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

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ELIZABETH HASBROUCK ANDERSON,

Index No.: 150407/2013

Plaintiff,

-against-

EDMISTON & COMPANY, INC.

Defendant.

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PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S CPLR §3211(A)(7) MOTION TO DISMISS

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PRELIMINARY STATEMENT

By any reasonable reading, Plaintiff Elizabeth Hasbrouck Anderson ("Anderson") sets forth viable causes of action for gender discrimination and retaliation under the New York City Human Rights Law. As alleged in the Verified Complaint, Anderson was subjected to the repeated discriminatory remarks of her direct supervisor, Robert Shepherd ("Shepherd"), who was the Director/President of the New York office, which included Shepherd stating, in front of Anderson, that all of the women working in yacht charter are so **"stupid"** and **"unable to make a deal"** that Shepherd ends up doing all of the work, and the women should really all just **"lie down and spread their legs for [him]"** (Complaint ¶10, ¶13). This outrageous and degrading statement clearly signaled that Anderson's career would never advance in Edmiston, as long as she reported to Shepherd, who held this discriminatory view of women.

When Anderson complained about Shepherd's blatant discriminatory bias, as alleged in the Verified Complaint, David Hudson ("Hudson"), a Director of the company, told Anderson that her relationship with Shepherd "has probably peaked" and discussed a severance arrangement with her.

Completely ignoring Anderson's low burden at this very preliminary stage, Defendant Edmiston & Company, Inc. ("Edmiston") moves to dismiss the Complaint pursuant to CPLR §3211(a)(7), asking this Court to disregard its duty to take the facts in the Complaint as true and accept its own self-serving and unsupported factual assertions. Edmiston's motion has no merit. It is a transparent and frivolous effort to distract the Court and delay this matter.

STATEMENT OF RELEVANT FACTS

As set forth in the Verified Complaint, a copy of which is attached to the Affirmation of Brian Heller, Esq., as Exhibit A, Robert Shepherd ("Shepherd"), the Director/President of Edmiston's New York office and Anderson's supervisor, repeatedly made offensive and blatantly

discriminatory comments about women, including telling a woman attending a conference that her **"boobs looked good"** (Complaint ¶9, bullet 5), calling one woman a **"cow"** (Complaint ¶9, bullet 12) and referring to various women, including a female Edmiston executive, as a **"C-U-Next-Tuesday,"** which he told Anderson was an acronym for the word **"cunt"** (Complaint ¶9, bullets 6, 7). Shepherd, on a regular basis, expressed his frustration with women he interacted with by angrily stating **"That fucking woman!"** or **"That stupid woman!"** but when he had any frustrations with men he did not express himself by disparaging and insulting them (Complaint ¶9, bullet 11). Shepherd also treated Anderson in condescending fashion because of her gender, repeatedly calling her a **"good girl"** (Complaint ¶9, bullet 4) and telling her that he was going to **"spank"** her if she "messed up one more time," which he did not do to the male employees (Complaint ¶9, bullet 1).

Shepherd did not hide his belief that the only way a woman in the yacht charter industry could be successful was if she slept around. (Complaint ¶9, bullets 7, 8, 9). Shepherd told Anderson that he did not believe women were suited for leadership positions (Complaint ¶9, bullet 3), expressing his belief that Anderson's employment opportunities at Edmiston were limited because of her gender. Shepherd became enraged upon learning that a recent female hire had a 3-year-old daughter, stating that she would not be able to perform her job because she had a child and that she would not have gotten the job if he had been aware she was a mother. (Complaint ¶9, bullet 13). Shepherd told Anderson that the only candidate he would consider for the open receptionist position was an **"attractive, young, British woman,"** confirming that he valued women as decoration. (Complaint ¶9, bullet 12). Shepherd even admitted to Anderson, **"You have to understand that this is a very sexist organization"** (Complaint ¶9, bullet 2), even though it was Shepherd, a senior executive of the company, who perpetuated that discriminatory environment.

Ultimately, on Thursday, October 18, 2012, Shepherd stated, in front of Anderson, that the all of the women working in yacht charter are so **"stupid"** and **"unable to make a deal"** that Shepherd ends up doing all of the work, and the women should really all just **"lie down and spread their legs for [him]."** (Complaint ¶10, ¶13). Anderson, as any woman would be, was devastated by Shepherd's graphic, vulgar and degrading remark, as she realized that given the depth of Shepherd's discriminatory beliefs, her career at Edmiston would never progress as long as she reported to him. (Complaint ¶14). Even after Anderson confronted Shepherd over this statement, Shepherd refused to acknowledge the wrongful nature of his conduct. (Complaint ¶16-17).

Anderson advised Shepherd on November 1, 2012, that based on his degrading remark, and in concert with all of the other misogynistic and bigoted comments she had heard him say about women, she was forced to conclude that Shepherd believed women are not capable of anything other than administrative work and sexual services and that she could no longer work with him. (Complaint ¶17). Anderson requested a transfer to Edmiston's London office, where the head of the marketing department, in which she worked, was located. (Complaint ¶19). Shepherd told Anderson that she would never change him, that if she cannot handle the way he speaks, then they should not work together and that she was "stupid" to think the London office is going to be a better environment, because they are "just as sexist, if not worse." (Complaint ¶19).

On Wednesday, November 7, 2012, Anderson was contacted by David Hudson ("Hudson"), a Director of Edmiston, regarding her protest of Shepherd's behavior. (Complaint ¶22). Hudson told Anderson, among other things, that there was no room for her in the London office and that, in any event, he feared the London office might be an even more troublesome work environment for Anderson, reminding her that their colleague Nick Burleigh has "quite the mouth on him,"

confirming that Edmiston tolerates a discriminatory work environment (Complaint ¶23).

The following day, November 8, 2012, Hudson left a lengthy voicemail for Anderson. A certified transcript of Hudson's voicemail is attached to the Affirmation of Brian Heller, Esq. as Exhibit B. In this voicemail, Hudson left no question but that, in Edmiston's view, Anderson's employment had been terminated, stating to Anderson:

> "I think your relationship [with Shepherd] has probably peaked, and that to ask the two of you to put past behind you, bygones be bygones, and just get on with it, I agree, I think that would wake [sic] – would make for a difficult work environment. So let's – let's not investigate that option any further."

Hudson confirmed that moving Anderson to London was not possible and "that leaves me to some form of settlement being an option that we -- the only option that we're left with," after which Hudson began discussing a severance offer and COBRA health benefits. Hudson concluded by stating, "I know that we will want to get this matter tied up sooner rather than later now, and hopefully we can agree these terms and then I'm sure that between you and Robert you can orchestrate a handover, an effective handover, a pleasant and amicable handover, and we will get you the very –." Pursuant to Hudson's clear statements, Anderson was terminated by Edmiston on November 8, 2012. (Complaint ¶27).

ARGUMENT

POINT I

ANDERSON SATISFIES HER MINIMAL BURDEN TO SURVIVE A MOTION TO DISMISS

In order to survive a motion to dismiss, Anderson need only satisfy the minimal requirements of stating a cause of action. The Court, in considering a motion to dismiss, looks only to the four

corners of the Complaint. As the First Department noted in Harris v. The China Club Late Night Management, Inc., 72 A.D. 3d 608, 609 (1st Dept. 2010):

> The sole criterion on a motion to dismiss is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cognizable action at law, a motion to dismiss will fail.

See also Bernstein v. Kelso & Co. Inc., 231 A.D.2d 314, 318 (1st Dept. 1997) (denying a motion to dismiss, stating, "Our role in a motion to dismiss pursuant to CPLR 3211(a)(7) is limited to determining whether the complaint states a cause of action, not whether there is evidentiary support of the complaint."). Anderson, therefore, is not required to present any evidence in opposition to Edmiston's motion.

Anderson is not required to "prove" her case at this very preliminary stage. In Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 508 (2002), the United States Supreme Court held that in cases of employment discrimination, the complaint need not set forth specific facts establishing a *prima facie* case, but need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court specifically noted:

> Before discovery has unearthed relevant facts and evidence, it may be difficult to define the precise formulation of the required *prima facie* case in a particular case. Given that the prima facie case operates as a flexible evidentiary standard, it should not be transposed into a rigid pleading standard for discrimination cases. Id. at 512.

Additionally, in considering a motion to dismiss, the Court should afford the Plaintiff the benefit of "every possible favorable inference" and should "liberally construe the complaint and accept as true the facts alleged in the complaint and submissions in opposition to the dismissal motion." 511 West 232nd Owners Corp. et. al. v. Jennifer Realty Co., 98 N.Y.2d 144, 152 (2002).

Taking this reduced standard into consideration, and taking the facts as alleged in the Complaint as true, it is surprising that Edmiston would even make this motion. Looking at the four corners of the Complaint, it is obvious that Anderson sets forth valid claims of gender discrimination and retaliation.

A. Anderson Establishes A Gender Discrimination Cause of Action

Anderson clearly sets forth a claim of gender discrimination under the broad standards of the New York City Human Rights Law. In Williams v. New York City Housing Authority, 61 A.D.3d 62 (1st Dept. 2009), the First Department addressed what a victim of gender discrimination like Anderson must plead to establish a claim under the New York City Human Rights Law. The court held that following the Restoration Act of 2005, in which the City Council amended the Law to be broader than its federal and state counterparts, such a plaintiff need only establish that "she has been treated less well than other employees because of her gender." Id. at 78. The court noted that contrary to the federal analysis, the Restoration Act directed that a claims within the "wide spectrum of harassment cases" between the federal "severe or pervasive" standard and a "merely" offensive utterance be permitted to reach a jury. Id. at 76.

Shepherd's conduct, as set forth in the Complaint and summarized in the Statement of Facts above, all of which was condoned and allowed by Edmiston, clearly demonstrates that Anderson was treated "less well" because of her gender. Given the flagrant manner in which Shepherd disrespected women, including saying **"That fucking woman!"** or **"That stupid woman!"**, telling a woman that her **"boobs looked good"** and referring to women as **"cow"** and to others as a **"C-U-Next-Tuesday,"** Edmiston's claim that Anderson cannot show that Edmiston's actions were motivated by gender bias is laughable.

In fact, Shepherd's comment that women working in yacht charter are so "stupid" and "unable to make a deal" that Shepherd ends up doing all of the work and **the women should really all just "lie down and spread their legs for [him]"** – by itself – is sufficient to set forth a claim under the New York City Human Rights Law. The First Department, in Williams, recognized that this standard is so broad that "a single comment" can establish a claim under the City Law, holding:

> One can easily imagine a single comment that objectifies women being made in circumstances where that comment would, for example, signal views about the role of women in the workplace and be actionable. 61 A.D.3d at 79 n.28.

That Edmiston has the audacity to label Shepherd's shameful and outrageous statement as "trivial" and "petty" reveals the disingenuous nature of its motion.

In seeking dismissal at this very early stage, Edmiston resorts to distorting the law. For example, Edmiston improperly divides Anderson's gender claim into one cause of action for "hostile environment" and another for "gender discrimination," even though the New York City Human Rights law contains no such distinction and the term "hostile environment" is a judicial creation. See Williams, 61 A.D.3d at 75 ("There is no 'sexual harassment provision' of the law to interpret; there is only the provision of the law that proscribes imposing different terms, conditions and privileges of employment based, inter alia, on gender."). Edmiston only creates this false distinction by misreading Magadia v. Napolitano, 2009 U.S. Dist. LEXIS 30926 (S.D.N.Y. Feb. 26, 2009). The Magadia court did not recognize that a hostile environment must be plead as a separate cause of action, as Edmiston infers, but rather admonished the plaintiff for attempting to use the hostile environment analysis "for resurrecting time-barred claims of discrimination and retaliation," a

situation that does not exist here.[1] Id. at *48.

Edmiston misuses the narrow affirmative defense that the First Department recognized exists under the City Law, whereby a defendant can avoid liability if it can prove that the conduct complained of "consists of nothing more than what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences.'" 61 A.D.3d at 79-80. The Williams court noted that this affirmative defense exists was designed to "narrowly target concerns about truly insubstantial cases, while at the same time avoiding improperly giving license to the broad range of conduct that falls between 'severe or pervasive' on the one hand and 'petty slights and trivial inconveniences' on the other." 61 A.D.3d at 79-80. The First Department clarified the limited nature of the affirmative defense in Bennett v. Health Management Systems, Inc., 92 A.D.3d 29, 44, n.16 (1st Dept. 2011), stating that, "As with Williams, it is our intention that a limited and narrow exception is not intended to be simply the new means by which an old status quo is continued."

The question of whether or not Edmiston proves the affirmative defense is best left to a jury. The Williams court noted that "in general, 'a jury made up of a cross section of our heterogenous communities provides the should be characterized as sexual harassment and retaliation.'" Id., quoting Gallagher v. Delaney, 139 F.3d 338, 342 (2d Cir. 1998). At this early stage in this case, without any discovery, Edmiston does not and cannot meet its burden of proving that a reasonable victim of discrimination would consider the conduct Anderson alleges to be "petty slights and trivial inconveniences."

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[1] Even in Li v. Educational Broadcasting Corp., 2011 N.Y. Misc. LEXIS 3522, at *7 (Sup. Ct. N.Y. Cty. June 30, 2011), which Edmiston cites, the court held that the plaintiff did not have "separate claims of both discrimination based on sex and hostile work environment."

Edmiston wrenches Williams' reference to the City Law not being a "general civility code" out of context. In the very same sentence where the First Department used the phrase "general civility code," the court recognized that the City Law was "structured to emphasize the vindication of civil rights over shortcuts that reduce litigation volume . . . " 61 A.D.3d at 79; see also Bennett, 92 A.D.3d at 44, n.16 (1st Dept. 2011) (criticizing a Southern District decision for "wrenching the Williams reference to a 'general civility code' out of context.").

Unable to refute Anderson's valid claims, Edmiston makes arguments about what the Complaint does not allege, none of which have any basis. For example, Edmiston claims that Anderson is alleging a "failure to accommodate" because it did not relocate her to the London office. What Edmiston omits, revealingly, is that Edmiston told Anderson that she would not like the London office because the people who work there are "just as sexist, if not worse" and that it might be an even more troublesome work environment for Anderson (Complaint ¶19, 23). Edmiston's actions, therefore, demonstrate that the only thing that it failed to "accommodate" was its own obligation to provide a workplace that was free of discrimination. Edmiston's effort to distort this into a non-existent failure to accommodate claim has no merit.

Edmiston also contends that its actions were not motivated by Anderson's gender, totally ignoring Shepherd's reprehensible and offensive remarks about women, which must be taken as true on this motion. Even more revealing than Shepherd's conduct is the fact that Edmiston, upon learning of Anderson's complaint, took no action whatsoever. Edmiston, through Hudson, confirmed that it would not take any remedial action against Shepherd and conceded that it permitted a work environment that was hostile to women, confirming that Edmiston's actions were related to Anderson's gender.

Edmiston relies heavily on Wilson v. N.Y.P. Holdings, Inc., 2009 U.S. Dist LEXIS 28876 (S.D.N.Y. Mar. 31, 2009), which is no longer good law. The First Department, in Bennett, specifically criticized the Wilson court for "ignoring the Williams holding and finding comments like 'training females is like training dogs' and 'women need to be horsewhipped' to not be actionable." 92 A.D.3d at 44, n.16. The fact that Edmiston relies on Wilson after the First Department effectively overruled it in Bennett, and then has the audacity to not even cite Bennett, is shocking and confirms just how frivolous Edmiston's motion really is.

This case is also unlike Kolenovic v. ABM Industries, Inc., 2012 N.Y. Misc. LEXIS 3560, at *12 (Sup. Ct. N.Y. Cty. July 13, 2012), which Edmiston cites. The court, in Kolenovic, granted summary judgment because it refused to consider the plaintiff's affidavit, which contradicted her deposition testimony. Given that there are no contradictions here, and the allegations in the Complaint must be taken as true, this case is not at all like Kolenovic.

The overwhelming majority of the remaining cases Edmiston cites are summary judgment decisions, where the plaintiff, unlike here, had the opportunity to conduct discovery into her claims. In fact, in Magnoni v. Smith & Laquercia, LLP, 701 F.Supp.2d 497 (S.D.N.Y. 2010), which Edmiston cites, the plaintiff's claim was dismissed following a trial, so that Magnoni has no bearing on this case. Moreover, the facts of the cases Edmiston cites are strikingly different from Shepherd's clearly discriminatory conduct. See Chin v. York City Hous. Auth., 2011 N.Y. Misc. LEXIS 3444, at *9 (Sup. Ct. N.Y. Cty. July 7, 2011) (granting summary judgment where the plaintiff alleged that her supervisor told her, among other things, that "Chinese food is greasy"); Caravantes v. 53rd St. Partners, LLC, 2012 U.S. Dist. LEXIS 120182, at *11-12, 54 (S.D.N.Y. Aug. 23, 2012 (granting summary judgment where the plaintiff was a "willing participant" playing a "game" with Latin

American employees); Kwan v. Andalex Group, LLC, 2012 U.S. Dist. LEXIS 71614, at *23-24 (S.D.N.Y. May 22, 2012) (granting summary judgment on plaintiff's gender discrimination claim where she was told that she was "strong willed"); Benson v. Otis Elevator Co., 2012 U.S. Dist. LEXIS 131535, at *24-26 (S.D.N.Y. Sept. 13, 2010) (granting summary judgment where the plaintiff was called "Ms. Smartypants" one year before her termination).

The facts alleged in the Complaint clearly demonstrate that Anderson was treated less well because of her gender, so that Edmiston's frivolous motion should never have been made.

B. Anderson Establishes A Retaliation Cause of Action

Edmiston's argument that Anderson fails to plead a cause of action for retaliation under the New York City Human Rights Law is similarly baseless. Edmiston's only argument is that Anderson cannot show adverse employment action, even though the Complaint plainly pleads that Anderson was terminated as a direct result of her complaints about Shepherd's unlawful conduct.

In order to circumvent the clear language of the Complaint, Edmiston argues as though Anderson is alleging a constructive discharge, which she is not. Edmiston's argument can only be accepted by ignoring the Complaint and accepting Edmiston's self-serving claims, which has absolutely no factual support in the record.

There can be no dispute about how Anderson's employment ended. Hudson's voicemail to Anderson on November 8, 2012, a transcription of which is attached as Exhibit B, unquestionably confirms that Edmiston believed that, immediately following her complaint, Anderson's "relationship [with Shepherd] has probably peaked" that they should "not investigate that option any further." Hudson then stated that "that leaves me to some form of settlement being an option that we -- the only option that we're left with," after which Hudson began discussing a severance offer

and COBRA health benefits. Pursuant to Hudson's clear statements, Anderson was terminated by Edmiston on November 8, 2012. (Complaint ¶27). If anything, judgment as a matter of law should be entered in Anderson's favor concerning her allegation that she was terminated, simply based on Hudson's voicemail. At a minimum, questions of fact remain on this issue, so that Edmiston's motion to dismiss is improper.

POINT II

ANDERSON'S CLAIMS FOR PUNITIVE DAMAGES SHOULD PROPERLY BE SUBMITTED TO THE TRIER OF FACT

As the Court of Appeals has long held, "Whether to award punitive damages in a particular case, as well as the amount of such damages, if any, are primarily questions which reside in the sound discretion of the original trier of facts." Nardelli v. Stamberg, 44 N.Y.2d 500, 503 (1978); Swersky v. Dreyer and Traub, 219 A.D.2d 321 (1st Dept. 1996) (reversing because "[i]t is for the jury to decide whether [defendant's actions] were so reprehensible as to warrant punitive damages."); Santos v. Costco Wholesale, Inc., 271 F.Supp.2d 565 (S.D.N.Y. 2003) (denying summary judgment because "[t]he issue of punitive damages must go to a jury."). Edmiston's effort to decide this factual question on a motion to dismiss – before any discovery has even taken place – is entirely inappropriate.

Taking the allegations in the Complaint as true, which is required at this preliminary stage, an award of punitive damages is certainly appropriate. Edmiston knowingly tolerated Shepherd's open and blatantly discriminatory conduct for years. When Anderson complained, Edmiston told her that it would not take any action against Shepherd and that moving her to the London office did not make sense since it might be an even more troublesome work environment for Anderson, given

the discriminatory environment that existed there. Edmiston's decision to remove Anderson from its workplace, rather than remedy the discriminatory environment that exists, is outrageous and reprehensible conduct that warrants a finding of punitive damages.

A jury could certainly find that Edmiston acted with "malice or reckless indifference" to Anderson's protected rights. See Kolstad v. American Dental Assn., 527 U.S. 526, 534 (1999); Umansky v. Masterpiece Intl. Ltd., 276 A.D.2d 692, 693 (2d Dept. 2000) (recognizing that "malice or reckless indifference" pertains "to the employer's knowledge that it may be acting in violation of the Federal law, not its awareness that it is engaging in discrimination."); Tse v. UBS Fin. Servs., Inc., 568 F.Supp.2d 274, 310 (S.D.N.Y. 2008) (holding that "plaintiff was only required to show that [defendant] acted intentionally and with reckless indifference to the perceived risk that his actions might violate the law. Because the jury could reasonably have found that plaintiff made that showing, its decision to award punitive damages may not be disturbed.").

The facts in the complaint, including Hudson acknowledging to Anderson that Edmiston could not provide a work environment free of discrimination, demonstrate that Edmiston knew or should have known that it was violating Anderson's protected rights. See Zimmermann v. Associates First Capital Corp., 251 F.3d 376, 385 (2d Cir. 2001) (finding jury could award punitive damages where the supervisor in question had "received 'human resources training' and training on 'hiring practices and equal opportunity.'"); Lamberson v. Six West Retail Acquisition, Inc., 2002 U.S. Dist. LEXIS 478, at *17 (S.D.N.Y. Jan. 15, 2002) (permitting punitive damages because "[t]he record demonstrates that defendants were aware of the prohibition in the law against [discrimination and] retaliation.").

Edmiston incorrectly claims that the Complaint must set forth "egregious or outrageous" conduct. Although a jury could certainly find Edmiston's conduct to be egregious or outrageous, it is well-settled that "where a defendant is aware that its actions violate federal law, it is not necessary that the misconduct itself be independently reprehensible or egregious." Manzo v. Sovereign Motor Cars, Ltd., 2010 U.S. Dist. LEXIS 46036, at *8 (E.D.N.Y. May 11, 2010).

The cases that Edmiston cites better support Anderson. In DeCurtis v. Upward Bound Intl., Inc., 2011 U.S. Dist. LEXIS 114001, at *15 (S.D.N.Y. Sept. 27, 2011), the court found that punitive damages were appropriate and "that any reasonable employer must have known that Plaintiffs' rights were being violated." In this case, as in DeCurtis, any reasonable employer would know that Anderson's rights were being violated, so that punitive damages are appropriate. In Molina v. J.F.K. Tailor Corp., 2004 U.S. Dist. LEXIS 7872 (S.D.N.Y. April 30, 2004), upon which Edmiston also relies, the court actually awarded punitive damages, so that it is unclear why Edmiston even cites that case.[2]

There is no basis for Edmiston to seek to strike Anderson's claim for punitive damages at this very preliminary stage. To require a plaintiff to identify the factual basis for punitive damages in the Complaint would completely alter the landscape of what is required in a pleading.

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[2] This case is nothing like Chapkines v. New York University, 2004 U.S. Dist. LEXIS 2990, at *20 (S.D.N.Y. Feb. 25, 2004), which Edmiston cites, where the pro se plaintiff, a teacher, was fired for, among other things, making an inappropriate sexual remark in class, and alleged no facts whatsoever to support his claim for age discrimination, so that his complaint, including his claim for punitive damages, was recommended for dismissal.

CONCLUSION

For the foregoing reasons, Anderson respectfully respect that Edmiston's motion to dismiss the Complaint pursuant to CPLR §3211(a)(7) be denied in its entirety and for such other and further relief as this Court deems just and proper.

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AFFIDAVIT OF SERVICE

COUNTY OF NEW YORK)
)ss:
STATE OF NEW YORK)

I, Iva Tyrell, being sworn, say: I am not a party to this action, am over 18 years of age, and reside in New York, New York 10029.

On April 11, 2013, I served the within Memorandum of Law in opposition to Defendants' motion to dismiss by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Greenfield, Stein & Senior, LLP
600 Third Avenue
New York, New York 10016

IVA TYRELL

Sworn to me this 11th
day of April 2013

NOTARY PUBLIC

BRIAN A. HELLER
Notary Public, State of New York
No. 02HE6081554
Qualified In New York County
Commission Expires October 7, 2014