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**Attorneys for Plaintiff**

**LYNNE MITCHNICK,**

**Plaintiff,**

**vs.**

**WILLIAM LEE CHILDS,**

**Defendant**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUDSON COUNTY**

**DOCKET NO: HUD-L-4742-12**

**Civil Action**

**STATEMENT OF MATERIAL FACTS  
NOT IN DISPUTE IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Lynne Mitchnick (hereinafter "Plaintiff"), hereby offers the following statement of material facts in support of her motion for partial summary judgment pursuant to R. 4:46 as to liability on the Plaintiff's claim for breach of contract, as well as summary judgment as to the affirmative defenses of waiver and illegality alleged by the defendant, William Lee Childs, Jr. (hereinafter "Defendant"), in his answer:

1. Defendant has, at all relevant times, been a professional poker player. (See the transcript of the Defendant's deposition attached the Certification of counsel in Support of Motion for Summary Judgment (hereinafter "Counsel Cert.") as Exhibit H, at page 7).
2. Plaintiff and Defendant entered into a signed contract on or about September 13, 2008 (hereinafter the "Backing Agreement"). The Backing Agreement specifically states that it excludes on-line tournaments. (See Counsel Cert, Exhibit A).
3. Defendant had a full opportunity to review the Backing Agreement prior to signing it and Defendant drafted portions of the Backing Agreement that he later signed. (See

Defendant's deposition testimony at page 9, line 21 to page 11, line 25, attached to the Counsel Cert as Exhibit H).

4. The Backing Agreement provided that the Plaintiff agreed to provide financing to Defendant to participate in professional poker tournaments, in exchange for Defendant's agreement to share his winnings with Plaintiff. (See Counsel Cert, Exhibit A).

5. The section of the Backing Agreement entitled "Player Responsibilities", on page 2 therein, obligated the Defendant to, among other things:

- (a) provide the Plaintiff with a schedule of live tournaments that he planned to play in six (6) months in advance.
- (b) deposit Plaintiff's share of winnings into the appropriate account or deliver the cash value of same to the Plaintiff within ten (10) days of Defendant winning same.
- (c) provide Plaintiff with the appropriate tax forms no later than January 31 of each calendar year.

(See Counsel Cert, Exhibit A).

6. The Defendant has admitted that he failed to perform each of these material, enumerated provisions of the Backing Agreement. (See Defendant's Reply to Request for Admissions, numbers 4, 8, and 10, attached to the Counsel Cert as Exhibit G. See Defendant's deposition testimony at page 70, lines 8-17; page 71, line 11 to page 72, line 3; page 73, line 9 to page 74, line 4, attached to the Counsel Cert as Exhibit H).

7. Although the Plaintiff exhibited admirable patience towards the Defendant, and repeatedly trying to work with him to improve his performance under the Backing Agreement, the Defendant's continued inability or unwillingness to perform under the terms of the Backing Agreement eventually forced the Plaintiff to terminate the Backing Agreement by issuing the

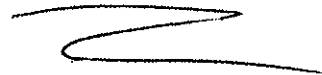
required written notice to the Defendant. (See Plaintiff's deposition testimony, page 74, line 24 to page 78, line 21, attached to the Counsel Cert as Exhibit J).

8. Plaintiff terminated the Backing Agreement by issuing the required written notice to the Defendant on July 30, 2012, said termination being made effective as of August 29, 2012. (See the termination letter attached to the Counsel Cert as Exhibit I).

9. Defendant has not come forward with any evidence that Plaintiff waived any of her rights under the Backing Agreement by virtue of her attempts to continue to work with the Defendant during the period of time he was breaching the Backing Agreement. Defendant's First Set of Interrogatories to Defendant, questions 16 and 17, attached to the Counsel Cert as Exhibit D. See Defendant's Responses to Plaintiff's Interrogatories, questions 16, 17(II) and 17(VIIa), attached to the Counsel Cert as Exhibit E.)

10. Defendant has not come forward with any evidence that Plaintiff ever breached the terms of the Backing Agreement. (See Defendant's First Set of Interrogatories to Defendant, questions 16, 17, 19, and 36, attached to the Counsel Cert as Exhibit D. See Defendant's Responses to Plaintiff's Interrogatories, questions 16, 17(VII), 19, and 36, attached to the Counsel Cert as Exhibit E. See Defendant's deposition testimony at page 74, line 12 to page 78, line 4, attached to the Counsel Cert as Exhibit H).

Respectfully Submitted,  
STEVEN ROBERT LEHR, P.C.



Eric J. Szoke, Esq.  
For the Firm

Dated: September 27, 2013