

UNITED STATES DISTRICT COURT

for the
District of Delaware

KURT MORALES II, et. al.

Plaintiff

v.

SUNPATH LTD, et. al.

Defendant

Civil Action No. 20-cv-01376-RGA

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: BERTRAM SOLUTIONS LLC, c/o FELIX BERTRAM, 1525 4TH ST, KIRKLAND, WA, 98033-5553

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attached Exhibit "A"

Place: Seattle Deposition Reporters, One Union Square, 600
University Street, Suite 1715 Seattle, WA 98101 or by
email to Plaintiffs' attorney

Date and Time:

08/01/2023 10:14 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/14/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Ian Connor Bifferato

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiffs
Kurt Morales II, Lucas Horton, and Brandon Callier, who issues or requests this subpoena, are:
Ian Connor Bifferato, The Bifferato Firm, 800 N King St, Wilmington, DE 19801, (302) 429-0907

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 20-cv-01376-RGA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF DELAWARE**

KURT MORALES II, BRANDON
CALLIER, and LUCAS HORTON,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

SUNPATH LTD., a Delaware corporation,
and NORTHCOAST WARRANTY
SERVICES, INC., a Delaware corporation,
AMTRUST NORTH AMERICA, INC., a
Delaware corporation, SING FOR SERVICE,
LLC, a Delaware limited liability company,
and PELICAN INVESTMENT HOLDINGS
GROUP LLC, a Delaware limited liability
company,

Defendants.

Case No.: 20-cv-01376-RGA

**SCHEDULE A TO SUBPOENA TO
PRODUCE DOCUMENTS,
INFORMATION, OR OBJECTS OR TO
PERMIT INSPECTION**

DEFINITIONS

Any references to “SUNPATH LTD.,” “NORTHCOAST WARRANTY SERVICES, INC.,” “AMTRUST NORTH AMERICA, INC.,” “SING FOR SERVICE, LLC,” “MEPCO,” and PELICAN INVESTMENT HOLDINGS GROUP LLC, “Defendant”, “Defendants”, “Defendant’s” or “Defendant(s)” shall be treated as referring to each and every Defendant named within this lawsuit, individually and collectively, as may be appropriate. Any references to “Plaintiff”, “Plaintiff’s”, or “Plaintiffs” shall be treated as referring to each and every Plaintiff named within this lawsuit, individually and collectively, as may be appropriate. Any references to “Respondent”, “YOU” or “YOUR” as used in these Document Requests includes BERTRAM SOLUTIONS LLC, as well as its officers, members, manager, directors, employees, agents, representatives and/or any and all persons acting or purporting to act on its behalf, as well as any predecessor entities that may be in possession of discoverable information. Any references

indicating the use of masculine or feminine, and any references indicating the use of singular or plural, shall be used interchangeably.

If any objection is made to any of the following Document Requests, Respondent shall make any such objection and state the relevant legal basis for such objection. If any objection is made based upon a claim of privilege as to any response, Respondent shall state the legal basis for the privilege Respondent is invoking and provide a detailed log to support the invocation of such privilege.

Each and every Document Request herein is deemed continuing in nature pursuant to the Federal Rules of Civil Procedure, and Respondent is obligated to seasonably amend and provide any updated information that renders the responses to one or more of these Document Requests incomplete or inaccurate, and serve those amended responses upon the undersigned Plaintiff's counsel.

As used in these Document Requests, the term "DOCUMENT" or "DOCUMENTS " means every writing or recorded material of every type and description, of any kind, that is in the possession, control or custody of Respondent, which Respondent has knowledge, whether originals, copies or facsimiles. Such writings or recordings include, but are not limited to, collection notes, electronic computer collection records, printouts of collection records, sample collection letters, Metro-data tapes, diskettes, computer hard drives, tape backups, Zip-type disks, magnetic media of any kind, CD-ROM, DVD, correspondence, memoranda, stenographic notes, handwritten notes, contracts, documents, rough-drafts, inter-office memoranda, memoranda for the files, letters, research materials, logs, diaries, forms, bank statements, tax returns, card files, books of account, journals, ledgers, invoices, diagrams, minutes, manuals, studies, publications, pamphlets, pictures, films, voice recordings, reports, surveys, minutes, statistical compilations, data processing cards, computer records, tapes, print-outs, agreements, communications, state and federal governmental hearings, reports, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, graphs, notebooks, note charts, charts, plans, drawings, sketches, maps, summaries or

records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, video tape, motion picture film, digital photographs, brochures, advertisements, circular, press releases, drafts, any marginal comments appearing on any document, all other writings, books of all nature and kind whether handwritten, typed, printed, mimeographed, photocopied or otherwise reproduced, all tape recordings (whether for computer, audio, or visual replay) and all other written, printed, and recorded matter or tangible things upon which words, phrases, symbols or information of any kind are recorded, encrypted or otherwise stored.

INSTRUCTIONS

1. Each Document Request shall be answered fully and in writing, and where requested, by the applicable rules, under oath.

2. The terms “and” or “or shall mean and include both the conjunctive and the disjunctive.

3. If you claim a privilege as to any of the information requested to be identified and/or produced in the Document Requests, specify the privilege claimed, the communication or other matter as to which such claim is made, the subject of the communication or other matter and the basis upon which you assert the claim of privilege.

4. If, in answering these Document Requests, you encounter any ambiguity in construing a Document Request, or a definition or instruction relevant to the inquiry contained therein, set forth the matter deemed ambiguous and set forth the construction chosen or used in answering the Document Request.

5. In answering these Document Requests, furnish such information as is available to you, not merely such information as is within your knowledge. This means that you are to furnish information that is known by, available to, or in the possession of your affiliates, employees, servants, or agents, including your attorney or any agent for you or your attorney (unless privileged).

6. If you object to any Definition or Instruction or to any of the specific Document Requests set forth below, the precise grounds of your objection(s) shall be stated, with particularity. If any objection rests in whole or in part of a claim of privilege, the privilege claims should be stated, and all facts and all documents relied upon in support of such claim shall be stated or identified with particularity.

7. If you object to or claim a privilege with respect to only a portion of a given Document Request, you are requested to answer that portion of the Document Request as to which you have no objection or claim of privilege.

8. All Documents and electronic data shall be produced in a sortable, filterable, searchable format. Any .pdf documents shall be produced in OCR and searchable format.

DOCUMENT REQUESTS

Pursuant to Rule 45 and 34 of the Federal Rules of Civil Procedure, Plaintiffs request that Respondent produce within thirty (30) days,¹ the Documents requested herein:

1. Documents relating to Plaintiffs.
2. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for Gustav Renny.
3. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for National Car Cure, LLC.
4. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for Affordable Car Cure, LLC.
5. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for National Auto Protection Corp.

¹ See 2015 Committee Notes regarding Rule 34: Under Rule 34(b)(2)(B), the response to the request must state that copies will be produced. The production must be completed either by the time for inspection specified in the request or by another reasonable time specifically identified in the response. When it is necessary to make the production in stages the response should specify the beginning and end dates of the production.

6. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for companies holding themselves out as AAP.

7. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for Pelican Investment Holdings Group, LLC.

8. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for Affordable Auto Shield, Inc.

9. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for Sing for Service LLC, or Mepco.

10. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for Sunpath Ltd.

11. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for Northcoast Warranty Services, Inc.

12. Documents sufficient to show the identities of persons whose payments you processed as payment service provider for Amtrust North America, Inc.

13. Communications exchanged with the entities stated in Requests No. 2-12.

14. Communications exchanged with any entity involved in performing services for the entities stated in Requests No. 2-12, including Forte Data Systems.

Dated: July 14, 2023

Respectfully submitted,

THE BIFFERATO FIRM P.A.

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