SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

[redacted]

Plaintiff,

- against -

[redacted]

and [redacted]

Defendants.

Index No. [redacted]

DEFENDANTS' REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF DEFENDANTS'
MOTION TO DISMISS COMPLAINT FOR LACK OF PERSONAL JURISDICTION,
FORUM *NON COVENIENS* AND FOR FAILURE TO STATE A CLAIM AGAINST
DEFENDANTS [redacted]

[redacted]

Attorneys for Defendants

[redacted]

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PRELIMINARY STATEMENT

* Defendants [redacted] and [redacted] submit this reply memorandum of law in further support of their motion to dismiss the Amended Complaint of plaintiff [redacted] (1) pursuant to CPLR 3211(a)(8), based on this Court's lack of personal jurisdiction over the defendants or, in the alternative, (2) pursuant to CPLR 327(a), on the ground of forum *non conveniens* or (3) pursuant to CPLR 3211(a)(7), based on the failure to state a claim against defendants [redacted] and [redacted] (the "Motion"). [redacted] are referred to collectively herein as "defendants".)

In its memorandum in opposition to defendants' motion, [redacted] concedes that all of the material events relating to the contract occurred in Germany. In the affidavit of [redacted] submitted by [redacted], he admits that he, as the President and CEO of [redacted], was the representative of [redacted] who dealt with [redacted] representatives and that he is a German citizen who resides in Germany. [redacted] also admits that he contacted [redacted] in Germany to perform services for [redacted] and does not deny that [redacted] supplied [redacted] with the printed materials to be assembled by [redacted] – at its sole office in [redacted], Germany.

In support of its argument that this Court may exercise jurisdiction over the German defendants, [redacted] relies on three facts. First, [redacted] argues that the defendants consented to a New York forum and the application of New York law to the parties' oral contract because [redacted] emails to [redacted] included a "reference" to [redacted] website which "displays" [redacted] General Terms and Conditions, which it claims it uses for its contracts. Notably, [redacted] did not provide the Court with a copy of these purported General Terms and Conditions. The omission is inconsequential. [redacted] has not submitted any competent evidence

* Vertreten durch Nietzer & Häusler und U.S. Counsel

that the defendants agreed to [redacted] General Terms and Conditions or that the defendants were made aware of the existence of such terms and conditions. The reason for [redacted] omission is simple: the defendants did not agree to be bound by the provisions of the General Terms and Conditions.

Furthermore, and perhaps most importantly, even the most cursory review of the purported terms and conditions on [redacted] website reveal they are not applicable to the agreement between [redacted]. The General Terms and Conditions state expressly they are applicable only to "sponsorship agreements" with, and "seminars" conducted by, [redacted]. On their face, the terms and conditions are obviously not intended to apply to contracts or agreements with third party vendors who are not engaging [redacted] services for informational or sponsorship purposes. In addition to the blatant inapplicability of the terms and conditions to the agreement at issue, [redacted] fails to advise the Court that these same terms and conditions contain an arbitration provision that requires both parties, [redacted] included, to submit any dispute to binding arbitration under the rules of the American Arbitration Association.

The second fact that [redacted] relies upon in putative support of its argument that this Court has personal jurisdiction over the defendants is that the mailings that were prepared by [redacted] consisted of advertisements for a seminar conducted by [redacted] that was scheduled to occur in New York and that "some" of the recipients of the mailings were located in New York. These alleged facts are immaterial, however, to determine whether defendants are subject to jurisdiction of the New York courts. [redacted] does not allege that [redacted] participated in any way in the seminar scheduled in New York. It also does not deny that [redacted], as it maintained in the affidavit of [redacted] sworn to on [redacted] was

responsible for aspect of the physical delivery of the assembled mailings except to deliver them to the German Post to be mailed to the addressees supplied by [redacted].

The third fact relied upon by [redacted] is that it paid [redacted] invoice by payment from [redacted] New York office. This fact is immaterial also. Acts by [redacted] are immaterial to determining whether this Court has jurisdiction over the defendants. None of facts that [redacted] argues are determinative demonstrate any "act by which defendant[s] purposefully availed [themselves] of the privilege of conducting activities in New York." Ehrenfeld v. Bin Mahfouz, 9 N.Y.3d 501, 508, 851 N.Y.S.2d 381, 385 (2007)(quoting McKee Elec. V. Rowland-Borg Corp, 20 N.Y.2d 377, 382, 283 N.Y.S.2d 34 (1967)). Nor do any of these facts demonstrate, as [redacted] is required to show, that defendants' activities are purposeful and there is a substantial relationship between the transaction and the claim asserted. See Kreutter v. McFadden Oil Corp., 71 N.Y.2d 460, 466-467, 527 N.Y.2d 195, 198-199 (1988); Deutsche Bank Securities, Inc. v. Montana Bd. of Investments, 7 N.Y.3d 65, 818 N.Y.S.2d 164, 167 (2006).

[redacted] arguments in opposition to defendants' motion for dismissal on the ground of forum *non conveniens* are likewise woefully inadequate. Neither the application of New York law nor the fact that a New York domiciliary is a party in the action is sufficient grounds for the denial of [redacted] motion to dismiss on the ground of forum *non conveniens*. The parties are in agreement that all of the operative facts at issue in this case occurred in Germany, all of the witnesses expected to be called in this case reside in Germany and there is no written contract entered into by and between the parties which sets forth the respective duties and obligations of the parties with respect to the mailings at issue. Clearly, under such a scenario, there is virtually no interest, if any, of the State of New York in the resolution of this dispute regardless of the fact that the plaintiff, [redacted], maintains its headquarters in

New York. An undue burden would be placed on the Court and the parties if the case is not dismissed.

Finally, in opposition to defendants' motion to dismiss the Amended Complaint against the individual defendants, [redacted] and [redacted], through the [redacted] Affidavit, alleges that they each represented to him that [redacted] would arrange for certain mailings that were turned over to German Post to be airmailed and that [redacted] failed to do so. These allegations are not found in the Amended Complaint.[1] [redacted] sole claim for relief against the defendants, as set forth clearly in the Amended Complaint, is for breach of contract by [redacted]. Notwithstanding [redacted] failure to plead these allegations in its Amended Complaint, they allege nothing more than [redacted] breach of contract. Furthermore, even if such representations or misrepresentations did take place, [redacted] alleges they were made to him in Germany by [redacted]

Because [redacted] has not offered any factual or legal arguments opposing defendants' motion to dismiss, this Court should dismiss [redacted] Amended Complaint based on the lack of personal jurisdiction over the defendants. In the event that the Court does not dismiss the Amended Complaint for lack of personal jurisdiction, it should be dismissed, pursuant to CPLR 327(a), on the ground of forum *non conveniens*. Finally, if the entire Amended Complaint is not dismissed based on the Court's lack of personal jurisdiction or forum *non conveniens*, the Amended Complaint should be dismissed against [redacted] for failure to state a claim.

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[1] Although [redacted] does not characterize the alleged representations of [redacted] counsel characterizes them as "willful misrepresentations." ([redacted] Mem. at 11). [redacted] has not asserted any claim of fraud or misrepresentation in its Amended Complaint and its counsel's argument should not be considered.

ARGUMENT

POINT I

[redacted] HAS FAILED TO DEMONSTRATE ANY BASIS WHICH WOULD ALLOW THE COURT TO EXERCISE PERSONAL JURISDICTION OVER THE DEFENDANTS

As previously set forth in defendants' moving papers, the only basis upon which this Court may exercise jurisdiction over the defendants is the New York "long-arm" statute set forth in CPLR 302, which set forth the basis for jurisdiction over nondomiciliaries. [redacted] does not dispute the application of the statute or the fact that the defendants are all nondomiciliaries located in Germany, along with [redacted] and, apparently, the main office out of which [redacted] President and CEO operates. As a result, [redacted] cannot show that the defendants purposefully availed themselves of the privilege of conducting business in New York and the benefits and protections of its laws based on the totality of the circumstances. In this case, [redacted] has utterly failed to produce any facts which would support a conclusion that [redacted] transacted any business within this State as to establish sufficient contacts from which this Court could obtain personal jurisdiction over the defendants.

A. There is No Legal Basis For Personal Jurisdiction

[redacted] likely aware of the tenuous, at best, factual argument for personal jurisdiction over the defendants, as discussed below, has asserted that [redacted] "consented" to personal jurisdiction based on the general terms and conditions "displayed" on [redacted] website (the "terms and conditions"). This novel legal theory is without basis in law or fact, as [redacted] has failed to provide any legal support for its theory that a party can unilaterally incorporate terms and conditions displayed on a website into an agreement which has no factual relationship to the terms and conditions. Moreover, [redacted] asserts no factual basis establishing that anyone

at [redacted], [redacted] consented to being bound by the terms and conditions set forth on the website, or for that matter, or were advised that [redacted] was relying on the incorporation of these terms and conditions as part of its negotiations with [redacted]

As an initial matter, [redacted] asserts no facts that indicate [redacted] was ever advised of [redacted] current legal position concerning the applicability of the terms and conditions to the parties' agreement. [redacted] newly devised legal theory is wholly without merit and contrary to well establish law, as it is indisputable that in order to be bound by a contract under New York law, the basic element of mutual assent must be established. See Express Industries and Terminal Corp. v. New York State Dept. of Transp., 93 N.Y.2d 584, 590, 693 N.Y.S.2d 857, 860 (1999) ("To create a binding contract, there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms"). In this case, where there is no written contract by and between the parties, it is [redacted] burden to show that such mutual assent exists as to the incorporation of the terms and conditions into its agreement with [redacted]. See Fleming v. Ponziani, 24 N.Y.2d 105, 110, 299 N.Y.S.2d 134, 139 (1969).

Presumably, if [redacted] was relying on the terms and conditions at the time of the negotiations by and between [redacted] and [redacted], [redacted] would have made reference to his reliance on the terms and conditions in his numerous communications with [redacted]. However, the [redacted] Aff. is completely devoid of any evidence that [redacted] made any such statements to [redacted] during negotiations. This failure is further evidenced by the careful language used in the [redacted] Aff. which states that [redacted] "emails to [redacted] included – in my signature – a reference to [redacted] website, which displays [redacted] General Terms and Conditions." [redacted] Aff. at ¶8 (emphasis added). [redacted] fails to state that he made any direct mention to the

terms and conditions or that his emails themselves made any direct mention to same. It is clear that at the time [redacted] was negotiating with [redacted] he did not disclose the existence of the terms and conditions to [redacted] nor was he relying in any way on the terms and conditions. This newly created legal theory is nothing more than an after the fact attempt to justify [redacted] improper filing of the initial complaint and the Amended Complaint in this Court.

Additionally, evidence of the baseless nature of [redacted] theory as to the applicability of the terms and conditions can be seen in the language of the terms and conditions themselves. The terms and conditions, a copy of which is attached, clearly show that [redacted] never contemplated or anticipated that the terms and conditions would apply to its agreement with [redacted] The terms and conditions are broken up into two separate categories of agreements (i) sponsorships and (ii) seminars. As to the sponsorship terms and conditions, the document clearly states that

> "[t]hese terms and conditions have been drafted with the objective to maintain satisfied sponsors. To the extent these terms and conditions set forth certain deadlines and other related requirements, they are based on the necessity to submit timely input to printers, organizers and website designers that support the sponsorships."

See the terms and conditions attached hereto. As can be seen, the terms and conditions as to sponsorship have absolutely no relation to the agreement at issue with [redacted] as to the mailings. [redacted] attempt to allege these terms and conditions have been incorporated into its agreement with [redacted] is completely baseless and bordering on the frivolous.

Furthermore, the second set of terms and conditions related to seminars is just that, conditions as to a participant's attendance at seminars offered by [redacted]. Id. This section of the terms and conditions refers to such topics as registration at the seminars, cancellation of seminars, payment of participation fees and changes within the event (i.e. time and venue). Id.

As is the case with the terms and conditions related to sponsorships, the language as to the seminar terms and conditions is completely unrelated to the [redacted] agreement or any other contract [redacted] may have entered into with any other third party which is unrelated to seminars or sponsorships.

Finally, and perhaps the most glaring evidence of the total lack of merit in [redacted] argument, the terms and conditions include two provisions which require any party with a dispute concerning a sponsorship or seminar, including [redacted] to submit the dispute to binding arbitration. Id. [redacted] cannot assert that these terms and conditions somehow apply to the agreement at issue as to the venue and choice of law provisions, but ignore the applicability of the arbitration provision. [redacted] failure to advise the Court of the existence of the provision, is at best a sign of its inability to raise any colorable defense to the Motion, and at worst a disingenuous attempt to withhold from this Court information that is relevant and material to [redacted] asserted legal position. The failure to disclose the arbitration clauses in the terms and conditions is further evidence that [redacted] knows full well that at no time were the terms and conditions applicable to, or incorporated into, its agreement with [redacted]. If [redacted] actually believed the terms and conditions were applicable, it would have submitted the dispute to the American Arbitration Association.

B. <u>There is No Factual Basis for Personal Jurisdiction</u>

[redacted] does not dispute the following facts established by defendants in the Motion: (i) [redacted] operates solely within the country of Germany and was contacted by [redacted] in Germany and (ii) all of the material actions and correspondence relevant to this action occurred in Germany. Despite the fact that there is no dispute that the operative facts all occurred in Germany, [redacted] still asserts that a factual basis for personal jurisdiction over the

defendants exists because (i) some of the mailings were addressed to recipients in the State of New York and (ii) [redacted] submitted its invoice for payment to [redacted] New York address. These purported bases for establishing jurisdiction fall far short of the required contacts to establish personal jurisdiction.

As shown in defendants' moving papers, the mere fact that a nondomiciliary has contact (i.e. telephone calls, emails, correspondence and even meetings) with parties present in the State of New York is insufficient to establish the requisite contacts to establish personal jurisdiction. See e.g., C-Life Group Ltd. v. Generra Co., 235 A.D. 2d 267, 652 N.Y.S.2d 41 (1st Dep't 1997) (45-minute meeting in New York, telephone and mail contacts with New York insufficient); L.F. Rothschild Unterberg, Towbin v. McTamney, 89 A.D. 2d 540, 452 N.Y.S.2d 630 (1st Dep't 1982) (several telephone calls to New York brokerage insufficient); Ettra v. Matta, 61 N.Y. 2d 455, 458-59, 474 N.Y.S.2d 687 (1984) (insufficient contacts where doctor treated injured New York resident in Massachusetts and followed up by telephone and mail with patient in New York). See also Farkas v. Farkas, 36 A.D.3d 852, 830 N.Y.S.2d 220, 221-22 (2d Dep't 2007)(Virginia resident's communications regarding mortgage payments with mortgagors of New York properties insufficient to confer jurisdiction because they were "ministerial in nature") and Abbate v. Abbate, 82 A.D. 2d 368, 384, 441 N.Y.S.2d 506, 515 (2nd Dep't 1981)("where that one act [in New York] is purely ministerial...it is doubtful that jurisdiction would be sustained").

Here, the fact that [redacted] assembled envelopes in Germany, which were ultimately sent to recipients (identified by [redacted] in New York, is simply not "contact" with New York by [redacted]. [redacted] interest in the assembled mailings was complete upon its delivery of the mailings to the German Post, as it is at this point in time that [redacted] had no

further obligation to perform under its agreement with [redacted]. [redacted] did not have any interest in the subject matter of the mailings or whether the assembled mailings actually reached their intended recipients. Moreover, even assuming that the Court determines that [redacted] did have some business interest in the delivery of the assembled mailings, the act of sending a mailing – to which [redacted] had no interest in financially - on behalf of another party is the most ministerial of acts imaginable. A party cannot, and should not, be found to have availed itself of the privileges and benefits of a jurisdiction, and be subject to suit therein, simply based upon the act of sending correspondence by mail to a recipient in that jurisdiction.

The same is true about the submission of [redacted] invoice to [redacted] New York office. [redacted] does dispute [redacted] statement that [redacted] invoice was initially sent to [redacted] Germany. See [redacted] Affidavit at ¶10. It was only upon [redacted] direction that the invoice was sent to New York for payment. Id. The submission of the invoice to [redacted] militates against any conclusion that [redacted] was operating under an impression that New York law somehow applied to this transaction or that [redacted] was somehow transacting business in New York. Again, the act of sending an invoice to New York for payment, after performance is complete, is nothing more than a ministerial act and is insufficient to establish sufficient contacts with New York to allow this Court to exercise personal jurisdiction.

This lack of personal jurisdiction is further evident as seen in two similar cases where New York companies had contractual relationships with nondomiciliaries, yet their complaints where dismissed nonetheless based on a lack of personal jurisdiction. In Katz & Son Billiard Products v. Correale & Sons, 20 N.Y.2d 903, 285 N.Y.S.2d 871 (1967), a New York corporation sued a New Jersey corporation for its failure to pay an account receivable, but the

complaint was dismissed due to lack of personal jurisdiction over the defendant. In Katz, there was a significant relationship both between the parties and the defendant's contacts with New York. In that case, there was no dispute that the defendant had contacted the plaintiff in New York via telephone to place an order for billiards equipment, the parties had a relationship of over thirty (30) years, and the equipment was shipped from New York to New Jersey. Id. However, due to the plaintiff's failure to actually transact business in New York, the suit was dismissed for lack of personal jurisdiction over the nondomiciliary despite the fact that the plaintiff was a New York corporation.

Similarly, in Markel Ins. Co. v. GFM Construction, Inc., 35 A.D.3d 151, 827 N.Y.S.2d 10 (1st Dep't 2006), the plaintiff, a New York insurance company attempted to collect a premium due from the defendant, a New Jersey corporation. The defendant showed that all of its actions regarding the execution of the insurance policy at issue took place in New Jersey, defendant's broker negotiated directly with plaintiff's broker concerning the policy's terms, and a meeting between plaintiff and defendant's brokers occurred in New Jersey. Id. Based upon these facts, the court found that the requirements of both CPLR 302(a)(1) and due process were not met.

As Markel and Katz indicate, the mere fact that a plaintiff is located in New York, and contact is made to the party in New York to facilitate an agreement, is insufficient to establish personal jurisdiction over the defendants. Moreover, as was the case in Markel, where all of the operative facts giving rise to the action occurred outside of New York, the mere fact that a New York corporation was owed a premium under a contract was an insufficient basis for establishing personal jurisdiction. Further, in Katz even the continuous contact of an out of state corporation to a New York corporation failed to satisfy the statutory and constitutional

requirements for personal jurisdiction. In this case, [redacted] negotiation and performance of the agreement with [redacted] occurred in Germany and not in New York. The only connection New York has to this action is that [redacted] received [redacted] invoice at its offices in Manhattan. The act of receiving an invoice in New York for services performed in a foreign jurisdiction is nothing more than a ministerial act, wholly insufficient to establish personal jurisdiction over the defendants.

In sum, [redacted] has raised no dispute as to the lack of contacts [redacted] has to the State of New York. The operative facts of this case show that all of the underlying events took place in Germany and that at no time did [redacted] believe it was subjecting itself to the Court's jurisdiction or otherwise transacting business in the State of New York. Additionally, [redacted] purported legal bases for invoking the venue and choice of law provisions is wholly without merit and should be dismissed by the Court out of hand. Accordingly, for these reasons, and those set forth in defendants' moving papers, the Amended Complaint should be dismissed as to all the defendants based upon a lack of personal jurisdiction.

POINT II

THE AMENDED COMPLAINT SHOULD BE DISMISSED ON THE GROUND OF FORUM *NON CONVENIENS* PURSUANT TO CPLR 327(a)

[redacted] opposition to the defendants' argument that the Amended Complaint should be dismissed on the alternative ground of forum *non conveniens* is as unpersuasive as its response to the defendants' argument for dismissing the Amended Complaint for lack of personal jurisdiction. [redacted] asserts two defenses to the defendants' position that this Court is an improper venue for [redacted] complaint. First, [redacted] asserts that venue is appropriate because New York law must be applied to the case. Second, [redacted] asserts that since it is a New York domiciliary, New York courts are an appropriate venue. Both of [redacted] positions are without factual or legal support and are insufficient to establish New York as an appropriate venue for this action.

As demonstrated above, New York law is not applicable to [redacted] claims as the choice of law provision in the terms and conditions is inapplicable to the agreement at issue in this matter. Rather, given that all of the relevant facts regarding the negotiation and consummation of the parties' contract occurred in Germany, German law should be applied. For similar reasons, the German courts have a far greater interest in resolving this dispute than those this Court in New York.

Further, [redacted] fails to cite to any case law in support of its argument that precludes a motion to dismiss based on forum *non conveniens* where a corporate entity has offices in New York and foreign jurisdictions. As shown in [redacted] Memorandum of Law in support of its motion, there is no such bright line rule that the mere presence of a New York party precludes dismissal based on forum *non conveniens*. In fact, [redacted] previously cited a

case, Bewers v. American Home Products Corp., 99 A.D. 2d 949, 472 N.Y.S. 2d 637 (1st Dep't) aff'd, 64 N.Y. 2d 630 (1984), where a complaint was dismissed for forum *non conveniens* where a party had offices in New York. See also Evdokias v. Oppenheimer, 123 A.D.2d 598, 506 N.Y.S.2d 883 (2nd Dep. 1986)(complaint dismissed against New York domiciliary corporation on showing that substantial majority of the witnesses and documentary evidence is located in Quebec).

Accordingly, there is simply no substantial interest on the part of the New York courts to hear and determine this case and there would be an undue burden on the Court and the parties if the case is not dismissed. The relevant documents, which are written in German, are located in Germany; the key employees or other representatives of the parties are located in Germany; any non-party witnesses are not located in New York; and German law will have to be applied by the Court to determine the parties' obligations and remedies. Therefore, for these reasons, and those set forth in defendants' moving papers, the Amended Complaint should be dismissed in the interest of substantial justice on the grounds of forum *non conveniens*.

POINT III

THE AMENDED COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A CAUSE OF ACTION AGAINST [redacted]

[redacted] has failed to allege, either in the Amended Complaint or in the [redacted] Affidavit any factual basis that would support a breach of contract claim against [redacted]. Cognizant of this omission, [redacted] attempts to recast its claim against the individual defendants as one of "willful misrepresentation." See [redacted] Opposition Brief at p. 11. However, the Amended Complaint is completely devoid of any such factual allegations, or any factual allegations whatsoever against the individual defendants. [redacted] is now trying to improperly amend the Amended Complaint, through the [redacted] Aff., rather than by requesting leave to file a Second Amended Complaint. As a result, the Amended Complaint fails to state any claim against the individual defendants and, as such, must be dismissed pursuant to CPLR 3211(a)(7).

Even giving [redacted] the benefit of all reasonable inferences regarding the truthfulness of its factual allegations, the Amended Complaint must still be dismissed because it fails to contain any factual allegation that [redacted] were parties to the agreement between [redacted] and [redacted] or that they breached said agreement. A plaintiff may submit affidavits for the purpose of remedying defects in a complaint and preserving "inartfully" drafted but potentially meritorious claims. See Davis v. CCF Capital Corp., 277 A.D. 2d 342, 717 N.Y.S. 2d 207 (2nd Dep. 2000). However, as is the case here, the [redacted] Aff. is not being used to remedy an inartfully plead complaint, rather it is being used as a wholesale substitution of factual allegations against the individual defendants to raise a brand new legal theory of liability that is not present in the Amended Complaint.

In sum, [redacted] has failed to allege any facts whatsoever that would establish any liability on the part of [redacted] on the single claim [redacted] has asserted in its Amended Complaint – breach of contract. It is apparent that [redacted] has recognized the deficiencies in its Amended Complaint and is improperly attempting to remedy its omission of any facts as to the individual defendants' liability through the [redacted] Aff. Accordingly, for these reasons, and those set forth in the defendants' moving papers, the Amended Complaint against [redacted] should be dismissed, pursuant to CPLR 3211(a)(7), on the ground that [redacted] has failed to state a claim for breach of contract against them as a matter of law.

CONCLUSION

For the foregoing reasons, and those set forth in defendants' initial moving papers, defendants [redacted] and [redacted] respectfully request that this Court dismiss the Amended Complaint in this action, pursuant to CPLR 3211(a)(8) on the ground that this Court lacks personal jurisdiction over the defendants or, in the alternative, dismiss the Amended Complaint, pursuant to CPLR 327(a), on the ground of forum *non conveniens*, and, in the further alternative, to dismiss the Amended Complaint against defendants [redacted] pursuant to CPLR 3211(a)(7).

Dated: New York, New York
[redacted]

[redacted]

Attorneys for Defendants
[redacted]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

[redacted]

Plaintiff,

against --

[redacted]

Defendants.

Index No. [redacted]

STIPULATION OF DISCONTINUANCE WITH PREJUDICE AS TO DEFENDANTS [redacted]

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys of record for plaintiff [redacted] and defendants [redacted] and [redacted] in the above entitled action, that whereas no party hereto is an infant, incompetent person for whom a committee has been appointed or conservatee and no person not a party has an interest in the subject matter of this action, the complaint be and the same is hereby discontinued with prejudice against defendants [redacted] and [redacted] and without costs as against one another.

IT IS FURTHER STIPULATED AND AGREED that facsimile copies of the signatures on this stipulation shall have the same force and effect as original signatures and that this stipulation may be executed in counterparts.

This stipulation may be filed without further notice with the Clerk of the Court.

Dated: New York, New York
[redacted]

[redacted]

[redacted]

By:_____
[redacted]

By:_____
[redacted]
Attorneys for Defendants
[redacted]