the claim, (3) draw all reasonable inferences in favor of the non-moving party, and (4) [not dismiss the claims] unless the

[62] D.I. 86.
[63] D.I. 90-91.
[64] D.I. 97. Oral argument was held via Courtscribes, during which Plaintiff was reminded multiple times about appropriate behavior and decorum. *Id.*
[65] D.I. 94.
[66] D.I. 99.
[67] D.I. 103.
[68] *Khushaim v. Tullow Inc.*, 2016 WL 3594752 at *2 (Del. Super. Jun. 27, 2016).

> plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[69]

Conclusory allegations, not supported by specific factual allegations, will not survive a motion to dismiss.[70]

IV. ANALYSIS

A. Plaintiff's Legal Malpractice Claim Fails

Defendant moves to dismiss Plaintiff's legal malpractice claim on the basis that (1) Plaintiff cannot establish an attorney-client relationship since the business entities involved in the referenced actions are not named plaintiffs in this suit; (2) Plaintiff has not pled with the requisite specificity required to put Defendant on notice, and (3) Plaintiff has not established the requisite proximate causation.

1. Plaintiff Established an Attorney-Client Relationship

Defendant first contends that Plaintiff's legal malpractice claims should be dismissed because Plaintiff failed to sufficiently plead, and cannot establish, that there was an attorney-client relationship formed between the parties.[71] Defendant argues Plaintiff was not the represented client in the cases which form the basis of his legal malpractice claim; that the represented client was actually Plaintiff's business entities: Fain Auto Sales, LLC; IMC of Delaware, LLC; Lillard Land

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[69] *Id.*
[70] *Id.*
[71] D.I. 80, pp. 11-12.

Holdings, LLC; and Cordova Auto Group, LLC; and Shippuden Transport, LLC.[72] As such, Defendant contends that Plaintiff's legal malpractice claim fails, as the business entities are not a party to this action, nor can they be without attorney representation.[73]

In making a claim for legal malpractice, a plaintiff must establish: "the employment of the attorney; the attorney's neglect of a professional obligation; and resulting loss."[74] In addition, such a claim requires a plaintiff to "plead and prove the existence of an attorney-client relationship."[75] The existence of an attorney-client relationship turns on the specific facts and circumstances of each case, but the key distinguishing feature is "whether the attorney and client entered into an express agreement for legal services."[76] In cases where there is no express agreement, a lawyer-client relationship may still be inferred based on the conduct of the parties.[77] Only the interested party or the represented client may bring forth a legal action against Defendant for legal malpractice.[78]

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[72] *Id.* at 2, 12.
[73] *Id.* at 13.
[74] *Balinski v. Baker*, 2013 WL 4521199, at *3 (Del. Super. Ct. Aug. 22, 2013).
[75] *Korotki v. Hiller & Arban, LLC*, 2017 WL 2303522, at *6 (Del. Super. Ct. May 23, 2017) (citing *Farmers Bank of Willards v. Becker*, 2011 WL 3925428, at *3–4 (Del. Super. Ct. Aug. 19, 2011) (quoting *Milner v. Anders*, 2001 WL 637394, at *4 (D. Del. May 10, 2001)).
[76] *Id.*
[77] *Id.*
[78] Superior Court Civil Rule 17(a).

In this case, Plaintiff alleges that he retained Defendant for legal services after having executed a formal agreement on December 14, 2023, in his name and not in the name of any business entity.[79] Although Plaintiff's lengthy and convoluted Complaint alleges deficiencies in Defendant's representation across several matters, it identifies only two actions in which Plaintiff was a named party: *Mark Lillard v. Tesla Realty Group*[80] and *Polaris Acceptance v. Mark Lillard*.[81] Although Plaintiff is the named defendant in *Polaris Acceptance v. Mark Lillard*, his Amended Complaint characterizes that action as having been brought against a business entity. However, Plaintiff's own Amended Complaint alleges Defendant provided deficient representation in the *Polaris Acceptance* case for asserting counter-claims which failed, because, according to Plaintiff, this claim could have only been brought by a natural person. The counterclaims of racial discrimination apparently failed because they were advanced by a business entity defendant. Therefore, while Plaintiff himself appears to be a named party in that action, Plaintiff has conceded he was not.

A legal malpractice claim may only be sustained by the party named in the underlying action for which the attorney-client relationship was formed. Therefore, his Complaint fails to set forth the basic facts required to establish such an attorney-

[79] D.I. 69, ¶ 6.
[80] D.I. 69, ¶¶ 44-47; N24C-02-242 MAH.
[81] *Id.*, ¶¶ 37, 54; *Mark Lillard v Wild East Group, LLC et. al*, N24C-04-126 JRJ.

client relationship with respect to any matters in which Plaintiff himself, as an individual, was not the party at issue. Consequently, any claim wherein Plaintiff alleges malpractice in handling a case in which Defendant represented a business entity fails to set forth a claim upon which relief can be granted.

Conversely, Plaintiff has sufficiently shown an attorney client relationship to support a cognizable claim in one matter: *Mark Lillard v. Tesla Realty Group*. Accordingly, to the extent Plaintiff raises a legal malpractice claim arising from Defendants representation of a separate legal entity, any such claim is **DISMISSED**, as Plaintiff only established an attorney-client relationship with respect to matters in which he, in his individual capacity, retained Defendant for legal representation. Any claims Plaintiff has put forth with respect to the *Lillard v. Tesla Realty Group* litigation survive temporarily. To the extent Plaintiff himself, as an individual, is a named party in the *Polaris Acceptance* litigation, that claim may survive as well at this stage of the analysis.

2. Despite the Complaint's lack of clarity and imprecise allegations, Plaintiff has sufficiently satisfied the minimal notice pleading standard

Defendants argue Plaintiff's legal malpractice claim fails because he has not pled with specificity and references non-specific matters.[82] To successfully plead a legal malpractice claim, a litigant must only plead factual allegations with enough

[82] D.I. 80, p. 13.

specificity as to put the defendant on notice of the claim being asserted against them.[83] Here, Plaintiff makes sweeping allegations to reference legal malpractice "in every legal matter for which Defendant was retained."[84] As explained above, Plaintiff identifies only two cases where he is the named party in the action. Plaintiff claims that Defendant was negligent in the work performed in a "landlord-tenant agreement" case,[85] the "Tower Automative/Dave Harmon matter,"[86] Plaintiffs "discrimination claim,"[87] and a "Tesla Realty" matter.[88] Though Plaintiff's Amended Complaint lacks cohesion and clarity, it includes enough details to inform Defendant of the allegations in the *Lillard v. Testla Realty Group* case in which he alleges malpractice. The same is true for the *Polaris Acceptance* litigation. Thus, Plaintiff has pled enough facts to put Defendant on notice of the claims being asserted with respect to the matters at issue remaining.

3. Plaintiff Does Not Plead Proximate Cause or Resultant Loss

Finally, Defendant argues that Plaintiff's legal malpractice claim fails because Plaintiff has both failed to plead proximate cause and resultant loss, or that his claims

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[83] *Prather v. Doroshow, Pasquale, Krawitz & Bhaya*, 2011 WL 1465520, at *2 (Del. Super. Ct. Apr. 14, 2011).
[84] D.I. 69, ¶ 98.
[85] *Id.*, ¶ 105.
[86] *Id.*, ¶ 106.
[87] *Id.*, ¶ 129.
[88] *Id.*, ¶ 135.

would have been successful if not for Defendant's negligence.[89] To state a legal malpractice claim the plaintiff must establish proximate cause, or rather that because of the lawyers negligence the plaintiff suffered a resulting loss.[90] "To show a resulting loss, the plaintiff must show the underlying suit would have been successful but for the negligence of the lawyer."[91]

Here, Plaintiff does not reference how any of the referenced cases would have been successful if not for Defendant's negligence. Though the Amended Complaint makes numerous allegations of negligent representation, such claims are conclusory. For example, in paragraph 135, Plaintiff identifies several purported deficiencies in Defendant's handling of the Tesla Realty litigation, including Defendant's failure to pursue settlement negotiations on Plaintiff's behalf or present Tesla Realty with the "previously prepared settlement offer" that Defendant had billed Plaintiff for reviewing.[92] Plaintiff further alleges that, during a May 7, 2024, conversation, Tesla Realty's managing partner advised him that "the matter could have been settled before Tesla Realty's insurance company became involved" had a formal offer been presented.[93] At most, this establishes that a settlement opportunity may have existed,

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[89] D.I. 80, p. 15.
[90] *Oliver v. Galerman*, 2022 WL 287907, at *2 (Del. Super. Ct. Jan. 31, 2022) (citing *Tarrant v. Rammunno*, 171 A.3d 138 (Del. 2017)).
[91] *Id.*
[92] D.I. 69, ¶ 136.
[93] *Id.*, ¶ 135.

not that Tesla Realty would have accepted the settlement offer, and thus falls short of establishing that Defendant's failure to present the settlement offer caused Plaintiff an identifiable loss.

The same is true with respect to the *Polaris Acceptance* litigation. His Amended Complaint simply states: "Defendant's handling of the case, as detailed in the March 23, 2024, email, demonstrates a clear instance of legal malpractice" because "the judge's denials of [Defendant's] motions, which dismissed their arguments as speculative, can only be viewed as a direct result of their failure to engage in discovery and pre-trial motions."[94] Plaintiff supports this assertion by essentially stating that Defendant failed to follow Plaintiff's advice to follow a certain course of action and is therefore negligent because of the ultimate outcome reached**.**

In paragraph 130, Plaintiff describes the alleged deficiencies of Defendant's representation in the discrimination action but fails to plead the action would have been successful if not for Defendant's negligence. Instead, Plaintiff concedes that "[Defendant's] decision undermined Plaintiff's individual discrimination claim and materially reduced the likelihood of success."[95] Plaintiff's Complaint is void of any well-pleaded assertion that any of the referenced cases would have been successful

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[94] *Id.*, ¶ 123.
[95] *Id.*, ¶ 130.

if not for Defendant's actions. Consequently, Plaintiff's legal malpractice claim fails as Plaintiff has not pled the requisite proximate causation. Accordingly, the motion is **GRANTED** and the Plaintiff's legal malpractice claims are **DISMISSED**.

B. Plaintiff's Breach of Fiduciary duty claim fails

Defendant next challenges Plaintiff's pleadings for his breach of a fiduciary duty claim. Defendant argues Plaintiff's claim fails for three separate reasons.[96] First, Defendant suggests Plaintiff failed to allege facts which support a fiduciary relationship.[97] Second, Defendant argues this Court lacks subject matter over these claims.[98] Finally, Defendant argues that this claim fails because it is duplicative of the breach of contract claim.[99]

This analysis begins with the most obvious issue presented: jurisdiction. Defendant is correct in that Superior Court does not have jurisdiction over equitable claims. Alleging a breach of a fiduciary duty is an equitable claim in which jurisdiction is vested in the Court of Chancery. The Delaware Court of Chancery "has exclusive jurisdiction to adjudicate claims for breach of a fiduciary duty" because "equity, not law, is the source of the asserted right."[100] The Chancery Court

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[96] D.I. 80, pp. 18-22.
[97] *Id.* at 18-19.
[98] *Id.* at 20.
[99] *Id.* at 20-22.
[100] *Bank of Delmarva v. S. Shore Ventures, LLC*, 2014 WL 5390389, at *2 (Del. Super. Ct. Oct. 21, 2014) (citing *Reybold Venture Group XI-A, LLC v. Atl. Meridian Crossing, LLC,* 2009 WL 143107, at *2 (Del. Super. Jan. 20, 2009)).

retains jurisdiction even where the plaintiff seeks monetary damages because a fiduciary duty claim stems from a relationship that exists in equity.[101]

Anecdotally, while not necessary to decide, the Court notes that a properly pleaded claim for breach of fiduciary duty requires the plaintiff to establish the existence of an attorney-client relationship that is fiduciary in nature.[102] A fiduciary relationship exists when there is "a special trust relationship between the parties" and typically form when one "reposes special trust in another or where a special duty exists on the part of one person to protect the interest of another."[103] Typically, a fiduciary is "one who is entrusted with the power to manage and control the property of another" such as corporations or estates.[104]

An attorney is not automatically a fiduciary unless they take on an additional role that exceeds the normal scope of the legal services being provided. Such fiduciary roles may include an attorney who "is acting in a second capacity like a trustee or corporate manager[,]" "[s]uch as in the case of client trust accounts."[105] A plaintiff may not simply classify an attorney a fiduciary "because nomenclature does

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[101] *Dickerson v. Murray*, 2015 WL 447607, at *6 (Del. Super. Ct. Feb. 3, 2015).
[102] *Id.*
[103] *Id.* at *5 (citing *Wal–Mart Stores, Inc. v. AIG Life Ins. Co.,* 872 A.2d 611, 624 (Del. Ch. 2005) *aff'd in part, rev'd in part,* 901 A.2d 106 (Del. 2006) (citations omitted).
[104] *Id.* (citing *Sokol Holdings, Inc. v. Dorsey & Whitney, LLP,* 2009 WL 2501542, at *3–4 (Del. Ch. Aug. 5, 2009).
[105] *Id.*

not establish duties."[106] "[A]n attorney must act in some capacity beyond the mere provision of legal services to owe actionable fiduciary duties."[107]

Here, Plaintiff's Complaint does not properly allege a fiduciary relationship. The Complaint simply argues, without citation to any supporting authority, that "[i]n a fiduciary relationship, the attorney must act in the client's best interest, demonstrating trust, loyalty and transparency," which is breached "when the attorney fails to prioritize the client's interests."[108] Plaintiff further argues Defendant owed him a fiduciary duty to "act in his best interest and protect him from unnecessary and excessive legal fees," and Defendant's "billing practices reflect a willful failure to honor their fiduciary duty."[109] While outside the scope of this Court's jurisdiction, it does not appear that Plaintiff has alleged facts sufficient to establish a special relationship to support a breach of a fiduciary duty claim.

Rather, Plaintiff's contentions primarily focus on billing related grievances and distain for the legal representation he received. A fiduciary relationship is not formed simply because Plaintiff received legal services from Defendant. Whether there has been a fiduciary relationship sufficiently pled, however, is not for this

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[106] *Id.*
[107] *Id.* at *6 (citing *Rich Realty, Inc. v. Potter Anderson & Corroon LLP,* 2011 WL 743400, at *3 (Del. Super. Feb. 21, 2011).
[108] D.I. 69, ¶ 175.
[109] *Id.*, ¶ 178.

Court to decide, as this claim is **DISMISSED** for lack of jurisdiction. There is no legal need to continue on an analysis for Defendant's third challenge.

C. Plaintiff's Breach of Contract Claim Fails

Defendant next moves to dismiss Plaintiff's claim alleging a breach of the Engagement Agreement, arguing Plaintiff failed to sufficiently plead facts supporting such a claim. Defendant further asserts Plaintiff has not demonstrated the resulting harm suffered because of Defendant's alleged breach.[110] Defendant first argues Plaintiff's claim fails because although he has demonstrated the existence of a signed engagement letter between the parties, he has failed to "allege who exactly was party to the contract(s), [and] which provisions of the engagement letter, if any, were breached."[111]

To survive a motion to dismiss for failure to state an actionable breach of contract claim, the plaintiff must demonstrate the existence of "a contractual obligation; a breach of that obligation by the defendant; and a resulting damage to the plaintiff."[112] The pleading requirements are liberal and do not require the plaintiff to "plead specific facts to state an actionable claim," but a plaintiff must include "a short and plain statement of the claim showing that the pleader is entitled

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[110] D.I. 80, pp. 22-26.
[111] *Id.* at 22, D.I. 69, ¶¶ 6, 143-174.
[112] *Sunstone Partners Mgmt., LLC v. Synopsys, Inc.,* 2024 WL 3813266, at *2 (Del. Ch. Aug. 14, 2024).

to relief."[113] Such statements are deemed sufficient as long as they put the defendant on notice of the claim being asserted against them.[114] However, " simply referring generally to the parties' contract will not sustain a claim for breach of contract."[115] A claim for breach of contract will fail unless a party "identif[ies] the particular contractual terms that were breached."[116]

Here, although Plaintiff alleges the existence of an express contract, evidenced by the engagement letter that he signed in his individual capacity to retain Defendant for legal services, he fails to articulate the specific provisions of the contract that were breached. Such deficiencies are fatal to a breach of contract claim.[117] Plaintiff was given multiple opportunities to fix the deficiencies in his originally filed Complaint. Multiple extensions were given, missed deadlines were forgiven, over objection. Plaintiff's obligation in prosecuting this case is to sufficiently plead facts upon which relief can be based. He has not done so here.

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[113] *VLIW Tech., LLC v. Hewlett-Packard Co*., 840 A.2d 606, 611 (Del. 2003).
[114] *Id.*
[115] *Marydale Pres. Assocs., LLC v. Leon N. Weiner & Assocs., Inc.*, 2022 WL 4446275, at *17 (Del. Super. Ct. Sept. 23, 2022) (citing *BET FRX LLC v. Myers*, 2022 WL 1236955, at *1 (Del. Ch. Apr. 27, 2022) ("The plaintiff's claims for breach of the express and implied terms of the LLC agreement fail because the plaintiff fails to identify any express or implied terms allegedly breached.").
[116] *Id.*
[117] D.I. 69, ¶ 6.

Further, "[t]o succeed on [a] breach-of-contract claim, [Plaintiff] must prove damages stemming from the breach."[118] Plaintiff fails to plead the necessary harm suffered to sustain a breach of contract claim. Aside from claiming that he suffered "undue stress and reputational damage" because of Defendant's "unnecessary delays [and] failures to act," Plaintiff fails to articulate the specific harm suffered from Defendant's alleged breach.[119] Thus, Plaintiff's breach of contract claim fails.

Given this ruling, it not necessary to analyze Defendant's duplicative argument. Additionally, because the legal malpractice claim is dismissed, Defendant's argument can no longer stand. Nonetheless, this claim is **DISMISSED** for failing to sufficiently plead facts which set forth a cause of action upon which relief can be based.

D. Plaintiff's Claim for Negligent Supervision Fails

The final issue before the Court is whether Plaintiff has sufficiently pled a claim for negligent supervision. Defendant argues that Plaintiff's claim must be dismissed because Plaintiff fails to allege actual or constructive knowledge of tortious conduct at the time of hiring.[120] Specifically, Defendant argues that Plaintiff's claim is deficient because Plaintiff has failed to "plead factual allegations

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[118] *Parexel Int'l (IRL) Ltd. v. Xynomic Pharms., Inc.,* 2021 WL 3074343, at *15 (Del. Super. Ct. July 21, 2021)
[119] D.I. 69, ¶ 145.
[120] D.I. 80, pp. 28-29.

that [Defendant] knew of tortious conduct by [the new associates] at the time they were hired."[121]

An employer may be held liable under the theory of negligent supervision "where the employer is negligent in giving improper or ambiguous orders or in failing to make proper regulations, or in the employment of improper persons involving risk of harm to others, or in the supervision of the employee's activity."[122] The deciding factor is whether the employer knew or should have known that the employee was likely to engage in the type of tortious conduct to cause injury.[123] Therefore, to successfully plead a claim for negligent supervision, Plaintiff must "allege [Defendant] was on notice of [the new associates'] tortious behavior at the time [they] [were] hired."[124]

Here, although Plaintiff contends that the new associates assigned to his cases were unsupervised to Plaintiff's own detriment, Plaintiff does not establish that the new associates had any such propensity for alleged tortious conduct, nor has Plaintiff alleged that Defendant was aware of any such allegations upon hiring them.

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[121] *Id.* at 29.
[122] *Bates v. Caesar Rodney Sch. Dist.*, 2018 WL 11360454, at *6 (Del. Super. Ct. Nov. 30, 2018), aff'd, 263 A.3d 127 (Del. 2021) (citing *Doe v. Indian River Sch. Dist.*, 2012 WL 1980562, at *4-5 (Del. Super. Ct. Apr. 11, 2012)).
[123] *Id.*
[124] *Root v. Wilmington,* WL 17039161, at *3 (Del. Super. Ct. Nov. 17, 2022).

Consequently, Plaintiff has failed to state an actionable claim for negligent hiring. This Count, accordingly, is **DISMISSED**.

E. Defendant's Alternative Motion to Strike is Moot

Defendant contends that if this Court finds no basis to dismiss Plaintiff's Complaint, portions of the Amended Complaint should be stricken.[125] Defendant specifically moves to strike "Plaintiff's meandering related to Defendant's fee dispute with Plaintiff, which resemble a mixture of legal argument and impertinent material, (2) Plaintiff's numerous inaccurate citations to legal authority in the Amended Complaint that appear to be the product of generative artificial intelligence tools, and (3) Plaintiff's scandalous and impertinent references to Defendant's Glassdoor reviews."[126]

Additionally, Defendant moves the Court to strike legal citations that may be the product of generative artificial intelligence software. Defendant raises concern for the following citations: "*Clark v. Kidder, Peabody & Co*., 635 A.2d 1291 (Del. 1993),"[127] *Doe v. Cahill*, 884 A.2d 451 (Del. 2005), *Narrowstep, Inc. v. Onstream Media Corp.,* 2010 WL 5422405 (Del. Ch. 2010), *Grunstein v. Silva*, 2009 WL

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[125] D.I. 80 at 31.
[126] *Id.* at 33.
[127] D.I. 69, ¶ 165.

4698541 (Del. Ch. 2009), and *MetCap Sec. LLC v. Pearl Senior Care, Inc*., 2009 WL 513756 (Del. Ch. 2009).[128]

Upon review of the filings Plaintiff submitted to the Court, it appears that either the citations are incorrect, or the cases do not stand for the proposition of which they are being used. First, the citation to "*Clark v. Kidder, Peabody & Co*., 635 A.2d 1291 (Del. 1993)" [129] is simply incorrect. The citation "635 A.2d 1291 (Del. 1993)" returns the case *Carpenter v. U.S.*, 635 A.2d 1289 (D.C. Ct. of App. 1993). The case *Clark v. Kidder, Peabody & Co.*, has the citation: 636 F. Supp. 195 (S.D.N.Y. 1986). Therefore, this citation's validity is questioned and the Court's concerns regarding the use of generative A.I. are raised.

Next, Plaintiff cites to *Doe v. Cahill* for the proposition that a complaint need only set forth facts sufficient to "raise a reasonable expectation that discovery will reveal evidence of the alleged misconduct."[130] However, *Doe v. Cahill* was before the Supreme Court of Delaware on appeal from a motion to deny a protective order, which sought to protect internet service providers from disclosing the identifies of the John Doe defendants in a defamation action. The Supreme Court determined that before obtaining the identities of anonymous defendants through discovery, the

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[128] D.I. 80 at 33.
[129] D.I. 69, ¶ 165, the Complaint submits: "This is textbook judicial estoppel. Plaintiff cannot maintain mutually exclusive positions in separate litigations to gain procedural advantage. See *Clark v. Kidder, Peabody & Co*."
[130] D.I. 69, ¶ 212.

defamation plaintiff must satisfy a summary judgment standard. The Court made further findings concerning defamation but did not speak to the issue at bar. This citation is out of context, not applicable and inappropriate.

Plaintiff cites *Narrowstep, Inc. v. Onstream Media Corp.,* 2010 WL 5422405 (Del. Ch. 2010) to support his allegations of his breach of contract claim, arguing "[m]utual assent requires both offer and acceptance, express or implied, between identified parties. See *Narrowstep, Inc. v. Onstream Media Corp*."[131] However, *Narrowstep* deals with various claims, including breach of contract, fraud, and unjust enrichment arising from a failed merger agreement. While the case discusses contract formation, it does not explicitly discuss mutual assent.[132] Therefore, this citation is questioned for its appropriate use here in this context.

Plaintiff's Amended Complaint reads: "Under Delaware law, courts will not infer a personal guarantee absent a clear and unequivocal undertaking by the individual. See *Grunstein v. Silva*."[133] *Grunstein v. Silva*,[134] however, involves "breach of an oral partnership agreement to carry out the acquisition of an eldercare and rehabilitative services company" and seeks "various remedies in contract,

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[131] *Id.* at ¶ 168.
[132] *Id.*
[133] D.I. 69, ¶ 170.
[134] 2009 WL 4698541, at *7 (Del. Ch. 2009).

equity, and tort."[135] Plaintiff's pin cite discusses a fiduciary duty and promissory estoppel claim.

Finally, Plaintiff's Amended Complaint, in paragraph 169, states: "But even these equitable claims require Plaintiff to demonstrate (1) a specific benefit conferred to the entity; and (2) that the benefit was knowingly accepted and retained under circumstances rendering it inequitable to do so. *See Metcap Sec. LLC v. Pearl Senior Care, Inc*."[136] While *Metcap Sec. LLC* discusses unjust enrichment, the elements are not articulated in the way Plaintiff cites, nor is Plaintiff's reliance on the case justified to argue whether corporate authorization exists.[137]

Whether some of the above inaccuracies are due to Plaintiff's *pro se* status and lack of familiarity with proper legal writing and citation or the use of generative A.I. is fully unclear. However, because Plaintiff was previously warned about the use of generative A.I. in court filings, the Court would have granted the motion to strike. However, this issue is now **MOOT** given the dismissal of Plaintiff's Complaint. Nonetheless, the previous cautions and admonitions regarding the use of generative A.I. in filings without proper due diligence remain and any further such

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[135] *Id.*

[136] D.I. 69, ¶ 169.

[137] *Metcap Sec. LLC*, 2009 WL 513756 (Del. Ch. 2009). Additionally, Plaintiff appears to incorrectly mislabel Defendant as "Plaintiff." D.I. 69, ¶ 169.

use in this case, should there be future filings, will be subject to the appropriate sanctions.

V. CONCLUSION

For the foregoing reasons Defendant's Motion is **GRANTED**. As a result, Plaintiff's "Motion to Require Segregation of Alleged Individual and LLC Obligations Consistent with Delaware Entity Liability Principles before further Adjudication" is **DENIED AS MOOT.**

IT IS SO ORDERED.

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Danielle Brennan, Judge