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April 14, 2016

BY HAND

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Igor Ovchinnikov v. Michael Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of Respondents' Motion for Stay.

Please contact me if you have any questions.

Sincerely,

Eric C. Jeffrey

Enclosure

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET Al

v.

MICHAEL HITRINOV ET AL

RESPONDENTS' MOTION FOR STAY

Specially-appearing Respondents Michael Hitrinov ("Hitrinov") and Empire United Lines, Co., Inc. ("EUL," collectively "Empire") move for a stay of this proceeding pending resolution of first-filed federal court claims regarding the same transactions concerning the precise assets at issue here.[1] The grounds for this motion, elaborated in the incorporated memorandum in support, are as follows:

1. This complaint is simply the latest step in a long, convoluted, and troubling web of claims over the very same cars.
2. The precise cars at issue here are also at issue in previously-filed federal litigation pending in the District of New Jersey.
3. Litigating claims in two jurisdictions regarding the same cars is contrary to judicial or administrative economy and creates a real threat of inconsistent results and unconstitutional double injury.

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[1] Complainants declined consent to the relief requested herein.

Memorandum in Support

A. Background

The basic facts were outlined in Respondents' Motion for Extension of Time.[2] To the extent feasible in a 10-page motion, we here provide a more detailed, but still incomplete, picture of the interlocking matters, including reference to supporting documents (attached).

Complainants purchased cars from Global Auto, Inc., Effect Auto Sales, Inc., G-Auto Sales, Inc., or other related companies owned and/or controlled by a Mr. Kapustin (collectively "Kapustin Global Auto Group" or "Group"), which promised to deliver them in Russia. [Complaint Paragraphs 35, 36, 38, 40, 51, 53, 65, 67.] A member of the Group then contracted with Empire to transport such cars in containers from the United States to a facility in Kotka, Finland operated by CarCont Ltd. There, the containers were opened and the cars and other cargo de-vanned. The vehicles were then picked up by member of the Kapustin Global Auto Group (Global Cargo Oy), after the Group made and Empire approved a request for release. This arrangement existed for years, and involved many cars beyond the few at issue here.

Empire never dealt with individual customers of the Kapustin Global Auto Group; and had no knowledge as to their identity.[3] This was true as a general matter, and is true here. Neither Complainants nor the Group ever requested Empire to release the vehicles in question

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[2] Complainants in their reply to the now-decided motion relied almost entirely on the notion that Respondents had notice, as tentatively found by the Presiding Officer. While Respondents and counsel have appeared for the specific purpose, among others, of refuting those assertions, that has nothing to do with the propriety of a stay.

[3] See Attachment 1, an example of the form of title that Empire received from the Group, which includes no reference to any customer of the Group. This was universally the case. See also Attachment 2, a letter from Mr. Kapustin to the New Jersey Court explaining that "for cars intended for export it is not required to transfer the title [to the overseas purchaser] and Global companies never transferred any DMV titles to any of [the] buyers."

and, as noted, Empire did not know who the individual customers were until well after the cars were sold.[4]

Empire also had a financial relationship with the Kapustin Global Auto Group; it provided the Group with funds (in the neighborhood of $450,000) to obtain the vehicles that the Group sold to purchasers, including Complainants, with the cars serving as collateral.[5] The

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[4] Although Respondents merely noted in their Motion for Extension of Time that subject matter jurisdiction and standing would not be an issue if a stay were granted, Complainants chose in their Response to make an actual argument on those matters. Complainants base their argument solely on a false representation of Respondents' position in the New Jersey proceeding. Indeed, the very statement Complainants quoted shows that Respondents did **not** argue or admit that Complainants have standing anywhere, much less before the FMC. While emphasizing selected words, Complainants simply cast a blind eye on the critical modifier "potentially" in the first sentence, which by itself totally rebuts Complainants' specious assertion. Moreover, Respondents were there arguing that the Group lacked standing due to equitable reasons such as unclean hands. In that context, to say that Complainants might, "potentially" have standing, is no assertion that they do. Finally, the statement was about judicial standing, not standing before the FMC. Under the Shipping Act, it is clear that Complainants have no standing to seek reparations because they did not pay the ocean freight to Empire, but rather to the Kapustin Global Auto Group. See, e.g. *Government of the Territory of Guam v. Sea-Land Service, Inc.*28 S.R.R 894, 902 (ALJ, Admin. Final 2002) ("Uniformly, the rule has been deemed to require rejection of reparations claims by persons who . . . claim reparations by arguing that the direct payor pass the charges on to it"); *Trane Co. v. South African Marine*, 19 FMC 375, 378, n.9 & accompanying text (Init. Dec., adopted 1976)("complainant must show that that he has paid the freight or has succeeded to the claim in a valid fashion, such as by assignment").

Respondents do not even mention the issue of subject matter jurisdiction. As the Presiding Officer is well aware, the subject matter of the FMC is limited to certain relationships, and does not allow a party to sue an entity that was, not acting as a common carrier with respect to the particular party and transaction at issue. See, e.g., *Edaf Antilles, Inc. v. Crowley Caribbean Logistics, LLC*, 33 S.R.R. 711 (ALJ, Admin. Final 2014). As the Complaint itself evidences, there was no shipper-carrier relationship between Empire and any of the Complainants.

Accordingly, should a stay be denied, the Complaint would in any event need to be dismissed for lack of subject matter jurisdiction and for lack of standing to seek reparations. As previously noted, these issues need not be addressed at present if this motion is granted.

[5] It has been debated elsewhere whether these funds were an investment or a loan. For present purposes, it does not matter how they are characterized. It is clear, however, that these cars were intended to serve as collateral. See Attachment 3.

Kapustin Global Auto Group defaulted on its repayment obligations, and to mitigate its damages Empire liquidated the approximately 40 cars in its possession or control.

The Kapustin Global Auto Group began telling its customers clamoring for their cars that Empire was improperly refusing to release the vehicles, even though no request for release was ever made to Empire by the Group, the Complainants, or anyone else.[6] Eventually, the same counsel who filed the Complaint for Complainants in this matter and continues to represent them represented the Kapustin Global Auto Group in a lawsuit against Empire in the U.S. District Court for the Eastern District of New York. See Attachment 4.[7] This complaint included within its scope the very same cars at issue here, as well as many others (totaling about 60).

Litigation in the EDNY and elsewhere did not go well for the Kapustin Global Auto Group, to put it mildly. Disgruntled customers sought to intervene in the EDNY action, asserting that they had been the victims of bait and switch tactics engineered by the Group. See Attachment 7. When intervention was denied, these customers filed a separate lawsuit against the Kapustin Global Auto Group in the United States District Court for the District of New Jersey, asserting claims under RICO. Civil Action No. 13-cv-07152(NLH)(AMD) See Attachment 8. The judge in New Jersey made a preliminary finding that the Kapustin Global

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[6] Complainants do not assert otherwise. Rather, they allege that they asked CarCont to release the vehicles. (Complaint Paragraphs 47, 61, 70, 73). Complainants, however, were even stranger to CarCont (which required release authority from Empire) than they were to Empire (which could order release only upon request of the Group).

[7] To avoid undue bulk, we attach the Complaint without its Exhibits, which were attached to Respondents' Motion for Extension of Time. As previously noted, such dual representation appears to create significant ethical issues. Mr. Kapustin has already complained to Mr. Nussbaum about this representation against the Group's interests, stating that he had not agreed to the conflicting representation, demanding that Complainants' counsel withdraw, and accusing counsel of lying to the district court. See Attachment 5. Complainants' counsel is also a potential fact witness in this matter, and at the very least will be subject to discovery, as to which The Group has waived privilege. See Attachment 6. Counsel for Complainants apparently believes these ethical issues to be one of the matters too trivial to merit response. We do not.

Auto Group had engaged in the predicate acts of mail and wire fraud, and was poised to issue an order freezing the Group's assets, when it promised to provide funds voluntarily to serve as security for a potential judgment. See Attachment 9.

As one might surmise, the Kapustin Global Auto Group never provided the promised funds. Instead, the Group purported in various filings to declare bankruptcy, which bankruptcies were dismissed as fraudulent by the New Jersey court. See Attachment 10.[8] The New Jersey court subsequently found that the Kapustin Global Auto Group had "engaged in [a] pattern of racketeering activity," and entered a default judgment against the Kapustin Global Auto Group, with damages totaling about set $2.3 million. See Attachment 9, above.[9]

Events in the EDNY went just as poorly for the Kapustin Global Auto Group. Its request for preliminary injunctive relief was refused by the court. See Attachment 12. In March 2015, all of its lawyers (including Complainants' counsel here) sought, and received, leave to withdraw, claiming, inter alia, that they had not been fully paid. See Attachment 13.[10] The case was thereupon dismissed, without prejudice, for failure to prosecute, and Empire's cross-claim against the Group in a related case was granted on default. See attachment 15.[11]

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[8] In a hearing on the matter, the district court judge referred to Mr. Kapustin as "a master criminal" and "a crook." See Attachment 11.

[9] The district court judge there concluded that the Group was "responsible for executing and masterminding [a] 'bait and switch' fraud scheme," "failed to deliver the vehicles," and "refused to 'release' vehicles and charged hidden fees." Id. at p. 8.

[10] Despite this withdrawal, counsel for Complainants herein nevertheless offered to do further work in the matter for the Kapustin Global Auto Group on a "pro bono" basis. See Attachment 14. Apart from quibbles over using the term "pro bono" to describe work being done for free on behalf of a commercial organization accused of fleecing customers, it is passing strange for a lawyer to make such an offer to an entity that purportedly fired and did not pay him or her.

[11] Empire's damages in that case have not yet been determined and could, potentially, include any sums the FMC might award claimants.

Meanwhile, back in New Jersey, plaintiffs were unable to find the Kapustin Global Auto Group's hidden assets to collect on the $2.3 million judgment, and so accepted an assignment of the Group's purported claims against Empire.[12] This assignment covered all of the 60 odd cars, including the very same cars at issue here. The New Jersey case remains pending.

Finally, we would be remiss if we failed to note some of the allegations Mr. Kapustin made regarding Complainants' counsel. In a letter to the New Jersey court, filed February 23, 2016, Mr. Kapustin asserted: (1) that counsel was bringing actions against Empire to benefit Empire's competitor, and (2) that counsel is involved, *sub rosa*, in the New Jersey case:

> "I also again would like to address the participation of Marcus Nussbaum in this case. Mr. Nussbaum contacted me in about December 2012. He offered to be our corporate attorney. He explained to me that he obtained my number from Igor Cherkassky, the owner of the company Unitrans –PRA. Mr. Nussbaum explain[ed] to me that the goal of Mr. Cherkassky was to destroy his competition Empire United Lines and the president of Empire United Lines Michael Hitrinov. Mr. Nussbaum became our corporate lawyer and invented the scheme of how to get the cars released and not to pay any money back. . . . Today Mr. Nussbaum is a part of [plaintiffs' counsel's] legal team." Attachment 17.[13]

Although Respondents obviously do not vouch for the verisimilitude of Mr. Kapustin's statements, they do raise questions, especially in light of counsel's seemingly inexplicable offer to provide free legal services to the Kapustin Global Auto Group in connection with the EDNY litigation against Empire (See n. 10, above and Attachment 14).

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[12] Because the Kapustin Global Auto Group's claims against Empire were in the EDNY, the Group filed a cut and paste cross-claim in the New Jersey case, see Attachment 16, after which the plaintiffs were substituted for the Group.

[13] Mr. Kapustin had previously told the court about "the conspiracy between Mr. Marcus Nussbaum my ex attorney in the New York case and [New Jersey counsel] against Michael Hitrinov and Empire United [L]ines. I know about the conspiracy because I was invited to participate in it at a meeting between these lawyers. At this meeting, [New Jersey counsel] . . . said that her goal was to destroy Michael Hitrinov. . . . It was discussed at that meeting how to make money on contingencies in all those courts by filing fabricated claims against Michael Hitrinov and Empire United Lines." Attachment 18.

B. Argument

There are currently two federal litigations in play regarding the exact same cars – the complaint in the New Jersey District Court and the instant Complaint. Stay of this later-filed proceeding is warranted, indeed mandated, by two separate considerations: (1) respect for judicial economy and avoidance of duplicative litigation; and (2) the potential for double liability to Empire. The first ground for stay is jurisprudential, the latter includes a constitutional dimension. We address both in turn.

Judge Wirth has recently elucidated the prudential aspect of a stay pending federal litigation. *General Motors LLC v. NYK,* ___ S.R.R. ___ 2016 WL 232546 at *2, Docket No. 15-08QLJ Jan. 5, 2016). She there explained that "[t]he test for evaluating a motion for stay was articulated by Justice Cardozo, who wrote that 'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on the docket with economy of time and effort for itself, for counsel, and for litigants." Id. (quoting *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). She went on to say that (1) the grant of a prudential stay "is discretionary and requires only a balancing of various interests," and (2) the factors to be considered include "'which court first assumed jurisdiction, the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, whether state or federal law provides the rule of decision on the merits, the adequacy of the state court to protect the parties rights, and whether one of the actions has a vexatious or reactive nature.'" Id. (quoting *Profile Manufacturing, Inc. v. Kress*, 1994 U.S. App. LEXIS 6048 at *7 (Fed. Cir. 1994).[14]

[14] Although *GM* involved a joint motion, that is a distinction without a difference, as the same principles apply to both and complainants' consent there served only to confirm that it would not be seriously injured by the stay.

Because the district court and the FMC are both federal forums, some of these factors do not merit serious consideration – e.g., federal law applies in each case, and we assume that both the FMC and the district court can adequately protect litigants' rights. Those factors that do apply clearly favor a stay. The federal court claim was the first to be filed, and is considerably more advanced than this proceeding.[15] And New Jersey is plainly more convenient to the complainants than Washington D.C., as Complainants' counsel is located in the adjacent state of New York (Complainants themselves are necessarily indifferent, as they reside in Russia). A stay would not only avoid piecemeal litigation, but also, as discussed next, eliminate the threat of double "jeopardy." Finally, as described above, there is evidence from Mr. Kapustin that this action was brought for vexatious purposes. Thus, a prudential stay is warranted here.[16]

Counsel for Complainants has suggested that the issue of a stay is controlled by the Presiding Officer's denial of a stay in Docket No. 14-16, *Baltic Auto Shipping. Inc. v. Hitrinov*, 33 S.R.R 1230 (ALJ 2015). As explained in Respondents' Motion for Extension of Time, and not rebutted, any such assertion is entirely disingenuous. Contrary to counsel's suggestion, the federal court proceeding at issue in *Baltic* is entirely different than the federal proceeding here. Further, the decision of the Presiding Officer in *Baltic* was substantially predicated on his factual finding that the federal court litigation was effectively moot. That is not the case here.

Counsel has also suggested that a stay is inappropriate because the Complainants here are not plaintiffs in the federal court case. Although the asserted fact is correct, the conclusion to be drawn is not. Because the very same cars are at stake in both cases and conflicting decisions cannot be tolerated, failure to stay one proceeding or the other would raise an unseemly race to

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[15] See, e.g. *Generac Power Systems, Inc. v. Kohler Co.*, 807 F. Supp. 2d 791 (E.D. Wisc. 2011).

[16] See, e.g., *In re Groupon Derivative Litigation*, 882 F. Supp. 2d 1043 (N.D. Ill. 2012).

the finish line.[17] The correct procedure is for Complainants to intervene in the first-filed federal case or file their own federal complaint and seek consolidation. Indeed, as we now show, that approach is required by the Constitution and by judicial policy as reflected in the Federal Rules of Civil Procedure.

The present arrangement of dual claims against Empire poses the possibility that Empire could be held liable to two different sets of complainants with regard to the very same transactions regarding the very same cars (although it should not be held liable to either). As discussed briefly in Respondents' Motion for Extension of Time, the Constitution does not countenance such double liability regarding the same assets in different jurisdictions. See, e.g., *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1961) (forcing a defendant in two actions "to pay a single debt more than once [takes defendant's] property without due process of law.[18] See also *Temple-Inland, Inc. v. Cook*, 82 F. Supp. 3d 539 (D. Del. 2015).

Such double liability is also inconsistent with various federal rules that seek to preclude defendants from having the same property or funds taken from them twice. Rule 19(a), for example, states that a party whose presence will not preclude subject matter jurisdiction must be joined to an action where, inter alia, "that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may . . . leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent

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[17] See, e.g., *Hutt v. Erbey*, 2015 WL 8780547 (N.D. Ga. 2015), Attachment 19 (transferring second filed case by different plaintiffs against same defendants to first-filed jurisdiction, and stating that "'[w]here two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit") (quoting from *Manuel v. Convergys Corp.*, 430 F. 3rd 1132, 1135 (11th Cir. 2005).

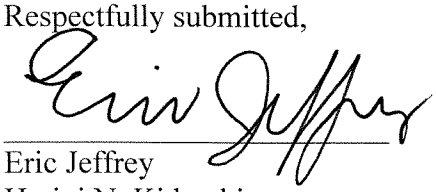
[18] *Western Union* also puts paid any assertion that because the claims in New Jersey and here are based on different laws, there is no double liability. That case itself involved claims under two different sets of laws, yet concluded that defendant could not be required to pay under both.

obligations because of the interest. Fed. R. Civ. P. 19(a). As the claims of complainants here and plaintiffs in New Jersey are against the same respondents/defendants, and relate to the same transactions regarding the very same cars, complainants would appear to be necessary parties in the New Jersey action.[19] Likewise, Rule 22 permits a defendant faced with "claims that may expose [it] to double or multiple liability" to seek interpleader joining all the claimants. Statutory interpleader, 28 U.S.C. 1335, operates to like effect.

CONCLUSION

For all of the above reasons, the Presiding Officer should stay these proceedings pending resolution of the first-filed federal district court case ongoing in New Jersey.

Respectfully submitted,



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[19] Complainants would also appear to be necessary parties on the grounds that disposition by the New Jersey court would "as a practical matter impair or impede the person's ability to protect [its] interest," because a monetary award to plaintiffs for these cars would, as discussed above, preclude a monetary award to complainants regarding those cars.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document via electronic and first-class mail to the following:

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.
P.O. Box 245599
Brooklyn, NY 11224

Dated at Washington, DC, this 14th day of April, 2016

Eric C. Jeffrey
Counsel for the MOL Respondents

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86170-969
AUTO COLLECTION GROUP
NEW JERSEY
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WDDGF81X49R073295

NEW YORK STATE

Title and Identification No.	Year	Make	Model Code	Body/Hull	LIENS Document No.
WDDGF81X49R073295 WDDGF81X49R073295	2009	ME/BE	C4A	4DSD	001142R

Color	Wt./Sts./Lgth.	Fuel	Cyl./Prop.	New or Used	Type of Title	Date Issued
WH	3635	GAS	6	NEW	VEHICLE	5/14/09

Name and Address of Owner(s)

DAIMLER TRUST
P O BOX 685
ROANOKE TX 76262

ODOMETER READING: 00009
00009
ACTUAL MILEAGE

This document is your proof of ownership for this vehicle, boat or manufactured home. Keep it in a safe place not with your license or registration or in your vehicle or boat. To dispose of your vehicle, boat or manufactured home, complete the transfer section on the back and give this title to the new owner.

Lienholder
DAIMLER TITLE CO
PO BOX 997545
SACRAMENTO CA95899

Lienholder
01
* ONE LIEN RECORDED *

Lienholder
* ONE LIEN RECORDED *

Lienholder
* ONE LIEN RECORDED *

MV-999 (1-05)

DEPARTMENT OF MOTOR VEHICLES

ANY CHANGE OR ERASURE WILL VOID THIS TITLE -- ANY FALSE STATEMENT IS A MISDEMEANOR

SECTION - Transfer by Owner

ODOMETER DISCLOSURE STATEMENT

Federal (and State) law requires that you state the mileage of the vehicle described on this certificate when transferring ownership. Failure to complete, or providing a false statement, may result in fines and/or imprisonment.

I certify that to the best of my knowledge, this odometer reading (check one):

1. reflects the ACTUAL MILEAGE of the vehicle described on the front
2. EXCEEDS THE MECHANICAL LIMITS (odometer started over at zero)
3. is NOT the actual mileage. WARNING! ODOMETER DISCREPANCY.

ODOMETER READING: 49243 (no tenths)

ODOMETER HAS SPACE FOR: (Check one)
- ☐ Five Digits, excluding tenths
- ☐ Six Digits, including tenths

DAMAGE DISCLOSURE STATEMENT (To be Completed by Owner Named on Face of Title)

To the best of my knowledge, this vehicle ☐ has been or ☐ has not been wrecked, destroyed or damaged to such an extent that the total estimated cost of parts and labor to rebuild or reconstruct the vehicle to the condition it was in before an accident, and/or legal requirements for repair of highways, exceeded 75% of the total value of the vehicle at the time of loss. (Checking the "has" box means the vehicle must have an anti-theft examination before being registered in the transferee's name and have the statement "Repaired Salvage MV" on it.)

I/we the transferor, being duly sworn, depose and state that I am the owner of the vehicle described on the face of this certificate. At the time of transfer, this title is subject only to the liens or encumbrances noted on the certificate, if any. I also certify that this is the most recent title issued for this vehicle, boat or manufactured home.

Section 2112 of the Vehicle and Traffic Law requires that application for a title must be made within 30 days of transfer.

Owner's Signature:	Daimler Trust	Owner's Name (Print or Type):	
Street Address:		State / ZIP code:	Date of Statement: 6-26-12
Buyer's Signature:		Buyer's Name (Print or Type):	effectAutosales Inc
Street Address:	elizabeth	NJ	Date of Statement: 6-26-12

SECTION II - Reassignment by Manufactured Home Dealer or Registered Boat Dealer or Out-of-State Dealer

ODOMETER DISCLOSURE STATEMENT

Federal (and State) law requires that you state the mileage of the vehicle described on this certificate when transferring ownership. Failure to complete, or providing a false statement, may result in fines and/or imprisonment.

I certify that, to the best of my knowledge, the odometer reading for this vehicle:

1. reflects the ACTUAL MILEAGE of the vehicle described on the front
2. EXCEEDS MECHANICAL LIMITS (odometer started over at zero)
3. is NOT the actual mileage. WARNING! ODOMETER DISCREPANCY.

ODOMETER READING: (no tenths)

ODOMETER HAS SPACE FOR: (Check one)
- ☐ Five Digits, excluding tenths
- ☐ Six Digits, including tenths

I/we the transferor, being duly sworn, depose and state that I am the owner of the vehicle, boat or manufactured home described on this certificate. At the time of transfer, this title is subject only to the liens or encumbrances noted on the certificate, if any. I also certify that this is the most recent title issued for this vehicle, boat or manufactured home.

Section 2112 of the Vehicle and Traffic Law requires that application for a title must be made within 30 days of transfer.

Owner's Signature:		Owner's Name (Print or Type):	
Street Address:		State / ZIP code:	Date of Statement:
Buyer's Signature:		Buyer's Name (Print or Type):	
Street Address:		State / ZIP code:	Date of Statement:

MV-999 (4-09) — 6 513390

From Sergey Kapustin

Case 13 CIV 7152

Akishev et al. vs Kapustin et al

As this court is aware I personally and four of my companies Global Auto Usa, G Auto, Effect Auto and SK Imports were found liable to plaintiffs for $2,3 M.

In the first place I would like to enlighten the court as to how such a judgment was obtained by plaintiffs. As this court is aware the court previously issued the order limiting my expenses. As this court is aware such a restraining order was issued prior to any judgment. I would like to inform the court what was going in this case outside of the courtroom.

1. Maria Temkin, attorney for plaintiffs in this case, approached me after the restraining order was issued and explained to me that at that time I had no chance to defend myself or my companies. She explained to me that under such order I do not have any more option to pay for ANY attorney. Maria Temkin told me that she will attach any money I pay to any lawyer. Then Maria Temkin explained that this court will do anything for her. Anything, whatever she wants. She explained to me that she has a special relationship with the clerks in chambers. She threatened me that if from that point I would not follow her instructions she will ask the judge put me in jail and put members of my family in jail. Maria Temkin also promised me not to enforce the restraining order if I followed her instructions.

2. Maria Temken then told me that she would hire the lawyer for me and that this lawyer would come to court. She recommended several lawyers to me and gave me the phone numbers of the lawyers she chose. This is how I got the name of Igor Voloshen and his phone number. Maria Temkin then informed me that she made all arrangements for me with Igor Voloshen. When I called Mr Voloshen he stated to me that he was expecting my call since Maria Temkin had already called him.

3. When I met Mr Voloshen he explained to me that he will follow all the instructions from Maria Temkin. Mr Voloshen explained to me that he did not want to know anything about the case. He told me that all the documents will be written for him by Maria Temkin.

4. After I signed the retainer with Mr Voloshen, Maria Temkin offered to be my lawyer in the related case in Federal Court in New York. She promised to write for me all the letters and prepare for me all the answers for that case. She actually under threats forced me to mislead the parties in the New York case. For example, she told me not to produce any documents or records and to answer at my deposition that I do not have any records. I actually gave Mr. Voloshen 6 CDs and a full box of documents. Mr Voloshen gave all of these documents to Maria Temkin and then she wrote letters to the court in New York for me to say that I did not have any documents. Maria Temkin also told me not to give out the correct addresses of the ex employees of my companies to prevent them from being deposed. Maria Temkin told me to lie if I am asked at the deposition in New York about the phone numbers of anybody. She instructed me to lie and say that I have a new phone and I have no contacts in my phone. Maria Temkin also instructed me not to answer any questions at my deposition in New York if I feel I did not want to answer and then to go outside and call her for her instruction on how to answer.

5. Most of those instructions were given to me during the meeting between Maria Temkin and myself in the presence of Mr Voloshen. I was told by Maria Temkin all those misleading acts will help me and my family. The letters written for me for the Federal Court in New York were sent by Maria Temkin to Igor Voloshen.

6. I also feel obliged to inform the court how the hearing for damages on August 31, 2015 was planned by Maria Temkin. I was instructed by her to be ready to drop the defense when Mr. Voloshen gave me the sign. It was a hearing of the case Maria Temkin vs Maria Temkin. When the court asked at the hearing about the retainer of Mr. Voloshen she already knew that he was going to be getting $12,000 for being a pocket dog for Maria Temkin. An attorney who did not say a single world at the hearing and then did not show up at the next hearings, by Maria Temkin' s plan is getting from her a kickback for $12,000.

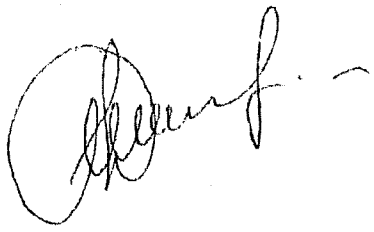
7. I also feel obligated to address the issue of the cross claim I technically filed in this court. Now for the first time in my life I have received a certified translation of the cross claim. I want to testify that never before has the cross claim document been translated to me. Maria Temkin and Mr Voloshen used me knowing that I cannot understand complicated legal documents in English. Now when I have read the cross claim document in Russian I want the court to be informed so I am not accused of lying at a later time. I reviewed the exhibits 1-4 to the cross claim with the list of cars. I can state that all the cars in those exhibits are sold to the buyers and the money for those cars was received by my companies. I feel obligated to point out that I cannot have any claims for cars I already sold and for which my companies have received the money. I do not want at a later time to be accused again of the selling the cars twice. Maria Temkin received all the documents showing that each and every car is sold and the money was received but as I see she continues to put me in trouble by making me file false claims. It is outrageous that this court penalized me for selling the cars twice but for Maria Temkin this court allows anything she wants.

8. I also would like to inform the court about the conspiracy between Mr Marcus Nussbaum my ex attorney in the New York case and Maria Temkin and Mr Voloshen against Michael Hitrinov and Empire United lines. I know about the conspiracy because I was invited to participate in it at a meeting between those lawyers. At this meeting Maria Temkin pronounced herself as the leading attorney of the legal team and said that her goal was to destroy Michael Hitrinov. Maria Temkin told Mr Nussbaum and Mr Voloshen that they must all listen to her instructions and they will all three make money. It was discussed at the meeting how to lie to multiple courts to make money on contingencies in all those courts by filing fabricated claims against Michael Hitrinov and Empire United Lines. I refuse to be a part of such a fraud under the leadership of Maria Temkin.

9. I intended and still intend to file the claim against Mr Nussbaum for the way he handled the New York case as my attorney. Even before the New York case was started Mr Nussbaum was suggesting to me how to get all the cars released without having to pay any money back to our investor Empire United Lines. Mr Nussbaum lied in all the documents in the New York case to try to get the cars released. When I informed Maria Temkin that it was my goal to proceed with my claim against Mr Nussbaum she told me not to even think about it and that she would restrict such a claim against a member of her new legal team thorough this court.

10. Neither me nor my companies were not represented by any attorney at the time when I signed anything assigning any claims or allowing the plaintiffs in this case to represent me. I was not even given any translation or explanation of any documents I had signed. As I stated above Igor Voloshen was a lawyer for Maria Temkin and not for me or my companies. I plan to proceed with the claim against Igor Voloshen as well.

I ask the court to consider this letter as a motion.



I ask this court:

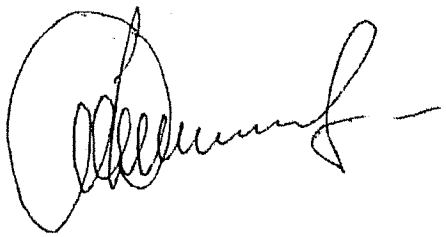
A) considering that it is clear that Igor Voloshen was hired by Maria Temkin to allow me and my companies to have a new fair hearing for damages. Please let me know when the next hearing will be so I can plan to attend.
B) allow me to continue with my claims against Mr Nussbaum and Mr Voloshen.
C) reverse the already granted to plaintiffs motion substituting me in my cross claim.
D) reverse the assignment of my cross claim and any other claim currently assigned to plaintiffs.

It is not fair to restrain me in expenses to the extent that I cannot get any attorney under the plaintiffs motion and then for plaintiffs lawyer Maria Temkin to use the restraining order to force me to accept her own lawyer. Even me who this court considers to be a liar is entitled to a fair due process.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 28,2016

Sergey Kapustin



Достопочтенному Ноэлю Л. Хиллману

От Сергея Капустина

Дело 13 CIV 7152

Акишев et alia против Капустина et alia

Как известно данному суду, я лично и четыре мои компании Global Auto USA, G Auto, Effect Auto и SK Imports были признаны обязанными выплатить истцам 2,3 млн долларов США.

Во-первых, я хотел бы проинформировать суд о том, как данное решение суда было получено истцами. Как известно данному суду, ранее судом был вынесен приказ, лимитирующий мои расходы. Как известно данному суду, этот запретительный приказ был вынесен до какого-либо суда. Я хотел бы проинформировать суд о том, что происходило вне зала суда по данному делу.

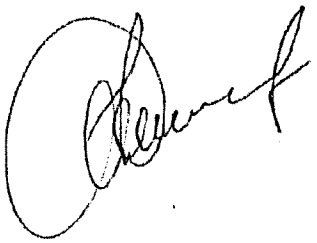
1. Мария Темкин, адвокат истцов по данному делу, подошла ко мне после вынесения запретительного приказа и объяснила, что с этого момента у меня нет никаких шансов защищать себя или мои компании. Она объяснила мне, что в соответствии с таким приказом у меня больше нет возможности платить НИКАКОМУ адвокату. Мария Темкин сказала, что она наложит арест на любые деньги, которые я заплачу какому-либо юристу. Затем Мария Темкин объяснила, что данный суд сделает для нее всё. Всё, что она захочет. Она объяснила мне, что у нее особые отношения с секретарями в судейской комнате. Она пригрозила мне, что если с этого момента я не стану следовать ее указаниям, она попросит судью посадить меня в тюрьму, а также посадить в тюрьму членов моей семьи. Мария Темкин также пообещала мне не приводить в исполнение запретительный приказ, если я буду следовать ее указаниям.
2. Мария Темкин затем сказала мне, что она наймет мне адвоката, и что этот адвокат придет в суд. Она порекомендовала мне несколько адвокатов и дала мне телефонные номера тех адвокатов, которых она выбрала. Именно таким образом я получил имя Игоря Волошена и номер его телефона. Мария Темкин затем проинформировала меня, что она обо всем для меня договорилась с Игорем Волошеным. Когда я позвонил г-ну Волошену, он заявил, что он ожидал мой звонок, так как Мария Темкин уже звонила ему.
3. Когда я встретился с г-ном Волошеным, он объяснил мне, что он будет следовать всем указаниям Марии Темкин. Он также объяснил мне, что он не хочет ничего знать о деле. Он сказал, что все документы будут написаны для него Марией Темкин.
4. После того, как я подписал с г-ном Волошеным договор о представительстве интересов в суде, Мария Темкин предложила быть моим адвокатом в родственном деле в федеральном суде штата Нью-Йорк. Она обещала написать за меня все письма и подготовить со мной все ответы по тому делу. Она при помощи угроз фактически вынудила меня ввести в заблуждение участников дела в Нью-Йорке. Например, она велела мне не предоставлять никакие документы или материалы, и отвечать во время дачи показаний, что у меня нет никаких материалов. На самом деле я передал г-ну Волошену шесть (6) компакт дисков и целую коробку документов. Мария Темкин также сказала мне не давать правильные адреса

бывших работников моих компаний, чтобы предотвратить дачу показаний ими. Мария Темкин сказала, что я должен лгать, если меня спросят во время дачи показаний в Нью-Йорке о чьих-либо телефонных номерах. Она проинструктировала меня, что я должен солгать и сказать, что у меня новый телефон и у меня нет никаких контактных номеров в телефоне. Мария Темкин также дала мне указание не отвечать на вопросы во время дачи показаний в Нью-Йорке, если я почувствую, что я не хочу на них отвечать, а затем выйти на улицу и позвонить ей, чтобы получить от нее инструкции, как отвечать.

5. Большинство этих указаний было дано мне во время наших встреч с Марией Темкин в присутствии г-на Волошена. Мне было сказано Марией Темкин, что все эти вводящие в заблуждение действия помогут мне и моей семье. Письма, написанные за меня в федеральный суд штата Нью-Йорк, были отправлены Марией Темкин Игорю Волошену.
6. Я также чувствую себя обязанным проинформировать суд о том, как слушание о возмещении убытков, состоявшееся 31 августа 2015г., было спланировано Марией Темкин. Я был ей проинструктирован быть готовым к отказу от защиты, когда г-н Волошен подаст мне знак. Это было слушание по делу Мария Темкин против Мария Темкин. Когда суд спросил меня во время слушания о договоре о моем представительстве интересов в суде г-ном Волошеным, она уже знала о том, что он должен был получить двенадцать тысяч долларов США за то, что он был карманной собачкой Марии Темкин. Адвокат, который не сказал ни слова во время слушания, а затем не появился на следующих слушаниях, в соответствии с планом Марии Темкин получает от нее откат в размере двенадцати тысяч долларов США.
7. Я также чувствую себя обязанным затронуть вопрос перекрестного иска, который я технически подал в данный суд. Сейчас, в первый раз в моей жизни я получил сертифицированный перевод перекрестного иска. Я хочу заявить, что никогда раньше документ перекрестного иска не был переведен для меня. Мария Темкин и г-н Волошен использовали меня, зная, что я не смогу понять сложные юридические документы на английском языке. Теперь, когда я прочитал документ перекрестного иска на русском языке, я хочу, чтобы суд был об этом проинформирован, чтобы впоследствии меня не обвинили во лжи. Я пересмотрел вещественные доказательства 1-4 перекрестного иска со списками машин. Я могу утверждать, что все машины в тех вещественных доказательствах были проданы покупателям и деньги за эти машины были получены моими компаниями. Я чувствую себя обязанным обратить внимание на то, что я не могу предъявлять иск на машины, которые я уже продал, и за которые мои компании получили деньги. Я не хочу, чтобы меня впоследствии снова обвинили за продажу машин дважды. Мария Темкин получила документы, показывающие, что все до единой машины были проданы и деньги были получены, но как я вижу она продолжает создавать для меня проблемы, заставляя меня подавать ложные иски. Возмутительно, что данный суд наказал меня за продажу машин дважды, однако Марии Темкин данный суд позволяет делать всё, что она хочет.
8. Я также хотел бы проинформировать суд о сговоре между г-ном Маркусом Насбаумом, моим бывшим адвокатом по делу в Нью-Йорке, и Марией Темкин и г-ном Волошеным против Майкла Хитринова и Empire United Lines. Я знаю об этом сговоре, потому что я был приглашен участвовать в нем во время встречи этих адвокатов. На этой встрече Мария Темкин провозгласила себя ведущим адвокатом юридической команды и сказала, что ее

цель была уничтожить Майкла Хитринова. Мария Темкин сказала г-ну Насбауму и г-ну Волошену, что они все должны слушаться ее указаний, и все трое получат деньги. В ходе встречи было обсуждено как лгать разным судам, чтобы сделать деньги на гонораре успеха во всех тех судах, путем подачи сфабрикованных исков против Майкла Хитринова и Empire United Lines. Я отказываюсь принимать участие в таком мошенничестве под руководством Марии Темкин.

9. Я намеревался и все еще намереваюсь подать иск против г-на Насбаума за то, каким образом он вел мое дело в Нью-Йорке в качестве моего адвоката. Даже до начала Нью-йоркского дела г-н Насбаум предлагал мне пути, как высвободить машины, не выплачивая никаких денег обратно нашему инвестору Empire United Lines. Г-н Насбаум лгал во всех документах Нью-йоркского дела, пытаясь высвободить машины. Когда я уведомил Марию Темкин, что моей целью является продолжение подачи иска против г-на Насбаума, она сказала мне даже и не думать об этом и что она заблокирует такой иск против члена новой юридической команды через суд.
10. Ни я, ни мои компании не были представлены никаким адвокатом в то время, когда я подписывал что-либо, уступая право требования или позволяя истцам в данном деле представлять меня. Мне даже не был предоставлен перевод или объяснение каких-либо документов, которые я подписывал. Как я заявил выше, Игорь Волошен был адвокатом Марии Темкин, а не моим или моих компаний. Я планирую подать иск против Игоря Волошена также.



Я прошу суд считать данное письмо ходатайством.

Я прошу данный суд:

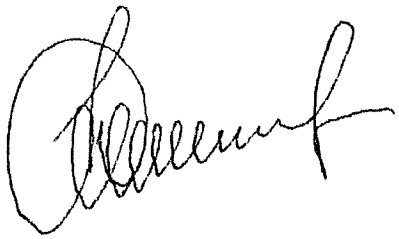
А) принимая во внимание очевидность того, что Игорь Волошен был нанят Марией Темкин, предоставить мне и моим компаниям право на новое беспристрастное слушание дела о возмещении убытков. Дайте мне пожалуйста знать, когда будет следующее слушание, чтобы я мог планировать присутствовать на нем.
Б) позволить мне продолжить подачу иска против г-на Насбаума и г-на Волошена.
В) отменить уже удовлетворенное ходатайство истцов, замещающее меня в моем перекрестном иске.
Г) отменить уступку требований по моему перекрестному иску или любому другому иску, в настоящее время возложенную на истцов.

Несправедливо ограничивать меня в расходах до такой степени, что я не могу нанять никакого адвоката, в соответствии с ходатайством истцов, а затем адвокату истцов Марии Темкин использвать запретительный приказ, чтобы вынудить меня принять ее собственного адвоката. Даже я, тот, кого суд считает лжецом, имею право на справедливый надлежащий процесс.

Я заявляю под страхом наказания за дачу ложных показаний в соответствии с законами Соединенных Штатов Америки, что вышеизложенное является подлинным и правильным.

Подписано 28 января 2016г.

Сергей Капустин



From: Igor Azikov [mailto:igor@effectauto.com]
Sent: Thursday, October 25, 2012 6:58 PM
To: Michael Hitrinov <Michael@eulines.com>
Subject: Release for Effect Auto Sales, Inc

Good evening Michael,
We would like to get a release for 2010 VW CC VIN: WVWML7AN9AE507141. We dropped off 2008 Mercedes-Benz C300 VIN: WDDGF81X49R073295 as a collateral and ready to pay $100 fee.
Please send us release at your earliest convenience.

Thank you.

Igor A.
Effect Auto Sales, Inc

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U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Attorney for Plaintiffs

CV 13-2479

GLOBAL AUTO, INC., G AUTO SALES, INC., and EFFECT AUTO SALES, INC., *Plaintiffs,* *– vs. –* MICHAEL HITRINOV, a/k/a MICHAEL KHITRINOV, EMPIRE UNITED LINES, CO. INC. MEDITERRANEAN SHIPPING COMPANY (USA), INC., and JOHN DOES 1 THROUGH 5, *Defendants.*	CIVIL ACTION NO. _____ **COMPLAINT** **JURY TRIAL DEMANDED** TOWNES, J. REYES, M.J

Plaintiffs GLOBAL AUTO, INC. ("Global"), G AUTO SALES, INC. ("GAS"), and EFFECT AUTO SALES, INC., ("EAS") (collectively "Plaintiffs") by their undersigned attorney, The Law Offices of Harlan Greenberg, by and for their complaint against the defendants herein, state as follows:

NATURE OF ACTION

1. This is an action in law for breach of maritime contract, injunctive relief, conversion, tortious interference, fraud and related causes of action under state law, and for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. §§ 1961 et seq.

2. As set forth in detail below, Plaintiffs are in the business of purchasing and exporting new and used cars from the United States to Europe. Defendant Mediterranean Shipping Company (USA), Inc. and some of the yet to be identified John Doe defendants are a shipping line engaged in the worldwide port to port transport of cargo containers via various ocean going vessels, also known as a Vessel Operating Common Carrier ("VOCC").

3. Defendants Michael Hitrinov, a/k/a Michael Khitrinov, Empire United Lines, Co. Inc., and some of the yet to be identified John Doe defendants are in the business of providing services as an ocean transportation intermediary, and operate as a non-vessel operating common carrier ("NVOCC"). These defendants arrange for the transport of automobiles overseas for automobile dealerships and personal shippers, and contracted with Plaintiffs to use their services to ship Plaintiffs' automobiles from the United States to the Port of Kotka, which is a major Finnish sea port that serves the foreign trade of Finland and the United States.

4. Plaintiffs have been forced to bring the instant lawsuit as a result of defendants' unlawful conversion of automobiles owned by Plaintiffs or Plaintiffs' customers. Plaintiffs seek injunctive relief from this Court in the form of an order compelling the defendants to immediately release automobiles owned by Plaintiffs and unlawfully held hostage by the defendants. Plaintiffs have further been forced to bring the instant lawsuit in order to recoup for lost profits and lost business suffered by Plaintiffs as a result of the Defendants' fraudulent and illegal activities, which in sum and substance are an attempt to extort additional monies from Plaintiffs, as further set forth in detail below.

THE PARTIES

5. Plaintiff GLOBAL AUTO, INC. is a New Jersey corporation with its primary place of business at 500 South Broad Street, Elizabeth, New Jersey 07202.

6. Plaintiff G AUTO SALES, INC. is a New Jersey corporation with its primary

place of business at 150-1 Carriage Lane. Delran, New Jersey 08075.

7. Plaintiff EFFECT AUTO SALES, INC. is a New Jersey corporation with its primary place of business at 508 South Broad Street, Elizabeth, New Jersey 07202.

8. Defendant Empire United Lines Co., Inc. ("Empire") is a closely held New York Corporation with its primary place of business at 2303 Coney Island Avenue, Brooklyn, New York, 11223-3337.

9. Defendant Michael Hitrinov, a/k/a Michael Khitrinov ("Hitrinov") is an adult individual and is a resident of the State of New York who maintains a principal place of business at 2303 Coney Island Avenue, Brooklyn, NY 11223.

10. Hitrinov is the president and/or Chief Operating Officer of Empire.

11. Defendant Mediterranean Shipping Company (USA), Inc. ("MSC") is, upon information and belief, a New York company with a principal place of business at 420 5th Avenue, 8th Floor, New York, NY 10018.

12. Defendants John Doe #1 through #5 (the "John Doe Defendants"), are persons and/or business entities that aided, abetted and/or participated in the events complained of herein but whose identities are as of yet unknown to Plaintiffs. Plaintiffs respectfully reserve the right to amend the caption and identify the John Doe Defendants by name once their identities are ascertained through discovery.

13. At all relevant times hereinafter mentioned, Empire and Hitrinov were united in interest such that they are one and the same.

14. At all relevant times hereinafter mentioned, Empire and Hitrinov were the alter/egos of each other.

15. At all times hereinafter mentioned, Empire is and was licensed by the Federal

Maritime Commission as an ocean freight forwarder and/or a non-vessel operating common carrier ("NVOCC") under license number 012052.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over the claims in this action pursuant to Article III, Section 2, U.S. Constitution and 28 U.S.C. §§ 1331 and 1333 as this matter relates to contracts for carriage of goods by sea from ports of the United States in foreign trade and thus comes under the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C.S. § 30701, the Shipping act of 1984, 46 U.S.C. §40101, et. Seq., and the court's original jurisdiction in maritime matters.

17. Subject matter jurisdiction is further premised on complete diversity of citizenship pursuant to 28 U.S.C.S. § 1332, the Plaintiffs being citizens of New Jersey for diversity purposes and Defendants being citizens of New York for diversity purposes, and the amount in controversy exceeding $75,000.00.

18. This Court also has supplemental jurisdiction over strictly state law causes of action pursuant to 28 U.S.C.S. § 1367 as such claims are also related to the claims in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

19. This Court has personal jurisdiction over the all of the defendants because they reside in or transact business in this District.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, in this District.

FACTS COMMON TO ALL PARTIES

21. Plaintiffs Global, GAS, and EAS are in the business of exporting new and used cars from the United States to Europe. These automobiles are generally purchased by Plaintiffs

either new or used from dealers or at auctions in the United States and are then shipped from the United States overseas via ocean transport in unimodal containers (alternatively referred to as "cargo containers" or "cargo").

22. Defendant Hitrinov is the sole owner, shareholder officer and director of Defendant Empire.

23. Empire, as an NVOCC, contracts with its customers as principal, agreeing to transport their goods on a voyage that includes an ocean leg.

24. An NVOCC commonly issues house bills of lading to its customers in its own name, even though it does not operate the ship that will carry the goods on the ocean voyage.

25. The NVOCC buys space on the carrying ship like any other customer, receiving a bill of lading from the owner or charterer of that ship when the goods are loaded on board.

26. The NVOCC commonly consolidates goods from several different shippers into a single container, receiving a bill of lading from the ocean carrier in relation to the container as a whole, but nevertheless issues a house bill of lading to each shipper according to Federal Maritime law.

27. An NVOCC is subject to regulation by the Federal Maritime Commission ("FMC").

28. Pursuant to rules and regulations promulgated by the FMC including, without limitation, regulations implementing the Shipping Act of 1984, 46 U.S.C. § 40101, et seq, an NVOCC can only charge a shipper prices disclosed in a published tariff filed with the FMC.

29. An exception exists with regard to NVOCCs that have entered into a negotiated rate arrangements ("NRA") with a shipper, which, if applicable, would allow the NVOCC to charge rates other than those disclosed to the FMC.

30. An NRA is defined as a written and binding arrangement between a shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after the receipt of the cargo by the carrier or its agent (or the originating carrier in the case of through transportation).

31. Empire never entered into an NRA with Plaintiffs and, consequently, the exception does not apply to the parties herein.

32. At all times relevant hereto, a master service agreement (the "Service Agreement") existed between Defendant Empire and shipping giant defendant MSC.

33. Pursuant to the Service Agreement between Empire and shipping giant MSC and others, Empire was able to obtain container space for Plaintiffs' cargo aboard vessels outbound from, inter alia, the Port of Elizabeth, New Jersey, on favorable terms.

34. From approximately March of 2010 up through December of 2012, Plaintiffs, via Empire, shipped containers with automobiles acquired by Plaintiffs on behalf of foreign customers to ports abroad including, without limitation, the Port of Kotka, Finland. During this time period, the automobiles shipped by Plaintiffs were either owned by Plaintiffs or had already been paid for, in whole or in part by Plaintiffs' clients, which placed a contractual obligation on Plaintiffs to ensure that the automobiles were shipped to their final destination and released to Plaintiffs' clients.

35. In all cases, arrangements for the export, shipment and delivery of the aforesaid vehicles were made with and at Defendant Empire's facility in Elizabeth, New Jersey.

36. The automobiles were shipped pursuant to an agreement between Plaintiffs and Empire that Plaintiffs would be charged one flat fee of $750.00 per automobile, inclusive of all freight and charges (including, but not limited to charges for loading, unloading, paperwork

processing, and trucking), which fee, according to Empire and Hitrinov, was calculated on a warehouse to warehouse basis (as opposed to being determined by the port of origin and port of call). Per the agreement between the parties, Empire and Hitrinov did not charge Plaintiffs storage fees for vehicles shipped overseas. Said agreement was memorialized in tariffs included in spreadsheets provided by Empire to Plaintiffs from time to time. The spreadsheets are annexed hereto as **Exhibit "A"**.

37. At all times mentioned herein, Empire was required by law to create and deliver a Bill of Lading and invoice to Plaintiffs with respect to the Oceangoing and non-Oceangoing transport of Plaintiffs' vehicles (the "House Bills of Lading" or "HBOLs" annexed hereto as **Exhibit "A-1"**).

38. At all times mentioned herein, Empire is a logistics service company, and provides services including, but not limited to ocean freight, ground transportation, auto shipping, warehousing, tracking and tracing, and containerization. Upon information and belief, Empire prepares and files all export information through the Automated Export System (alternatively referred to as "AES"), which is the electronic means for filing export information and ocean manifest information directly to U.S. Customs.

39. As set forth herein, Empire booked shipments with VOCC's for transportation by water from U.S. origins to foreign destinations on behalf of their customers, and, upon information and belief, prepared and processed documents in connection with those shipments, represented itself on shipment documents as the forwarding agent, cleared shipments with Customs for export, arranged for inland transportation of shipments to port, and assumed responsibility for payment of ocean freight charges to the VOCCs.

40. Pursuant to U.S. customs export regulations, all export shipments must be

declared to the U.S. Census Bureau by filing all export information through the Automated Export System.

41. Pursuant to U.S. customs export regulations, any individual or entity which files export information through AES is required to provide, as part of the filing process: (1) information which identifies the principal party of interest (the person in the U.S. who receives the primary benefit, monetary or otherwise, of the foreign transaction, known as the "USPPI"); (2) the consignee information (the shipment recipient); (3) a declaration of the value of the goods being shipped; and (4) the ultimate destination of the goods being shipped.

42. Pursuant to U.S. customs export regulations, only a forwarding agent may represent a USPPI in an export transaction, and must obtain a power of attorney or other written authorization in order to act on its behalf.

43. In violation of U.S. Customs export regulations and all applicable federal and state law, Empire fraudulently represented itself to be the USPPI for the aforementioned automobiles shipped from the United States to Kotka.

44. Upon arrival at the port of destination, the exported automobiles were unloaded and stored at a private warehouse in Kotka owned by a corporation known as Carcont Ltd. ("Carcont"), and were stored for pick up by the consignee and/or the intended customer. At all times mentioned herein, Carcont, upon information and belief, is wholly owned by defendant Hitrinov.

45. Between September of 2010 through December of 2011, Hitrinov and Empire made multiple loans to Plaintiff Global for the purposes of allowing Global to maintain a cash flow during times of decreased volume of shipping. Global accepted these various loans in the amounts of $45,000.00 on 9/20/2010; $25,000.00 on 10/05/2010; $100,000.00 on 10/13/2010;

$160,000.00 on 5/12/2011; $120,000.00 on 12/13/2011; and $120.00 12/13/2011. Copies of the wire transfer notices evidencing these loans in the total amount of $450,120 are annexed hereto as **Exhibit "B"**.

46. Defendants Hitrinov and Empire collected interest on the loans from Global at a yearly rate 18% per year. To date, the total amount of interest paid by Global to Hitrinov and Empire is $139,386.00.

47. Pursuant to the Federal and New York State statutes described below: (1) defendants Hitrinov and Empire were required to be duly licensed with state and/or federal agencies which regulate banking in order to make the business loans to Global as described herein; and (2) the interest rate of 18% per year charged by defendants Hitrinov and Empire was prohibited by law.

48. Defendants Hitrinov and Empire have been involved, and are presently involved, in the practice of making loans and unlawful collection thereof as described herein, in violation of §§ 340, 358, 492, and 499 of the New York State Banking Law, §§ 105, 190.40, 190.42, and 190.45 of the New York State Penal Law, 18 U.S.C. §§ 659-660, 875(d), 892-894, 1957, 1962, 2312-2313, as well as other Federal and State law.

49. Between March of 2010 through December of 2012, Hitrinov offered Plaintiffs the use of Empire's storage facilities in Elizabeth, New Jersey for the storage of automobiles owned by Plaintiffs and for which Plaintiffs had not yet procured an overseas buyer. Per the agreement between the parties, Hitrinov charged plaintiffs a one-time storage flat fee of $100.00 per vehicle, regardless of the length of time that the vehicles would be stored.

50. In or around September of 2012, Plaintiffs informed Empire that they had reached an agreement with other NVOCCs and ocean freight shippers such as Evergreen Shipping

Agency (America) Corp., pursuant to which Plaintiffs were extended favorable shipping rates. Based upon the agreement with the other NVOCCs, Plaintiffs notified Empire that the business relationship between the parties would be wound down and ultimately discontinued.

51. At the time of notification, Plaintiff EAS had already shipped 37 vehicles to Finland via Empire, all of which were already being held in storage at Hitrinov's storage site in Kotka. A copy of the spreadsheet itemizing the these vehicles is annexed hereto as **Exhibit "C-1"**.

52. At the time of notification, Plaintiff EAS had an additional 20 vehicles which were already being held in storage at Hitrinov's storage site in Elizabeth, New Jersey, all of which were owned by EAS. **See, Exhibit "C-1"**.

53. The total value of the vehicles mentioned herein shipped and stored by Empire for EAS is $1,045,931.00.

54. At the time of notification, Plaintiff Global had already shipped 5 vehicles to Finland via Empire, all of which were already being held in storage at Hitrinov's storage site in Kotka. **See, Exhibit "C-2"**.

55. The total value of the vehicles mentioned herein shipped and stored by Empire for Global is $79,959.00.

56. At the time of notification, Plaintiff GAS had already shipped 1 vehicle to Finland via Empire, which was being held in storage at Hitrinov's storage site in Kotka. In addition to the aforementioned vehicle, GAS shipped a Yamaha boat and trailer, also held in storage in Kotka. **See, Exhibit "C-3"**.

57. The total value of the vehicles mentioned herein shipped and stored by Empire for GAS is $39,350.00.

58. After Empire was notified of Plaintiffs' intention to wind down their business relationship with Empire, Hitrinov and Empire unlawfully seized Plaintiffs' automobiles identified herein in **Exhibits "C-1" through "C-3"** and have refused to release them to their intended recipients, despite the fact that Plaintiffs have lived up to their contractual obligations and have paid Empire in full for all shipping and storage charges. The freight charges (in the amount of $750.00 per vehicle) and storage fees (originally agreed to be in the amount of $100.00 per each vehicle stored in New Jersey) for the automobiles described herein were paid in full to Empire by all three Plaintiffs. Copies of the wire transfer notices, pursuant to which Plaintiffs paid Empire for the freight charges are annexed hereto as **Exhibit "C-4"**.

59. In addition, due to Empire's and Hitrinov's failure to timely release the 2008 Mercedes Benz ML 320 (Vin # 4JGBB22E88A372761) listed on Exhibit C-1, EAS was caused to pay an additional fee of $10,000 in increased customs charges to Russian authorities when the vehicle was ultimately released by Empire and Hitrinov, for which EAS is now liable.

60. After Empire was notified of Plaintiffs' intention to wind down their business relationship with Empire, Hitrinov and Empire informed Global that the loans made to Global were to be repaid in full immediately.

61. After illegally seizing the automobiles, Hitrinov and Empire also made demand upon all three Plaintiffs for repayment of the loans made to Global as set forth herein.

62. All Plaintiffs have made demand upon Hitrinov and Empire for the immediate release of automobiles, which demand was refused by Hitrinov and Empire.

63. In response to the demand, Hitrinov and Empire have taken it upon themselves to contact Plaintiffs' customers, the intended recipients of the aforementioned automobiles, and have offered them the goods shipped by Plaintiffs at a radical discount, with the expectation that

any money paid by the customers will then be seized and applied by Hitrinov and Empire as against the unlawful loans and "debt", which, in no way is connected to the vehicles owned by plaintiffs EAS and GAS.

64. In short, Hitrinov and Empire are illegally and unlawfully holding Plaintiffs' cargo hostage in exchange for a payment of an unlawful debt conjured up by Hitrinov and Empire only after Plaintiffs decided to sever their business relationship. The debt has unlawfully been applied as to cargo that is owned by plaintiffs EAS and GAS.

65. This is not the first time that Hitrinov and Empire have attempted to engage in a scheme to defraud and/or this specific type of fraud.

66. On August 1, 2002, the FMC published an Order of Investigation and Hearing alleging that Empire knowingly and willfully provided false information on its bills of lading that enabled Empire to collect unwarranted compensation from ocean carriers. A true and correct copy of the Order of Investigation is attached as **Exhibit "D"**.

67. The Order of Investigation resulted in formal notification published in the Federal Register under 67 FR 53353 (2002). See, **Exhibit "E"**.

68. The investigation resulted in settlement pursuant to which Empire paid a $40,000 civil penalty to the FMC. See, **Exhibit "F"**.

69. In addition, Empire, Hitrinov, and MSC have been sued on numerous occasions by customers alleging fraud in the companys' business practices. See, e.g. *"Garant-S" v. Empire United Co., Inc., et al.* 11-CV-1324 (E.D.N.Y. 2011) (alleging fraud over "disappearance" of motor vehicles); *Motostrada, LLC v. Hitrinov, et al.* 08-CV-3648 (E.D. Pa. 2008) (alleging fraud and extrajudicial seizure of automobiles to extract payment of inflated and retroactively imposed storage charges); *Easy Expert, Inc. v. Hitrinov, et al.* 09-CV-4714 (E.D.N.Y. 2009) (alleging

fraud, extrajudicial seizure of automobiles to extract payment for unrelated and disputed debt); *Baltic Auto Shipping Inc. v. Michael Hitrinov et al.* 11-CV-06908 (D.N.J. 2011) (alleging fraud, extrajudicial seizure of automobiles to extract payment for unrelated and disputed debt); UAB *Pamario Dvaras v. Empire United Lines Co., Inc. et al.* 12-CV-01257 (E.D.N.Y 2012) (allegations of failure to file export information pursuant to U.S. Customs export regulations).

70. True and correct copies of the complaints filed in the aforementioned actions are attached collectively as **Exhibit "G"**.

71. It is believed and therefore averred that Hitrinov and Empire are criminals who lure customers into a business relationship on purportedly favorable terms. In the course of the relationship, Hitrinov and Empire, as the shippers, exercise dominion and control of the shipment. Generally when Hitrinov and Empire notice that the relationship is deteriorating or at some other strategically opportune time, Hitrinov and Empire utilize self-help to orchestrate an extra-judicial seizure of goods and demand a ransom under the threat that the seized goods will be sold off without regard for the value which would cause significant financial damage to its victims.

72. In light of the numerous fraud cases filed against Empire, Hitrinov, and MSC, it is believed and therefore averred that MSC has continuously aided, abetted, and protected Empire over the years, and has joined with Hitrinov and Empire in using this fundamental fraudulent business model and applying it on numerous occasions in an effort to obtain unjust and unlawful compensation. Per an article recently published in the well known Global Shipping Industry journal known "TradeWinds", a copy of which is annexed hereto as **Exhibit "H"**, Empire and Hitrinov have been accused of using inside connections with MSC to run a serial shipping scam. Pursuant to the attached article from the online news service known as Courthouse News

Service, a copy of which is annexed hereto as **Exhibit "H-1"**, Hitrinov and Empire were accused of engaging in a conspiracy to strong-arm an exporter into liquidating its inventory, and that the defendants herein owned or controlled Carcont, and tried to conceal their conversion of the plaintiff's property by claiming Carcont had denied access to the cars due to unpaid storage charges.

73. On or about June 30, 2008, the U.S. Customs and Border Protection division of the Department of Homeland Security ("CBP") issued "Informational Pipeline No. 08-012-NWK" (alternatively described herein as the "CBP Notice"), a copy of which is annexed hereto as **Exhibit "I"**.

74. Per the CBP Notice, the Department of Homeland Security implemented new regulations and procedures pertaining to the exportation of used automobiles from the United States, including the following procedures: (1) that all required documentation, including the original certificate of title, a duplicate of the title, and a dock receipt, bill of lading, or Intent to Export form which contains identifying vehicle information, must be presented to the CBP at least 72 hours prior to export; and (2) that the vehicle must be held on dock for a minimum of 72 hours after the carrier terminal accepts the vehicle, and the export documents are presented to the CBP.

75. On or about August 5, 2008, defendant MSC published and distributed its own notice/memorandum (alternatively described herein as the "MSC Notice") acknowledging the CBP Notice, a copy of which is annexed hereto as **Exhibit "J"**. The MSC Notice explains that CBP requires mandatory filing of export information prior to vessel departure through the Automated Export System for all shipments.

76. The MSC Notice further explains that pursuant to CBP regulations, the shipper or

authorized agent will be required to provide to the exporting carrier the AES ITN or exemption legend at least 24 hours prior to the exporting ships arrival at the port where the cargo is loaded.

77. Upon information and belief, Empire failed to comply with the CBP and U.S. Customs regulations described herein by creating the bills of lading that contained false or inaccurate consignee and/or AES information. See **Exhibit "A-1"**.

78. At all times hereinafter mentioned, MSC was aware, and/or should have been aware of the fact that Empire had created bills of lading that contained false and/or inaccurate consignee and/or AES information.

79. At all times hereinafter mentioned, MSC had a duty to investigate whether the AES information and/or consignee information presented by Empire was accurate.

80. Upon information and belief, MSC failed to comply with the CBP and U.S. Customs regulations described herein by failing to hold plaintiffs' automobiles on dock for 72 hours prior to export as set forth above. Annexed hereto as **Exhibit "K"** for purposes of illustration are copies of two of the bills of lading received by plaintiffs from Empire, as well as copies of the corresponding printout from MSC's website which tracked the shipment of the automobiles in the bills of lading. The printouts from MSC clearly indicate that the vehicles were not held on dock for 72 hours prior to export.

81. As set forth below, Plaintiffs seeks an award of damages in an amount sufficient to deter MSC, Hitrinov, and Empire from engaging and violating these Plaintiffs' rights and to deter defendants from performing this scheme to defraud upon anyone else.

COUNT I
VIOLATION OF THE SHIPPING ACT OF 1984

82. Plaintiffs incorporate the preceding paragraphs by reference.

83. Empire and Hitrinov violated the Shipping Act of 1984, as amended, by imposing

charges which were never agreed upon and never published with the FMC and by unlawfully seizing Plaintiffs' cargo holding it as security and/or collateral for the payment of an unjust and unlawful debt.

84. As a direct and proximate result of Defendants' unlawful activities, Plaintiffs suffered damages and losses in excess of $1,000,000.

COUNT II
(BREACH OF FIDUCIARY DUTY)

85. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

86. At all times relevant hereto an agency relationship existed between Plaintiffs and Defendants Empire and Hitrinov.

87. Pursuant to the agency relationship, Defendants Empire and Hitrinov owed Plaintiffs a duty of loyalty and a duty of the utmost good faith and fair dealing.

88. By reason of the aforesaid, Defendants Empire and Hitrinov breached their fiduciary obligations by, *inter alia*, converting Plaintiffs' assets which were the subject of the agency relationship.

89. The actions of the Defendants Empire and Hitrinov are willful, wanton and outrageous and justify the award of punitive damages.

90. Defendants Empire and Hitrinov are therefore jointly and severally liable for all harm and damages occasioned by the aforesaid unlawful conduct.

COUNT III
(CONVERSION)

91. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

92. By reason of the aforesaid, Empire and Hitrinov have unlawfully and without justification converted Plaintiffs' property.

93. Plaintiffs have suffered damage as a result of Empire's and Hitrinov's conduct.

94. Empire's and Hitrinov's actions are willful wanton and outrageous and justify the award of punitive damages.

COUNT IV
PLAINTIFFS v. ALL DEFENDANTS
(CIVIL CONSPIRACY)

95. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

96. By reason of the aforesaid, the defendants MSC, Hitrinov, Empire, and the John Doe Defendants - consisting of two or more persons - combined and/or agreed with malicious intent to engage in unlawful overt acts and/or achieve objectives by unlawful means complained of herein to the great harm and detriment to the Plaintiffs.

97. Plaintiffs have suffered damage as a result of Defendants' conduct.

98. Defendants' actions are willful wanton and outrageous and justify the award of punitive damages.

COUNT V
(TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS)

99. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

100. By reason of the aforesaid, Defendants Empire and Hitrinov have intentionally interfered with Plaintiffs' relationships with actual and/or prospective customers and have interfered with Plaintiffs' ability to lawfully market and sell their inventory in an orderly manner.

101. Plaintiffs have suffered damage as a result of Defendants' conduct.

102. Defendants' actions are willful wanton and outrageous and justify the award of punitive damages.

COUNT VI
(ACTION TO PIERCE CORPORATE VEIL)

103. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

104. Plaintiffs believe and therefore aver that Defendants Empire, Hitrinov, and MSC were active conspirators and participants in a scheme to defraud the plaintiffs. As active conspirators and participants in the conduct complained of herein, the individual defendant is not entitled to the limited liability protections of the corporate form.

105. In addition, Plaintiffs believe and therefore aver that MSC, Hitrinov, and Empire have misused the corporate form and disregarded corporate formalities to a degree where the distinction between the individual and corporate defendant and the distinction between the corporate defendants *inter se* has been rendered meaningless thereby rendering the entities a "sham" for purposes of this action.

COUNT VII
(INJUNCTIVE RELIEF)

106. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

107. Plaintiffs seek injunctive relief in the form of an order and/or decree enjoining Hitrinov and Empire from exercising unlawful dominion and control over Plaintiffs' goods that are being held hostage and/or in the process of being sold off by said defendants, and an order enjoining defendants from interfering with Plaintiffs' relationships with their customers. Plaintiffs specifically seek an order compelling the release of the vehicles and restraining the

defendants from withholding the vehicles from their rightful owners.

108. Defendants' conduct threatens immediate and irreparable harm to Plaintiffs' business reputation and goodwill for which no adequate remedy at law exists.

COUNT VIII
PLAINTIFFS v. DEFENDANT EMPIRE
(BREACH OF CONTRACT)

109. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

110. By reason of the aforesaid, Defendant Empire has breached its contract with Plaintiffs for the shipment of goods via ocean transit.

111. As a direct and proximate cause of the foregoing, Plaintiffs have suffered significant losses in excess of $1,000,000.00.

COUNT IX
(NY CONSUMER FRAUD ACT – GEN. BUSINESS LAW § 349)

112. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

113. Plaintiffs are consumers and intended beneficiaries of the protections set forth in General Business Law § 349. The purchase of Empire's services was a transaction covered by General Business Law § 349.

114. Empire and Hitrinov engaged in deceptive acts and practices as set forth herein, in that said defendants actively and specifically induced Plaintiffs into shipping a significant quantity of goods for the purpose of placing the plaintiffs in a hopeless position where they would succumb to Defendants' unlawful demands for fear of losing revenues associated with the wrongfully seized cargo.

115. Empire and Hitrinov engaged in deceptive acts and practices as set forth herein,

in that said defendants are now imposing bogus charges which were never agreed upon and never published with the FMC and by unlawfully seizing Plaintiffs' cargo holding it as security and/or collateral for the payment of an unjust and unlawful debt.

116. Plaintiffs reasonably and justifiably relied upon and were deceived by the deceptive acts and practices of the Defendants.

117. Based upon the actions of Defendants, Plaintiffs are allowed to pierce the corporate veil and hold defendant Hitrinov personally liable for the wrongful acts of Empire under this cause of action.

118. As a result of the conduct of the Defendants that violates General Business Law § 349, Plaintiffs have been damaged and suffered compensatory damages, economic loss, lack of use of the cargo described herein, direct damages, all in an amount to be proven at the time of trial and not less than $1,000,000.00.

119. As set forth herein, the extended history of identical allegations against Defendants by numerous other individuals and corporations definitively establishes that MSC, Empire, and Hitrinov willfully and maliciously engaged in deceptive acts, and in turn Plaintiffs are entitled to punitive damages in an amount not less than $1,000,000.00.

120. Plaintiffs are entitled under General Business Law § 349(h) to recovery from Defendants of attorney fees paid in the bringing of this action.

COUNT X
(COMMON LAW FRAUD)

121. Plaintiffs hereby incorporate by reference the allegations set forth above.

122. By reason of the aforesaid, Hitrinov and Empire, through fraud and deceit, induced Plaintiffs into shipping a significant quantity of goods for the purpose of placing the plaintiffs in a hopeless position where they would succumb to said Defendants' unlawful

demands for fear of losing revenues associated with the wrongfully seized cargo.

123. As set forth above, from approximately March of 2010 up through December of 2012, Plaintiffs, via Empire, shipped numerous containers with automobiles acquired by Plaintiffs on behalf of foreign customers to ports abroad including, without limitation, the Port of Kotka, Finland.

124. The automobiles were shipped pursuant to an agreement between Plaintiffs and Empire that Plaintiffs would be charged one flat fee per container, which fee was calculated on a warehouse to warehouse basis.

125. As set forth above, some of the automobiles were stored at Empire's storage facilities in New Jersey pursuant to an agreement between Plaintiffs and Empire that Plaintiffs would be charged a one time storage flat fee of $100.00 per vehicle, regardless of the length of time that the vehicles would be stored.

126. Pursuant to the agreements, Plaintiffs paid defendants in full for all shipping and storage charges.

127. The defendants, during the course of negotiations concerning the agreements and during their execution and performance, failed to disclose that in the event that Plaintiff's were to discontinue the business relationship, that they would seize plaintiffs' cargo, unless plaintiffs agreed to pay brand new excessive charges not previously agreed upon.

128. The defendants, during the course of negotiations concerning the agreements and during their execution and performance, failed to disclose their intent to sell Plaintiff's cargo to satisfy payment of an unjust and unlawful debt arising out of the loans made to Global.

129. Accordingly, the sum of at least $1,000,000.00 together with applicable punitive and treble damages in an amount to be determined by the court, with all interest, attorneys' fees,

costs and disbursements incurred in connection with this action, is due to Plaintiffs from the defendants.

COUNT XI
PLAINTIFFS v. ALL DEFENDANTS
(Violation of the Racketeer Influenced and Corrupt Organizations Act -- 18 U.S.C.A. §§ 1961 et seq.)

106. Plaintiffs hereby incorporate by reference the allegations set forth above.

107. Defendants MSC, Empire, and the John Doe Defendants and other un-named parties who voluntarily and/or through coercion aided and abetted Defendants herein in the unlawful seizure and detention of Plaintiffs cargo and in the fraud and deceit complained of herein, are enterprises engaged in, and the activities of which, affect interstate and international commerce.

108. Hitrinov, and the John Doe Defendants and other un-named parties who voluntarily and/or through coercion aided and abetted Defendants herein in the unlawful seizure and detention of Plaintiffs cargo and in the fraud and deceit complained of herein, are persons within the meaning of 18 U.S.C.A. § 1961(3) and as persons employed by and/or associated with MSC and Empire, conducted and participated, directly and indirectly, in the conduct of the affairs of MSC and Empire through a pattern of racketeering activity in violation of 18 U.S.C.A. § 1962(c).

109. The predicate acts which constitute this pattern of racketeering activity are set forth above in the facts common to all parties and the foregoing causes of action, and are, to wit: a pattern of defrauding various business owners (including, but not limited to the plaintiffs) by placing their victims in a hopeless position where they would succumb to Defendants' unlawful demands for fear of losing revenues associated with the wrongfully seized cargo.

110. As set forth herein, defendants have engaged in an ongoing scheme in which they

have continued to take this fundamental business model and have applied it over and over again in an effort to obtain unjust and unlawful compensation.

111. These acts of racketeering, occurring within ten years of one another, constitute a pattern of racketeering activity within the meaning of 18 U.S.C.A. § 1961(5).

112. Plaintiffs have been injured in their business by reason of this violation of 18 U.S.C.A. § 1962, in that, as a direct and proximate result of defendants' complained of acts, plaintiffs have suffered pecuniary damages of at least $1,000,000.00.

113. By reason of the Defendants' violation of 18 U.S.C.A. § 1962, Plaintiffs are entitled, pursuant to 18 U.S.C.A. § 1964(c), to threefold the damages sustained of at least $3,000,000.00, with interest thereof, and reasonable attorney's fees in connection herewith.

RELIEF REQUEST

By reason of the aforesaid, Plaintiffs seeks the following:

(a) An award of actual damages in excess of $1,000,000.00 as against Defendants, jointly and severally;

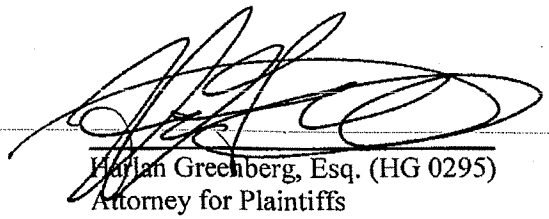
(b) An award of punitive damages in excess of $1,000,000.00 as against all Defendants jointly and severally;

(c) An award of damages in excess of $1,000,000.00, mandatory attorney's fees and costs under the New York GBL § 349 and the RICO Statute and any other applicable statute;

(d) Treble damages as available under common law and any other applicable statutes;

(e) Injunctive relief as needed to maintain the status quo and prevent Defendants from undertaking further unlawful and illegal acts, including but not limited to an order compelling the release of the vehicles and restraining the defendants from withholding the vehicles from their rightful owners; and

(f) Such other relief as may be deemed just and equitable.



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212-964-0503 (office)
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harlangesq@comcast.net

Dated: April 19, 2013

From: Sergey Kapustin <skapustin@yahoo.com>
Sent: Friday, December 18, 2015 1:07 PM
To: Jon Werner
Subject: Fwd:

Отправлено с iPhone

Начало переадресованного сообщения:

> **От:** Sergey Kapustin <skapustin@yahoo.com>
> **Дата:** December 18, 2015 at 8:06:22 PM GMT+2
> **Кому:** "marcus.nussbaum@gmail.com" <marcus.nussbaum@gmail.com>
>
> Отправлено с iPhone To Marcus Nussbaum
>
> It has come to my attention that you are representing customers of Global Auto, Inc., Effect Auto Sales, Inc., and G Auto Sales, Inc. in connection with claims brought before the Federal Maritime Commission.
>
> This representation of these customers is a conflict of interest because you previously represented those companies in connection with the same matters. You are using information provided by myself and the companies in that prior representation and exposing myself and the companies to liability through your actions. I have not agreed to this representation of these customers and I demand that you withdraw from representation of these customers immediately.
>
> Otherwise I will write to the Court to demand that you be disqualified from representing these customers and will write to the bar association to make a complaint about your unethical actions.
>
> As you know you lied to the Federal court on the related matter. By those lies You caused all the companies and me personally a huge damage.
>
> I intend to file a lawsuit against you for malpractice as soon as i return from overseas .
>
> Sergey Kapustin

WAIVER OF ATTORNEY-CLIENT PRIVILEGE AND WRITTEN CONSENT TO DISCLOSURE

I, Sergey Kapustin, am the president and sole owner of Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc., and SK Imports, Inc. At all times, including the present, I have had full authority to speak on behalf of, and to make decisions with respect to, all of these companies.

I had previously retained the services of Marcus A. Nussbaum, Esq., Harlan Garrett Greenberg, Esq. and Igor A. Voloshen, Esq., as attorneys for Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. and SK Imports, Inc.

The attorney client relationship between Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. and SK Imports, Inc. and Marcus A. Nussbaum, Esq., Harlan Garrett Greenberg, Esq. and Igor A. Voloshen, Esq. has now ended.

On behalf of Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. and SK Imports, Inc. I hereby expressly waive any and all attorney client privileges that the companies hold, or that I hold, as a result of the legal representation of the companies by Marcus A. Nussbaum, Esq., Harlan Garrett Greenberg, Esq. and Igor A. Voloshen, Esq., and expressly grant permission to Marcus A. Nussbaum, Esq., Harlan Garrett Greenberg, Esq. and Igor A. Voloshen, Esq., or anyone associated with them, to discuss all issues I raised privately with them and to disclose all written communications I, and anyone associated with Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. and SK Imports, Inc., have had with them.

I hereby represent that there was no force or threat to me by anyone for me to prepare and sign this waiver of confidentiality and consent to disclose. I further represent that, on behalf of Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. and SK Imports, Inc., I knowingly and intelligently waive any and all attorney client privileges those companies had, or that I had, with Marcus A. Nussbaum, Esq., Harlan Garrett Greenberg, Esq. and Igor A. Voloshen, Esq. and/or anyone associated with them.

I am fully aware that having signed this waiver agreement, I cannot hold Marcus A. Nussbaum, Esq., Harlan Garrett Greenberg, Esq. and/or Igor A. Voloshen, Esq., or anyone associated with them, whether during or after the attorney-client relationship, liable for disclosing confidential and/or privileged information about me or the companies.

I further agree that I will sign this agreement in the presence of a notary, and that by notarizing this agreement, I have willingly, and knowingly executed this waiver agreement, and agree to its terms voluntarily.

Dated: This 15 day of January, 2016

Sergey Kapustin

STATE OF Pennsylvania

COUNTY OF Bucks

On January 15, 2016 before me personally came Sergey Kapustin, to me known, and known to me to be the individual described in, and who executed the foregoing WAIVER OF ATTORNEY-CLIENT PRIVILEGE AND WRITTEN CONSENT TO DISCLOSURE, and duly acknowledged to me that he executed the same.

Eduardo L. Cruz
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
EDUARDO L CRUZ, NOTARY PUBLIC
BRIDGEPORT BORO, MONTGOMERY COUNTY
MY COMMISSION EXPIRES OCTOBER 11, 2016

[Translation into Russian – Перевод на русский]

НАМЕРЕННЫЙ ОТКАЗ ОТ ПРИВИЛЕГИИ АДВОКАТСКОЙ ТАЙНЫ
ПИСЬМЕННОЕ СОГЛАСИЕ НА РАЗГЛАШЕНИЕ ИНФОРМАЦИИ

Я, Сергей Капустин, являюсь президентом и единоличным владельцем компаний Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. и SK Imports, Inc. На протяжении всего времени, включая настоящее время, у меня было полное право на обсуждение вопросов от имени всех этих компаний и принимать решения, касающиеся всех этих компаний.

В прошлом я воспользовался услугами г-на Маркуса А. Нассбаума (Marcus A. Nussbaum, Esq.), г-на Харлана Гарретта Гринберга (Harlan Garrett Greenberg, Esq.) и г-на Игоря А. Волошена (Igor A. Voloshen, Esq.) в качестве адвокатов, представляющих интересы компаний Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. и SK Imports, Inc.

В настоящее время взаимоотношения юрист-клиент между компаниями Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. и SK Imports, Inc. и г-ном Маркусом А. Нассбаумом (Marcus A. Nussbaum, Esq.), г-ном Харланом Гарреттом Гринбергом (Harlan Garrett Greenberg, Esq.) и г-ном Игорем А. Волошеным (Igor A. Voloshen, Esq.) прекратились.

От имени компаний Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. и SK Imports, Inc. настоящим я прямо выражаю свой намеренный отказ от любых привилегий адвокатской тайны, которыми могут обладать компании или которыми могу обладать я в результате защиты правовых интересов г-ном Маркусом А. Нассбаумом (Marcus A. Nussbaum, Esq.), г-ном Харланом Гарреттом Гринбергом (Harlan Garrett Greenberg, Esq.) и г-ном Игорем А. Волошеным (Igor A. Voloshen, Esq.), и прямо предоставляю разрешение г-ну Маркусу А. Нассбауму (Marcus A. Nussbaum, Esq.), г-ну Харлану Гарретту Гринбергу (Harlan Garrett Greenberg, Esq.) и г-ну Игорю А. Волошену (Igor A. Voloshen, Esq.) и любым связанным с ними лицам на обсуждение любых вопросов, которые я лично с ними обсуждал, а также на разглашение любой информации, фигурирующей в переписке между ними и мной и любыми лицами, связанными с компаниями Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. и SK Imports, Inc.

Я настоящим заявляю, что меня никто не заставлял и не принуждал подготовить и подписать этот намеренный отказ от прав конфиденциальности и согласия на разглашение информации. Кроме того, я заявляю, что от имени компаний Global Auto, Inc., Effect Auto Sales, Inc., G Auto Sales, Inc. и SK Imports, Inc. я преднамеренно и сознательно отказываюсь от любых привилегий адвокатской тайны, которыми могли обладать эти компании или я в отношениях с г-ном Маркусом А. Нассбаумом (Marcus A. Nussbaum, Esq.), г-ном Харланом Гарреттом Гринбергом (Harlan Garrett Greenberg, Esq.) и г-ном Игорем А. Волошеным (Igor A. Voloshen, Esq.) и (или) с любыми связанными с ними лицами.

Подписывая это соглашение об отказе от прав, я отдаю себе полный отчет в том, что я не могу привлекать г-на Маркуса А. Нассбаума (Marcus A. Nussbaum, Esq.), г-на Харлана Гарретта Гринберга (Harlan Garrett Greenberg, Esq.) и (или) г-на Игоря А. Волошена (Igor A. Voloshen, Esq.) или любых связанных с ними лиц, будь то до или после окончания взаимоотношений юрист-клиент, к ответственности за раскрытие конфиденциальной информации и (или) информации, не подлежащей разглашению, касающейся меня или этих компаний.

Я далее выражаю свое согласие с тем, что я буду подписывать это соглашение в присутствии нотариуса, и, что нотариальное заверение этого соглашения означает, что я без принуждения и сознательно подписал это соглашение об отказе от прав, и добровольно соглашаюсь на его условия.

Дата: 15 января 2016 года

Сергей Капустин

ШТАТ: Pennsylvania

ОКРУГ: Bucks

15 января 2016 года Сергей Капустин, личность которого была установлена, в моем присутствии лично подписал НАМЕРЕННЫЙ ОТКАЗ ОТ ПРИВИЛЕГИИ АДВОКАТСКОЙ ТАЙНЫ И ПИСЬМЕННОЕ СОГЛАСИЕ НА РАЗГЛАШЕНИЕ ИНФОРМАЦИИ, и в надлежащем порядке подтвердил, что он подписал этот документ.

НОТАРИУС

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
EDUARDO L CRUZ, NOTARY PUBLIC
BRIDGEPORT BORO, MONTGOMERY COUNTY
MY COMMISSION EXPIRES OCTOBER 11 2016

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ NOV 7 - 2013 ★
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GLOBAL AUTO, INC., *et al.*,

Plaintiffs,

-against-

MICHAEL HITRINOV, a/k/a MICHAEL KHITRINOV, *et al.*,

Defendants.

----------x

MEMORANDUM AND ORDER

13-CV-2479 (SLT)(RER)

TOWNES, United States District Judge:

In April 2013, plaintiffs Global Auto, Inc. ("Global"), G Auto Sales ("GAS") and Effect Auto Sales, Inc. ("EAS") (collectively, "Plaintiffs") – all of which are New Jersey corporations allegedly engaged in internet sales of automobiles to Europeans – commenced this maritime action against Empire United Lines, Co., Inc. ("EUL"); its principal, Michael Hitrinov a/k/a Michael Khitrinov ("Hitrinov"); and Mediterranean Shipping Company (USA), Inc. ("MSC USA") (collectively, "Defendants"), which were involved in shipping the cars to Europe. In their complaint, Plaintiffs principally allege that Defendants unlawfully seized certain automobiles owned by Plaintiffs and their customers and request, *inter alia*, the release of those vehicles. Eleven of Plaintiffs' customers (the "Applicants"), all of whom are citizens of either Russia or Kazakhstan and some of whom allegedly own one of the vehicles, now move to intervene in this action pursuant to Rules 24(a) and 24(b) of the Federal Rules of Civil Procedure. For the reasons set forth below, that motion is denied.

BACKGROUND

Unless otherwise indicated, the following facts are drawn from the Plaintiffs' complaint in this action (the "Complaint") and are not in dispute. Plaintiffs are engaged in the business of

selling automobiles via the internet to individuals residing in countries comprising the Commonwealth of Independent States ("CIS"). EUL, a New York corporation with its principal place of business in Brooklyn, is a Non-Vessel Operating Common Carrier ("NVOCC") licensed by, and subject to regulation by, the Federal Maritime Commission. MSC USA is the United States agent for Mediterranean Shipping Company S.A. ("MSC"), a shipping company. EUL and MSC have entered into a "Service Agreement," which obligates EUL to ship, and MSC to carry, a certain minimum volume of freight over a set period at a set rate.

Between March 2010 and December 2012, Plaintiffs utilized the services of EUL (and, by virtue of the Service Agreement, the services of MSC) in shipping cars to Europe. Some of those cars were owned by Plaintiffs, but others "had already been paid for, in whole or in part[,] by Plaintiffs' clients." Complaint, ¶ 34. The cars were delivered to EUL's facilities in Elizabeth, New Jersey, loaded into shipping containers, and shipped via MSC vessels to Finland. There, the cars were unloaded and stored in a warehouse owned by Carcont, Ltd. – an entity which, Plaintiffs allege on information and belief, is wholly owned by Hitrinov. *Id.*, ¶ 44.

In addition to providing these shipping services, EUL helped to finance Plaintiffs' purchase of cars, loaning one or more of Plaintiffs or Plaintiffs' principals thousands of dollars. The parties to this action agree on how much was loaned ($450,120.00); exactly when the loans were extended (five dates beginning on Sept. 20, 2010, and ending with two loans on Dec. 13, 2011); and the interest rate (18% annually or 1½% per month). However, the parties disagree as to whom the loans were made. Plaintiffs maintain that Global alone borrowed the money, while Hitrinov claims that the loan was made to one Sergey Kapustin, and that Kapustin and his wife, Irina, control all three of the Plaintiffs.

Sometime in the fourth quarter of 2012, the parties' relationship soured for reasons which remain in dispute. EUL demanded that Plaintiffs immediately re-pay the loans and seized the cars that were still in their possession. *Id.*, ¶¶ 58, 60-61. Plaintiffs allege that at or about the time of this seizure, Carcont's warehouse contained a total of 43 cars which had been shipped to Finland by Plaintiffs: 37 shipped by EAS, 5 shipped by Global, and 1 shipped by GAS. *Id.*, ¶¶ 51, 54, 56. In addition, Plaintiffs allege that EUL's Elizabeth warehouse contained another 20 cars owned by EAS. *Id.*, ¶ 52. All of the vehicles are specifically described in Exhibits C-1, C-2 and C-3 (collectively, "Exhibit C") to the Complaint.

Plaintiffs' Complaint and Motion for Preliminary Injunctive Relief

In late April 2013, Plaintiffs commenced this action. Although the Complaint principally alleges federal question jurisdiction – stating that this action is brought pursuant to the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 30701; the Shipping Act of 1984, 46 U.S.C. § 40101, *et seq.*; and "the court's original jurisdiction in maritime matters," Complaint, ¶ 16 – the Complaint also alleges that this Court has diversity jurisdiction because Defendants are New York entities, while all three Plaintiffs reside in New Jersey. The Complaint seeks not only compensatory and punitive damages, but also "[i]njunctive relief . . . including but not limited to an order compelling the release of the vehicles and restraining the defendants from withholding the vehicles from their rightful owners . . . ." Complaint at 23.

On May 6, 2013, Plaintiffs moved for a temporary restraining order and preliminary injunction, seeking a mandatory injunction directing Defendants to release, or cause the storage facilities having possession of the cars to release, the automobiles listed in Exhibit C to the Complaint. In support of their motion, Plaintiffs filed three nearly identical declarations: one

from Irina Kapustina, allegedly the President of EAS; one from Sergey Kapustin, allegedly the President of Global; and one from Mikhail Goloverya, allegedly the President of GAS. All three declarations state that, on various dates between March 2010 and December 2012, the declarant entered into multiple separate contracts with EUL to ship vehicles to Finland. At the time the vehicles were delivered to EUL, the vehicles had already been "pre-sold to customers overseas." Kapustina Dec., ¶ 6; Kapustin Dec , ¶ 6; Goloverya Dec., ¶ 6. The contracts of sale for the vehicles provided that if Plaintiffs failed to make delivery within a reasonable time, customers could cancel their contracts and receive a refund of the purchase price. Kapustina Dec., ¶ 7; Kapustin Dec., ¶ 7; Goloverya Dec., ¶ 7. Some of those contracts also provided that the Plaintiff would pay a penalty for non-performance. *Id.*

Each of the declarations states that "most" of the overseas customers "pre-paid the purchase prices of their respective vehicles" in advance of delivery. Kapustina Dec., ¶ 6; Kapustin Dec., ¶ 6; Goloverya Dec., ¶ 6. However, those same declarations state that EUL and Hitrinov have contacted Plaintiffs' customers and offered to sell them the vehicles "at a radical discount." Kapustina Dec., ¶ 16; Kapustin Dec., ¶ 16; Goloverya Dec., ¶ 14. According to the declarations, these offers were made with the expectation that any amounts recovered would be applied to repaying debts owed to EUL by Plaintiffs. *Id.*

In a declaration included in Defendants' response to Plaintiffs' motion for injunctive relief, Hitrinov denies having contacted any of Plaintiffs' customers. Declaration of Michael Hitrinov, dated May 23, 2013 (the "Hitrinov Declaration"), ¶ 40. However, Hitrinov admits to having directed that Plaintiffs' vehicles be removed from Carcont's facilities in Finland and "sold to third party buyers to satisfy [P]laintiffs' indebtedness to EUL." *Id.* Hitrinov further

states that as of May 23, 2013, all but two of these vehicles had been sold to buyers in CIS countries. *Id.* Hitrinov does not specifically identify the two remaining vehicles. In addition, Hitrinov states that EUL's Elizabeth warehouse still contains 16 vehicles owned by Plaintiffs, but that EUL does not have title documents for any of these vehicles. *Id.*, ¶ 42. Hitrinov's declaration does not identify any of these vehicles.

At a hearing on June 4, 2013, this Court denied Plaintiffs' motion for injunctive relief. Although this Court's order to show cause dated May 8, 2013, directed Plaintiffs to serve Defendants with the papers on which Plaintiffs' motion for preliminary injunctive relief was based, Plaintiffs have not filed any proof of service indicating that the Complaint has been served on Defendants. Defendants have not yet answered or otherwise responded to the Complaint.

The Motion to Intervene

In papers originally filed on June 28, 2013, and amended on July 17, 2013, Applicants move to intervene in this action pursuant to Rules 24(a) and 24(b) of the Federal Rules of Civil Procedure. Eight of the Applicants – Ardak Akishev, Zhandos Aliakparov, Alexey Batalov, Evgeniy Kondratuk, Eduard Lisitsin, Viktor Maniashin, Yuriy Yamkoviy and Alla Yamkovaya – are represented by a New Jersey attorney, Anna V. Brown. The three other Applicants – Igor Glazunov, Irina Glazunova and Mikhail Matveev – are represented by a Minnesota attorney, Nadia Wood.[1]

According to a memorandum of law which Ms. Brown and Ms. Wood jointly filed in support of their motion, Applicants are eleven of "hundreds, if not thousands" of victims of a

[1] Although neither Ms. Brown nor Ms. Wood are admitted to practice in the United States District Court for the Eastern District of New York, both have been granted permission to proceed before this Court *pro hac vice*.

fraudulent scheme hatched by Sergey Kapustin and his wife, Irina Kapustina (collectively, the "Kapustins"). Amended Memorandum of Law in Support of Motion to Intervene ("Applicants' Memo") at 1-2. That scheme allegedly involves using "slick Internet websites" to advertise cars which are purported to be "new" or in "good condition" at "just slightly under the market value," thereby inducing unwitting customers to wire money to the Kapustins in order to "purchase" one of the cars. *Id.* However, according to the Applicants' Memo, most of the customers never receive a vehicle or a refund, while a few receive flooded or salvaged vehicles. *Id.* at 2.

All eleven of the Applicants are alleged to have wired money to the Kapustins, but to have received no vehicles. *Id.* Six of the eleven Applicants – Kondratuk, Lisitsin, Maniashin, Matveev, Yamkoviy and his wife, Yamkovaya – are specifically alleged to have purchased one of the automobiles listed in Exhibit C to the Complaint. *Id.* at 5-6. The body of the Applicants' Memo does not specifically mention the other five Applicants, much less allege that they have cognizable property interests in the specific cars discussed in Exhibit C to the Complaint. *Id.* at 2.

Along with Applicants' Memo, Applicants have submitted a 68-page proposed pleading, entitled "Intervenors' Complaint." That proposed pleading does not discuss any of the claims raised in the Complaint, much less identify claims for which intervention is sought. Rather, it is in the nature of a cross-claim against Plaintiffs, setting forth 16 causes of action which Applicants propose to bring against Plaintiffs, the Kapustins, Goloverya, and three other individuals allegedly affiliated with Plaintiffs. Unlike the Complaint, the proposed pleading does request a mandatory injunction directing Plaintiffs to relinquish the vehicles, but requests "equitable relief requiring [Plaintiffs to] disgorge and pay back all sums they have collected from [Applicants]." Intervenors' Complaint at 67.

In their opposition to the motion to intervene, Plaintiffs have submitted an affidavit from Sergey Kapustin, who purports to be the President of Global. In that affidavit, Kapustin confirms that Kondratuk, Lisitsin, Maniashin, Matveev, Yamkoviy have all purchased specific vehicles from Global, and that all but one of the cars were shipped via EUL to Carcont's warehouse in Finland. Affidavit of Sergey Kapustin, dated Aug. 12, 2013 ("Kapustin Affidavit"), ¶ 23. Matveev's car was never shipped and, according to Kapustin, remains in EUL's warehouse in Elizabeth. *Id.*, ¶ 23(F).

According to Kapustin, Batalov also purchased a specific automobile from Global, which was shipped via EUL to Carcont's warehouse in Finland. *Id.*, ¶ 23(C). Another Applicant, Akishev, purchased a specific vehicle but subsequently cancelled his purchase and entered into a repayment agreement, in which Global agreed to refund the purchase price in installments. *Id.*, ¶ 23(G). Yet another Applicant, Glazunov, placed an order for a specific automobile which was never procured, allegedly because of delays in the transfer of funds to Global. *Id.*, ¶ 23(H). Kapustin claims that he has offered to refund the full purchase price to Glazunov, but that the offer was refused by Wood, who is demanding both the purchase price and attorneys' fees. *Id.*

The Kapustin Affidavit does not specifically mention the remaining three Applicants: Aliakparov, Yamkovaya and Glazunova. However, the affidavit specifically alleges that Global has purchased "vehicles at issue" for all of the Applicants except Akishev and Glazunov, and that these vehicles were either shipped to the Carcont warehouse in Finland or remain in EUL's warehouse in Elizabeth. *Id.*, ¶ 22. Kapustin claims that he has requested "[a]n accounting of status and location of these vehicles" on several occasions, but that none has been provided. *Id.*, ¶ 24.

Although Plaintiffs do not contest the timeliness of Applicants' motion and tacitly admit that most of the Applicants have a property interest in the vehicles at issue in this case, Plaintiffs oppose the motion to intervene on two grounds. First, Plaintiffs' Memorandum of Law in Opposition to the Motion to Intervene ("Plaintiffs' Memo") asserts in a point heading that "Applicants' rights will not be impaired as a result of this action." Plaintiffs' Memo at 4. However, the text below that point heading contains no analysis of whether disposition of this action may, as a practical matter, impair or impede the Applicants' ability to protect their interests.

Second, Plaintiffs argue that Applicants' motion fails to "explain why Plaintiffs will not adequately represent Applicants' interests in this litigation." *Id.* at 5. Plaintiffs argue that Applicants "offer no reason why Plaintiffs would not vigorously pursue" the claims against Defendants, apart from "the unsubstantiated accusation that Plaintiffs run a fraudulent scheme, not a legitimate business operation." *Id.* (internal quotations omitted). In addition, Plaintiffs argue that permissive intervention is unwarranted, asserting that Applicants and Plaintiffs have "identical objectives" in this action and that Applicants will "inundate the Court with needless paper and argument." *Id.* at 5-6.

In their Reply Memorandum of Law in Support of the Motion to Intervene (the "Reply Memo"), Applicants acknowledge that "where the parties share the same ultimate objective," there is "a presumption that a party already in action will adequately represent intervenor's interests." Reply Memo at 2 (citing *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 180 (2d Cir. 2001)). However, Applicants argue that Plaintiffs do not share their "ultimate objective" because Plaintiffs seek only to recover the vehicles seized by Defendants, while

Applicants seek to recover "treble damages and attorneys' fees" from Plaintiffs, not the Defendants. *Id.* at 2-3. In addition, Applicants argue that, even if there were a presumption that Plaintiffs would adequately represent Applicants' interests, that presumption would be overcome because Applicants are "actively trying to sue" Plaintiffs, "coupled with possible collusion of interests between [Plaintiffs and Defendants], as well as baffling incompetency of counsel for [Plaintiffs]." *Id.* at 3.

DISCUSSION

Rule 24 of the Federal Rules of Civil Procedure, which governs intervention in federal actions, distinguishes between two kinds of intervention: Intervention of Right, which is addressed in Rule 24(a), and Permissive Intervention, which is addressed in Rule 24(b). In this case, Applicants move to intervene pursuant to both Rule 24(a) and 24(b). Since the law relating to the two kinds of intervention is different, this Court will begin by addressing Intervention of Right.

Intervention of Right

Rule 24(a) provides:

> On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the Applicant's ability to protect its interest, unless existing parties adequately represent that interest.

Applicants do not assert that there exists a federal statute which gives them an unconditional right to intervene in this case, but argue that they have a right to intervene under Rule 24(a)(2).

Under Rule 24(a)(2), a court must permit an applicant to intervene when: "(1) the motion is timely; (2) the applicant asserts an interest relating to the property or transaction that is the subject of the action; (3) the applicant is so situated that without intervention, disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the applicant's interest is not adequately represented by the other parties." *MasterCard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc.*, 471 F.3d 377, 389 (2d Cir. 2006). "All four parts of the test must be satisfied to qualify for intervention as of right." *Wash. Elec. Coop., Inc. v. Mass. Mun. Wholesale Elec. Co.*, 922 F.2d 92, 96 (2d Cir. 1990). Moreover, in this Circuit, the burden of persuasion rests entirely on the applicant, who must "(1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action." *Brennan v. N.Y.C. Bd. of Educ.*, 260 F.3d 123, 128-29 (2d Cir. 2001) (quoting *New York News, Inc. v. Kheel*, 972 F.2d 482, 485 (2d Cir. 1992)).[2]

In this case, Plaintiffs essentially concede that Applicants have met their burden with respect to the first three parts of the four-part test. Plaintiffs do not contest the timeliness of Applicants' motion to intervene. Plaintiffs also admit that most of the Applicants have a property interest in the vehicles at issue in this case, even though there is (1) evidence that

[2] Some Circuit Courts of Appeals and commentators have interpreted the 1966 amendments to Rule 24(a)(2) – which, *inter alia*, replaced language requiring an applicant to show that the representation of the existing parties "is or may be inadequate" with language permitting intervention "unless existing parties adequately represent" the intervenor's interests – as shifting the burden of persuasion on the fourth element to the opponents of intervention. *See* 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Fed. Practice & Procedure § 1909 (3d ed. 2007), and cases cited in footnote 6 therein. The Second Circuit, however, has expressly held that "[u]nder Rule 24(a)(2) the purported intervenor must show that its interest is not adequately represented." *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 70 (2d Cir. 1994).

Akishev, who initially purchased a specific vehicle from Global, subsequently cancelled his purchase; (2) evidence that Glazunov's order for a specific automobile was never filled; and (3) no evidence that Aliakparov, Yamkovaya or Glazunova ever owned one of the cars at issue.

Plaintiffs' Memo does contain a point heading which asserts that "Applicants' rights will not be impaired as a result of this action." Plaintiffs' Memo at 4. However, the text below that point heading contains no analysis of whether disposition of this action may, as a practical matter, impair or impede the Applicants' ability to protect their interests. Although there is evidence that Hitrinov has already sold all but two of the cars which were shipped to Finland, Plaintiffs make no effort to demonstrate that Applicants' vehicles were among the cars already sold. In the absence of any argument on this point, this Court will assume for purposes of this memorandum and order that Applicants can demonstrate that their interests may be impaired by the disposition of this action and will proceed to the one issue that Plaintiffs contest: whether Applicants have met their burden of showing that their interests are not protected adequately by the parties to the action.

The Adequacy of Plaintiffs' Representation

"[T]he burden to demonstrate inadequacy of representation is generally speaking 'minimal.'" *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 179 (2d Cir. 2001) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)). However, the Second Circuit has required a "more rigorous showing of inadequacy in cases where the putative intervenor and a named party have the same ultimate objective." *Id.* at 179 (citing *Wash. Elec. Coop.*, 922 F.2d at 98). Under such circumstances, "the movant to intervene must rebut the presumption of adequate representation by the party already in the action." *Id.* at 179-80; *see U.S.*

Postal Svc. v. Brennan, 579 F.2d 188, 191 (2d Cir. 1978) ("The applicant must at least overcome the presumption of adequate representation that arises when it has the same ultimate objective as a party to the existing suit.").

There is no "hard-and-fast rule of what form of showing must be made to rebut a presumption of adequate representation." *Id.* at 180. The Second Circuit has expressed general agreement with other courts which have held "that evidence of collusion, adversity of interest, nonfeasance, or incompetence may suffice to overcome the presumption of adequacy." *Id.* (citing *United States v. Int'l Bus. Machs. Corp.*, 62 F.R.D. 530, 538 (S.D.N.Y. 1974), and *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 172 F.3d 104, 111 (1st Cir. 1999)). However, the Second Circuit has also made it clear that the presumption cannot be overcome merely by showing that the putative intervenor has a different motive than any of the parties already in the action. For example, in *Washington Electric Cooperative, Inc. v. Massachusetts Municipal Wholesale Electric Co.*, *supra*, the Vermont Department of Public Service, a state agency involved in supervising and regulating electrical cooperatives, sought to intervene in an action brought by one of those cooperatives to recoup amounts paid to an electrical wholesaler under a void sales agreement. The district court denied the motion to intervene. On appeal, the Second Circuit affirmed that decision, stating:

> [Plaintiff] and [putative intervenor] may have differing motives for recovering the money paid to [defendant]; the former wants the money back for itself, while the latter wants to assure that money due consumers is returned to them. However, a putative intervenor's interest is not inadequately represented merely because its motive to litigate is different from that of a party to the action.

Wash. Elec. Coop., 922 F.2d at 98 (bracketed material added).

In this case, Plaintiffs and Applicants may have different motives, but they have the same objective. They both seek to force Defendants to release, or otherwise compensate them for, the cars listed in Exhibit C of the Complaint. Indeed, the Complaint expressly seeks injunctive relief "including but not limited to an order compelling the release of the vehicles and restraining the defendants from withholding the vehicles from their rightful owners." Complaint at 23. The Complaint further alleges that some of the vehicles shipped to Finland "had already been paid for, in whole or in part[,] by Plaintiffs' clients," and that Plaintiff has a "contractual obligation . . . to ensure that the automobiles [are] . . . released to Plaintiffs' clients." Complaint at ¶ 34. While Plaintiffs' pleading does not state which of the vehicles listed in Exhibit C of the Complaint are owned by their clients, Global's President provides those specifics in his affidavit in opposition to the instant motion. *See* Kapustin Affidavit, ¶ 23. Indeed, Kapustin not only confirms Applicants' claims that Kondratuk, Lisitsin, Maniashin, Matveev, Yamkoviy have all purchased specific vehicles from Global, *id.*, but volunteers that another car, which was not even mentioned in Applicants' Memo, is owned by Batalov. *Id.* at ¶ 23(C).

In arguing that Plaintiffs do not share their "ultimate objective," Applicants look beyond the claims currently at bar to the cross-claims they plan to file if permitted to intervene in this action. Applicants concede that Plaintiffs seek to recover from Defendants "for what they allege was illegal seizure of vehicles." Reply Memo at 2. However, Applicants claim that their objective is to recover from Plaintiffs, not from Defendants, "treble damages and attorneys' fees for violations of New Jersey consumer protection laws." *Id.* at 3.

While that may well be Applicants' objective in the cross-claims they intend to file, that objective is irrelevant to the intervention analysis. For purposes of Rule 24(a)(2), the question is

whether Plaintiffs and Applicants have the same objective in the action currently before this Court. Since this Court finds that they do, Plaintiffs are presumed to adequately represent Applicants' interests.

To be sure, "evidence of collusion, adversity of interest, nonfeasance, or incompetence may suffice to overcome the presumption of adequacy." *Butler, Fitzgerald & Potter*, 250 F.3d at 180. However, Applicants provide no such evidence. Rather, Applicants claim that Plaintiffs may have adverse interests because Applicants are "actively trying to sue" Plaintiffs; speculate that loans from Defendants to one or more of the Plaintiffs suggests "possible collusion of interests between [Plaintiffs and Defendants]" and accuse Plaintiffs' counsel of "baffling incompetency." Reply Memo at 3.

Even if Applicants' speculation and *ad hominem* attacks could suffice to establish adversity of interest, collusion or incompetence, Applicants' arguments would be unpersuasive. First, Plaintiffs interests in this action are not rendered adverse to Applicants by the fact that Applicants intend to sue Plaintiffs. Indeed, the Complaint suggests that Plaintiffs' exposure to contractual claims from Applicants and other dissatisfied customers is one of the principal reasons for commencing this action. Second, in light of the deterioration of the business relationship between Plaintiffs and Defendants, there is no reason to suspect that Plaintiffs will collude with Defendants to the Applicants' detriment. Third, Plaintiffs' counsel's performance in this litigation to date cannot fairly be characterized as incompetent. Accordingly, this Court concludes that Applicants have not overcome the presumption that Plaintiffs will adequately represent their interests and are not entitled to intervention as a matter of right.

Permissive Intervention

In addition to seeking intervention of right, Applicants also move for permissive intervention pursuant to Fed. R. Civ. P. 24(b)(1). That rule provides that "[o]n timely motion, the court may permit anyone to intervene who (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact." Permissive intervention is wholly discretionary with the trial court. *H.L. Hayden Co. of New York, Inc. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986) (citing *Brennan*, 579 F.2d at 191). In exercising its discretion, the trial court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). However, the trial court may also consider other relevant factors, which "'include the nature and extent of the intervenors' interests,' the degree to which those interests are 'adequately represented by other parties,' and 'whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.'" *H.L. Hayden Co.*, 797 F.2d at 89 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir.1977)).

In the case, the relevant factors strongly militate against permitting intervention. First, intervention by Applicants will delay adjudication of the original parties' rights. The Complaint pertains primarily to a maritime dispute between Plaintiffs and Defendants. Judging from Defendants' response to the Plaintiffs' motion for preliminary injunctive relief, the instant action may also involve questions of whether Defendants had a security interest in automobiles purchased by Plaintiffs, in whole or in part, with funds loaned to them by Defendants. However, Applicants' proposed pleading – which accompanied the motion to intervene, as required by Fed.

R. Civ. P. 24(c) – focuses primarily on dealings between Plaintiffs and their customers, including Applicants. Although the claims Applicants seek to litigate may touch on some of the same questions facts as the main action, most of the facts and claims alleged in Applicants' proposed pleading have, at most, marginal relevance to the claims and defenses raised in this action. Litigating Applicants' claims will undoubtedly delay resolution of Plaintiffs' claims.

Second, Applicants' interest in the main action is very limited. As discussed above at pp. 3-4, *ante*, Plaintiffs' motion for preliminary injunctive relief sought the release of cars located in Defendants' warehouses in Elizabeth and Finland. Although a few of those cars may have been sold to some of the Applicants, Applicants' proposed pleading does not even request the release of these cars. Rather, the *ad damnum* clause of Applicants' proposed pleading requests "equitable relief requiring [Plaintiffs to] disgorge and pay back all sums they have collected from [Applicants]." Intervenors' Complaint at 67. Morever, even if Applicants were interested in joining in Plaintiffs' attempts to regain possession of their cars from Defendants, Applicants' interests are adequately represented by Plaintiffs for the reasons discussed above in connection with Applicants' motion to intervene as of right. *See* pp. 11-14, *ante*.

Third, Applicants will not contribute to full development of the underlying factual issues in the main action and to the just and equitable adjudication of the legal questions presented therein. As noted above, Applicants seek to re-focus this litigation away from issues concerning the relationship between Plaintiffs and Defendants and onto issues relating to Plaintiffs' dealings with its customers. Applicants have no knowledge of the facts central to the main action, or any interest in resolving the legal issues raised in this action. Furthermore, the defendants named in Applicant's proposed pleading reside in districts outside of the Eastern District of New York, and

none of the acts attributed to those defendants took place in this district. Indeed, if Applicants proposed pleading were filed as a separate action, this Court would not be the proper venue. *See* 28 U.S.C. § 1391(b).

CONCLUSION

For the reasons set forth above, the motion to intervene in this action pursuant to Rules 24(a) and 24(b) of the Federal Rules of Civil Procedure is denied. Nothing herein precludes the Applicants from filing the proposed pleading attached to their Amended Memorandum of Law in Support of Motion to Intervene as the complaint in a separate action. However, Applicants should not commence an action in this Court without first considering whether this Court is a proper venue for such an action.

SO ORDERED.

SANDRA L. TOWNES
United States District Judge

Dated: November 5, 2013
Brooklyn, New York

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Irina Glazunova
Mikhail Matveev

IN THE FEDERAL DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Ardak Akishev, Zhandos Aliakparov, Alexey Batalov, Igor Glazunov, Irina Glazunova, Andrey Kirik, Natalia Kirik, Evgeniy Kondratuk, Eduard Lisitsyn, Viktor Maniashin, Mikhail Matveev, Yuriy Yamkoviy, Alla Yamkovaya. **Plaintiffs,** **v.** Sergey Kapustin, Irina Kapustin, Michael Goloverya a/k/a Mikhail Goloverya, Vladimir Shteyn a/k/a Vladimir Shtein, Igor Zadorozhniy a/k/a Yegor Zadorozhniy, Michael B. Campagna, Michael Hitrinov, a/k/a Michael Khitrinov,	**COMPLAINT** **JURY TRIAL DEMANDED**

G Auto Sales, Inc., Global Auto, Inc., Effect Auto Sales, Inc., Global Cars, Inc., SK Imports, Inc., Empire United Lines, Co., Inc., CarCont, Ltd, Global Cargo Oy, John Does (1-10), Doe Entities (1-10), **Defendants.**	

PLAINTIFFS, Ardak Akishev, an individual residing at 163A Kabanbye St. 52, Almaty, Kazakhstan, 050000; Zhandos Aliakparov, an individual residing at 129 -19/1 Gabdulina St., Astana, Kazakhstan, 010000; Alexey Batalov, an individual residing at 92 Lenina St. 153, Gurievsk, Kemerovskaya Oblast, Russia, 652785; Andrey Kirik and Natalia Kirik, individuals residing 11/2 Zvyozdnaya St. 62, Saint-Petersburg, Russia; Evgeniy Kondratuk, an individual residing at 21-9 Kastanaevskaya St., Moscow, Russia, 121096; Eduard Lisitsyn, an individual residing at 232/1 Krasniy Prospect 27, Novosibirsk, Russia; Viktor Maniashin, an individual residing at 30 Seraphimi Deryabinoy St. 208, Ekaterinburg, Russia, 620149; Yuriy Yamkoviy and Alla Yamkovaya, individuals residing at 16a Dachnaya St., Borobskiy, Russia; Igor Glazunov and Irina Glazunova individuals residing at 23 Prospect Kirova 40, Murmansk, Russia 183032; Mikhail Matveev residing at 1/9 Shostakovicha St. 65, Sankt-Peterburg, Russia, 194358; by their undersigned attorneys by their undersigned attorney Anna V. Brown, Esq. and Nadia Wood, Esq., attorney for

Igor Glazunov, Irina Glazunova, Mikhail Matveev; collectively "Plaintiffs," allege as follows:

INTRODUCTION

AT THE CORE OF THIS SUIT IS A FRAUDULENT SCHEME

1. The Plaintiffs in this case are citizens of the former USSR Republics who attempted to fulfill their dream: to own a gently used car from the United States, one that traveled on roads with no potholes and was maintained by qualified mechanics. They believed they could trust a car dealer from the United States because of how tightly they are regulated here, as opposed to the market back home.

2. Plaintiffs worked hard, took personal and bank loans, scrabbled their lifetime family savings only to lose them in a massive fraud scheme perpetrated by their former compatriots from this side of the globe.

3. Defendants Sergey Kapustin, Irina Kapustina, and Mikhail Goloverya ("the Kapustins") are a family of expatriates who operate several slick Internet websites as virtual fronts for their three New Jersey car dealerships, Global Auto, Effect Auto Sales, and G Auto Sales, respectively.

4. The Kapustins' beautifully-designed websites advertise cars for sale specifically targeting their former compatriots back in the USSR. The Kapustins offer cars for sale just below the market value.

5. The buyers, who think they are getting a good deal from a reputable dealer, wire the money, and the journey begins.

6. The Kapustins then write apologetic emails that they are encountering delays in delivery: the car turns out to be in a different port in a different country, paperwork gets lost, accountant goes on vacation.

7. Months later, the Kapustins offer the buyer a different, often an inferior car, for just a few thousand more. Buyers—by then desperate to get anything at all out of this deal—wire additional money. Some victims in this case made as many as three wire transfers to the Kapustins. They are still waiting for their vehicle or a refund.

8. In the end, most buyers receive no vehicles at all, nor do they get their money back. A few receive flooded or salvaged vehicles that were sold as "new" or in "good condition." This scheme goes back at least 8 years; it involves hundreds of victims; and an estimated average wire amount per transaction is about $20,000. The victims face language barriers, they cannot easily access U.S. courts and consumer protection agencies, and so this fraudulent scheme has continued unfettered for years.

9. Defendants' actions establish a pattern of a racketeering activity in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq. Defendants' business practices of "bait and switch" sales violate New Jersey Consumer Protection laws; their conduct is unconscionable and deceptive, and amounts to common law fraud. This lawsuit follows.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (actions arising under the laws of the United States) and 18 U.S.C. § 1964(c) (jurisdiction over civil RICO actions).

11. The Court also has supplemental jurisdiction over state law claims under 28 U.S.C. § 1367.

12. Venue is proper in this District under 18 U.S.C. § 1965 and 28 U.S.C. § 1391 because this is where Defendants can be found and transact their affairs and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

13. All Plaintiffs are individuals who in 2012 and 2013 attempted to purchase vehicles from G Auto Sales, Inc., Global Auto, Inc., Effect Auto Sales, Inc.

14. All Plaintiffs are citizens of Russia and reside there, except Ardak Akishev and Zhandos Aliakparov, who are citizens and residents of Kazakhstan.

15. Defendants Sergey Kapustin, Irina Kapustina, and Mikhail Goloverya are all individuals residing at 137 Grasshopper Drive, Warminster, PA 18974. Sergey Kapustin and Irina Kapustina are husband and wife, and Mikhail Goloverya is Sergey's step-son from Irina's prior marriage.

16. Defendants Global Auto, Inc. ("Global" or "Global Auto"), G Auto Sales, Inc., ("G Auto") and Effect Auto Sales, Inc. ("Effect" or "Effect Auto") are

corporations registered in the State of New Jersey. Their primary business address is at 150-1 Carriage Lane, Delran, New Jersey 08075. Defendants Sergey Kapustin, Mikhail Goloverya, and Irina Kapustina as their presidents, respectively.

17. Global, G Auto, and Effect are businesses which sold or offered for sale a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 24-month period.

18. Upon information and belief, Global is owned by Sergey Kapustin.

19. Defendant Sergey Kapustin is liable for the conduct and debts of Defendant Global.

20. Upon information and belief, G Auto is owned by Mikhail Goloverya.

21. Defendant Mikhail Goloverya is liable for the conduct and debts of Defendant G Auto.

22. Upon information and belief, Effect is owned by Irina Kapustina.

23. Defendant Irina Kapustina is liable for the conduct and debts of Defendant Effect Auto.

24. According to the Business Entity Information provided by the State of New Jersey, "Effect Auto Sales" is also an alternative name for Global Auto, Inc. According to the same papers, in 2009, Irina Kapustina and Sergey Kapustin both signed Global Auto's corporate documents as "Presidents" of Global Auto, Irina in connection with using "Effect Auto" as an alternative name, and Sergey in connection with also using "Auto Collection Group."

25. According to the Business Entity Information provided by the State of New Jersey, Global Auto's corporate status has been revoked in February of 2013 for failure to file an annual report for 2 years, making the officers personally liable for corporate obligations.

26. Global Cars, Inc. ("Global Cars") is a corporation registered in Pennsylvania with registered address at 303 Ridgeway Street, 2nd Floor, Philadelphia, PA 19116. Global Cars is owned by SK Imports, Inc., a Pennsylvania corporation with the same registered address.

27. Upon information and belief, condo at 303 Ridgeway Street, 2nd Floor, Philadelphia, PA 19116, is owned by Sergey Kapustin. The basis of Plaintiffs' belief are publicly available deeds. SK Imports, Inc., which shares its initials with Sergey Kapustin, was incorporated by Sergey Kapustin.

28. Upon information and belief both Global Cars and SK Imports were registered on April, 26, 2013 and March 4, 2013, by Sergey Kapustin in order to shield his assets from liability in this lawsuit and the investigation of the NJ Division of Consumer Affairs, Office of Consumer Protection initiated by Plaintiffs' complaints.

29. There is a closeness of relationship between the Kapustins and all five corporate Defendants as evidenced by:

a. pervasive control over all five corporations;
b. negotiations by corporate officers of one corporation on behalf of another corporate entity (e.g., Sergey Kapustin negotiating on behalf of G Auto and Mikhail Goloverya);

c. intermingling of activities with substantial disregard of the separate nature of the corporate entities;
d. serious ambiguity about the manner and capacity in which the various parties and their respective representatives are acting;
e. common ownership;
f. common management;
g. common financing;
h. commingling of funds;
i. commingling of loans;
j. operations in each others' names;
k. impermissible personal payments and asset transfers.

30. The closeness of their relationships indicates that individual Defendants are alter egos of the corporate entities and piercing the corporate veil is necessary to avoid injustice and fundamental unfairness.

31. Defendant Michael B. Campagna is the registered agent for Global, Effect and G Auto with a business address at 277 N. Broad St., Elizabeth, NJ 07207.

32. Upon information and belief, Defendant Vladimir Shteyn (Shtein is an alternative spelling of his last name) was at all times material to this case, an agent, manager or employee of corporate Defendants. Plaintiffs' belief is based on representations Shteyn made via email to the Plaintiffs when he responded to their inquiries regarding cars for sale, handled the negotiations, and acted with appearance of decision-making authority.

33. Upon information and belief, Defendant Igor Zadorozhniy ("Yegor" is an alternative spelling of his first name) is Sergey Kapustin's nephew who was at all times material to this case, an agent, manager or employee of corporate Defendants in Kotka, Finland. Plaintiffs' belief is based on representations

Zadorozhniy made via email to the Plaintiffs when he responded to their inquiries regarding cars for sale, handled the negotiations, and acted with appearance of decision-making authority.

34. Defendant Michael Hitrinov, a/k/a Michael Khitrinov ("Hitrinov") is a financier of the scheme and an owner of a shipping company Empire United Lines Co., Inc. He is a resident of the State of New York who maintains a principal place of business at 2303 Coney Island Avenue, Brooklyn, NY 11223.

35. Defendant Empire United Lines Co., Inc. ("Empire") is a maritime shipping company, a closely held New York Corporation with its primary place of business at 2303 Coney Island Avenue, Brooklyn, New York, 11223-3337. Hitrinov is the president and/or Chief Operating Officer of Empire.

36. In 2012, Hitrinov allegedly converted the some of the vehicles to satisfy the debts of Kapustin, which led to an action by Kapustin against Hitrinov currently pending in the U.S. District Court for the Eastern District of New York, CV 13-2479 (CV 13-2479 Complaint is attached hereto as Exh.3). Plaintiffs attempted intervene with their own proposed interveners' complaint in that action but their motion to intervene was denied on November 7, 2013. (EDNY CV 13-2479 ECF#38).

37. Defendant CarCont Ltd. is a company and a warehouse in Kotka, Finland, where some of the Plaintiffs' vehicles were shipped and resold the vehicles to persons other than Plaintiffs. Upon information and belief, CarCont is owned by Hitrinov.

38. Defendant Global Cargo Oy is a local agent company of Global-Effect-G Auto in Kotka, Finland, where some of the Plaintiffs' vehicles were shipped and resold the vehicles to persons other than Plaintiffs. Upon information and belief, Global Cargo Oy is owned by the Kapustins.

39. Defendants John Doe #1 through #10 (the "John Doe Defendants"), are persons that aided, abetted, or participated in the events complained of herein but whose identities are as of yet unknown to Plaintiffs. Plaintiffs reserve the right to amend the caption and identify the John Doe Defendants by name once their identities are ascertained through discovery.

40. Defendant Doe Entities #1 through #10 are business entities that aided, abetted, or participated in the events complained of herein but whose identities are as of yet unknown to Plaintiffs. Plaintiffs reserve the right to amend the caption and identify the Doe Entities once their identities are ascertained through discovery.

FACTUAL ALLEGATIONS COMMON TO ALL PLAINTIFFS

Upon information and belief, the Kapustins are running a scheme with intent to defraud overseas buyers as follows:

41. After entering into a consent judgment with New Jersey Attorney General for various violations of New Jersey Consumer Fraud Act in 2009 (Exh. 1), the Kapustins decided to move on to defrauding citizens of former USSR. Buyers overseas have far more limited access to the U.S. courts or law-enforcement and consumer protection agencies.

42. In 2010-2011 the Kapustins conspired with Hitrinov to obtain necessary funding for the initiation of their fraudulent scheme. Hitrinov provided approximately $450,120.00 in startup capital. (Exh.3, ¶45). Hitrinov also agreed to provide assistance through his company Empire with the maritime shipment of vehicles.

43. The Kapustins then developed glamorous websites GlobalAutoUsa.com and EffectAuto.com to advertise vehicles for sale.

The Tale of Two Websites

44. GlobalAutoUsa.com website is registered to Global Auto, Inc. at the address 500 S. Broad Street, Elizabeth, NJ 07202. Global conceded that this address is its principal place of business. (Exh. 3, EDNY Compl.¶5). This is also the same address that is displayed as a business address for Effect Auto on their website, EffectAuto.com, and as contact address on Effect Auto's invoices. (Exh. 3, EDNY Compl.¶7).

45. Neither Global Auto nor Effect Auto operates from that address, however. Instead, 500 S. Broad St. is occupied solely by "Park Place of New Jersey" car dealership.

Illustration 1: Banners and billboard welcoming customers to Park Place of New Jersey dealership at 500 S. Broad St., Elizabeth, NJ.

Illustration 2: License plate of a car for sale at Park Place of New Jersey dealership at 500 S. Broad St., Elizabeth, NJ.

46. GlobalAutoUsa.com website is written in Russian, it discusses delivery of cars to Russia and other former USSR Republics through a port in Kotka in Finland, and promises to make cars from the USA a "reality for everyone."

47. Address on the "contact information" section of the GlobalAutoUsa.com website is listed as 150-1 Carriage Ln., Delran, NJ 08075. This is the same

address listed on the G Auto's incorporation papers and pleaded as the G Auto's principal place of business. That office, however, does not even appear to have a computer.

Illustration 3: Office of G Auto at 150-1 Carriage Ln., Delran, NJ 08075.

48. Vehicles advertised on GlobalAutoUSA.com do not include exact odometer readings, nor does the website describe prior use of each used vehicle, or explain that vehicles are sold without a warranty, or even provides a clear explanation of what "as is" means, as are all required by N.J.A.C. 13:45A-26A et seq.

49. Buried in a tiny link at the bottom of the GlobalAutoUsa.com website are Terms and Conditions for "Global Cars, Inc."

50. The *de jure* address listed for Global Cars on the Terms and Conditions is a Post Office in Southampton, PA, with a rented mailbox.

51. The terms and conditions listed at GlobalAutoUsa.com—which are referred to as Terms and Conditions Global Cars Inc., which in turn traces its ownership back to Sergey Kapustin—state that all merchandise purchased on the website can only be exchanged for store credit. The terms also state that in

case of cancellation because of the buyer, refund is done by withholding 15% of the order as commission, and that refund can only be made upon the resale of goods to another buyer. Meaning, if the buyer wants their money back, they have to wait until that vehicle is sold to someone else, and even then they will only receive 85% of their money back.

52. On the invoices issued to Plaintiffs, a similar cancellation clause states that commission in the amount of 10% of the order will be withheld from any refund and that the refund will still be issued only upon resale of the cars.

53. Cars sold to buyers in Russia and other former USSR Republics from the United States are usually shipped by sea from ports in New York and New Jersey to port in Kotka, Finland. It takes about 14–21 days for the car to reach Kotka from New Jersey. Kotka is only a few hours away from St. Petersburg, and serves as a major gateway for many cars destined for buyers in the former USSR republics. Buyers can either pick up the car in Kotka themselves, or have it delivered by a car carrier to their home town.

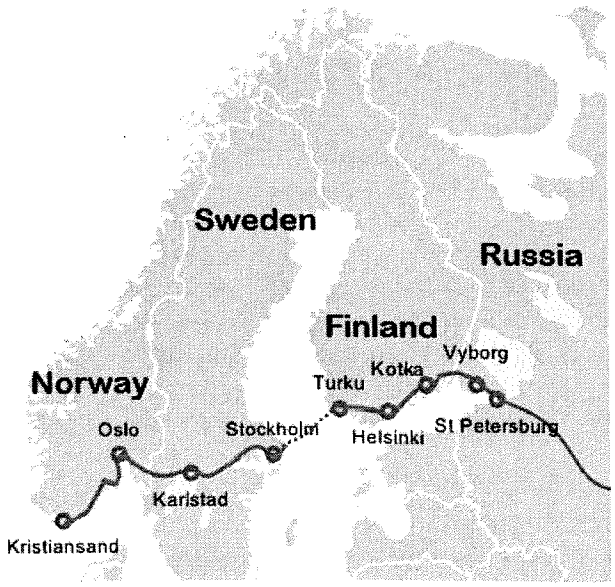

Illustration 4: Port of Kotka in Finland, connected by a major highway E-18 to St. Petersburg, Russia.

54. Global, G Auto, and Effect regularly ship cars to Kotka. Website GlobalAutoUSA.com discusses storage lot of Global Cargo Oy in Kotka, Finland. According to the website, Global Cargo belongs to Global Auto USA. Prior to the dispute with Hitrinov, Global, G Auto, and Effect used his warehouse at CarCont for storage (Exh.3, ¶44).

55. Upon information and belief, Global Auto USA is not an actual business entity. The basis of Plaintiffs belief is that searches for Global Auto USA as an alias or as a business entity in Pennsylvania and New Jersey returned nothing. Search of UCC filings for Global Auto USA also returned nothing.

The Kapustins' Websites Serve as a Front for an Illegal Online "Sales" Scheme

56. A number of vehicles advertised for sale on GlobalAutoUSA.com and EffectAuto.com do not actually belong to any Defendants. Instead, the

Kapustins use images of cars and information about them gathered from other online car sales sites to advertise these vehicles as "bait." They set the price point just below the market value and explain that they do so because they are a wholesaler.

57. Once contacted about purchasing the vehicle, the Kapustins and their agents issue invoices from G Auto, Global, or Effect requesting Defendants to wire money to their bank accounts.

58. G Auto uses the bank account ending in 2168 at Citizens Bank, Global uses the bank account ending in 4963 also at Citizens Bank, and Effect uses the account ending in 2841 at Wells Fargo.

59. The invoice claims to be a contract for sale of a motor vehicle, but it does not include any required odometer or warranty disclosures. It does, however, state that by "reserving" a car the buyer confirms that he read Terms and Conditions on the website and agrees with them.

60. After buyers wire the money, the delays begin. The buyers are given the silent treatment, then various excuses, such as inexplicable "difficulties with delivery," lost paperwork, accountant going on vacation. The buyers are reluctant to ask for a refund, since that means paying a substantial cancellation penalty and waiting until the car resells, as stated in their invoices.

61. The Kapustins then institute the "switch" portion of their "bait and switch" scheme. They push a different vehicle, often a few thousand dollars

more expensive (Plaintiff Lisitsyn was forced to buy a car twice as expensive). Desperate buyers agree to the switch and wire the money.

62. After the switch, even buyers who were seemingly buying the same-priced car also get hit with unloading fees, port fees, transportation fees, storage fees, customs fees, and other fees that were not mentioned in the invoice. The demands for additional fees first come via email, then are often followed by letters from Michael B. Campagna, registered agent for all three companies and an attorney.

63. The Campagna letters look very serious to buyers unfamiliar with the U.S. laws. The letters tell the buyers that "their" vehicle sitting in the port will be sold to pay the hidden port fees, so buyers will get nothing. If buyers share their experiences online, Campagna also threatens them with "prosecution to the fullest extent of the law" for defamation (Exh. 2).

64. In the end, the buyers either get a grossly overpriced and vastly inferior vehicle than the one they intended to purchase, or they get nothing at all, as is the case with many Plaintiffs here.

65. The basis of Plaintiffs' beliefs about the scheme are their own, very similar, car-buying experiences from the corporate Defendants and public records, including the sheer number of negative complaints and similar experiences of other customers.

FACTUAL ALLEGATIONS SPECIFIC TO EACH PLAINTIFF

Defrauding Ardak Akishev

66. In January 2013, Akishev was lured in by advertisement of automobiles for sale and export from the United States to Kazakhstan on the website http://effectauto.com/ by Defendant Effect Auto.

67. On January 12, 2013 Akishev decided to purchase 2012 Honda CR-V, VIN 5J6RM4H7XCL066864 from Effect Auto. Effect Auto issued an invoice for $21,420, which included the cost of the vehicle, the cost of shipment to Kazakhstan, and bank fees.

68. The CARFAX report for this vehicle shows it was sold at an action on January 14, 2013 marked as "Salvaged", which voids manufacturer's warranty. This information was not included in the internet advertising and was never disclosed to Akishev. To the contrary, Defendant Zadorozhniy orally assured Akishev that the vehicle was in an "ideal" condition.

69. On January 16, 2013, Akishev wired $21,420 to Effect's bank account ending in 2341 at Wells Fargo bank listed on Effect's invoice.

70. The wire transfer from Akishev originated in Kazakhstan and its destination was a bank in the United States; this wire transfer utilized interstate wire communications.

71. From January to late February, Akishev repeatedly called Effect Auto and Sergey Kapustin personally inquiring whether the vehicle had been shipped to him. After numerous unsuccessful inquiries Akishev demanded his money back by sending a text message to Kapustin.

72. Kapustin was handling the negotiations on behalf of Effect Auto in this matter, even though Irina Kapustina is listed as Effect Auto's President.

73. Kapustin refused to issue a full refund and asked Akishev to send him a letter stating that Akishev terminated the contract and was requesting to refund the purchase price that he paid minus 10% percent of the sum representing the termination fee. Akishev sent Sergey Kapustin such letter on February 28, 2013.

74. Over the next several months Kapustin made several $500 payments, only a partial refund of $21,420 received from Akishev.

Defrauding Zhandos Aliakparov

75. In February of 2013, Plaintiff Aliakparov researched internet seeking to purchase a vehicle from the United States.

76. On February 16, 2013, he browsed the webpage http://globalautousa.com and found a vehicle he was interested to buy, Mazda CX-5 VIN JM3KE2CE5D0105675. According to the website advertisement, the vehicle was located in Finland.

77. The CARFAX report for this vehicle shows that the vehicle was still in Pennsylvania and that four months prior to Aliakparov's inquiry, on November 2, 2012 it was declared a total loss with collision damage reported. This information was not included in the internet advertising and was not disclosed to Aliakparov.

78. On February 17, 2013, Defendant Zadorozhniy sent a contract-invoice from G Auto Sales for $9,920 for the vehicle. Neither the advertisement on

GlobalAutoUSA.com nor the email from Zadorozhniy mentioned seller's warranty as required by N.J.A.C. 13:45A-26F.3.

79. On February 18, 2013, Aliakparov asked about the technical condition of the vehicle and whether it required any repairs. The same day, February 18, 2013, Zadorozhniy falsely represented via email to Aliakparov that the automobile was in working condition.

80. The next day, February 19, 2013, in response to another inquiry, Zadorozhniy emailed Aliakparov that the vehicle was still in the United States, contrary to the information in the advertisement describing the vehicle as located in Finland.

81. On February 20, 2013, Aliakparov independently obtained a CARFAX report. Although Alikparov had difficulty understanding the CARFAX report, he understood enough to inquire of Zadorzhniy why the report reflected that the vehicle was damaged.

82. The same day, on February 20, 2013, Zadorozhniy falsely represented to Aliakparov via email that the vehicle was never damaged but was "written off" to receive 100% of insurance and then was resold at a lower price. Zadorozhniy assured Aliakparov that the vehicle was "intact" and "on the go."

83. On February 21, 2013, Aliakparov wired $9,920 to G Auto's account ending in 2168 at Citizens bank.

84. The wire transfer from Aliakparov originated in Kazakhstan and its destination was a bank in the United States; this wire transfer utilized interstate wire communications.

85. During the following several weeks Aliakparov made numerous phone calls inquiring of the whereabouts of the vehicle. He was first told that there was a problem with documents, then that there was a problem with car keys.

86. Finally a month later a person named Vlad—who, upon information and belief, is Defendant Vladimir Shtein—told Aliakparov that the car was damaged by flood and that it had been in a repair shop for the past month and was still not fixed.

87. In the following months Zadorozhniy offered Aliakparov to choose from available—but more expensive—vehicles.

88. Upon searching the internet and finding many similar stories of other Global Auto's customers, desperate Aliakparov requested a refund. He was willing to accept even a partial refund just to get some of his money back.

89. On May 4, 2013, Zadorozhniy referred Aliakparov to Kapustin. Kapustin has been handling the negotiations on behalf of G Auto in this matter, even though Mikhail Goloverya is listed as G Auto's President, not Kapustin.

90. On May 20, 2013, after numerous inquiries, Kapustin falsely represented via email that he would refund the money after the vehicle was resold.

91. On May 28, 2013, after numerous inquiries, Kapustin falsely represented via email that the accountant was processing the refund.

92. On June 8, 2013, after numerous inquiries, Kapustin falsely represented via email that he would issue the refund the following week.

93. On June 11, 2013, after numerous inquiries, Kapustin again falsely represented via email that he would issue the refund within days.

94. On June 25, 2013, after numerous inquiries, Kapustin falsely represented that he could not process the refund because the accountant was on vacation.

95. Aliakparov received neither a vehicle nor his $9,920 back.

Defrauding Alexey Batalov

96. In March 2012, Plaintiff Batalov found internet advertising of Global Auto through the Google search engine by searching "vehicles from USA" and was lured in through the webpage http://GlobalAutoUSA.com.

97. On or about April 3, 2012, Batalov agreed to purchase Jeep Compass Sport 2.4L AWD, VIN 1J4NF1FB8BD282283. The advertisement on GlobalAutoUSA.com website listed the vehicle as located in Finland and Global's employees informed Batalov that the vehicle was available for pick up in Finland within one or two weeks from the time of payment.

98. The same day, April 3, 2012, Global issued an invoice for $25,920.

99. Batalov paid Global's invoice by wiring $25,920 from his bank in Russia to Global's account ending in 4963 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

100. Nearly three weeks later, on April 23, 2012, Defendant Vladimir Shtein informed Batalov via email that there had been problems with the customs declaration for that vehicle.

101. In May of 2012 Batalov repeatedly contacted Global with inquiries as to the status of his vehicle. Shtein continuously assured Batalov that his issue was about to get resolved.

102. Because Batalov secured a credit in Russia to purchase this auto, he needed to present proof of ownership of the vehicle to the bank. Without proof of ownership, the credit was considered unsecured debt subject to much higher fees. Because of the delay in delivery on the part of Global, Batalov incurred significantly higher interest rates than he had anticipated.

103. Finally on May 26, 2012, nearly two months after Batalov wired money to Global, Shtein informed Batalov that the vehicle he purchased, Jeep Compass, was shipped back to the United States. Shtein then asked Batalov to choose another vehicle.

104. On June 4, 2012, desperate Batalov agreed to purchase a different vehicle Nissan Pathfinder 2.5 Turbo Diesel 4X4, VIN VSKJVWR51U0346515, and asked to apply the store credit he had for the attempted purchase of previous vehicle to this one.

105. Shtein informed Batalov that the vehicle would be available for pick up within two to three weeks.

106. On June 13, 2012, Batalov asked Shtein to provide the vehicle's odometer reading but did not receive the answer.

107. During June and July 2012, Batalov made numerous inquiries about the vehicle. Batalov received numerous emails from individuals named Vladimir Popov and Svetlana informing him about various problems with paperwork.

108. On July 18, 2012, Defendant Igor Zadorozhniy sent Batalov an email that the vehicle arrived in Finland.

109. Despite Batalov's understanding that the price he paid for the vehicle included customs fees and delivery to St. Petersburg, Russia, not just a port in Finland, Zadorozhniy told Batalov that he had no such information. This precipitated another flurry of emails back and forth between Batalov and Global's agents. In an email dated September 18, 2012, Zadorozhniy then asked Batalov to wire an additional $2,000 for customs fees and delivery.

110. In a subsequent email the same day, Zadorozhniy also informed Batalov that they would not be dealing with the customs because they lack financial resources to do so because of financial difficulties in the company. Batalov was then offered to pick something else from their warehouse in Finland.

111. Batalov insisted on getting the car he ordered, without paying the additional $2,000, as was his agreement with Shtein.

112. During the following months, Batalov was offered various vehicles, but the offers and the conversations shifted towards phone rather than email. Batalov would receive an email from Shtein asking to call, rather than create a paper trail.

113. To this date, Batalov received neither his Nissan nor his $25,920 back.

Defrauding Andrey Kirik and Natalia Kirik

114. In August 2012, Plaintiffs Andrey and Natalia Kirik (the "Kiriks") decided to buy an automobile in the United States. After searching internet advertisements they found a vehicle of their interest, 2009 Volkswagen Tiguan WVGBV75N99W546258 listed for sale by a reputable dealer Heritage Voskswagen Parkville in Baltimore, MD ("Heritage").

115. On September 17, 2012, the Kiriks found Global Auto's website GlobalAutoUSA.com which advertised the company's services in maritime shipment of automobiles from the United States to Russia. Andrey Kirik (Kirik) contacted the company via email kotkacars@gmail.com displayed on its webpage.

116. The person named Igor—who, upon information and belief, is Defendant Igor Zadorozhniy,—referred Kirik to Sergey Kapustin by providing his telephone number. Kirik called Kapustin to discuss terms of shipment of the vehicle to Kotka, Finland. Kapustin assured Kirik that his company would transport the vehicle to Kotka, Finland, and that it would take about 30 days for them to do it. Kirik proceeded with the purchase of the vehicle from Heritage for the total price of $24,403.94.

117. On September 20, 2012, the Kiriks received G Auto invoice signed by Michael Goloverya for $870, which included ($850 charge for vehicle shipment and $20 bank fees). The Kiriks made a wire transfer in the amount of $870 to G Auto account at Citizens bank ending in 2168.

118. On October 2, 2012, Vladimir—who, upon information and belief, is Defendant Vladimir Shtein,—picked up Kirik's vehicle from Heritage in Baltimore, MD. Sometime in the beginning of October, Kirik called Igor Zadorozhniy and provided him with the contact information to be notified when the vehicle arrives in Kotka, Finland.

119. On or about October 23, 2012, a package with the original title arrived at the address of Kirik's representative in the United States, which Kirik provided

to Heritage. Surprised Kirik called Global as he was sure that vehicle was already en route to Finland. On the same day, at Global's request Kirik's representative sent the original title and other documents by FedEx expedited delivery to Global's address in Delran, NJ. Svetlana from Global confirmed the receipt of the documents.

120. On October 31, 2012, Kirik emailed Global inquiring whether the vehicle had been shipped. On November 2, 2012, Svetlana emailed Kirik and informed him that due to the hurricane Sandy, she could not confirm the whereabouts of the vehicle. A few days later Kirik called Kapustin who told Kirik that his vehicle was damaged in the hurricane.

121. On November 16, 2012, Kirik requested a survey report on his vehicle with photographs of all damage.

122. On December 5, 2012, Svetlana emailed a survey report on the vehicle with no photographs, which showed minor wear and zero damage.

123. On December 12, 2012, Kirik requested that Kapustin release his vehicle to Kirik's representative in the United States and issue a refund of the transportation fee.

124. On December 12, 2012, Kirik's representative called Kapustin and requested to release the vehicle to him.

125. Kapustin promised to release the vehicle and requested the representative's information, which Kirik emailed to Kapustin.

126. On December 13, 2012, Kapustin changed his mind about releasing the vehicle and emailed Kirik that his vehicle would be shipped to Kotka, Finland

and that he would inform Kirik about the container number when the vehicle arrives.

127. On December 14, 2012, Svetlana also confirmed via email that they are in the process of shipping the vehicle to Finland.

128. After December, 2012, Global cut off all communications with Kirik and did not respond to his emails or phone calls.

129. Eight months later, on July 23, 2013, Natalia Kirik traveled to Kotka, Finland to Global's local office to search for the vehicle she asked Global to transport from the United States to Finland. The vehicle was not there.

130. Thus, the Kiriks lost their vehicle, for which they paid $24,403.94, and the shipping fee in the amount of $870.

Defrauding Eduard Lisitsyn

131. In January 2012, Plaintiff Lisitsyn was lured in by advertisement of cars on the website GlobalAutoUSA.com. Lisitsyn sent an email to the address listed on the web page sales@globalautousa.com requesting information on automobiles.

132. On February 6, 2012, Lisitsyn decided to purchase a 2011 Porsche Cayenne WP1AB2A27BLA42739, which he chose from the company's online listings.

133. On February 6, 2012, Global issued an invoice for $29,920.

134. On February 27, 2012 Lisitsyn asked to provide assurances that the vehicle would be delivered to his hometown of Novosibirsk (Siberia) by May 15,

2012 because the bank in Russia which he obtained a loan from required it to secure credit.

135. Global assured via email that the vehicle would be delivered by May 15, 2012. On February 27, 2012, Lisitsyn paid Global's invoice by wiring $29,920 from his bank in Russia to Global's account ending in 4963 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

136. A week later, on March 6, 2012, Shtein represented to Lisitsyn that the vehicle had been sold to another buyer.

137. The same day, on March 6, 2012, Lisitsyn requested the refund of the money.

138. The next day, on March 7, 2012, Shtein informed Lisitsyn that the Global Auto policy was only to offer replacement vehicles—not refund the money—and was told to select a different vehicle.

139. By that time Lisitsyn obtained auto financing loan from the bank in Russia for the purchase of the vehicle from Global and was required to present evidence of ownership to the bank, or the loan would be classified as unsecured and incur a much higher interest rate.

140. A week later, on May 14, 2012, desperate Lisitsyn agreed to buy a replacement vehicle a 2009 Lexus LX 570, VIN JTJHY00W094019179 for $59,900. That is $30,000 higher than the price of the car he originally agreed to purchase. Shtein promised Lisitsyn that the vehicle would arrive in Finland within 15–20 days of the payment.

141. The same day, on May 14, 2012, Global issued an invoice for the balance.

142. Lisitsyn paid Global's invoice by wiring additional $30,020 from his bank in Russia to Global's account ending in 4963 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

143. By August 2012, three months later, the vehicle still had not been shipped.

144. Three months after the second wire transfer, on August 9, 2012, Shtein said that the second car had problems with paperwork, and offered Lisitsyn a third car, a 2009 LX570 Lexus VIN JTJHY00W694027108 for $64,900, assuring him that the vehicle was ready for delivery.

145. This vehicle was $6,000 more than the amount Lisitsyn already paid, and more than twice as expensive as the car he originally intended to buy.

146. Even though two previous invoices were from Global, the third invoice for the third vehicle was issued by G Auto.

147. Lisitsyn paid G Auto's invoice by making third wire transfer in the amount of $5,020 from his bank in Russia to G Auto's account ending in 2168 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

148. Lisitsyn received neither his Lexus nor his $64,960 back.

Defrauding Evgeniy Kondratuk

149. On April 14, 2012, Plaintiff Kondratuk was lured in by advertisement of cars on the website GlobalAutoUSA.com, and sent sales@globalautousa.com an

inquiry. Kondratuk was not buying a specific car, but asking GlobalAutoUSA about their service to locate a vehicle with certain parameters, in Kondratuk's case, a 2012 SAAB 9-4X.

150. On April 16, 2012, Shtein emailed Kondratuk back, saying that a vehicle with all required specifications would cost $34,000, including shipping to Kotka, Finland.

151. Kondratuk found the estimated price to be reasonable. On April 20, 2012, Kondratuk wired $10,020 as a down payment on the Saab from his bank in Russia to Global's account ending in 4963 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

152. Global was then supposed to undertake a search for a 2012 Saab 9-4X with specifications requested by Kondratuk.

153. A month later, on May 23, 2012, Shtein sent Kondratuk information on an available for purchase from Global a 2011 Saab 9-4X, VIN 3GOFNTEYOBS800141. Kondratuk agreed to purchase this Saab even though it was not within the parameters he originally requested.

154. Global issued an invoice for the purchase price of $39,900. This was nearly $6,000 more than Global's initial estimate of $34,000.

155. A week later, on May 30, 2012, Kondratuk made a second wire transfer in the amount of $29,920 from his bank in Russia to Global's account ending in 4963 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

156. A couple of more weeks later, after numerous inquiries about the vehicle's location, Shtein informed Kondratuk on June 15, 2012 that the Saab he purchased was damaged, and that Global would keep looking for a different Saab for Kondratuk to purchase.

157. Months later, on August 23, 2012, Shtein offered Kondratuk to purchase another vehicle 2011 Saab 9-4X Aero, VIN 3G0FNUE62BS800047 for $46,000, to which Kondratuk agreed. This was $10,000 more than the initial estimate and another $6,000 more than the two wire transfers to Global, combined.

158. Another month went by, and in September 21, 2012, Shtein informed Kondratuk that the vehicle was being loaded for shipment to Finland.

159. In yet another month, on October 24, 2012, Zadorozhniy and Shtein informed Kondratuk that the vehicle was delivered to Finland and requested to pay the final invoice in the amount of $6,120, not to Global Auto like the first two payments, but to G-Auto.

160. A couple of days later, on October 26, 2012, Kondratuk made a third wire transfer of $6,120 from his bank in Russia to G-Auto's bank account ending in 2168 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

161. In the months that followed, Kondratuk wrote numerous letters and made many phone calls to find out the whereabouts of the vehicle.

162. Nearly six months later, from March 6 through March 9, 2013, Kondratuk made a trip to Finland to meet with Defendant Zadorozhniy and to try to locate his vehicle.

163. A month later, from April 2 through April 5, 2013, Kondratuk made another trip to Finland to try again to find his vehicle and to file a complaint with the police in Finland. His efforts to find the vehicle were unsuccessful.

164. Kondratuk received neither his Saab nor his $46,060 back.

Defrauding Victor Maniashin

165. On November 3, 2012, Plaintiff Maniashin contacted the webpage of http://globalautousa.com and sent them an email inquiring about purchasing a car designated as Lot # 14774 and delivery to Saint Petersburg, Russia.

166. On November 6, 2012, Maniashin transferred $16,920 to the account of G Auto ending in 2168 at Citizens Bank in the United States as a payment on G Auto's invoice; this wire transfer utilized interstate wire communications.

167. Not even a week later, on November 11, 2012, Zadorozhniy, who is in Kotka, Finland, represented to Maniashin that the vehicle had been damaged in hurricane Sandy that hit New Jersey.

168. Zadorozhniy also wrote to Maniashin that the company is on a verge of bankruptcy because of the damage caused by the storm. He suggested that Maniashin contact Sergey Kapustin with any questions or concerns and gave Manisashin Kapustin's phone number, even though this was G Auto's sale, of which Goloverya is the president, not Kapustin.

169. Zadorozhniy then asked Maniashin to buy another, more expensive, vehicle.

170. The same day, on November 11, 2012, Maniashin received an invoice for a 2009 Toyota Venza, VIN 4T3ZE11AX9U017211 for the purchase price of $22,920. This was $6,000 more than the price of the first car.

171. On November 13, 2012, Zadorozhniy informed Maniashin that the vehicle was en route to Finland.

172. The next day, on November 14, 2012 Maniashin made a wire transfer of additional $6,020 from his bank in Russia to G-Auto's bank account ending in 2168 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

173. In early December, Sergey Kapustin informed Maniashin that he could not release the vehicle to Maniashin in Finland and referred him to Defendant CarCont Ltd. in Kotka, Finland, which allegedly had Maniashin's vehicle. CarCont also refused to release Maniashin's vehicle.

174. Maniashin received neither his vehicle nor a refund of his $22,940.

Defrauding Yuriy Yamkoviy and Alla Yamkovaya

175. On January 26, 2012, Yuriy and Alla Yamkoviys, husband and wife, found advertised vehicles at GlobalAutoUSA.com and contacted it via email kotkacars@gmail.com listed on that web site. The Yamkoviys wanted to purchase and ship to Russia five automobiles, two for themselves, and three for their children, Vitaliy, Mikhail, and Elena.

176. On January 27, 2012, Global sent information on available vehicles falsely representing the mileage reading of the vehicles.

177. For VW listed below Global reported 58,000 miles, about half of the actual mileage of 92,558 miles as reflected by the CARFAX report as of January 11, 2012.

178. For Mercedes listed below Global reported 44,000 miles, which is less than half of the actual mileage of 112,282 miles as of January 9, 2012 reported by CARFAX.

179. For Honda CRV Global reported 54,000 miles, which is less than half of the actual mileage of 118,236 as of December 26, 2011 per CARFAX report.

180. For Audi Global reported 27,000 miles, which is less than half of the actual mileage of 78,879 miles as of January 11, 2012 per CARFAX report. On January 31, 2012, Global also falsely represented that Audi was in excellent condition because from 2009 "the vehicle was parked in the garage and the owner used it as his second car for driving."

181. On January 28, 2012, Global sent to Yamkoviys contracts-invoices for the following vehicles:

Car	VIN	Amount
2010 Honda Insight EX ("Honda Insight")	JHMZE2H71AS025533	$9,920
2009 Volkswagen Passat ("VW")	WVWJK73C19P012661	$9,920
2008 Mercedes-Benz GL320 ("Mercedes")	4JGBF22EX8A417378	$29,920
2009 Audi A4 ("Audi")	WAUSF78KX9N025099	$16,920
2008 Honda CR-V LX ("Honda CRV")	JHLRE48328C001761	$9,920

182. On January 30, 2012, the Yamkoviys made three wire transfers for the total amount of $29,760 to the account of Global Auto ending in 4963 at

Citizens Bank in the United States from their bank account in Russia as payment for Honda Insight, VW and Honda CRV; these wire transfers utilized interstate wire communications.

183. The CARFAX report for Honda Insight shows the vehicle was declared a "Total Loss" on March 25, 2010 and marked as "Salvaged," which voids manufacturer's warranty. This information was never disclosed to the Yamloviys until they independently obtained a CARFAX report.

184. When confronted with the discrepancy Global "generously" made a discount of $1,000 to the price of Honda Insight and credited it back to the account.

185. The CARFAX information on mileage for other vehicles except for the Mercedes was not yet available to the Yamkoviys.

186. On February 1, 2012, the Yamkoviys made the wire transfer in the amount of $45,820 from their bank in Russia to the account of Global Auto ending in 4963 as payment for Mercedes and Audi; this wire transfer utilized interstate wire communications.

187. At the time of contracting Global assured the Yamkoviys via email that all five vehicles would be shipped to Finland within 15 to 20 days and then delivered to the Yamkoviys' hometown in Russia.

188. A week later, on February 7, 2012, Global Auto informed the Yamkoviys via email that all vehicles were en route to Finland.

189. On February 13, 2012, the Yamkoviys asked to confirm whether all five vehicles were en route to Finland; Global again confirmed via email that all five were on board the ship.

190. On February 24, 2012, Global assured the Yamkoviys via email that the estimated arrival date was March 1 or 2, 2012.

191. A few days later, on March 11, 2012 and on March 15, 2012, Global informed the Yamkoviys that only three of the five vehicles, Honda CRV, Audi, VW had arrived.

192. When requested to send a photo of the vehicles, Global Auto demanded 50 Euro per photo.

193. In addition, Global demanded additional payments for unloading and storage. On April 2, 2012, the Yamkoviys paid additional $3,550 for unloading and storage and received the vehicles. The Yamkoviys picked up the vehicles in Finland and arranged themselves for delivery from Finland to Russia incurring substantial international travel and transportation expenses.

194. Approximately a month after the vehicles were picked up, Svetlana (last name unknown) from Defendant Global Auto called the Yamkoviys and informed them that the vehicle prices were higher than the prices quoted on the invoices and withheld additional $14,000 from the remaining account balance.

195. On April 9, 2012, Global informed the Yamkoviys that the remaining two vehicles, Mercedes and Honda Insight, were still in the United States because

of the "problems with the documents" and offered to choose other vehicles from its website, GlobalAutoUSA.com.

196. The CARFAX report for Honda Insight shows that the vehicle never left its location in the state of California. The CARFAX report for Mercedes shows that the vehicle never left its location in the state of Kentucky. Global sold the Yamkoviys the vehicle it did not even owned.

197. Months later, on June 25, 2012, after unsuccessful efforts to retrieve the vehicles the Yamkoviys requested the refund of the money. Global refused to issue the refund.

198. After several months of silent treatment by Global, on September 12, 2012, following many pleading phone calls and emails and out of desperation, the Yamkoviys agreed to purchase a 2008 BMW X5, VIN 5UXFE43579L260951, for $31,900. This time the invoice was issued by G-Auto, not Global, like the previous ones.

199. For five months, from September 2012 to January 2013, the Yamkoviys made numerous inquiries as to whereabouts of the vehicle.

200. Finally, on January 30, 2013, Svetlana from Global informed the Yamkoviys that the BMW X5 had arrived in Finland and was ready for pick up as soon as the Yamkoviys pay additional $7,120. Svetlana further stated that if the Yamkoviys failed to make the payment within 7 days, the vehicle would be sold at an auction and the Yamkoviy would remain responsible for the storage charges.

201. On February 8, 2013, the Yamkoviys made a wire transfer of additional $7,120 from her bank in Russia to G-Auto's bank account ending in 2168 at Citizens Bank in the United States; this wire transfer utilized interstate wire communications.

202. Several days later Global Auto informed them that the BMW X5 was missing, and that Mikhail Hitrinov, President of Empire United took the vehicle to an unknown location.

203. The Yamkoviys have not received either their vehicle or their $45,960 back.

Defrauding Igor Glazunov and Irina Glazunova

204. On January 16, 2013, Irina Glazunova sent an inquiry to Sales@GlobalAutoUSA.com about 2010 Lexus 460 VIN JTJBM7FX0A5002911 advertised on GlobalAutoUSA.com website. In her email, Irina Glazunova specifically asked about the vehicle's mileage and location, whether it was in USA or Kotka, Finland.

205. The same day, she received a response from "Vladimir" from "sales department of Global Auto USA," who answered that the car is in Kotka, Finland and that the mileage was 25,000 miles exactly.

206. The CARFAX history report for this vehicle reports that a few months prior, back on November 25, 2012, the car's mileage was 52,912, more than double what G Auto subsequently reported back to Irina Glazunova.

207. The next day, Irina Glazunova received another email from Vladimir, telling her if she was ready to buy, he would send her an invoice. Irina

Glazunova agreed, emailing Vladimir back that she would pick up the car from Kotka herself.

208. Kotka is only 800 miles from Murmansk, Russia, where the Glazunovs live. If a car is located in Kotka, it can be picked up in a couple of days without having to wait weeks for it to be loaded and shipped to Kotka from USA.

209. The same day, January 17, 2013, Irina Glazunova received an invoice from G Auto Sales for $36,920 asking her to wire the money to G Auto's account ending in 2168 at Citizens Bank.

210. On January 22, 2013, Irina Glazunova wired $20,020 from her bank account in Russia to G Auto's account ending in 2168 at Citizens Bank; this wire transfer utilized interstate wire communications.

211. On January 31, 2013, Irina Glazunova wired another $16,900 from her bank account in Russia to G Auto's account ending in 2168 at Citizens Bank; this wire transfer also utilized interstate wire communications.

212. Total amount of Irina Glazunova's wire transfers was $36,920, the amount of G Auto's invoice.

213. A week later, Irina Glazunova emailed G Auto expressing her frustration with being able to reach Vladimir, who seemed to be constantly out to lunch and not returning phone calls. Irina Glazunova complained that she still had not received copies of the title she was promised within 48 hours of payment. She asked for the copies of the title to be sent to her immediately.

214. Irina Glazunova received a response that G Auto did not have the title and that she would receive it next week.

215. On January 30, 2013, Igor Glazunov, Irina's husband, also sent a request to G Auto inquiring about location of the vehicle and status of the sale.

216. He received a request to call rather than email. During that phone call, Igor Glazunov was informed that the Lexus he purchased thinking it was a day's drive away in Kotka, Finland, was still in the USA.

217. About a week later, on February 5, Igor Glazunov received another email from G Auto saying that there was another delay. They still had not received a copy of the title as requested.

218. A few days later, on February 8, 2013, the Glazunovs hired Attorney Nadia Wood, undersigned counsel, to represent them in negotiations with G Auto.

219. A couple of weeks later, on February 20, 2013, after doing some research into the Kapustins, Attorney Nadia Wood sent a demand letter to Mikhail Goloverya, listed as President of G Auto, as well as Michael B. Campagna as a registered agent for all three corporate Defendants.

220. Another few days later, on February 25, 2013, Attorney Nadia Wood received a phone call from Sergey Kapustin, claiming to negotiate on Mikhail Goloverya's behalf. Asked how he was related to G Auto and Mikhail Goloverya, Sergey Kapustin responded that he was teaching Goloverya "how to do business." Sergey Kapustin did not disclose whether he was represented by counsel and, to the best of Nadia Wood's knowledge, was not represented by counsel at that time.

221. Sergey Kapustin demanded that an email be sent to him to the address sales@globalautousa.com requesting the return of the money in the name of the Glazunovs. Attorney Nadia Wood sent him an email the same day, forwarding, with their permission, her clients' letter requesting the refund. Attorney Nadia Wood did not send this email, or her client's letter, to anyone other than Sergey Kapustin at the email address sales@globalautousa.com. Attorney Nadia Wood requested that all further communications be sent to her, and not to the Glazunovs.

222. Sergey Kapustin responded by emailing the Glazunovs directly, telling them that he was the owner of the company from which they ordered the vehicle, even though the Glazunovs purchased a vehicle from G Auto and not Global.

223. In another email on the same day Sergey Kapustin said he absolutely could not see how he had failed to perform under the contract. He lamented that the Glazunovs only paid on January 31, and now being February 25, 2013, a vehicle could not swim that fast across the ocean. Sergey Kapustin did not address the fundamental problem with advertising a car as located in Finland when it was located in the United States.

224. In the same email, Sergey Kapustin urged the Glazunovs to buy a different Lexus LX 470 located in Kotka for $45,900. That would be $9,000 more than the amount the Glazunovs already paid. Sergey Kapustin also said that it would be "strange" to return money to an American attorney as

requested in Nadia Wood's demand letter, that it looked like money laundering, and that he had to consult his attorney. Silence followed.

225. A couple of weeks later, on March 12, 2013, Lexus for which the Glazunovs wired the money was still listed as available for sale on GlobalAutoUSA.com website and as located in Finland.

226. On March 14, 2013, nearly two months after the Glazunovs had paid for their vehicle they were told located just a few hours away in Finland, Attorney Nadia Wood sent a second demand letter and a litigation hold letter to all three of the Kapustins and again to Michael B. Campagna as a registered agent for the three corporate Defendants.

227. The same week, on March 14, 2013, the Glazunovs discovered the vehicle they believed they purchased from G Auto Sales in January had been previously sold in the United States at an auction to another Russian buyer. The Glazunovs located the buyer using the VIN number; the buyer told them he had never heard of the Kapustins or their companies, and that he had purchased the car in November 2012, two months prior to Irina Glazunova's initial inquiry to GlobalAutoUSA.com.

228. The day G Auto sent the Glazunovs their invoice for purchase of "their" Lexus, January 17, 2013, is the same day that Lexus became registered in Russia to a different buyer in Vladivostok, Russia. The buyer sent the Glazunovs a photo of "their" vehicle from a town eight time zones away from where the Kapustins were claiming the car was located at the time of "sale."

229. After sharing their experiences with the Kapustins on the public online forum for the victims, someone posted the entire thread of correspondence between G Auto and the Glazunovs, including the email Attorney Nadia Wood sent to sales@globalautousa.com account per Sergey Kapustin's request. The posting accused the Glazunovs of attempt to launder money through Nadia Wood. The same posting also threatened Igor Glazunov with losing visa to the United States.

230. The Glazunovs did not receive their car or their money back.

Defrauding Mikhail Matveev

231. In February 2013, Mikhail Matveev became interested in vehicles advertised on GlobalAutoUSA.com website. He inquired about purchasing a 2013 Honda CR-V, VIN 2HKRM4H58DH604682, asking about mileage and warranty, and delivery to St. Petersburg, Russia.

232. The same day, February 17, 2013, Matveev received response back from Igor Zadorozhniy, telling him that the SUV was brand new, that it had no mileage on it, that it would be under original manufacturer's warranty and that any Honda dealer must service it, and that it would be in Kotka in 30-35 days.

233. CARFAX report for this vehicle shows that four months prior to inquiry by Matveev it was acquired in October of 2012 by Plaza Auto Mall, a dealership in Brooklyn, NY. Plaza Auto Mall, upon information and belief, is not related to any Defendants. The car was eventually sold by that dealership in May of 2013 marked as Salvaged, which voids manufacturer's warranty.

234. Neither the advertisement on GlobalAutoUSA.com nor the email from Zadorozhniy mention seller's warranty as required by N.J.A.C. 13:45A-26F.3.

235. The next day after his inquiry, on February 18, 2013, Matveev received an invoice from G Auto Sales asking him to wire $14,920 to G Auto's account ending in 2168 at Citizens bank.

236. Matveev wired $14,920 from his bank account in Russia to G Auto's account ending in 2168 at Citizens bank; this wire transfer utilized interstate wire communications.

237. In about a month, Sergey Kapustin informed Matveev in a phone conversation that there were difficulties with delivery of Honda, and that he should choose a different vehicle from what's available.

238. Sergey Kapustin has been handling the negotiations on behalf of G Auto in this matter, even though Mikhail Goloverya is listed as G Auto's President.

239. On March 28 2013, Matveev chose a 2009 Volkswagen Tiguan VIN WVGBV75N09W525864 with advertised mileage of "about 90,000 miles."

240. CARFAX reports that three months prior, in December 2012, Tiguan's mileage was 94,151.

241. Matveev received another invoice from G Auto on March 28, 2013, showing the credit from the failed Honda purchase being applied to the Tiguan purchase. The invoice is back dated to February 18, 2013.

242. In May of 2013, Matveev received several emails from Kapustin telling Matveev that his car was seized at the port in the USA by Empire United.

Kapustin told Matveev to contact Mikhail Hitrinov, owner of Empire United, to inquire about the whereabouts of the Tiguan.

243. Matveev received an email from "accounting department" of GlobalAutoUSA.com telling him that his Tiguan was loaded into Empire's container on February 7, 2013, more than a month prior to the sale to Matveev.

244. A 2009 Tiguan with this VIN WVGBV75N09W525864 appears listed as belonging to Effect Auto—not G Auto that issued invoices and accepted payments—as located in USA, freight unpaid, on Exhibit C-1 to the Complaint in EDNY CV 13-2479, ECF No. 1, PageID #86.

245. In the EDNY action, corporate Defendants alleged that Empire United seized cars in September 2012. (Exh. 3, EDNY Compl. ¶50.) Matveev's car, according to Sergey Kapustin, was delivered to Empire United for shipping on February 7, 2013. Sergey Kapustin then sold the Tiguan to Matveev on March 28, 2013, two weeks after attorney for the corporate Defendants, Harlan Greenberg, informed the customers of the pendency of the lawsuit against Empire United concerning the seized vehicles. (Exh. 4).

246. Matveev did not receive either the vehicle or his money back.

RICO ALLEGATIONS

247. **G-Effect-Global Auto-Global Cars Enterprise:** all individual and corporate Defendants named in this Plaintiffs' Complaint are associated in fact as a RICO enterprise defined in 18 U.S.C. § 1961(4). Presumably, G Auto, Global Auto, and Effect make some legitimate car sales and their registered

agent Michael B. Campagna also practices law as an attorney. But corporate Defendants and their managers (the Kapustins) and agents, including Shtein, Zadorozhniy, and Campagna are also acting in concert for the shared goal of defrauding overseas car buyers. The corporate Defendants share staff (Zadorozhniy, Shtein), agent (Campagna), managers (Sergey Kapustin negotiates on behalf of everyone, regardless of whether the car was purchased through G Auto or Effect or Global), accountant (Svetlana, last name unknown), and money (cars sold by G Auto show up on lists of cars owned by Effect; money wired to Global are credited for purchases of G Auto's cars, etc). Defendant Hitrinov financed and received profit from the fraudulent scheme. This enterprise affects interstate and foreign commerce because it exports vehicles to foreign countries and both sends and receives funds through banks in the United States and abroad.

248. **Conduct and Participation:** Defendants Sergey Kapustin, Irina Kapustina, and Mikhail Goloverya ("the Kapustins") managed and participated in conduct of the G-Effect-Global enterprise through a pattern of racketeering activity. Various persons conspired with the Kapustins, including, but not limited to, Defendants Shtein, Zadorozhniy, and Campagna. Sergey Kapustin directed the overall scheme and its implementation, with assistance and approval from Mikhail Goloverya and Irina Kapustina; they supervised and instructed Shtein and Zadorozhniy, who handled most of communications with clients and instituted the delay tactics, and Campagna, who lend his credibility as an attorney and made the threats to prosecute the victims and sell their

cars for port storage fees seem legitimate. Hitrinov financed and received profit from operations of the RICO enterprises.

249. **Pattern of Racketeering:** The pattern of racketeering activity included related violations of 18 U.S.C. § 1343 (wire fraud); 18 U.S.C. § 1341 (mail fraud); 18 U.S.C. § 1956 (money laundering); 18 U.S.C. § 1957 (engaging in monetary transactions in property derived from unlawful activity); 18 U.S.C. § 1952 (Travel Act), 18 U.S.C. § 1912 (witness intimidation), as included in 18 U.S.C. 1961(1).

250. **Continuity Plus Relatedness (Pattern) of Conduct:** The pattern began no later than January 2012 when Defendants committed predicate acts of racketeering towards the Yamkoviys, and continued through April-July of 2013, when Defendants committed acts of 18 U.S.C. § 1343 wire fraud towards Aliakparov and 18 U.S.C. § 1512 witness intimidation towards the Glazunovs. The pattern of racketeering is open-ended and will continue towards other buyers from GlobalAutoUSA.com website as evidenced by recent registration of the fictional name Global Cars to whom GlobalAutoUSA.com allegedly belongs in April of 2013. Global Cars is a fictional name owned by SK Imports, Inc., also registered only recently in March of 2013 by Sergey Kapustin.

251. **Injury to Property:** Plaintiffs were directly and proximately harmed by predicate acts of racketeering, including wire fraud, mail fraud, and Travel Act violations, which resulted in ascertainable financial losses to the Plaintiffs.

PREDICATE ACTS OF RACKETEERING

252. The related predicate acts of racketeering include:

WIRE FRAUD 18 U.S.C. § 1343

253. The Wire Fraud Statute, 18 U.S.C. § 1343, prohibits: "transmit[ting] . . . by means of wire . . . any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice [to defraud]."

254. Each of the below acts was done in furtherance of the scheme to receive money from overseas car buyers and used, or caused the use of, the United States wires:

a. As to every Plaintiff, Defendants Global, G Auto, and Effect represented through GlobalAutoUSA.com that they had cars available for sale that they either did not have or did not intend to sell; Sergey Kapustin, Mikhail Goloverya, and Irina Kapustina were the dealership managers personally responsible for these dealerships' actions. The websites GlobalAutoUSA.com and EffectAuto.com are updated and accessed through the use of wires.

b. Defendants Shtein and Zadorozhniy affirmed via email or phone the often-false representations by corporate Defendants as to availability of cars and mileage; they then delayed subsequent action by Plaintiffs by telling them, via email or phone, that the shipment was delayed for various reasons. Shtein, Zadorozhniy, and other agents and managers of G Auto, Global, and Effect used email accounts kotkacars@gmail.com, zakaz@globalautousa.com, account@globalautousa.com, sales@globalautousa.com, and skapustin@yahoo.com to mislead buyers regarding availability of cars,

warranty status, and mileage. These misrepresentations were made via email or phone and used wires for communication.

c. Relying on these representations, every Plaintiff made at least one wire transfer to accounts of Global, G Auto, and Effect, some made as many as three; all used wires.

d. Sergey Kapustin made frequent phone calls and emailed each Plaintiff, also delaying action by Plaintiffs or misdirecting their attention towards Empire United, and denying their requests for refund of the money they wired; these phone calls and emails used wires.

e. Michael B. Campagna emailed the victims with his letters regarding port fees and prosecution for defamation attached; these emails traveled using wires.

f. Additionally, upon information and belief, Defendants further used wires to disburse payments received from Plaintiffs to places unknown with a goal of concealing and disguising the nature and control of the money.

MAIL FRAUD 18 U.S.C. § 1341

255. The Mail Fraud statute, 18 U.S.C. § 1341, prohibits "intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . places in any post office or . . . any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier."

256. Each of the below acts was done in furtherance of the scheme to receive money from overseas car buyers and used, or caused the use of, the United States Post Office and commercial interstate carrier:

a. Sergey Kapustin rents a P.O. box at Southampton, PA, post office which he uses as a business address for Global Cars listed on the Terms and Conditions at GlobalAutoUSA.com, which attracts unwitting buyers with glossy advertising.

b. The buyers are promised that the titles to their vehicles would be delivered using private commercial interstate carrier DHL.

c. Upon information and belief, G Auto, Global Auto, and Effect used private commercial interstate carrier as well as U.S. Post Office to mail titles to buyers, register for auctions to acquire vehicles, obtain licenses from the State of New Jersey, and obtain financing.

TRAVEL ACT 18 USC § 1952

257. The Travel Act, 18 U.S.C. § 1952, prohibits "travel[ling] in interstate or foreign commerce or us[ing] the mail or any facility in interstate or foreign commerce, with intent to . . . promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity".

258. Each of the below acts was done in furtherance of the scheme to receive money from overseas car buyers and involved interstate or foreign travel:

a. Upon information and belief, the Kapustins, Shtein, and Zadorozhniy traveled extensively from the U.S. to Finland and back to establish,

manage, and promote the Finland branch of the operations in furtherance of the scheme to defraud Russian car buyers.

b. Upon information and belief, the Kapustins and Shtein also traveled extensively between their residences in Pennsylvania and their offices in New Jersey, as well as to various car auction sites across the country, to purchase vehicles, to ship them, and to transact business with Empire United, which has offices in Brooklyn, New York.

c. Upon information and belief, the Kapustins and their agents traveled frequently to car auctions in other states to purchase vehicles for resale.

MONEY LAUNDERING 18 U.S.C. § 1956

259. The money laundering statute 18 U.S.C. § 1956(a)(1) prohibits "conduct[ing] such a financial transaction which in fact involves the proceeds of specified unlawful activity . . . (A) (i) with the intent to promote the carrying on of specified unlawful activity; or . . . (B)(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity."

260. Each of the below acts was done in furtherance of the scheme to receive money from overseas car buyers and involved conducting financial transactions involving proceeds of unlawful activity:

a. Upon information and belief, during the relevant times the Kapustins used the proceeds derived from defrauding overseas buyers to invest in real estate in the United States and foreign countries, to invest in

other businesses (Irina Kapustina also owns a clothing business Liberty Fashion), and to wire funds to places unknown with intent to conceal and disguise the nature and control of the money.

b. Sources of Plaintiffs' beliefs are publicly available deeds to numerous properties owned by the Kapustins in the United States and abroad, transfers of properties owned by Sergey Kapustin to an LLC registered in New York shortly before the imposition of consent judgment by New Jersey AG in 2009, ownership of various businesses here and abroad, and apparent commingling of funds and transactions between the Kapustins business entities in the United States and its entities in Finland.

c. Hitrinov used the proceeds of unlawful activities to reinvest in his own business.

TRANSACTIONS INVOLVING CRIMINALLY-DERIVED PROPERTY 18 U.S.C. § 1957

261. The criminally-derived property statute 18 U.S.C. § 1957 prohibits "engag[ing] in a monetary transaction in criminally derived property of a value greater than $10,000 . . . derived from specified unlawful activity."

262. Each of the below acts was done in furtherance of the scheme to receive money from overseas car buyers and involved engaging in financial transactions in criminally derived property of a value greater than $10,000:

a. Upon information and belief, the Kapustins used the funds in the amount greater than $10,000 obtained by defrauding overseas buyers

to invest in real estate and other businesses, to make personal withdrawals from the businesses, and to buy cars for personal use and resale.

b. Hitrinov used the proceeds of unlawful activities in the amount greater than $10,000 to reinvest in his own business.

WITNESS TAMPERING 18 U.S.C. § 1512

263. The Witness Tampering Statute, 18 U.S.C. § 1512(b) prohibits "us[ing] intimidation, threaten[ing], or corruptly persuad[ing] another person, or attempt[ing] to do so, or engag[ing] in misleading conduct toward another person, with intent to . . . (1) influence, delay, or prevent the testimony of any person in an official proceeding; (2) cause or induce any person to (A) withhold testimony . . . (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense."

264. Plaintiffs and other defrauded individuals, who have not yet joined the lawsuit, formed a group on the Russian social media web site VK.com to unite their efforts in initiating legal action against Defendants in the United States and filing complaints with the New Jersey Division of Consumer Affairs, New Jersey Police, and the FBI.

265. Sergey Kapustin was aware of the forum and even posted there on March 14, 2013 under his own name.

266. In spring of 2013, Plaintiffs retained undersigned attorneys Nadia Wood and Anna Brown, who attempted to resolve their cases prior to going to court by sending demand letters to the Kapustins, corporate Defendants, and Michael Campagna as their registered agent. The attorneys, Nadia Wood in particular, were actively posting on the forum for the victims.

267. Each of the below acts was done in furtherance of the scheme to receive money from overseas car buyers and involved intimidating witnesses with intent to influence and delay their testimony by steering them away from finding representation, and to hinder and delay reporting of possible federal crimes being committed:

a. On May 9, 2013, someone posted on the forum for the victims that Nadia Wood is not an attorney and that Igor Glazunov is attempting to launder money by asking to G Auto to return money through her. The poster also threatened Glazunov with losing visa to the United States. This post included the entire thread of correspondence between G Auto and the Glazunovs sent to the sales@globalautousa.com, including an email by attorney Nadia Wood sent to that account by request of Sergey Kapustin. This correspondence could only have been accessed and reposted by Defendants.

b. On May 20, 2013, with the intent to deter other victims from seeking legal redress, Defendant Global Auto sent an email communication to his former customers referring to attorney Anna Brown as a person

hired by Defendant Hitrinov, an owner of the shipping company, to purposely defraud the Plaintiffs.

c. On May 21, 2013, Sergey Kapustin sent an email to Plaintiff Maniashin demanding not to pursue a legal action and saying that Plaintiffs' attorney Anna Brown was hired by Defendant Hitrinov and would not help Maniashin.

d. On May 20, 2013, Attorneys Nadia Wood and Anna Brown contacted Marcus Nussbaum, attorney for G Auto, Global, and Effect, via email, urging Attorney Nussbaum to counsel his clients to stop making knowingly false statements.

e. Instead, on May 25, 2013, Defendants created numerous defamatory websites using Nadia Wood's name accusing her of blackmail with intent to deter her from representing the victims. The websites, registered to Global Auto USA, unlawfully display Nadia Wood's copyrighted logo and use her name, which is a registered service mark. These websites and defamatory statements are now subject of a separate lawsuit, *Wood v. Kapustin et al.*, No. 13-1495 (D. Minn. June 19, 2013).

DEMAND FOR JURY TRIAL

268. Plaintiffs hereby demand a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all claims.

CLAIMS FOR RELIEF

269. Unless noted otherwise the caption of the claim refers to the claim of all Plaintiffs against all Defendants.

COUNT I

RICO – 18 U.S.C. § 1962(a)

Using and investing income derived from racketeering

270. The allegations of the above paragraphs are incorporated herein as if set out in full.

271. Defendants received income derived, directly or indirectly, from a pattern of racketeering activity affecting interstate and foreign commerce.

272. Defendants derived this income by defrauding overseas car buyers, which was achieved by a pattern of racketeering activity, including the violations of 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 1956 (money laundering), 18 U.S.C. § 1957 (transactions involving criminally-derived property); 18 U.S.C. § 1952 (Travel Act), 18 U.S.C. § 1512 (witness intimidation).

273. Defendants invested this income into wide-spread advertising, professional-looking websites, attractive photos of cars posted as "bait" to lure in more clients, and into traveling and establishing business overseas to further grow the Enterprise. These investments of income derived from a pattern of racketeering activity resulted in injury to Plaintiffs when they were seduced by the shiny façade and wired the money to G Auto, Global, and Effect.

274. Plaintiffs were directly and proximately harmed by these financial losses caused by the pattern of racketeering activity, including the predicate acts described above.

COUNT II

RICO – 18 U.S.C. § 1962(b)

Acquisition of an "Interest in or Control of" an Enterprise

ALL PLAINTIFFS V. THE KAPUSTINS

275. The allegations of the above paragraphs are incorporated herein as if set out in full.

276. Defendants Sergey Kapustin, Irina Kapustina, and Mikhail Goloverya through a pattern of racketeering activity, acquired, directly or indirectly, control over G Auto, Global, and Effect companies, as well as of G-Effect-Global association-in-fact enterprise. These entities were engaged in activities that affect interstate and foreign commerce.

277. By gaining control over the enterprises, the Kapustins were able to direct their activities away from legitimate car dealership business towards defrauding overseas buyers.

278. Plaintiffs were directly and proximately harmed by the financial losses caused by the Kapustins taking over the control of the enterprises.

COUNT III

RICO – 18 U.S.C. § 1962(c)

Employment or association with an enterprise engaged in racketeering

PLAINTIFFS V. INDIVIDUAL DEFENDANTS

279. The allegations of the above paragraphs are incorporated herein as if set out in full.

280. Individual Defendants were employed by and associated with G-Effect-Global Enterprise, which engaged in activities that affect interstate and foreign commerce. They conducted and participated in, directly or indirectly, the conduct of G-Effect-Global Enterprise, through a pattern of racketeering activity, including facilitating the predicate acts described above.

281. Plaintiffs were directly and proximately harmed by the financial losses caused by the pattern of racketeering activity, including the predicate acts described above.

COUNT IV

RICO – 18 U.S.C. § 1962(d)

Conspiracy to commit RICO violations

PLAINTIFFS V. INDIVIDUAL DEFENDANTS

282. The allegations of the above paragraphs are incorporated herein as if set out in full.

283. Individual Defendants conspired to commit violations of 18 U.S.C. § 1962 (a), (b), and (c) described above.

284. Defendants Sergey Kapustin, Mikhail Goloverya, and Irina Kapustina conspired to take control over the enterprises and to invest the resulting income in violation of 18 U.S.C. § 1962 (a) and (b).

285. Defendants Shtein, Zadorozhnyi, and Campagna conspired to violate 18 U.S.C. § 1962 (c) at the direction of the Kapustins.

286. Plaintiffs were directly and proximately harmed by the financial losses caused by the pattern of racketeering activity, including the predicate acts described above.

COUNT V

VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT 56:8-1, et seq.

287. The allegations of the above paragraphs are incorporated herein as if set out in full.

288. Defendants G Auto, Global, Effect, Sergey Kapustin, Mikhail Goloverya, and Irina Kapustina are "dealers" as defined in N.J.S.A. 56:8-67 because they sold or offered for sale a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12-month period. Their dealerships are registered in New Jersey and claim that New Jersey is their principal place of business, therefore, New Jersey laws regulating sales and advertising of used cars apply to them.

289. These Defendants engaged in deceptive and unconscionable commercial practices, deception, fraud, false promises, false pretenses, and misrepresentations in their interactions with Plaintiffs in violation of the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 *et seq.*

290. Defendants knowingly and intentionally concealed, suppressed, or omitted material facts in their interactions with Plaintiffs, in violation of the CFA, including but not limited the ownership of the vehicles advertised for sale, their location, mileage, and condition.

291. Defendants violated statutes and administrative regulations promulgated pursuant to the CFA in their interactions with Plaintiffs.

292. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya engaged in practices that constitute misrepresentations, deceptive acts, and unconscionable business practices in their dealings with Plaintiffs including, but not limited to:

a. Inducing Plaintiffs to make down payments or full payments on vehicles under false pretenses;
b. Increasing the agreed upon sales price of the vehicles;
c. Selling vehicles without holding title;
d. Misrepresenting the identity of the seller of vehicles;
e. Misrepresenting the location of the vehicles;
f. Misrepresenting the condition of the vehicles;
g. Misrepresenting the mileage of the vehicles;
h. Not disclosing port fees, storage fees, and other fees prior to sale, then charging these fees to buyers;
i. Overcharging the Plaintiffs for the vehicles;
j. Incorporating Terms and Conditions listed on a website as part of the fine print in the contract for sale of a vehicle;

k. Including a clause that only allows for "store credit" instead of a refund, with withholding of a significant commission, and only after sale of a car to a different buyer;

l. Refusing to issue refunds for the vehicles Plaintiffs did not receive;

m. Failing to provide Plaintiffs with the required written warranty under New Jersey law;

n. Failing to provide Plaintiffs with the required odometer disclosures under federal and New Jersey laws;

o. Misrepresenting the nature of their obligations to the customers after the alleged seizure of vehicles by Empire United;

p. Misrepresenting the nature of legal proceedings against Empire United in the letters to customers;

q. Misrepresenting the nature of procedural motions in the suit against Empire United, such as that asking for an extension to respond to a motion for a preliminary injunction means Empire United is at fault, is afraid, and has something to hide, and therefore will lose;

r. Misrepresenting that Harlan Greenberg also represents the customers' interests in EDNY action against Hitrinov;

s. Misrepresenting that attorneys for the victims are either not attorneys or are attorneys working for Hitrinov and Empire United;

293. Defendants Shtein, Zadorozhniy, Campagna, and Doe Defendants such as the mysterious Svetlana also engaged in practices that constitute

misrepresentations, deceptive acts, and unconscionable business practices in their dealings with Plaintiffs, including but not limited to:

a. Facilitating the unlawful facts of other Defendants as described above;
b. Conveying false information to Plaintiffs about the location, mileage, and condition of the vehicles;
c. Delaying Plaintiffs' action by telling them that their issues are about to get resolved;
d. As to actions by Svetlana, charging Plaintiffs higher than agreed upon prices for the vehicles in addition to hidden fees;
e. As to actions by Campagna, failing to conduct a reasonable inquiry into whether opinions of the victims are defamation, or whether assessing storage costs not previously disclosed was reasonable, or any other inquiry into the Kapustins business practices before representing the Kapustins via threatening letters to buyers. Campagna knew or should have known that opinions are not defamation, that hidden fees are misleading in violation of New Jersey laws, that failure to make certain disclosures in advertising and sale of motor vehicles is illegal under several state and federal laws;

294. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-68(a) by misrepresenting mechanical conditions of the vehicles;

295. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-68(b) by failing to disclose material defects in the mechanical conditions of the vehicles known to them;

296. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-68(c) by representing that the vehicles were free from material defects in mechanical conditions of the vehicles;

297. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-68(d) by failing to disclose, prior to sale, the existence and terms of any written warranty, service contract or repair insurance currently in effect on a used motor vehicle provided by a person other than the dealer.

298. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-68(f) by failing to disclose, prior to sale, the existence and terms of any written warranty, service contract or repair insurance offered by the dealer in connection with the sale of a used motor vehicle.

299. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-68(i) by failing to disclose, prior to sale, that a used motor vehicle was sold without any warranty, service contract, or repair insurance.

300. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-68(j) by failing to provide a

clear written explanation, prior to sale, of what is meant by the term "as is," if the used motor vehicle is sold "as is."

301. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-69 by selling vehicles without a written warranty.

302. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:1-2 because they are conducting business under fictional names GlobalAutoUSA and Global Cars without filing a certificate with the Secretary of State in New Jersey.

303. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.S.A. 56:8-2.25 by misrepresenting geographic location of the merchandise.

304. Plaintiffs suffered ascertainable losses as a result of each of the above violations of the CFA and other New Jersey Statutes.

COUNT VI

VIOLATION OF THE MOTOR VEHICLE ADVERTISING REGULATIONS (FAILURE TO MAKE REQUIRED DISCLOSURES)

305. The allegations of the above paragraphs are incorporated herein as if set out in full.

306. The Motor Vehicle Advertising Regulations N.J.A.C. 13:45 A-26A.1 *et seq.*, addresses, among other things, general advertising practices concerning motor vehicles offered for sale or lease in the State of New Jersey.

307. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.A.C. 13:45A-26A.4(a)(1) by

advertising vehicles as part of a scheme not to sell them or not to sell them at the advertised price.

308. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.A.C. 13:45A-26A.5(a)(1) by failing to clearly display advertiser's name and business address on GlobalAutoUSA.com: vehicles belonging to all three corporate Defendants were sold through that website, yet only the business address for G Auto is listed, and Terms and Conditions refer to a fictional name with a rented P.O. box for an address.

309. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.A.C. 13:45A-26A.5(a)(2) by failing to include a phrase "price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees, and taxes" in their online advertisements.

310. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.A.C. 13:45A-26A.5(b)(1) & (2) by failing to include in the advertisement of used vehicles actual odometer reading as of the date the advertisement is placed for publication and the nature of prior use.

311. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.A.C. 13:45A-26A.7(a)(10) by engaging in the unlawful advertising practice of calling themselves wholesalers.

312. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.A.C. 13:45A-26B.2(a)(2) by charging customers pre-delivery service fees without first itemizing the actual pre-

delivery service being performed and setting forth in writing, in at least 10-point type, on the sales document the price for each specific pre-delivery service.

313. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.A.C. 13:45A-26B.3(a)(2) by charging customers for the performance of any documentary service without first itemizing the actual documentary service being performed and setting forth in writing, in at least 10-point type, on the sale document the price for each specific documentary service.

314. Defendants G Auto, Global Auto, Effect, Sergey Kapustin, Irina Kapustina, Mikhail Goloverya violated N.J.A.C. 13:45A-26F.3 by failing to provide a written warranty meeting the requirements of 13:45A-26F.

315. Defendants' conduct constitutes multiple violations of the Motor Vehicle Advertising Regulations, each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

316. Plaintiffs suffered ascertainable losses as a result of each of the above violations of the CFA and relevant administrative rules.

COUNT VII

ODOMETER FRAUD - 49 U.S.C. § 32701 *et seq.*

317. The allegations of the above paragraphs are incorporated herein as if set out in full.

318. Corporate Defendants and their agents failed to conform to disclosure requirements on transfer of motor vehicles by either falsely representing the mileage of the vehicles sold or not disclosing the mileage to the buyers at all.

319. As a direct and proximate cause Defendants' unlawful actions in violation of the Motor Vehicle Information and Cost Savings Act (the "Odometer Act"), 49 U.S.C. § 32701, et seq., Plaintiffs suffered ascertainable losses.

COUNT VIII

BREACH OF CONTRACT

320. The allegations of the above paragraphs are incorporated herein as if set out in full.

321. Plaintiffs agreed to purchase automobiles from Global, G Auto, and Effect Auto.

322. These corporate Defendants breached their agreements with Plaintiffs by failing to deliver the vehicles.

323. Plaintiffs suffered damages caused by the breach.

COUNT IX

COMMON LAW FRAUD

324. The allegations of the above paragraphs are incorporated herein as if set out in full.

325. Defendants made numerous material misrepresentations to Plaintiffs knowing them to be false and Plaintiffs relied on these misrepresentations as evidenced by the wire transfers they made to accounts of corporate Defendants.

326. Plaintiffs suffered ascertainable losses as a result of Defendants' actions.

COUNT X

CIVIL CONSPIRACY TO COMMIT TORT

327. The allegations of the above paragraphs are incorporated herein as if set out in full.

328. Defendants made concerted actions acting for a common goal to defraud Plaintiffs.

329. Each and every member of the conspiracy is equally and vicariously liable for damages caused to Plaintiffs by Defendants' misrepresentations and omissions.

330. The conduct of Defendants was willful, wanton, intentional, malicious and reckless. Plaintiffs are entitled to punitive damages.

COUNT XI

CONVERSION

331. The allegations of the above paragraphs are incorporated herein as if set out in full.

332. Defendants have unlawfully and without justification converted Plaintiffs' money.

333. Plaintiffs have suffered damages as a result of Defendants' conduct.

COUNT XII

UNJUST ENRICHMENT AND DISGORGEMENT OF PROFITS

334. The allegations of the above paragraphs are incorporated herein as if set out in full.

335. Defendants received money directly and indirectly from Plaintiffs.

336. Defendants obtained this money because of their deceptive, unconscionable, and illegal business practices.

337. Defendants conducted their business in a manner that is illegal.

338. It would be unjust for Defendants to retain the money received from their illegal schemes.

339. Defendants have been unjustly enriched and Plaintiffs are entitled to a judgment requiring Defendants to disgorge and pay all sums they received from Plaintiffs.

COUNT XIII

PIERCING THE CORPORATE VEIL

PLAINTIFFS V. DEFENDANTS G AUTO, GLOBAL, EFFECT, GLOBAL CARS, SK IMPORTS, GLOBAL CARGO OY

340. The allegations of the above paragraphs are incorporated herein as if set out in full.

341. As described in detail throughout this Complaint, Defendant Kapustin, as owner of Defendants Global Auto, Global Cars, SK Imports and Global Cargo Oy; Defendant Irina Kapustina as owner of Defendant Effect, and Defendant Mikhail Goloverya as owner of Defendant G Auto exercise complete dominion and control over the corporations. The relationship between the Kapustins and corporate Defendants is such that the Kapustins use the corporations as their alter egos for their own purposes.

342. The control by the Kapustins over the corporate defendants is so complete and extensive that they made all the decisions including the decisions to defraud Plaintiffs.

343. As a direct and proximate cause of the Kapustins' control over corporate Defendants, Plaintiffs suffered damages.

COUNT XIV

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

PLAINTIFFS V. DEFENDANTS G AUTO, GLOBAL, EFFECT, IRINA KAPUSTINA, SERGEY KAPUSTIN, MIKHAIL GOLOVERYA

344. The allegations of the above paragraphs are incorporated herein as if set out in full.

345. Defendants G Auto, Effect, Global, Irina Kapustina, Sergey Kapustin, and Mikhail Goloverya owed a duty of good faith and fair dealing to Plaintiffs.

346. As detailed above, Defendants breached this duty by failing to honor the material terms and conditions of the contracts for sale of vehicles and refusing to refund Plaintiffs money and compensate them for consequential damages.

COUNT XV

VIOLATIONS OF THE TRUTH-IN-CONSUMER CONTRACT, WARRANTY, AND NOTICE ACT

PLAINTIFFS V. DEFENDANTS G AUTO, GLOBAL, EFFECT, IRINA KAPUSTINA, SERGEY KAPUSTIN, MIKHAIL GOLOVERYA

347. The allegations of the above paragraphs are incorporated herein as if set out in full.

348. Defendants G Auto, Effect, Global, Irina Kapustina, Sergey Kapustin, and Mikhail Goloverya have violated the Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 *et seq.*

349. Defendants offered or entered into a written consumer contract or gave or displayed a written warranty, notice or sign which included a provision that

violated one or more clearly established rights of Plaintiffs as established by New Jersey or federal law at the time the offer was made, the contract was signed or the notice was given.

350. Defendants offered or entered into a written consumer contract or gave or displayed a written warranty, notice or sign which included—or failed to include—a provision that violated their clearly established responsibilities as mandated by New Jersey or federal law at the time the offer was made, the contract was signed or the notice was given.

351. Each of Defendants' violations of federal statutes and regulations related to a notice, contract, or warranty set forth in this Complaint constitute separate violations of the Truth-in-Consumer Contract, Warranty and Notice Act.

COUNT XVI

LIBEL

PLAINTIFF GLAZUNOV V. DEFENDANTS G AUTO, GLOBAL, EFFECT, IRINA KAPUSTINA, SERGEY KAPUSTIN, MIKHAIL GOLOVERYA

352. The allegations of the above paragraphs are incorporated herein as if set out in full.

353. Defendants G Auto, Effect, Global, Irina Kapustina, Sergey Kapustin, and Mikhail Goloverya made statements on the online public forum with over 300 members that Igor Glazunov is engaged in money laundering, knowing these statements to be false, and intending these statements to damage Glazunov's reputation.

354. Knowingly false accusations of criminal activity are libel per se and are actionable without proof of economic loss.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendants:

1. Finding that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq. and the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 *et seq.*
2. Finding that Defendants violated the Truth in Consumer Contract Warranty and Notice Act, N.J.S.A. 56:12-14 *et seq.* and federal Odometer Act, 49 U.S.C. § 32701 *et seq.*
3. Finding that Defendants' conduct violates RICO 18 U.S.C. § 1962 and that Plaintiffs were injured by this conduct;
4. Finding that Defendants' conduct constitutes breach of contract, common law fraud, conspiracy to commit tort, conversion, and breach of implied covenant of good faith and fair dealing; that Defendants were unjustly enriched and should disgorge profits; and that the Kapustins' conduct justifies piercing of the corporate veil for Defendants G Auto, Effect, and Global.
5. Finding that the Kapustins and corporate Defendants conduct towards Igor Glazunov in posting false accusations of criminal activity constitutes libel per se.

6. Finding that contracts incorporating GlobalAutoUSA.com Terms and Conditions and withholding 10 or 15% "commission" are unconscionable and unenforceable as a matter of law.

7. Permanently enjoining Defendants and owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 *et seq.*, and the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 *et seq.*, including, but not limited to the acts and practices alleged in this Complaint;

8. Permanently enjoining Defendants from making libelous statements against any of the victims or the victims' attorneys.

9. Assessing maximum statutory damages pursuant to N.J.S.A. 56:8-1 *et seq.*, including treble damages and reasonable attorneys' fees and costs pursuant to N.J.S.A. 56:8-19.

10. Assessing maximum statutory damages, actual damages, reasonable attorneys' fees and costs of suit pursuant to N.J.S.A. 56:12-17.

11. Assessing either actual or statutory damages, whichever is greater, and reasonable attorneys' fees and costs of suit pursuant to 49 U.S.C. § 32710.

12. Awarding equitable relief requiring Defendants disgorge and pay back all sums they have collected from Plaintiffs.

13. Ordering Defendants to provide an accounting of all amounts collected from Plaintiffs, including fees and interest.

14. Awarding actual, nominal, punitive, compensatory, and consequential damages in the amount to be proved at trial.

15. Ordering trebling of damages under RICO, NJ Consumer Fraud Act and Odometer Act;

16. For pre-judgment and post-judgment interest.

17. For such other relief as the Court deems just and proper.

NOTICE TO ATTORNEY GENERAL

A copy of this Complaint will be mailed to the New Jersey Attorney General within ten days after filing with the Court pursuant to N.J.S.A. 56:8-20.

Respectfully submitted,

/s/ Anna V. Brown, Esq.
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Respectfully submitted,

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Law@NadiaWood.com
To be admitted pro hac vice as Attorney for Plaintiffs
Igor Glazunov
Irina Glazunova
Mikhail Matveev

JURY TRIAL DEMANDED

Plaintiff request this case to be tried by jury on all issues triable.

November 25, 2013

/s/ Anna V. Brown, Esq.
Anna V. Brown, Esq.
Attorney for Plaintiffs

DESIGNATION OF TRIAL COUNSEL

Anna V. Brown, Esq. and Nadia Wood, Esq. are hereby designated as trial counsel in this matter.

November 25, 2013

/s/ Anna V. Brown, Esq.
Anna V. Brown, Esq.
Attorney for Plaintiffs

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11

I certify under penalty of perjury that this matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding. Plaintiffs do not know of any other parties who should be joined in this action. There is a related proceeding between co-defendants in the U.S. District Court for the Eastern District Court of New York, 13-CV-2479.

I further certify under penalty of perjury that each Plaintiff in this action has read and verified under penalty of perjury under the laws of the United States of America that the allegations set forth in the Complaint are true and correct.

November 25, 2013

/s/ Anna V. Brown, Esq.
Anna V. Brown, Esq.
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Ardak Akishev, *et al.* **Plaintiffs,** **v.** **Sergey Kapustin, *et al*,** **Defendants.**	**Civil Action No. 13-cv-07152(NLH)(AMD)**

ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL DEFAULT JUDGMENT

For the reasons stated below, Plaintiffs are awarded monetary damages in the total amount of **$2,228,089.29,** post-judgment equitable relief and post-judgment interest.

THIS ACTION having been commenced by Plaintiffs Ardak Akishev, Zhandos Aliakparov, Alexey Batalov, Evgeniy Borzenko, Igor Glazunov, Irina Glazunova, Andrey Kirik, Natalia Kirik, Arkadiy Kolbin, Evgeniy Kondratuk, Eduard Lisitsyn, Vladimir Lukyanov, Viktor Maniashin, Mikhail Matveev, Alexander Pukir, Evgeniy Telin, Yuriy Yamkoviy, Alla Yamkovaya, Alexander Zhilinskiy, Elena Zvereva, Mikhail Zverev, (collectively, "Plaintiffs") represented by counsel Anna V. Brown, Esq. and Maria Temkin, Esq., on November 25, 2013 by the filing of the Summons and the Complaint asserting claims against Defendants, Sergey Kapustin, G Auto Sales, Inc., Global Auto Sales, Inc., Effect Auto Sales, Inc., and SK Imports, Inc. a/k/a Global Cars, Inc. ("Global Defendants") and Global Cargo Oy and Igor Zadorozhniy ("Finland Global Defendants), (collectively "Defendants") alleging an ongoing "bait-and-switch" fraudulent scheme masterminded and operated by Defendants through deceptive advertising aimed at luring Eastern European customers to wire funds for automobile purchases and then switching to higher prices, misrepresenting mileage, condition and location and ownership of these vehicles, extorting more funds and failing to

deliver the paid-for-vehicles, for legal and equitable relief for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(a-c) (Counts I-III); civil conspiracy to commit RICO violations, 18 U.S.C. § 1962(d) (Count IV); violations of New Jersey Consumer Fraud Act 56:8-1, et seq.; violations of the Motor Vehicle Information and Cost Savings Act (the "Odometer Act"), 49 U.S.C. § 32701, et seq., violations of Pennsylvania Unfair Trade Practices Act and Consumer Protection Law 73 P.S. § 201-1, et seq. ("UTPCPL") (Count XVII), imposition of constructive trust (Count XVIII) and other common law claims.

WHEREAS, on December 2, 2013, Global Defendants were served with Summons and Complaint.

WHEREAS, on April 4, 2014, Plaintiffs filed an Amended Complaint.

WHEREAS, on April 27, 2014, Finland Global Defendants were served with Summons and Amended Complaint via international registered mail with return receipts sent by the Clerk of Court at their place of business in Finland pursuant to Fed.R.Civ.P. 4(f)(1) and (2)(C)(ii). Finland Global Defendants have not answered or otherwise responded to the Amended Complaint. On June 5, 2015, Plaintiffs have moved for entrance of a default pursuant to Fed.R.Civ.P. 55(a) for failure to plead or otherwise respond. On June 8, 2015, the Clerk entered a default.

FAILURE TO COMPLY WITH THE CONSENT ORDER

WHEREAS, on June 3, 2014, Plaintiffs filed their Motion for an Order to Freeze the Assets of Defendants and Expedited Discovery Related to Assets pursuant to Federal Rule of Civil Procedure 65 ("Asset Freeze Motion") representing the funds Plaintiffs wired to the bank accounts of Global Auto, G Auto, Effect Auto, and Global Cars to purchase the motor vehicles advertised for sale by Global Defendants and received neither the vehicles nor the refunds (collectively, "Wired Funds"). If the funds remaining in those accounts were insufficient, Plaintiffs requested the Court to direct Defendants to place the funds in an escrow account and

to permit expedited discovery related to the disposition of the funds and Defendants' assets, including their ownership of hotel "Motel Road 66" in Finland.

WHEREAS, having received the Global Defendants' opposition, in which they did not dispute receiving the Wired Funds, on September 5, 2014, the Court held an evidentiary hearing on the Asset Freeze Motion.

WHEREAS, on September 23, 2015, to avoid the immediate freeze of the corporate Global Defendants' bank accounts, Plaintiffs and Global Defendants agreed to and the Court entered the Consent Order, Docket No. 80, to deposit into the registry of the Court $400,000.00 (four hundred thousand dollars) in monthly installments within 90 days of the Consent Order and to provide expedited discovery related to the disposition of Plaintiffs' funds and Defendants' assets.

WHEREAS, Global Defendants failed to comply with the Consent Order and dissipated assets and depleted their bank accounts in order to avoid compliance with the Consent Order.

WHEREAS, on October 7, 2014, in order to evade his obligations under the Consent Order, Defendant Sergey Kapustin filed his Chapter 13 Bankruptcy Petition (Case No. 14-30488).

ADMISSION OF CONTINUING MASS INTERNET FRAUD

WHEREAS, on October 23, 2014, Plaintiffs moved for contempt against Global Defendants and their counsel.

WHEREAS, on October 24, 27, 28, 29 and November 3, 2014, the Court held evidentiary hearings during which it was established that while Global Defendants websites www.globalautousa.com, www.effectauto.com, www.effectauto.ru ("Websites") advertised over 4,000 vehicles as "in stock", Defendant Kapustin testified only about 14 vehicles were actually owned by the corporate Global Defendants, and some vehicles were sold twice through

the Websites to foreign customers using electronic mail communications and international bank wire payments.

WHEREAS, the Court having made preliminary findings that there is probable cause to believe that Global Defendants have committed at least two predicate acts of mail and wire fraud in the furtherance of a RICO enterprise through a pattern of racketeering activity conducted operating through the Internet; on October 27 and October 29, 2014, this Court ordered, pursuant to 18 U.S.C. § 1964 and, *e.g., Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 498 (1985) (explaining that RICO is to be read broadly and liberally construed to effectuate its remedial purposes), that the Defendants' corporate bank accounts to be frozen and the Websites to be shut down immediately (Docket Nos. 106; 110).

BAD FAITH FILING OF CORPORATE BANKRUPTCIES

WHEREAS, on November 4, 2014, corporate Global Defendants filed their Chapter 7 bankruptcy petitions (Global Auto Sales (Case No. 14-32520), Effect Auto Sales, Inc. (Case No. 14-32521), G Auto Sales, Inc. (Case No. 14-32522) and SK Imports, Inc. (Case No. 14-32523).

WHEREAS, on November 12, 2014, Plaintiffs moved for the Court's determination that the Bankruptcy automatic stay under 11 U.S.C. § 362(a) does not apply to this case pursuant to 11 U.S.C. §362(b)(1) and (4) to prevent Global Defendants from continuing to dissipate assets; and concealing information about the assets and potential fraudulent transfers "to prevent the bankruptcy court from becoming a haven for wrongdoers." *In re Nortel Networks, Inc.*, 669 F.3d 128, 137-138 (3d Cir. 2011) (citations omitted).

WHEREAS, having considered the opposition from Jeffrey Lester, Esq., the Chapter 7 Trustee for corporate Global Defendants in the form of a response and a sur-reply, having heard argument of counsel, the Court withdrew the reference to the Bankruptcy Court pursuant to the standing order of reference of this Court dated September 19, 2012, of the bankruptcy cases: Global Auto Sales, Inc. (Case No. 14-32520), Effect Auto Sales, Inc. (Case No. 14-

32521), G Auto Sales, Inc. (Case No. 14-32522), SK Imports, Inc.. (Case No. 14-32523) and Sergey Kapustin (Case No. 14-30488) pursuant to 28 U.S.C. § 157(d).

WHEREAS, on May 20, 2015, the Court dismissed the bankruptcies pursuant to Section 105(a), 305(a), 349 and 707(a) of the Bankruptcy Court, having considered the pleadings and having heard oral argument and having made findings of good cause including having found that Debtors failed to satisfy their burden that the bankruptcy petitions were filed in good faith based on the fact that:

a. The petitions were filed for purposes of avoiding defending multiple actions for fraud and enforcement of judgments in different venues;

b. The petitions were not truthful, accurate or complete. The statements in the petition and schedules were categorically wrong and sought to defy creditors' claims;

c. The Debtors failed to amend schedules to provide full and complete information with regard to all assets and liabilities as ordered by the January 28, 2015 Court Order, nor did the Debtors seek extension of the deadline to comply with the Order;

d. A substantial number of creditors might be victims of fraud;

e. The corporate Debtors failed to fully comply with the Trustee's subpoena;

f. The Debtor Sergey Kapustin selectively invoked his Fifth Amendment privilege against self-incrimination with regard to every question related to the bankruptcy petitions, schedules, or any information that could potentially be included in the bankruptcy petitions and schedules. Debtor, Sergey Kapustin's reliance on the Fifth Amendment privilege created an adverse civil inference against him because the admission would subject him to criminal liability; and

g. The invocation of the Fifth Amendment rights is inconsistent with the orderly administration of the estates as the Debtor Sergey Kapustin shifted the expense of defending himself from the fraud claims to the Trustees.

CONCEALMENT OF FOREIGN BANK ACCOUNTS

WHEREAS, on June 19, 2015, Plaintiffs moved for Temporary Restraining Order and Preliminary Injunction establishing that after entering into the Consent Order Global Defendants diverted their monetary operations to the foreign bank accounts and concealed assets in foreign countries during the pendency of the bankruptcy proceedings; and that Plaintiffs' funds and assets unlawfully obtained by the Global Defendants as described in the Amended Complaint have been misapplied and will be misappropriated, hidden, wasted, or otherwise used to the detriment of Plaintiffs; and that the Defendants will engage in hiding funds or assets, including concealing the funds or assets in foreign countries, to frustrate the relief ordered in this action.

WHEREAS, having held an evidentiary hearing on the relief sought in the Motion on June 29, 2015; and having received a notice of the Motion *pro se* Defendants Sergey Kapustin, Irina Kapustina and Michael Goloverya appeared and testified at the evidentiary hearing; and having considered the Motion for Preliminary Injunction, the Court found that Plaintiffs have satisfied the four pronged test for preliminary injunctive relief set forth in *McNeil Nutritionals, LLC v. Heartland Sweeteners, LLC*, 511 F.3d 350, 356 (3d Cir. 2007) because (1) there is a reasonable likelihood that it will prevail on the merits of the claims as Plaintiffs have established grounds for entering default judgement in their Motion for Sanctions (Docket No. 169), during the evidentiary hearing on the motion on April 27, 2015, and during the evidentiary hearing on the assessment of damages on June 29, 2015; (2) Plaintiffs have demonstrated that they will suffer an irreparable harm in the absence of a preliminary injunction order and based on Global Defendants' previous concealment and diversion of corporate funds, and that Global Defendants will continue to dissipate assets leaving Plaintiffs with no recovery; (3) Global Defendants will suffer no appreciable harm because there is a reasonable cause to believe that the funds in their accounts and other assets have been obtained and concealed by engaging in the unlawful activities as described in the Amended Complaint; (4) the public interest is served by deterring Defendants' fraudulent schemes to avoid compliance

with the Court's orders; this Court granted Plaintiffs' Preliminary Injunction Motion and enjoined Global Defendants from disposing of any interest in any assets located in the United States and in foreign countries.

ENTERING DEFAULT AS A SANCTION IS WARRANTED

WHEREAS, on February 17, 2015, Plaintiffs moved for sanctions against Global Defendants and their counsel ("Sanctions' Motion") including entering a default judgment as a sanction for their continuing litigation misconduct including numerous fraudulent representations to the Court, dissipation of assets in order to avoid compliance with the Consent Order, concealment of assets in foreign jurisdictions, filing bankruptcy petitions in bad faith for the purpose of invoking the automatic stay and frustrating this Court's jurisdiction, continuing delay resulting in significant prejudice to Plaintiffs.

WHEREAS, on April 27, 2015, having considered the Sanctions' Motion, the opposition from Global Defendants and their counsel, the evidentiary materials presented by the parties, having heard argument of counsel, having considered the factors enumerated in *Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912, 919 (3d Cir. 1992) (internal citations omitted), "(1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense", the Court made its finding that Global Defendants' bad faith litigation misconduct caused unreasonable delay and prejudice to Plaintiffs, Global Defendants admitted obtaining funds from Plaintiffs and presented no meritorious defenses, and having considered alternative sanctions, no sanction other than entering a default would remedy the continuing delay and disruption of the judicial process in this case.

WHEREAS, on May 27, 2015, Plaintiffs submitted their Application to Assess Damages for Default Judgment ("Application to Assess Damages").

WHEREAS, on August 31, 2015 and September 4, 2015, having considered Plaintiffs' Application to Assess Damages, opposition from Global Defendants, having considered both parties' evidentiary materials and argument, the Court held evidentiary hearings and made the foregoing findings of fact and conclusions of law.

WHEREAS, during the hearing the Court found that Global Defendants were responsible for executing and masterminding the "bait and switch" fraud scheme targeting online unsophisticated foreigners from the former Soviet Union and other countries by advertising vehicles for sale below the market value. Plaintiffs presented evidence that the advertised and "sold" cars were not in Global Defendants' possession and often already owned by unrelated third parties at the time of the "sale." Once the customer wired the money, Global Defendants failed to deliver the vehicles that customer paid for and refused to issue any refunds. Global Defendants then offered customers different cars, for a higher price, thus extorting more money from the customers. Eventually, even on the "switch" vehicles that were ultimately, sometime after 6-8 months of first wire, shipped to Global Defendants' warehouse in Finland, Global Entities refused to "release" vehicles and charged hidden fees, misrepresented odometer readings, withheld the information that the vehicle had been declared "total loss" after an accident or flooded by hurricane Sandy with "salvage" title issued.

WHEREAS, the Court finds that Plaintiffs have stated a course of action under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(a-c) (Counts I-III); civil conspiracy to commit RICO violations, 18 U.S.C. § 1962(d) (Count IV) by virtue of committing multiple acts of racketeering by defrauding customers in violation of, inter alia, the wire and mail fraud statutes, 18 U.S.C. §1343 and 1341; violations of New Jersey Consumer Fraud Act 56:8-1, et seq.; violations of the Motor Vehicle Information and Cost Savings Act

(the "Odometer Act"), 49 U.S.C. § 32701, et seq., violations of Pennsylvania Unfair Trade Practices Act and Consumer Protection Law 73 P.S. § 201-1, et seq. ("UTPCPL") (Count XVII), imposition of constructive trust (Count XVIII) and other common law claims.

WHEREAS, the Court finds that Defendant Kapustin, as owner of corporate Global Defendants exercised complete dominion and control over the corporations and used the corporations as his alter egos for his own purposes, making all the decisions including the decisions to defraud Plaintiffs.

WHEREAS, the Court finds that individual Defendant Sergey Kapustin and corporate Global Defendants are a group of RICO persons, Global Companies Enterprise, associated in fact for the common purpose of engaging in fraudulent conduct constituting a RICO enterprise defined in 18 U.S.C. § 1961(4) functioning together as a continuing unit, each of them necessary to accomplish each step or aspect of the fraudulent scheme. Defendant Sergey Kapustin and corporate Global Defendants acted in concert for the shared goal of defrauding overseas car buyers receiving profits from the fraudulent scheme. This enterprise affected interstate and foreign commerce because it exported vehicles to foreign countries and both sent and received funds through banks in the United States and abroad.

WHEREAS, the Court finds that Defendant Sergey Kapustin, who is a person within the meaning of RICO, managed and participated in conduct of the Global Companies Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c), including multiple acts of wire fraud, mail fraud, and/or financial fraud.

WHEREAS, the Court finds that Global Defendants engaged in the pattern of racketeering activity, which included related violations of 18 U.S.C. § 1343 (wire fraud); 18 U.S.C. § 1341 (mail fraud); 18 U.S.C. § 1956 (money laundering); 18 U.S.C. § 1957 (engaging in monetary transactions in property derived from unlawful activity); 18 U.S.C. § 1952 (Travel Act), 18 U.S.C. § 1912 (witness intimidation), as included in 18 U.S.C. 1961(1).

WHEREAS, the Court finds that the pattern of the racketeering activity began no later than some time in 2008 resulting in investigation by Attorney General for the State of New Jersey Division of Consumer Affairs of deceptive conduct of Global Auto Enterprise, resulting on November 19, 2010, in the consent judgment for injunctive relief, civil penalties, legal fees and restitution to victims. The scheme continued in 2012 when Global Defendants committed predicate acts of racketeering towards Plaintiffs Yamkoviys, and continued through February 2014, when Defendants committed acts of 18 U.S.C. § 1343 wire fraud towards Plaintiff Pukir. Global Defendants continued the pattern by filing fraudulent bankruptcies. Global Defendants' acts were arranged and ordered so as to exhibit both a relation between the predicate acts and the threat of continuing unlawful activity. Defendants' acts of mail fraud, wire fraud, and financial fraud were open-ended and occurring on an ongoing and daily basis targeting overseas car buyers from GlobalAutoUSA.com and other websites registered by Global Defendants with the intent to defraud foreign buyers.

WHEREAS, the Court finds that Plaintiffs were directly and proximately harmed by Global Defendants' predicate acts of racketeering, including wire fraud, mail fraud, and Travel Act violations, which resulted in ascertainable financial losses to the Plaintiffs.

IT IS HEREBY ORDERED on this 10th day of September, 2015, that the Judgment of Default shall be entered against Global Defendants and Plaintiffs shall be awarded damages as follows:

TREBLING OF LOST FUNDS UNDER RICO

1. The Court finds that Global Defendants are jointly and severally liable to Plaintiffs for the treble amount of the funds lost by Plaintiffs pursuant to RICO, 18 U.S.C. § 1964(c) ("Any person injured in his business or property by reason of a violation of section 1962 of this chapter . . . shall recover threefold the damages he sustains . . . ."); *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 233 (1989) ("[A] person found in a private action to have violated

RICO is liable for treble damages"). The Third Circuit instructed that where a plaintiff successfully obtains a judgment of civil liability under RICO, an award of treble damages is mandatory. *See, e.g. Genty v. RTC*, 937 F.2d 899, 914 (3d Cir. 1991) ("It is clear that trial courts and juries are at no liberty under RICO to award any amount less than treble damages."); *La Suisse, Societe D'Assurances Sur La Vie v. Kraus*, 2014 U.S. Dist. LEXIS 99847 (S.D.N.Y. July 21, 2014) (awarding default judgment and treble damages under RICO).

THE ODOMETER FRAUD ACT DAMAGES

2. The Court further finds that Global Defendants are jointly and severally liable to Plaintiff Evgeniy Borzenko for damages pursuant to the Odometer Fraud Act, 49 USCS § 32710, for the treble the amount of the Jeep Compass transaction of $15,900 and the statutory damages in the amount of $ 10,000 for the Mazda transaction, the vehicles that he received. The Court further finds that Plaintiffs Yuriy Yamkoviy and Alla Yamkovaya are entitled to the statutory damages in the amount of $ 10,000 per each transaction for the three vehicles that they received. *Mon Cheri Bridals, Inc. v. Wen Wu*, 383 Fed. Appx. 228, 240 (3d Cir. 2010) ("permitting the calculation of damages based on separate transactions because of the "harm suffered under separate statutory schemes for separate facts").

PREJUDGMENT INTEREST

3. The Court finds that Global Defendants are jointly and severally liable to Plaintiffs for the prejudgment interest award on the full amount of actual damages trebled under RICO from the date of filing of the Amended Complaint, April 4, 2014. The Court remains mindful of the fact that the purpose of awarding prejudgment interest is compensatory, "because RICO is essentially compensatory and contains no provision barring prejudgment interest, any such award is within the district court's sound discretion." *West Hills Farms, LLC v. ClassicStar Farms, Inc. (In re ClassicStar Mare Lease, Litig.)*, 727 F.3d 473, 495 (6th Cir. 2013) (applying the award of prejudgment interest to the entire RICO treble damages amount).

Aetna Casualty Sur. Co. v. P & B Autobody, 43 F.3d 1546, 1571 (1st Cir. 1994) (upholding the award of prejudgment interest on the entire treble damages amount under the RICO claims).

4. The Court finds that with respect to the federal RICO claims, Odometer Fraud Act, and NJ and PA consumer fraud statutes, it is appropriate to incorporate an award of prejudgment interest as an element of Plaintiffs' recovery in light of the circumstances of this case given Global Defendants' fraud perpetrated on numerous consumers as well as repeated bad faith conduct during this litigation.

5. Having reviewed voluminous and well-documented evidence presented by Plaintiffs of damages caused by Global Defendants' conduct, the Court finds that Global Defendants are jointly and severally liable to each Plaintiff as follows:

Plaintiff(s)	***Compensatory Damages***	***Trebled Compensatory Damages***	***Odometer Fraud Damages***	***Prejudgment Interest at 5% Per Annum***	**TOTAL FINAL JUDGMENT AWARD**
Ardak Akishev	$ 3,900	$11,700		$841.43	**$12,541.43**
Zhandos Aliakparov	$ 9,920	$29,760		$2,142,72	**$31,902.72**
Alexey Batalov	$ 25,920	$77,760		$5,598.72	**$83,358.72**
Evgeniy Borzenko	$ 18,342	$55,026	$57,700	$8,116.27	**$120,842.27**
Igor Glazunov Irina Glazunova	$36,920	$110,760		$7,974.72	**$118,734.72**
Andrey Kirik Natalia Kirik	$ 25,273.94	$75,821.82		$5,459.17	**$81,280.99**
Arkadiy Kolbin	$16,640	$49,920		$3,594.24	**$53,514.24**
Evgeniy Kondratuk	$46,960	$140,880		$10,143.36	**$151,023.36**
Eduard Lisitsyn	$ 64,960	$194,880		$35,896 loan interest	**$230,776.00**
Vladimir Lukyanov	$ 5,940	$17,820		$1,283.04	**$19,103.04**
Victor Maniashin	$ 22,940	$68,820		$ 9,297 loan interest	**$78,117.00**
Mikhail Matveev	$14,920	$44,760		$3,222.72	**$47,982.72**

Alexandr Pukir	$ 51,390	$154,170		$25,872 Loan interest	**$180,042.00**
Evgeniy Telin	$ 9,920	$29,760		$2,142,72	**$31,902.72**
Yuriy & Alla Yamkovaya	$49,960	$149,880	$30,000	$12,951.36	**$192,831.36**
Alexander Zhilinsky	$12,920	$38,760		$2,790.72	**$41,550.72**
Mikhail and Elena Zverev	$9,920	$29,760		$3,661 Loan interest	**$33,421.00**

RICO TREBLING OF ATTORNEY FEES AND COSTS INCURRED IN FRAUDULENT BANKRUPTCY CASES

6. The Court finds that Global Defendants are jointly and severally liable to Plaintiffs for the trebled amount of attorney fees and costs incurred in having to litigate fraudulent bankruptcies filed by Global Defendants as a part of their racketeering scheme. *See Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1167 (2d Cir. N.Y. 1993) ("we explicitly ruled in Bankers Trust that legal fees may constitute RICO damages when they are proximately caused by a RICO violation") (relying on *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096 (2d Cir. N.Y. 1988), finding that expenses in fraudulent bankruptcy proceedings can constitute RICO injury); *La Suisse, Societe D'Assurances Sur La Vie v. Kraus*, 2014 U.S. Dist. LEXIS 99847, 22-23 (S.D.N.Y. July 21, 2014).

7. Global Defendants' failure to disclose assets in bankruptcy schedules, concealment of information related to the administration of the estates and making false statements under penalty of perjury to defraud creditors in violation of 18 USCS § 152 constitute predicate acts under 18 USCS § 1961, ("racketeering activity" means... (D) any offense involving fraud connected with a case under title 11"; *see Cadle Co. v. Flanagan*, 271 F. Supp. 2d 379 (D. Conn. 2003) (finding that filing of false schedules and concealing assets to defraud creditors in a bankruptcy case are RICO predicate acts)). This unlawful conduct

caused Plaintiffs to incur substantial legal expenses in theses bankruptcy matters that are subject to trebling under RICO, 18 U.S.C. § 1964(c).

8. The Court finds that Global Defendants are jointly and severally liable to Plaintiffs for the treble attorney fees incurred for the fraudulent bankruptcies in the total amount $222,675.00 and trebled bankruptcy cases costs of $15,022.14.

POSTJUDGMENT INJUNCTION AND EQUITABLE RELIEF

9. In accordance with Rule 65 and Rule 69 of the Federal Rules of Civil Procedure, remedial statutory provisions and this Court's inherent equitable power to provide relief ancillary to its authority to redress remedy litigation misconduct, the Preliminary Injunction Order (Docket 229) shall continue to be in effect until the final judgement in this case is paid in full or until further Order of the Court.

10. Global Defendants shall transfer registration of the domain names of the Websites to Plaintiffs to display information to assist other potential victims of fraud to obtain remedies.

AWARD OF ATTORNEY FEES AND COSTS IN THIS CASE

11. The Court finds that pursuant to 18 U.S.C. § 1964(c) Global Defendants are jointly and severally liable to Plaintiffs for attorney fees of $470,810.00 and costs of $10,637.14, which are reasonable and appropriate in light of the nature of the case.

POSTJUDGMENT INTEREST

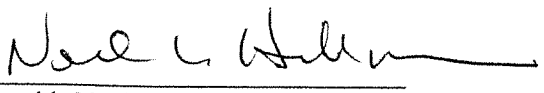
12. The Court finds that Global Defendants are jointly and severally liable to Plaintiffs for postjudgment interest on the entire amount of judgment from the date of judgment at the statutory rate calculated pursuant to 28 U.S.C. § 1961(a).

FINAL JUDGMENT AWARD

Plaintiffs are awarded post-judgment injunctive relief, post-judgment interest and monetary damages in the total amount of **$2,228,089.29**, representing: (a) compensatory treble

damages, statutory damages and prejudgment interest as of April 2, 2014 of $1,508, 925.01; (b) trebled attorney fees incurred for the fraudulent bankruptcies of $222,675.00 and trebled bankruptcy costs of $ 15,022.14; (c) reasonable attorney fees of $470,810.00 and costs of $10,637.14.

FOR THE COURT:



At Camden, New Jersey

Honorable Noel L. Hillman
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ARDAK AKISHEV, et al., Plaintiff, v. SERGEY KAPUSTIN, et al.,	Hon. Noel L. Hillman, U.S.D.J Case No. 13-cv-07152 (NLH) (AMD)
In re: GLOBAL AUTO, INC., Debtor.	Case No. 14-32520 (DHS) Chapter 7
In re: EFFECT AUTO SALES, INC., Debtor.	Case No. 14-32521 (DHS) Chapter 7
In re: G AUTO SALES, INC., Debtor.	Case No. 14-32522 (DHS) Chapter 7
In re: SK IMPORTS INC., Debtor.	Case No. 14-32523 (DHS) Chapter 7
In re: SERGEY KAPUSTIN, Debtor.	Case No. 14-30488 (TBA) Chapter 7

[~~PROPOSED~~] ORDER DISMISSING CHAPTER 7 BANKRUPTCY CASES PURSUANT TO 11 U.S.C. § 707(a)

This matter having been opened to the District Court by the *sua sponte* motion brought on by text order entered on January 21, 2015, seeking dismissal of the following Chapter 7 bankruptcy cases: Global Auto, Inc.; G Auto Sales, Inc.; SK Imports Inc.; Effect Auto Sales, Inc. (the foregoing collectively the "Corporate Debtors"); and Sergey Kapustin (the "Individual Debtor"); due notice hereof having been given to all creditors and other parties in interest on February 21, 2015; pleadings in support of dismissal having been filed by the above-captioned Plaintiffs; Chapter 7 Trustees Lester and Thomas having taken no position with regard to dismissal but having not opposed dismissal; Sergey Kapustin, as the principal of the Corporate Debtors and in his individual capacity, having filed letters with the Court; a hearing hereon having been held on April 6, 2015; appearances thereat having been made by Anna Brown, Esq. and Maria Temkin, Esq. on behalf of the Plaintiffs; Jenny R. Kasen, Esq. on behalf of Amhngeldyyovich Bakzhanov; Jonathan I. Rabinowitz, Esq. of Rabinowitz, Lubetkin & Tully, LLC on behalf of the Chapter 7 Trustee, Jeffrey Lester; Alan Moldoff, Esq. of Eckert, Seamans, Cherin & Mellott, LLC on behalf of floor plan lender, AFC; Yan Rudikh, Esq. on behalf of the Corporate Debtors; Sergey Kapustin in his individual capacity; Jeffrey Goldsmith, Esq. on behalf of D.K. International Tradings, Inc.; Eugenie Voitkevich, Esq. on behalf of Muhamed Izbastin; James Dobis, Esq. of Dobis Russsell & Peterson on behalf of certain Defendants in the District Court Action; and Brian Thomas, Esq. in his capacity as Chapter 7 Trustee of the Individual Debtor; a Russian interpreter having been present in Court to interpret for the Individual Debtor; Jeffrey Goldsmith, Esq. and Eugenie Voitkevich, Esq. having made oral statements on the record in support of dismissal; this Court having considered the pleadings and having heard oral

argument and having made findings of good cause including having found that Debtors failed to satisfy their burden that the bankruptcy petitions were filed in good faith based on the fact that:

a. The petitions were filed for purposes of avoiding defending multiple actions for fraud and enforcement of judgments in different venues;

b. The petitions were not truthful, accurate or complete. The statements in the petition and schedules were categorically wrong and sought to defy creditors' claims;

c. The Debtors failed to amend schedules to provide full and complete information with regard to all assets and liabilities as ordered by the January 28, 2015 Court Order, nor did the Debtors seek extension of the deadline to comply with the Order;

d. A substantial number of creditors might be victims of fraud;

e. The corporate Debtors failed to fully comply with the Trustee's subpoena;

f. The Debtor Sergey Kapustin selectively invoked his Fifth Amendment privilege against self-incrimination with regard to every question related to the bankruptcy petitions, schedules, or any information that could potentially be included in the bankruptcy petitions and schedules. Debtor, Sergey Kapustin's reliance on the Fifth Amendment privilege created an adverse civil inference against him because the admission would subject him to criminal liability; and

g. The invocation of the Fifth Amendment rights is inconsistent with the orderly administration of the estates as the Debtor Sergey Kapustin shifted the expense of defending himself from the fraud claims to the Trustees.

IT IS ORDERED on this 20th day of ~~April~~ May, 2015 that

(1) The cases be and they hereby are dismissed pursuant to Section 105(a), 305(a), 349 and 707(a) of the Bankruptcy Court and the District Court's general equitable powers sitting as the Bankruptcy Court for the Individual Debtor and Corporate Debtors.

(2) Section 349 of the Bankruptcy Code shall govern the effect of dismissal except as otherwise set forth herein.

(3) The District Court sitting as the Bankruptcy Court shall retain jurisdiction to act upon applications to fix (a) awards for the Chapter 7 Trustee's professionals in accordance with Section 330 of the Bankruptcy Code and (b) sanctions against the Corporate Debtors and Individual Debtor and their attorney pursuant to Bankruptcy Rule 9011.

(6) The District Court sitting as the Bankruptcy Court shall retain jurisdiction to hear and determine the (i) motion by the Chapter 7 Trustee of the Corporate Debtors to abandon books and records pursuant to Section 554 of the Bankruptcy Code and (ii) the control of the websites: www.globalautousa.com; www.effectauto.com; and www.effectauto.ru .

BY THE COURT:

Noel L. Hillman

Honorable Noel L. Hillman
U.S. District Court Judge

At Camden, New Jersey

Dated: May 20, 2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARDAK AKISHEV, et al.,

Plaintiffs, **CIVIL ACTION NUMBER:**

-vs- **1:13-cv-07152-NLH-AMD**

SERGEY KAPUSTIN, et al.,

Defendants.

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
Tuesday, January 6, 2015

B E F O R E: **THE HONORABLE NOEL L. HILLMAN**
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

BROWN LEGAL CONSULTING, LLC
BY: ANNA V. BROWN, ESQUIRE
MARIA TEMKIN, ESQUIRE
Attorneys for the Plaintiffs

DOBIS, RUSSELL & PETERSON
BY: JAMES STEVEN DOBIS, ESQUIRE
Attorneys for the Defendants
Sergey Kapustin, Irina Kapustina, Michael Goloverya, G Auto Sales, Inc., Global Auto, Inc., Effect Auto Sales, Inc., Global Cars, Inc., and SK Imports, Inc.

RABINOWITZ, LUBETKIN & TULLY, LLC
BY: JONATHAN I. RABINOWITZ, ESQUIRE
Attorneys for Chapter 7 Trustee Jeffrey Lester

Certified as true and correct as required by Title 28, U.S.C., Section 753.
/S/ Robert T. Tate

(In open court at 12:17 p.m..)

THE DEPUTY COURT CLERK: All rise.

THE COURT: All right. Good afternoon. I would say please be seated except for counsel but that's all we have. So, let's have appearances. This is Akishev versus Kapustin. May I have appearances for the plaintiff?

MS. TEMKIN: Maria Temkin and Anna Brown for plaintiffs.

THE COURT: Yes, Ms. Temkin, Ms. Brown, welcome to you both.

MS. TEMKIN: Thank you, your Honor.

THE COURT: I invoked your name the other day. I'll discuss that in a minute. Who do we have over here?

MR. RABINOWITZ: Good afternoon, your Honor. Jonathan Rabinowitz of Rabinowitz, Lubetkin & Tully on behalf of the Chapter 7 trustee for four of the corporate defendants in this action, and the trustee's name is Jeffrey Lester.

THE COURT: All right. Welcome, Mr. Rabinowitz. All right. And?

MR. DOBIS: James Dobis for the defendants, your Honor.

THE COURT: Yes, Mr. Dobis. Thank you. Please be seated.

All right. Well, we have a bit of a procedural, some procedural issues here, and I guess what's happened is Ms.

Brown or Ms. Temkin, let me see, probably both signed this, the November 12th letter really I think has been gaveled as a motion, though it's hard for me to kind of even describe it as a motion. I guess it's a motion to allow you to continue proceeding in the action and seeking enforcement of the various orders that I have entered.

MS. TEMKIN: Correct, your Honor.

THE COURT: Including a consent order which took on some significance to me.

MS. TEMKIN: Your Honor, just as an abundance of caution, we are actually not seeking to enforce the consent order within this Court. We are seeking to continue the action here, but anything related to the consent order, we would go to the Bankruptcy Court for determination.

THE COURT: Why is that? Let me tell you why I say that, because there are a couple of -- well, when we get to the issue of the exceptions to the stay, the governmental entity and public policy enforcement prong, I had entered various orders, and there is some case law support for the notion that this Court becomes the governmental entity for purposes of either (b)(1) or (b)(4). So, why wouldn't my -- this Court's interest in the integrity of its orders and the enforcements of its orders not be to some extent a possible exception to the stay?

MS. TEMKIN: It would be, your Honor. We, again, our

letter -- the way it went, your Honor, if you remember, we were in the middle of a contempt proceeding and we worked out our issues with the defendants and we informed the Court that we would not need to continue the contempt proceeding, and within the next couple of hours, defendants informed the Court that the corporate Global entities filed for bankruptcies, and the Court requested plaintiffs to provide their position with regard to that, and all that motion and briefs ensued. We felt at the time that consent order and enforcement of the $400,000 payment into the Court would potentially, potentially influence and relate to the administration of the estate. The way -- and depending on the way it goes, putting that into this Court's registry, it will actually save it, so we would proceed with the enforcement as well under the government exception and under the quasi criminal proceeding exception, except that once it gets to distribution maybe we probably feel that, depending on what happens in the bankruptcy, we might -- maybe the trustee would have a better assessment of what it is.

THE COURT: Right. All right. Well, let me ask Mr. Rabinowitz then, and this procedural question also relates to you and the status of the trustee in these proceedings because there's been no formal appearance, and I realize procedurally this has been somewhat unique in that it was the beginning of contempt proceedings and the consent order and injunction and

all of that that preceded the filing of the bankruptcies or the bankruptcy for the corporate entities, in any event, and resulted in the trustee's interest, but -- and so my filing or teeing this up on our docket as a motion is somewhat unusual that way. But the trustee has not entered an appearance in this action. I know -- I presume by virtue of status as a trustee under the bankruptcy system, they have access to the ECF filing and so forth, but I received your filings on behalf of the trustee, but as I understand it from the clerk, there's been no appearance by the trustee.

MR. RABINOWITZ: Your Honor, if I can address the issue. Under the Bankruptcy Code, the trustee doesn't automatically succeed to become a party in this action. The trustee succeeds to the rights and assets of the various debtors, but an affirmative step would have to be taken by the trustee to become an actual party. These debtors were represented.

Traditionally, not all the time, but traditionally motions regarding the scope of the automatic stay are made before the Bankruptcy Court. We did not get notice of this letter brief. We are a party in interest because the trustee is a fiduciary not only for these particular creditors, but for all creditors, and there are other creditors in these cases, including two secured creditors owed roughly $750,000. When we got wind of it --

THE COURT: I'm sorry. Who is that?

MR. RABINOWITZ: NextGear and AFC. They are two traditional automobile finance lenders who lent these debtors money that they used to acquire automobiles to run their business.

THE COURT: Okay. Let me just ask you a basic question. If that's the case, how can the debtors have no assets?

MR. RABINOWITZ: The debtors do have assets, as far as I can see.

THE COURT: They do have assets?

MR. RABINOWITZ: From my preliminary analysis, there is a claim against a Mr. Hitrinov that's prior to the filing of the bankruptcies being litigated in the Eastern District of New York.

THE COURT: That I'm aware of.

MR. RABINOWITZ: There are 60, roughly, and please, your Honor, this is in the early stages of a complicated case.

THE COURT: Sure, sure.

MR. RABINOWITZ: There are roughly 60 automobiles that are located in Pennsylvania and New Jersey, and there are roughly 200 automobiles that are located in Finland. So, those are assets. The question is, are there equity in those assets, because if I've got two lenders --

THE COURT: Sure, I understand.

MR. RABINOWITZ: -- who are owed 750 and these cars are worth less than 750, they are assets, but they go to the lenders, they don't go to anybody else. So, the first issue the trustee needs to analyze is are there equity in those 260 automobiles, and then if there is, how do we go about realizing upon that equity? There is no reciprocity between, unfortunately, between domestic orders in the United States from a court of competent jurisdiction and the country of Finland. There are ways that we can get those cars and we have, in the process, we have retained Finnish counsel to advise us and take steps. But if either the Bankruptcy Court or your Honor would enter an order and say turn over those cars, whoever has them, we could not go into a Finnish court and seek enforcement of that order. We would need to start some kind of independent Finnish proceeding. It's either called an ancillary proceeding, because they have a model Bankruptcy Code similar to ours, or some kind of litigation de novo in their system in Finland to try to get those cars, but we're not going to incur that expense until we determine if there's equity there. So, there is the potential 260 autos which may or may not have some equity.

I also, your Honor, don't know yet if these two lenders have duly perfected their security interest in these automobiles. Here's the issue. They have filed a UCC-1. Let's assume that 9203 of Article 9 of the Uniform Commercial

Code has been satisfied and 9308, so they are duly perfected, they have an attached and perfected security interest. Does that security interest follow the automobiles in Finland? Don't know. The issue, that's something yet to be resolved. If it doesn't, then there are 200 cars that are free and clear. If it does, then it's a question of valuation.

These are the kinds of issues that the trustee is trying to explore and taking seriously as it does generally, he does generally, and in this particular case, his fiduciary duties.

So that circling back, your Honor, to try to answer your question, when we got wind of this action, the trustee's desire is to have a central forum for the administration of assets, for the fixing of claims, and for the distribution of the proceeds of the assets, and while your Honor has the power, I can't -- I make my arguments, I made my arguments, your Honor could administer this bankruptcy case or administer this portion, if there were piecemeal administration, the trustee believes that that would adversely affect the overall administration of the case. It would increase costs, there would be the potential for inconsistent results, and those kinds of issues, judicial efficiency and judicial economy kinds of issues. So, we're trying to have a central administration of these four cases in the Bankruptcy Court, which is the court that generally administers Chapter 7 cases.

Now, if your Honor is inclined to say that one of the exceptions applies or to withdraw the reference or to vacate the stay, whatever power your Honor chooses to exercise, all we're saying at the end of the day is allow the plaintiffs to liquidate their claim but not enforce it. If they want to enforce it -- and what does enforcement mean? Let the trustee do his job, marshal assets, identify what the assets are and marshal them, liquidate those assets to cash, and whatever claim ultimately is fixed, whether it's fixed in the Bankruptcy Court in favor of these plaintiffs or fixed by your Honor as a result of a trial, they take that claim back into the Bankruptcy Court, and the priority of that claim and the distribution to which it is entitled is determined in the bankruptcy forum as opposed to this forum. That's the alternate that we are suggesting here.

THE COURT: All right. Well, there's a lot going on there. Let me ask you a couple questions.

MR. RABINOWITZ: Sure.

THE COURT: One, these 60 cars that are in Pennsylvania and New Jersey, I didn't read every line, but I read it looking for disclosure of assets. I didn't see in any of the four petitions -- are there four petitions?

MR. RABINOWITZ: There are four petitions, that's correct.

THE COURT: Any reference to New Jersey or

Pennsylvania cars. Is that true?

MR. RABINOWITZ: Absolutely true.

THE COURT: Doesn't that make that a fraudulent filing? Here's the problem. Mr. Kapustin is just not -- just has a problem telling the truth. He's told numerous different stories about what assets he has and doesn't have. He told me he had plenty of money to pay any judgment and I delayed the issuance of an injunction. He's filed bankruptcy petitions that appear to be fraudulent.

Let me ask about the UCC-1's. How many cars are listed on them? Who lends $750,000 for 200 cars or 260?

MR. RABINOWITZ: Well, your Honor, Article 9 does not --

THE COURT: Let me guess. There's a lot more cars that he pledged or said he owned for those financing arrangements.

MR. RABINOWITZ: Can I --

THE COURT: Yes or no, yes or no.

MR. RABINOWITZ: I can't answer that yes or no, Judge.

THE COURT: All right. How many cars are on the UCC-1?

MR. RABINOWITZ: There are none because Article 9 does not require a description. If the UCC-1 simply said all assets, that satisfies the requirements of Article 9. You

don't have to list the automobiles on Article --

THE COURT: Do you have the application for credit?

MR. RABINOWITZ: I haven't gotten that yet, no. I don't know. But I can answer your question --

THE COURT: I'd like to see it, because I'd be willing to bet it goes beyond 200 cars.

MR. RABINOWITZ: But, your Honor, let me address your issue of the fraudulent conduct by Mr. Kapustin, however you pronounce his name.

THE COURT: Yes. That's better than I can.

MR. RABINOWITZ: Okay. The trustee shares the concerns of these plaintiffs and your Honor for the integrity of our system, and if there is fraudulent conduct --

THE COURT: I have already found there is.

MR. RABINOWITZ: -- there are mechanisms in place to remedy or redress that fraudulent conduct. For instance, if there is criminal conduct, the trustee is obligated to make a referral to the U.S. Trustee's Office --

THE COURT: I already have.

MR. RABINOWITZ: -- who then makes a referral to the Justice Department, and they have a bankruptcy fraud division.

THE COURT: Mr. Rabinowitz, when is all that going to happen? This case is --

MR. RABINOWITZ: Two months old, your Honor, 60 days old.

THE COURT: Mr. Kapustin has been -- you've already found evidence that it's fraudulent. What's the holdup? Have you called the U.S. Attorney's Office and said I have a petition before me, I have evidence of cars in New Jersey and Pennsylvania, I've got a petition before me that shows no such assets, and all in the context of a finding of mail fraud by this Court, a contempt proceeding, numerous complaints to the FBI, the Pennsylvania Attorney General, the New Jersey Attorney General, and where they are is beyond me, and I'm going to send a copy of this transcript to each and every one of them, and a letter from the Russian government.

I got a phone call here Friday, the 26th, from some gentleman in the Caribbean, St. Maarten.

MR. RABINOWITZ: Judge, we have gotten multiple phone calls from purchasers of automobiles.

THE COURT: Mr. Rabinowitz, I'm trying to make a simple statement. You cited the law to me. The Bankruptcy Court is not a haven for criminals.

MR. RABINOWITZ: That is correct.

THE COURT: Mr. Kapustin by all appearances appears to be a master criminal.

MR. RABINOWITZ: And, your Honor, I will accept your Honor's wisdom and findings with regard to the conduct of Mr. Kapustin. Okay? Mr. Kapustin is not the four debtors. The trustee has taken over these four debtors. Okay? They are

corporate entities. Mr. Kapustin is no longer in control of those entities. There is nothing by virtue of the fair and just and efficient administration of these four corporate debtors which will affect criminal proceedings against Mr. Kapustin or whatever other proceedings that any party in interest, whether it's the FBI, whether it's the plaintiffs in this action, whether it's other creditors of his, want to take with regard to him. Those remedies remain.

All this trustee is seeking to do is to have, because this is his statutory charge, he's not making it up out of whole cloth, he is seeking to have an efficient administration of the assets for distribution to the creditors of this estate. If there is criminal conduct that requires referrals, those will be made in due course. The trustee is in the process of collecting all the information.

THE COURT: I'm not waiting. I'm going to call up the U.S. Attorney's Office myself today and say there appears to be four fraudulent, based on what Mr. Rabinowitz has told me and what I have read, there appears to be a fraudulent, four fraudulent bankruptcy petitions filed, and there's fraud in the first one, the personal one.

MR. RABINOWITZ: Which has nothing to do with this trustee. The trustee is not the trustee of the Chapter 13 case of Mr. Kapustin.

THE COURT: Is there one?

MR. RABINOWITZ: If your Honor will allow.

THE COURT: Yes.

MR. RABINOWITZ: Mr. Kapustin chose to file an individual Chapter 13 case as opposed to a Chapter 7. A Chapter 13 does not have a case specific trustee appointed. It's a standing trustee. In this vicinage or the vicinage he filed in, I believe he filed in --

THE COURT: Trenton.

MR. RABINOWITZ: -- in Trenton or Newark, I don't remember.

THE COURT: I think it's Trenton.

MR. RABINOWITZ: The vicinage that he filed in is Marie-Ann Greenberg, who is the standing trustee for all Chapter 13 cases that have been filed. We have been in communication with her. It is ironic, your Honor, and I don't mean this critically, that these proceedings, this motion for a determination the stay doesn't apply have been made in these corporate cases when the real actor here is Mr. Kapustin and the motion in his bankruptcy case has not been made to get the kind of relief that the parties are seeking here. It's an unnecessary set of relief because there is now a trustee in place who is not engaging in the conduct that Mr. Kapustin is engaging in.

But if I could circle back and answer your -- I'm here to answer every question your Honor asks, and you asked a

question about the schedules and the petition. In my 30 years, 36 years of experience, I've been doing this for 36 years, I agree with your Honor that these schedules were wholly deficient. They were filed with little or no information. Okay?

THE COURT: I can't imagine -- I'm not a bankruptcy lawyer. Mr. Rabinowitz, I'm sure you are, I can tell, experienced at this and I'm sure held in high regard at the bar. I just can't imagine that one is allowed to file a petition in which one says I may have some cars in Finland and I'll sometime in the future, maybe at the hearing that's held, I'll come up with a list. That's just remarkable to me.

MR. RABINOWITZ: It is not the way it should be done.

THE COURT: Does that happen all the time?

MR. RABINOWITZ: No. I was about to say that in my 36 years of experience, this is the exception, not the rule. Now, I am told, I'm not defending, I'm not excusing, I'm really relaying to the Court the explanation that we received as to why these schedules were deficient, was that the petitions were filed on an emergent basis. Whatever judgment Mr. Kapustin made, it's not this trustee's judgment, but whatever judgment Mr. Kapustin made, he filed them quickly, and because he did it on an emergent basis, it didn't include the information.

THE COURT: Mr. Rabinowitz, let me ask you why you

think he did it.

MR. RABINOWITZ: Your Honor, I'm old enough and have done this long enough not to speculate. One explanation is he was -- didn't want to disclose information. That is a possible explanation. Yes, your Honor?

THE COURT: Let the record reflect I'm raising my hand. Do you think it might have something to do with me?

MR. RABINOWITZ: Yes.

THE COURT: Not that this is about me, but do you think it might have had something to do with this case?

MR. RABINOWITZ: Yes, absolutely. That's what I meant by emergent. He filed it because he --

THE COURT: He was avoiding the enforcement power of this Court. Nortel, you cited Nortel to me. Let's talk about Nortel.

MR. RABINOWITZ: Sure.

THE COURT: First of all, Nortel says in footnote 11 that the Court of Appeals assumes, without finding, that a private party can serve as a surrogate for enforcement of a governmental entity.

MR. RABINOWITZ: But in Nortel, the Court ruled that the governmental entity required that it be a governmental entity, in that particular case.

THE COURT: Absolutely, no question about it. And I got a letter from the Russian government --

MR. RABINOWITZ: And as to Halo, upon which plaintiffs rely, Halo said as a matter of fact, not a matter of law, that in fact it was continued by the governmental entity.

THE COURT: Well, I'm finding in this case that the Russian government is the governmental entity under subsection (4) of the stay provision. It's clear to me the Russian government has an interest in this matter by the letter, and a foreign entity is within the designated entities. I'm taking the Court of Appeals at its word in footnote 11 that assuming that they assume, and I'm going to assume, that a private party may vindicate the interest of a foreign entity, and Nortel -- Nortel is a very different case from this. You've got billions of assets, more in claims by a legitimate company.

MS. TEMKIN: There was no finding of any wrongdoing.

THE COURT: I'm sorry?

MS. TEMKIN: And there was no finding of any wrongdoing by the debtor.

THE COURT: And the Court of Appeals expressly says there's no allegation of wrongdoing by Nortel or any of its entities or any violations of U.K. law or American law or Delaware law or anybody's law. It was simply a fight about creditors in a legitimate company's operations that became extended, overextended, and the Court also says, the whole

point of the bankruptcy system is to help people who get overextended. It's not designed to act as a mask or a shelter for a crook, and that's exactly what we have here.

MR. RABINOWITZ: I agree with your Honor.

THE COURT: We have a guy who files a petition who tells me that he's got hundreds, more than enough money to satisfy the million dollar judgment sought by the plaintiff. As soon as I say, okay, well, where is it, he goes into Bankruptcy Court and tells the Bankruptcy Court he has zippo. He lied on the stand. He committed a fraud after this case was committed against numerous plaintiffs to be.

MR. RABINOWITZ: And he should pay the piper. He should be penalized by virtue of that.

THE COURT: But this is not Nortel. This is not a legitimate -- there's no aura of a legitimacy with Mr. Kapustin at all.

MS. TEMKIN: And --

MR. RABINOWITZ: Counsel, if I just may --

THE COURT: Address the Court, Mr. Rabinowitz.

MR. RABINOWITZ: I'm sorry. Mr. Kapustin should be responsible for his acts, and if that means that he has some kind of civil liability, he should be responsible for it. If it means he has criminal responsibility, he should be responsible for it. The trustee agrees. If the trustee, to the extent it falls within his purview, sees things that

require that there be criminal referrals, the trustee will take those actions. But that's not the issue we have here.

We have four corporate debtors. Mr. Kapustin, as we all know, and I'm not saying something that is novel, these corporate debtors are not Mr. Kapustin. They are corporate entities. Our system recognizes the difference, which, all of which we believe have some assets that need to be administered and have creditors' claims that need to be fixed, and the value of those assets have to be distributed to those creditors. That is the process that we are trying to vindicate here. And that is the process that the trustee submits respectfully ought to be administered within the confines of the Bankruptcy Court rather than burdening this Court with the administration of those kinds of issues.

We have said, as an alternative, if the plaintiffs simply want to get a determination from this Court that these corporate debtors owe them money, while we think it ought to occur in the Bankruptcy Court, we don't object for that claim. We're not going to defend it. We're going to allow them to take default judgment. It doesn't matter -- it does from the creditors' standpoint, but from the trustee's perspective, fixing the claim at 100 million dollars or a million dollars, assuming it's a legitimate basis for whatever the damages the Court ultimately determines, is simply a dilution of other creditors' claims against the set of assets, and that is not

enough of an interest to cause the trustee to defend. The trustee is not going to defend if your Honor retains jurisdiction to liquidate this claim.

What we're asking is, we don't think that ought to occur, but if that's going to occur, that the other administrative steps that need to be taken in order to fulfill his statutory duties occur in the Bankruptcy Court, and that's not what plaintiffs are seeking today. They want to do asset discovery. They want to take general discovery. And they want to enforce prior orders of this Court with regard to assets which are within the traditional purview and jurisdiction of the Bankruptcy Court to administer for the benefit of all creditors. That is what we object to today.

So, your Honor, I can argue Nortel. Nortel still has a rule of strict construction with regard to the governmental unit requirement. I understand your Honor's finding that the Russian government satisfies that requirement. I respectfully disagree, but that's -- your Honor makes the ruling and I'm bound by that ruling, I understand that. But what we're saying today is it makes no sense to have piecemeal administration of these Chapter 7 cases in various courts.

And, your Honor, if I can, I'm really trying to suggest that orderly administration is served by allowing the trustee in the Bankruptcy Court to perform their function, but if I can give an example, I learned yesterday for the first time

that there is an action I believe out in the midwest somewhere.

THE COURT: Minnesota.

MR. RABINOWITZ: Minnesota.

THE COURT: Judge Doty.

MR. RABINOWITZ: Where a woman by the name of Nadia Wood filed a suit for I think copyright infringement, I haven't seen the complaint yet, and for defamation.

THE COURT: Well, you note it in your brief, the claim in the plaintiffs here, Mr. Kapustin doesn't -- when he gets sued, he thinks it's a good idea to defame the lawyers who represent the people suing him.

MR. RABINOWITZ: Understood. It seems to be a pattern of his. So, this suit is pending out in Minnesota, and as to certain defendants, I don't know who yet, the suit was dismissed for lack of jurisdiction. So, the plaintiff appealed to the Eighth Circuit and made a motion essentially to vacate the automatic stay before the Eighth Circuit to allow her claim to be liquidated in the -- out in the Eighth Circuit.

So, one of the concerns the Chapter 7 trustee has here, which would really increase the cost of administration of these cases to the detriment of creditors, because for every dollar that it costs to defend each of these claims throughout the United States, it's one less dollar that goes into

creditors' pockets, what the trustee is concerned with is if your Honor rules that you are going to retain jurisdiction to liquidate claims against these corporate debtors as opposed to allowing the Bankruptcy Court to do it, that that is going to be precedential and it is going to set off a domino effect in other proceedings.

It was interesting that in the brief that I read last night, and I did it quickly because I just learned of it, they refer to this action, and I think what they said was they thought your Honor had already ruled in favor of plaintiffs to allow this proceeding to go forward. I guess they had seen some briefs, whatever they had seen.

THE COURT: Must be reading my mind.

MR. RABINOWITZ: My concern is we're now going to have the claim liquidated here, we're going to have another claim liquidated out in Minnesota, and the potential for claims all over the country. The trustee doesn't have the resources, so to speak, to put the finger in the dike to defend all of these things, so we're going to have multiple forums, which is contrary to the bankruptcy policy of having one central forum to liquidate these claims, and all of this means what? If the purpose is deterrent effect, who are we deterring here? Sergey Kapustin, let's deter him. We don't have to deter these corporate debtors by virtue of wrongful conduct because the trustee is now in control and he as an

independent fiduciary is not engaging in any wrongful conduct. It's Sergey Kapustin and he's still here, he's still a defendant in this action. A motion to vacate stay can still be made against him. Criminal referrals are going on. All the things that need to be occurring with regard to Mr. Kapustin are going forward. All we're saying is allow for the central administration of these corporate debtors for the benefit of all creditors rather than eating everything up in professional fees to run around the country to have to address each of these issues.

THE COURT: Wouldn't Mr. Lester just be replicating what Ms. Wood and Ms. Brown and Ms. Temkin have been trying to do for some time, which is to identify the assets? In fact, they identified some here. I think we have a couple of titles in the registry of the Court. Do we not?

MS. TEMKIN: We do, your Honor.

THE COURT: So, it just seems to me that when you have someone who -- the Court has already made a finding that Mr. Kapustin, that the plaintiff has proved by a preponderance that Mr. Kapustin has engaged in multiple acts of mail and wire fraud. He has a problem telling the truth. He's likely in contempt of this Court. He files a bankruptcy petition that says I may or may not have assets. He simply doesn't -- he's too smart to be confused about who owns what cars. He appears to be hiding assets. By the time Mr. Lester figures

all of this out, Mr. Kapustin is going to have whatever assets, if it hasn't already happened, dissipated, and, in fact, the whole case suggests he's already done that simply because he has millions and millions, it seems to me millions of dollars worth of income and yet a report of no assets personally and in the four corporate cases. It just seems to me wholly inefficient for Mr. Lester to start from scratch when the plaintiffs here and in Minnesota have been working at the same goal for some time.

MR. RABINOWITZ: Your Honor, I don't believe it's a duplication of efforts. One of the things that Congress did in enacting the Bankruptcy Act and then the Bankruptcy Code is to give trustees powers that private parties don't have. So, when your Honor suggests that there is a duplication of effort, I'll address that as a factual matter, but I would point out that the trustee has the capacity to undo prior transactions, okay, that private parties do not. For instance, preferences, Section 547 of the Bankruptcy Code allows a 90-day reach-back prior to the filing of the bankruptcy for non-insider transfers and a one-year reach-back for related-party transfers.

THE COURT: Mr. Rabinowitz, I hate to interrupt you, but are you suggesting that the powers of the Bankruptcy Court or bankruptcy trustee exceed those of a District Court judge under the remedy provisions of the RICO act?

MR. RABINOWITZ: Yes.

THE COURT: In what way? Can't I -- as the judge I clerked for used to say, in a different context, in the context of the Court of Appeals jurisdiction, she said I can issue an order shutting down the U.S. government. The best the Circuit Court can do is issue a stay. Can't I -- aren't my injunctive powers at least as broad as the bankruptcy trustee?

MR. RABINOWITZ: No, they are not.

THE COURT: That's remarkable to me.

MR. RABINOWITZ: And please, your Honor, I in no way, I respect the broad powers of this Court and the purposes of this Court, and what I'm about to say is not intended in any way to undercut those broad powers or the good offices of this Court. But let me point out why there are greater powers under the Bankruptcy Code than this Court has, and let me give you a caveat to what I'm about to say. Your Honor could withdraw the reference of the entire bankruptcy case. Okay?

THE COURT: And administer it myself.

MR. RABINOWITZ: And administer it yourself. If you did that, then you would apply the provisions of the Bankruptcy Code, which would include these avoidance powers, but from a jurisdictional standpoint, if you don't withdraw the reference, those avoidance powers that exist under the Bankruptcy Code are not powers that parties before this Court

can exercise.

THE COURT: Oh, I understand. You misunderstood my question, and that was probably because it was poorly framed. I'm talking about two standalone situations. I'm not asking you to abandon the claim that the stay ought -- that the stay shouldn't apply. I'm assuming in the absence of a stay. My injunctive power has to be as broad as the power of the trustee. There's nothing the trustee can do or the bankruptcy judge can do that I can't do as a District Court judge.

MR. RABINOWITZ: If you withdraw the reference of the entire Chapter 7 case, then I agree with your Honor.

THE COURT: Okay.

MR. RABINOWITZ: If you don't --

THE COURT: In some other case. It has nothing to do with bankruptcy.

MR. RABINOWITZ: But there was no motion -- I don't mean to get far afield, and, Judge, please cut me off if I'm overstepping. Okay? But there is nothing before this Court other than a footnote in a reply brief that asks this Court to withdraw the reference. If your Honor rules in plaintiffs' favor that the stay doesn't apply, that is not the equivalent of withdrawing the reference. You would have to affirmatively make a ruling, you can, it's within your power, I would argue against it and I did in my brief, but unless you make an affirmative ruling to withdraw the reference, then by simply

determining that the exception to the automatic stay applies does not give the plaintiffs before this Court the ability to exercise the rights and powers under Section 547 of the Bankruptcy Code, and your Honor doesn't have that power.

THE COURT: All right. Well, if I just -- I just become the Bankruptcy Court if I --

MR. RABINOWITZ: You could. You could, but you would then have to administer the entire case. We would have to come before you on applications to retain counsel. We would have to come before you on every step that needs to be taken in the administration of a Chapter 7 case.

MS. TEMKIN: One of those applications would be to retain Mr. Parker in Eastern District of New York matter.

MS. BROWN: That was filed just 10 days ago, the trustee filed an application with the Bankruptcy Court to retain Mr. Parker, sanctions against whom --

THE COURT: The person I'm considering holding in contempt? How do I withdraw the reference?

MS. TEMKIN: Your Honor, we actually, we formally haven't made a motion to withdraw the reference.

THE COURT: I'll do it sua sponte.

MS. BROWN: The Court can do it.

MS. TEMKIN: The Court can do it.

THE COURT: I'm withdrawing the reference. I'm going to be the Bankruptcy Judge in this case.

MR. RABINOWITZ: Okay, Judge. I look forward to appearing before you on a regular basis to administer the case.

THE COURT: I'll be happy to do it.

MR. RABINOWITZ: Okay. That's the simple solution. Then we'll administer the case in this Court.

THE COURT: You don't have any conflicts. We won't have any conflicts.

MR. RABINOWITZ: Well, there will be no potential for inconsistent results, that's correct, your Honor. Your Honor will make all the rulings and address all the applications that need to be made.

THE COURT: Why shouldn't I do that, Ms. Temkin?

MS. TEMKIN: Your Honor, you absolutely should, if you want more work, and this would be -- you know, this Court would be the Appellate Court for the Bankruptcy Court anyway, and if -- I do -- and this is why we did come to this Court, your Honor, with our request to find that there are certain exceptions to the automatic stay, because of this Court's intimate knowledge of the massive fraud that has been committed by Mr. Kapustin.

And to alleviate trustee's concern, Mr. Kapustin is not a separate entity from the Global corporate defendants. They are his alter egos, and we have plenty of testimony, he used all the bank accounts and just everything was mixed up and

there was just complete disregard of any corporate entity, and we will be filing a motion to dismiss the bankruptcies in the Bankruptcy Court anyway. And when there is such a finding of underlying massive fraud, those bankruptcies will be dismissed, and there's case law supporting that. So, yes, your Honor, of course you can.

THE COURT: I'm taking the whole kit and kaboodle.

MR. RABINOWITZ: Can I address that briefly, what counsel just said?

THE COURT: Sure.

MR. RABINOWITZ: Let's think about what counsel just said. Counsel supports the withdrawal of the reference and then is going to make a motion to dismiss the bankruptcies. That's what I heard counsel say. Do I misunderstand?

THE COURT: She said there's a basis to do it.

MS. TEMKIN: Exactly.

MR. RABINOWITZ: Is that the intent, may I inquire through the Court without addressing counsel if that's the intent?

THE COURT: Well, I don't know why -- I would have to rule on that.

MS. TEMKIN: Not now, your Honor. I'm not making an application. I'm just saying that this would be, you know, within -- that's what could happen.

MR. RABINOWITZ: Well, all I'm --

THE COURT: Why would that be bad if it's fraudulent?

MR. RABINOWITZ: Here is why that would be bad? Because whose interest then is being furthered here, all the creditors of these corporate debtors or simply plaintiffs?

MS. TEMKIN: It's not --

MR. RABINOWITZ: Counsel, if I can finish my thought, I have not interrupted you.

THE COURT: I would have to rule on that. If there are other creditors that are victims, too, I would not be acting as a court of equity to favor one victim over another unless there were compelling reasons to do it. You look at that UCC-1 or that credit application, I'll bet you it's very different than those bankruptcy petitions.

MS. TEMKIN: And, your Honor, you've been asking Mr. Kapustin and corporate Global defendants for weeks to present to your Honor evidence of what cars were secured, what cars are financed, and none of that -- NextGear came out of nowhere. We were not aware of that, absolutely.

MR. RABINOWITZ: And the trustee, because that's what the trustee does, that's what he's trained to do, that's his special expertise, even though this Court and these plaintiffs attempted to get that information, we got that information in a matter of days, and we identified those cars and we have taken the steps to try to get control of those cars to liquidate them. This is what trustees do. This is their

statutory responsibility.

But I want to finish my point about dismissal. If in fact, hypothetical, your Honor withdraws the reference and it is plaintiffs' intent thereafter to move to dismiss these bankruptcy cases and your Honor grants that motion, what will be left is simply this action where the plaintiffs will have the rights. That serves only the purpose of plaintiffs and not the general creditor body who will be harmed and will undercut the very purpose of the bankruptcy process, which is to avoid the race to the courthouse in favor of one particular creditor over another particular creditor. I don't see how anybody's interest other than plaintiffs' interest in this action is served by that, your Honor.

MS. TEMKIN: That is not true.

THE COURT: Well, I don't have that before me, and I just bit off enough right now without having to worry about that. So, I want -- can you submit an order, please, Ms. Brown and Ms. Temkin, withdrawing the reference of both the corporate and the personal? It just doesn't make any sense to, in light of the ongoing contempt proceedings, the injunctions I've issued, the apparent fraudulent bankruptcy petitions, the numerous phone calls that I am getting, letters from the Russian Consulate General, to have this thing bifurcated.

I recognize and respect Mr. Rabinowitz's and Mr.

Lester's efforts so far and believe that for the present there is no reason why those efforts can't continue, but they will continue before me so that I can balance the interests of all the respective parties here in an appropriate way. So, I'm here, Mr. Rabinowitz. Whatever orders you want or need to administer the estate of those, of the four corporate entities, I'll be happy to hear those. You may have to educate me a little bit on the Bankruptcy Rules. I'll start reading them. But it will just make me a better appellate judge when I get appeals to have my own experience in these matters.

MR. RABINOWITZ: Your Honor, may I address two issues? The first is that there are procedures in place. As your Honor has local civil rules, there are local Bankruptcy Rules and there are Bankruptcy Rules as well. This will be a learning experience for both of us, and it may be inappropriate to address this issue on the record. If your Honor says so, we can do it off the record, but I would need to have some process of communication so that we can talk about how to implement those local Bankruptcy Rules and Bankruptcy Rules consistent with your Court's, your Honor's practices.

THE COURT: Well, I assume I'm going to follow the Bankruptcy Rules, both the general ones and the local ones, and you can just assume that I'm the new Bankruptcy Judge in

the District of New Jersey. If there's something that I want to do that you think violates those rules, you'll just tell me and I'll figure out whether I create an exception for myself.

MR. RABINOWITZ: Your Honor, the second issue, and this is a very difficult issue always to raise, because I look forward to the opportunity of appearing before your Honor and administering this case going forward, but the total withdrawal of the reference is an unusual result, based on my experience. I've been involved in a few, Bevel Breslin before Judge Debevoise 30 years ago, but it doesn't happen a lot.

THE COURT: Right. Which was a fraud case, by the way.

MR. RABINOWITZ: It was a fraud case, that's correct. I would like an opportunity to consult with the trustee to let him know what has transpired with regard to the withdrawal of the reference, and I would ask if your Honor would entertain a short stay of the enforcement of the order to allow us to analyze how to move forward. I'm not suggesting that has any significance or meaning, but just to give us a breathing spell. There is an automatic 14-day stay under Rule 62(a) of the Federal Rules of Civil Procedure which may or may not apply because this was -- could have been considered an injunction hearing of some nature, and I'm wondering if your Honor could make some finding or ruling that that stay continues in effect for 14 days.

THE COURT: And what does the stay do?

MR. RABINOWITZ: It just keeps, maintains the status quo for that 14-day period.

THE COURT: Are you going to do anything for 14 days, Ms. Temkin? Do you have any plans to? Do you want me to do anything in 14 days?

MS. TEMKIN: Well, your Honor, just regarding the websites, we would like the orders to be back on the websites, so that they -- you know, the orders that the websites have been shut down by the orders of the Court and exhibiting those orders. We would like to have that because potential new victims are still coming up, and we've had more than 100 now.

The problem, I just wanted to say, regarding the fair administration of this in the Bankruptcy Court, the trustee has not even said that -- there is a lot of foreign creditors. They have absolutely no familiarity with how to file any proofs of claim and they are just desperately looking for something, and they could be coming, it would be easier for them to come into this Court.

MR. RABINOWITZ: Your Honor, we have responded to every single creditor request with instructions as to how to file proofs of claim. So, whether it's in the Bankruptcy Court or the District Court, that result is not going to change. How the claims are filed will remain the same, although the question now becomes, do they get filed in the

District Court clerk's office or do they still get filed in the Bankruptcy Court? They have a procedure for doing that which the District Court does not, which is something that we'll have to address.

THE COURT: Right.

MR. RABINOWITZ: All I'm asking is that the rule, the automatic stay set forth in FRCP 62(a), that your Honor rule that it remains in effect for 14 days to give the trustee an opportunity just to understand the ramifications of your Honor's ruling and determine how he wants to go forward.

THE COURT: Well, let's start with -- is there anything else you want me to do in 14 days?

MS. TEMKIN: No, your Honor.

THE COURT: Put the notices up on the website?

MS. TEMKIN: Right.

THE COURT: All right. Do you want to depose Mr. Kapustin, continue the deposition of Mr. Kapustin?

MS. TEMKIN: We would like to do that. We haven't finished the deposition of Ms. Kapustina, and we almost finished the deposition of Mr. Kapustin with regard to the assets, but we would like to then proceed in the normal fashion with regard to discovery, and we would also like to actually supplement our motion for sanctions because of the new development of Mr. Parker wanting to continue to represent Mr. Kapustin, despite numerous representations to this Court

that it was unethical for him to do so, and we would like to make that just supplemental submission.

THE COURT: That's just remarkable to me.

MS. TEMKIN: I know. And we just haven't had time to do that, but we would like to make the supplemental submission and actually have a hearing, maybe not within those 14 days, but whenever it is convenient to the Court to have a hearing on actually the pending motions for sanctions, and that one should not be interfering with any administration of the assets.

THE COURT: All right. I'm not staying anything, Mr. Rabinowitz, for 14 days. There are victims -- talk about public interest and fraud. The Nortel case specifically points to consumer fraud cases as the type of cases that should be exempt. It talks about fraud cases. I am getting phone calls in my chambers from people in the Caribbean who sent tens of thousands of dollars allegedly to Mr. Kapustin, and there's little doubt that there's truth to it because there are no cars and the money is gone and Mr. Kapustin just admitted on the stand that he takes people's money and decides later whether he's going to give it back to them or not. It's the most remarkable case I've ever seen in my life. People are being victimized as we speak and with no recourse, nowhere to go, no one is listening to them, no one is doing anything to help them. I'm getting phone calls in my chambers.

There's no need for a stay. The stay is absolutely against the public interest.

MS. BROWN: Your Honor, if I may, perhaps this would be to the benefit of the creditors, the victims and everybody to place, in addition to your Honor's orders on the website, to place instructions on the website, on the company's website --

THE COURT: Very good suggestion.

MS. BROWN: -- of how to file proofs of claim so they don't come bother you or come directly to you, but clear instructions similar to class actions of how to proceed and where to file.

THE COURT: Draft something up, put it in an order, direct it to Mr. Lester, directing Mr. Lester to restore to the website my orders and an instruction on who to contact, I guess it would be Mr. Lester at this point, to assert a claim in the bankruptcy case that I'm now taking control of.

MR. RABINOWITZ: Your Honor, would the claims still be filed with the clerk of the Bankruptcy Court or the District Court?

THE COURT: For now, yes.

MR. RABINOWITZ: To continue to be filed.

THE COURT: You make a good point about there are procedures in place. I'm looking to streamline things, make things more efficient, to help put in a claim to see whether

they have a valid one for these people who are writing me, sending me e-mails, calling on the telephone. Better, better in the Bankruptcy Court, as you point out. I don't know how this is all going to sort out. I don't know whether those 260 cars, which are probably the only clear asset at this point, will ever be cash or ever be distributed to anybody or who will get what. Query where all the millions of dollars might be. Maybe it's a hotel in Finland. But in any event -- or Iceland. Where is the hotel?

MS. TEMKIN: In Finland, your Honor.

THE COURT: Finland. There ought to be a mechanism for people to file claims. The Bankruptcy Court seems to be the most efficient. It's set up for those kinds of things. There are forms. There is someone who is presumably neutral. That's the problem I have with getting these phone calls into my court. I've made my findings, but there's no final judgment in my case. I shouldn't be talking to victims on the telephone. I shouldn't be -- I should be allowed to answer my own telephone.

So, Ms. Brown, your suggestion is a very good one. Mr. Rabinowitz has pointed out that this is what Mr. Lester does for a living, apparently, and what the statutory charge is and statutory framework is, I'm not seeking at this point to disrupt any of that. In fact, I think it makes sense for me to, as I already have, bring it under my umbrella so that it

can serve as a proper adjunct to the case pending before me and to allow for the orderly presentation and consideration of claims and the likelihood that the amount of claims will far exceed attainable assets in this matter.

So, draft an order directed to Mr. Lester restoring to all the relevant websites my order shutting them down and creating instructions for anyone who believes that it may be a victim of fraud to contact the -- give them the phone number of the FBI, the U.S. Attorney's Office, Mr. Lester, the state Attorney General in New Jersey, the state Attorney General in Pennsylvania, the Russian embassy, or wherever they may be, so that they can have an opportunity to put proofs to their claims.

MR. RABINOWITZ: Your Honor, one last inquiry, your Honor, and that is, counsel for plaintiffs has indicated they would like to proceed with asset discovery. If your Honor is going to apply the Bankruptcy Rules in this case as withdrawn before your Honor, those rules do address how a creditor can take discovery with regard to assets generally. It's Rule 2004.

THE COURT: All right.

MR. RABINOWITZ: And I would ask that plaintiffs be required to comply with that bankruptcy rule in attempting to take that kind of asset discovery rather than utilizing the Federal Rules of Civil Procedure, which are different in terms

of scope and procedure than that bankruptcy rule.

MS. TEMKIN: And we completely disagree, your Honor.

THE COURT: Why is that?

MS. TEMKIN: Because we're in this action, and we are not just asking for asset discovery. We would like to go into the conduct of general discovery and we would like to prove merits of our case. Asset discovery is intertwined with the merits of our case. There is money laundering. There is wire -- there's fraud, and they all go into assets and into the cars and what happened, and we cannot be limited by the Bankruptcy Court's rules for that because we need to prove merits of our case. And we're not --

THE COURT: Okay. Mr. Rabinowitz, the problem is there are non-debtor defendants in this case, and again, I don't know where those millions of dollars are, but they could very well be in the hands of people affiliated with Mr. Kapustin. So, he would have relevant information about that.

MR. RABINOWITZ: He should be deposed. I'm not suggesting he can't be deposed. I'm suggesting that if they want to go beyond the issues in dispute in this action, which asset discovery -- if they find -- let's assume your Honor rules in their favor and grants them a 100 million dollar damage judgment against --

THE COURT: I've already got a consent order. They promised to pledge $400,000 into the Court, Mr. Kapustin did,

on behalf of the corporate entities.

MR. RABINOWITZ: If in fact -- I guess I'm not sure -- if in fact the corporate entities don't have that $400,000 but Mr. Kapustin does individually --

THE COURT: Well, I have to look at the terms of the order, but let's say the corporate entities do, shouldn't the plaintiffs be able to conduct discovery to find the money that he said he had?

MR. RABINOWITZ: Well, that is the very antithesis of the bankruptcy process. What that is going to allow is these particular creditors to take -- let's assume hypothetically, I'm just making a hypothetical to make my point, if that were the only asset, the $400,000 that these corporate debtors had, to satisfy your Honor's ruling that at the end of the day, even though there are numerous other creditors in this case, the victims that your Honor is getting calls about all the time, that $400,000, the only asset is going to go to satisfy this particular claim.

THE COURT: No, no, no. I now have the bankruptcy case. It is going to go into the registry of the Bankruptcy Court and I'll decide later.

MR. RABINOWITZ: And that's the trustee's duty, not theirs as a creditor against the case.

THE COURT: Let me ask you this. Will Mr. Lester take on the responsibilities for enforcing my order? What

will be Mr. Lester's next step in terms of identifying assets?

MR. RABINOWITZ: Well, we've taken a number of steps already, but one of them is what's called a 2004 examination of Mr. Kapustin, serving subpoenas on third parties who have records. We've already served each of the banks with subpoenas. We're waiting for the returns of those. But taking what's called a 2004 examination of relevant parties, including Mr. Kapustin, serving subpoenas on third parties to get documents.

THE COURT: Is it scheduled yet?

MR. RABINOWITZ: The subpoenas have gone out and we have return dates on those subpoenas. We did have a 341 meeting and which counsel for plaintiffs attended, and we have not yet scheduled the 2004 examination, no.

THE COURT: All right. I'd like Mr. Lester to schedule it sooner rather than later. Ms. Temkin, if you want to take his deposition on asset discovery prior to that, then draft an order to show cause to Mr. Lester why, issued by me, why you shouldn't be allowed to proceed, and Mr. Rabinowitz can come in at the time and argue why you shouldn't, but Mr. Lester should proceed quickly.

MR. RABINOWITZ: And we will. And we wouldn't oppose their taking asset discovery as a creditor. If I suggested that, I wasn't -- I didn't mean that, simply not as part of this action, which is also pending before this Court, but

under Rule 2004, which is the appropriate bankruptcy rule that creditors use to identify assets.

THE COURT: Okay. Well, why couldn't you just, you know, ring the bell, have a 2004 asset discovery in the context of the bankruptcy?

MS. TEMKIN: And then I will have another deposition.

THE COURT: Ring the bell to stop again, and then say now we're taking the deposition in the other case?

MR. RABINOWITZ: The trustee doesn't represent Mr. Kapustin in his individual capacity. So, who -- who is plaintiff going to be taking the fact deposition in this particular action of Mr. Kapustin as a former officer and director and shareholder, or of the corporate debtor under 30(b)(6)? This is very confusing, your Honor. It is not clear to me. We don't represent, the trustee doesn't represent --

THE COURT: This is what I don't want to happen, Mr. Rabinowitz. I don't want this kind of procedural morass to prevent this matter moving forward. Mr. Dobis represents Mr. Kapustin. Yes, Mr. Dobis?

MR. DOBIS: So far, your Honor, you denied my motion without prejudice to withdraw. So, that's why I'm here.

THE COURT: So, he'll represent him in his personal capacity.

MR. RABINOWITZ: Might I inquire of counsel? I

thought you represented the corporate debtors.

MR. DOBIS: We represent all of the defendants.

MR. RABINOWITZ: All defendants, okay.

THE COURT: So, and as far as his being an officer, I assume that -- well, does he have any status as an officer?

MR. RABINOWITZ: He does not.

THE COURT: So, that's angels dancing on the head of a pin then. Right?

MR. RABINOWITZ: I understand that, but I don't want the confusion. I don't want plaintiffs taking the position that the trustee has to defend this action in some way and respond to discovery. We have not appeared in the action. We're not a party to the action. We have no duty or obligation to respond to discovery in this action. With regard to the 2004, it's not directed to the trustee. It's directed to third parties. That could be Mr. Kapustin in his individual capacity.

THE COURT: Well, that doesn't mean -- well, what information does the plaintiff have in the bankruptcy proceeding as to what the trustee has discovered in terms of assets?

MR. RABINOWITZ: Well, we will share that information because a creditor has the right to know what the trustee is doing. We'll share whatever information that we have with regard to assets. But this is creating, unfortunately, and I

understand your Honor's ruling, procedural difficulties. It isn't clear ultimately at the end of the day, other than liquidating a damage claim against these corporate debtors that would be entitled to distribution, exactly how this plays out. I can't conceptualize it.

THE COURT: Well, here's what I don't want it to play out, how I don't want it to play out. I don't want Mr. Kapustin's filing of fraudulent, what appear to be fraudulent bankruptcy petitions to frustrate or bar his disclosing information he has about the dissipation of his assets in the hands of third parties who are defendants in my case. That's precisely what Nortel and all the case law says the Bankruptcy Code should not be used, as a shield, a mask, a hide-out for crooks.

MR. RABINOWITZ: And Mr. Kapustin can't do that, and if he is, he ought to be sanctioned and penalized.

THE COURT: All right.

MR. RABINOWITZ: But we're talking about the corporate debtors.

THE COURT: Well, we're talking about closely -- 100 percent owned corporations, that according to the petition that I read has no offices, has no books and records, has nothing. It's a fiction.

MR. RABINOWITZ: It does have books and records and it does have offices. We've taken possession of the

Pennsylvania office. We have taken possession of the books and records that are set there. There is a Delran office and an Elizabeth office as well which are in some form of subtenancy.

THE COURT: I should say it has no formal structure. I'll go through the petition. I'll go through what it doesn't have and what it does have.

MR. RABINOWITZ: The petitions are wholly deficient, your Honor.

THE COURT: I'm sorry?

MR. RABINOWITZ: The petitions and schedules are wholly deficient. I didn't file them.

THE COURT: You're a very careful lawyer, Mr. Rabinowitz.

MR. RABINOWITZ: I didn't prepare them, I didn't file them.

THE COURT: I'm not so careful perhaps. It has no patents, copyrights, licenses, customer lists. It has no boats or accessories, aircraft, office equipment. It has no machinery. It has no inventory. Other than I may have a couple of cars, it has nothing.

MR. RABINOWITZ: And I agree. And that's what the trustee is trying to do to find out what's there, so we can marshal them, liquidate them to cash, and distribute them to creditors.

THE COURT: Well, now you tell me it has an office location. So, it must have equipment.

MR. RABINOWITZ: It does. It has some office equipment there, yes.

THE COURT: How many fraudulent statements do you need in a petition before the trustee will call up the U.S. Attorney's Office and say this is a fraud?

MS. TEMKIN: This is the first thing we asked -- well, I spoke to Mr. Rabinowitz's associate, Barry Roy, but this is the first thing that we asked.

THE COURT: I'll deal with these things, Mr. Rabinowitz, as they come up. I'll follow the law like anybody else. You'll help me sort through it.

Ms. Temkin, can you draft an order directed to Mr. Lester restoring to the websites my orders as well as directions, and consult with Mr. Rabinowitz and Mr. Lester and Mr. Dobis about what they should say. If the trustee, Mr. Rabinowitz, has any intention of hiring Mr. Parker, you should make that application to me.

MR. RABINOWITZ: Well, there will be a record that will be transferred from the Bankruptcy Court up to the District Court with everything that's gone on.

MS. BROWN: His application was already --

THE COURT: He moved to withdraw -- he said he had irreconcilable conflict with Mr. Kapustin. I don't know how

Mr. Parker can continue to represent Mr. Kapustin.

MR. RABINOWITZ: He wouldn't be. Nobody is seeking to have him represent Mr. Kapustin. So the record is clear, your Honor now having withdrawn the reference, can deny the application which has yet to be granted, but just so there's full disclosure so your Honor is aware of what's transpired so there is every bit of information that I have, that your Honor has on as many issues as I can do, including this issue, this is what transpired. There is an action, as I indicated, pending in the Eastern District of New York.

THE COURT: I'm very familiar with it. Mr. Parker told me that money was coming here to satisfy these plaintiffs. That was part of the consent order. He utterly failed in his assurances to the Court, and to have him litigate in that matter after his representations to this Court and putting off the contempt proceedings and everything else because of his representations that that money was as good as gold just seems to me to be remarkable. He is not the person who should be litigating that case on behalf of those corporate entities in New York.

MR. RABINOWITZ: And he's not.

THE COURT: They ought to find somebody new who can stand by what he says.

MR. RABINOWITZ: And he's not. But can I disclose to the Court so your Honor will have all the information on this

issue as to what transpired?

THE COURT: Please.

MR. RABINOWITZ: Thank you.

THE COURT: I'm just telling you there's a history here.

MR. RABINOWITZ: I understand. And I don't want that history in any way to taint adversely, and if I am overstepping my bounds, your Honor will direct me and tell me, I don't want that history to make it more difficult to administer the case. And so, in that interest, I want your Honor to know exactly what transpired here, and there will be further proceedings because there have been objections to the retention of Mr. Parker.

So your Honor is aware, here is what transpired. We identified that action as a valuable cause of action. Your Honor is aware from your Honor's own experience that when you have a bankruptcy case that has no money in it, it is difficult to retain professionals to pursue actions and take steps. Right now there is no cash in this estate. We hope that there will be in the future, but professionals are reluctant to get involved in cases when they have a risk of nonpayment.

THE COURT: Can you retain them on a contingency basis?

MR. RABINOWITZ: Yes, you can, if they're willing to

do that, exactly right, your Honor. So, in collecting the information necessary for the trustee to administer this case, we identified this cause of action as having value to the estate. Here's the value we see in it. There are roughly 17 vehicles that Empire has in its possession, Hitrinov. We don't believe he has a right to those vehicles. In addition, he took $400,000 from other vehicles that belonged to these corporate debtors that were sold and applied it to a debt. The question is, did he have a right to do that? If he was a secured creditor who was duly perfected, then he could take the proceeds of his collateral to satisfy his secured debt. To date, we can't determine whether he's a secured creditor or not. He never filed a UCC-1. There's no written security agreement. At best he has an argument that he has a possessory lien as a warehouseman. We think that is a questionable argument on his behalf.

So, ultimately, the Court, it is going to be your Honor, if a court of competent jurisdiction determines he's unsecured, he didn't have a right to take that $400,000. So, if you assume the vehicles are worth a hundred, just to pick a number out of the air, he took an additional $400,000 and applied it to his debt, didn't have a right, fraudulent conveyance, possibly preferential, so that's $500,000.

In addition, he sold vehicles that belonged to the corporate debtors, roughly 100, $150,000, and he put it in his

pocket. So, not only did he not have collateral, he didn't have a debt associated with that $150,000. So, if you take those numbers, 100, plus 400, plus 150, you've got roughly $650,000 that is the value, best case, without taking into consideration costs of litigation, that we could collect against this individual.

THE COURT: But Mr. Hitrinov has already resisted an effort to be compelled to turn back those monies over out of the Eastern District, has he not?

MR. RABINOWITZ: Yes, but that is what the suit was about. The provisional remedy was denied. The fact that a provisional remedy was denied doesn't mean that he isn't liable for both those cars and that money.

THE COURT: True.

MR. RABINOWITZ: So, he has made an offer to us. He said, I want to settle it. I recognize that I have risk here and I want to settle it. We said, how do we get this done quickly, because speed, everybody is interested in speed here, how do we get it done quickly at the lowest possible cost that we can do it? Mr. Parker said that he believed, based on his experience in this particular action, that he could facilitate a quick recovery that creates an estate that allows us to do other stuff, including going into Finland and retaining counsel, bring an ancillary proceeding to try to get those cars. So, we sought to retain.

As a result of our application which has not been granted by anybody, we got an objection from Mr. Hitrinov's counsel, who filed an objection and said, would you adjourn it, I will make you a settlement offer. So, we adjourned the application to retain Mr. Parker, so it hasn't been granted. The fact that we made the application facilitated us getting the offer and we're now awaiting a written offer.

Now, one of the things that we've done to facilitate is we retained an appraiser, Alan Atkins, recognized in this jurisdiction, and he is today, or depending on the weather, is going in to appraise these vehicles to get a dollar value associated with it that will facilitate the offer. So, that's what's going on, we're trying to bring that money into the estate ultimately to provide for some distribution to creditors and provide a war chest that allows us to do the other things we're attempting to marshal assets.

THE COURT: Why would Mr. Parker want to do this?

MR. RABINOWITZ: Because he -- well, your Honor said contingency fee. The proposed arrangement was to get him paid a portion of his unpaid fees, this is his motivation for doing it, that he incurred prior to filing of the bankruptcy, and without having to go get new counsel who would have to come up to speed, who probably wouldn't be retained on a contingency basis but would require an hourly fee, we thought that that was a sound exercise of business judgment by the trustee.

But it's not going to happen. We have stopped trying to retain him and we are waiting simply for an offer, and if we can get an offer without retaining counsel, we're not going to retain counsel. We're simply going to seek approval under 919 of that offer to settle the Hitrinov claim. And that's what's going on.

MS. TEMKIN: And the application has been filed. Mr. Parker has filed a declaration with the Bankruptcy Court, signed declaration that he has absolutely no conflicts, no ethical conflicts or no other conflicts whatsoever with Mr. Kapustin or any Global corporate defendants, and that should be -- also that's why we would like to put a supplement to our motion for sanctions, and we don't want to get into this right now, but this --

MR. RABINOWITZ: That's absolutely --

THE COURT: Mr. Lester will not retain Mr. Parker.

MR. RABINOWITZ: Understood, your Honor. I need the record to be clear. What counsel has just said is not what the law provides. As special counsel under 327(e) of the Bankruptcy Code, a professional can have represented a debtor prior to the filing of the bankruptcy.

THE COURT: That's not the issue, Mr. Rabinowitz. It's Mr. Parker's representations to this Court about his relationship with Mr. Kapustin.

MS. TEMKIN: And we've been urging Mr. -- again, I

communicated mostly with Mr. Roy, who is Mr. Rabinowitz's associate, I sent him all the filings and we've explained the situation, and none of that was taken into account.

THE COURT: I'm assuming that their goal is to take advantage of the situation to get the money into the estate.

MS. TEMKIN: Sure.

THE COURT: But that doesn't mean that counsel who has a conflict should be the lead on that. And any fees, in light of the pending application for sanctions, the misrepresentations that were made to this Court, the retention of any fee by Mr. Parker would have to be subject to review of this Court and approval of this Court.

MR. RABINOWITZ: Understood. All fees would have to be subject to your Honor, now that the reference has been withdrawn. Can I ask this --

THE COURT: Especially when I've got victims, apparently, who are going to get nothing.

MR. RABINOWITZ: If I withdraw the application -- the application is not going to be acted upon, and your Honor can direct that having withdrawn the reference, if I withdraw the application today prior to getting the offer from Hitrinov, I believe that that will affect Mr. Hitrinov's willingness to make his offer. Can we wait -- I will withdraw, I'm representing to the Court that I will withdraw the application. Is it possible to wait until we see if Mr.

Hitrinov makes an offer or not before we formally withdraw the application?

THE COURT: Why would -- what magic powers does Mr. Parker have over Mr. Hitrinov?

MR. RABINOWITZ: I can't speak to causality, I can only speak to correlation. The fact is after we filed the application, that's when we got the overture from Mr. Hitrinov's counsel to try to settle. That's the only explanation I have. If your Honor says no, I understand, and I will withdraw the application.

THE COURT: Well, the application should be withdrawn.

MR. RABINOWITZ: Okay.

THE COURT: And I'll leave it to you to be -- disclose what you feel like you need to disclose or not disclose to Mr. Hitrinov and his counsel. It's kind of hard, Mr. Parker is not here to be heard, it's kind of hard for me to say I would -- under no circumstances would I hire him. My point of don't hire him is, don't hire him without my approval and having a really good reason to do it because I have every reason to think it's wrong.

MR. RABINOWITZ: We're not going to. Withdraw the application and we won't take those steps at this point in time.

THE COURT: Well, there's an application. Until it's

approved, you can't hire him, right?

MR. RABINOWITZ: That's correct. We have not hired him. You've directed me to withdraw the application, which I will do.

THE COURT: Well, I'm sorry. Perhaps that's unwise, and the reason I say that is Mr. Parker is not here to defend himself.

MS. TEMKIN: That's why we would like to do a supplemental submission and maybe have another hearing on all that.

THE COURT: If after you have reviewed -- have you reviewed the transcripts in this case?

MR. RABINOWITZ: I have not, no.

THE COURT: Well, Mr. Lester ought to or you ought to and understand what my concerns are about Mr. Parker proceeding to represent the corporate entities in this matter. If you believe after reading those transcripts and reading what has been said to you by the plaintiffs that it would be appropriate to do so, then you can continue to press your application. If you believe after reviewing what's gone on in this case that that application should be withdrawn, you should withdraw it. I'm not going to rule on it in a vacuum. I just now took over the case. I haven't read the papers on the issue. But I have grave concerns about Mr. Parker continuing to represent the corporate entities in this.

In fact, he moved to withdraw on this matter and I actually granted it, I believe, except for purposes of the enforcement of the -- I basically designated Mr. Dobis. Mr. Kapustin accuses Mr. Parker of lying. Mr. Parker accuses Mr. Kapustin of lying.

MR. RABINOWITZ: But Mr. Kapustin no longer stands in the shoes as an officer, director --

THE COURT: As a legal matter, but as a factual matter, those are his companies. He knows everything about them. It may very well come to be that any meaningful discussion about the claims --

MR. RABINOWITZ: Absolutely not.

THE COURT: He's absolutely a fact witness, right?

MR. RABINOWITZ: He would be a fact witness with regard to the claims.

THE COURT: How could Mr. Parker go into the Court in the Eastern District or engage in a settlement in which he asserts fact A that comes out of the mouth of a client that he's accused of lying? How could you do that? How could any lawyer do that? How could you, Mr. Rabinowitz, counsel Mr. Lester to let that happen? You wouldn't do that, would you?

MR. RABINOWITZ: I would not, your Honor.

THE COURT: Well, think about it.

MR. RABINOWITZ: But the claims are different by virtue of these special powers that the trustee now has.

THE COURT: That's a legal matter.

MR. RABINOWITZ: I can prove my case without Mr. Kapustin. I believe today, based on what I know, I could prove my case in the Eastern District without having Mr. Kapustin as a fact witness. Don't hold me to that, that's my -- I'm sorry. I was overly -- that was my speculation. I think there is a likely, a possibility that I could prove my case.

THE COURT: I'll grant you that, but it would be the rare case. I think you should look at that application. I think you ought to look carefully at the record in this matter and see whether or not Mr. Parker can actually truly represent the interests of the corporation when its principal -- when he has accused its principal, former principal, I guess I'll call him, of lying to him in a matter before this Court. Mr. Parker's defense in the contempt matter is that Mr. Kapustin told me I had all these assets. And I can't think of a lie that goes more central to the issue of the bankruptcy, and to have the bankruptcy trustee hire the lawyer who is accusing the principal, it just seems to be an irreconcilable conflict, but I'll leave that to you to examine, apply your professional standards to it, and let me know whether you want to withdraw that application or continue it. Right now it's not -- I just now took the case. I don't have it to rule on. So, you're going to submit something and I'll set a hearing.

I should have just a general, now that I'm going to be -- what do I have two weeks from now? Can you bring Mr. Lester before me next time, Mr. Rabinowitz, so I can meet him?

MR. RABINOWITZ: I will, absolutely.

THE COURT: Who picks him, by the way?

MR. RABINOWITZ: There is a panel of 60 some odd individuals who have been prequalified by the Department of Justice, it's what's called the panel, and then when a case gets filed, it's like -- it used to be the clerk would go into a box and pull it out, but it happens randomly by computer now, they just go on that 60 panel and they randomly select him.

THE COURT: Who is the U.S. Trustee for this district?

MR. RABINOWITZ: Well, the U.S. Trustee has resigned -- retired, I'm sorry, so they picked an interim U.S. Trustee to serve until they pick a permanent U.S. Trustee, and unfortunately, I don't remember the name of the new interim.

THE COURT: Who was the old one? Was it Ms. Stainer?

MR. RABINOWITZ: No, you're thinking of Ms. Staiano.

THE COURT: Staiano.

MR. RABINOWITZ: That goes back a couple generations ago. It's Roberta -- don't get old.

THE COURT: That's quite all right. But is it fair to say that the U.S. Trustee is aware that this matter has

been referred to the U.S. Attorney's Office?

MR. RABINOWITZ: I can't speak to that. I don't know the answer to that.

THE COURT: All right. Is there any reason why -- well, I'll take that up with Mr. Lester when he appears before me.

MR. RABINOWITZ: Your Honor, it is both appropriate for your Honor to make the referral and for Mr. Lester to make the referral as well.

THE COURT: Well, I only know what comes from the mouth of the witnesses on the stand and the documents that have been submitted to me. I think Ms. Brown, Ms. Temkin know a lot more than I know at this point, and not that they've been hiding from me, they've been very forthcoming, and I assume Mr. Lester's efforts, as I said, I don't know how anyone can examine those bankruptcy petitions and not just shake their head. They're just remarkable documents to me. I prosecuted bankruptcy fraud. I prosecuted cases with a lot less evidence and examples of misstatements in bankruptcy petitions.

MR. RABINOWITZ: Your Honor, just so the record is clear, so nobody accuses me of not giving disclosure, when we identified those deficiencies, immediately with regard to the inventory, counsel to the debtors did provide us with written inventories of vehicles. Now, they should have been on the

schedules. They weren't. But when we asked for them, they did provide us with those inventories. So, are they complete? I don't know yet.

THE COURT: Have you seen those?

MS. TEMKIN: We haven't.

MS. BROWN: We have not.

THE COURT: Any reason why the plaintiffs shouldn't have them?

MR. RABINOWITZ: They can see them. They're a matter of public record.

THE COURT: Please direct Mr. Lester to turn them over to the plaintiffs.

All right. I have a trial on -- let me see. That's too far in the future. I start a trial on the 20th. What's today? Today is the 6th. Monday is a holiday. Well, why don't we take this up at lunchtime, 12:30 on Tuesday, January 20th.

MR. RABINOWITZ: That's a status conference, your Honor?

THE COURT: Status conference.

MR. RABINOWITZ: Give me the date again, your Honor.

THE COURT: January 20th, 12:30. I'd like Mr. Lester to appear. You're going to submit an order for the websites?

MS. TEMKIN: Yes, your Honor.

MS. BROWN: Yes, your Honor, and we will be glad to

assist the trustee with the Russian language portion of the instructions.

THE COURT: I appreciate that.

MR. RABINOWITZ: This order, your Honor, is to re-establish the websites in this Court? I'm sorry. Not having been involved in the proceeding --

THE COURT: The websites were up and then I directed that notices be placed on them, and I guess that's fallen away. Perhaps Mr. Kapustin abandoned them. What happened, Ms. Brown?

MS. BROWN: They were there for 24 hours and then Mr. Kapustin removed those notices and filed for bankruptcy simultaneously.

MS. TEMKIN: And shut down the websites.

THE COURT: All right. I know you've told me that and I guess it was lost.

MS. BROWN: On October 9th, your Honor ruled for us to appear for an order to show cause against Mr. Kapustin as to why the notice should not be placed on the websites. Mr. Kapustin represented and Mr. Dobis represented in court that they voluntarily agreed to this order. They placed the orders on the websites I believe October 30th, and they removed them at the time of filing bankruptcy on November the 4th.

THE COURT: All right. Well, I entered this order pursuant to the RICO statute, Mr. Rabinowitz, as an interim

remedy because of what appeared to me not only the likelihood but the certainty that there were many victims out there. Again, they are writing me, they were calling on the telephone. They interacted with Mr. Kapustin and his company through the corporate entities through a website from remote locations around the world. That website is their only window into what happened to their money. It's vital that that website be maintained and that there be notice that it was shut down by order of this Court and provide direction to potential victims pursuant to my remedial powers under the RICO statute. The trustee apparently would have the ability to --

MR. RABINOWITZ: We have no ability to control that website. If it's down -- does it require an outside provider to maintain that website?

THE COURT: Well, it had one. Mr. Kapustin talked to somebody.

MR. RABINOWITZ: And does that provider require payment of money? We have no money to pay anybody to provide any business services in this regard. If your Honor is going to direct this order, it should be directed to Mr. Kapustin in his individual capacity. These estates have no money, none. There's not any money to pay anybody.

THE COURT: Well, Mr. Dobis, are you in contact with Mr. Kapustin?

MR. DOBIS: No, your Honor.

THE COURT: Where is he?

MR. DOBIS: I have no idea where he is, your Honor.

THE COURT: When was the last time you spoke with him?

MR. DOBIS: I have a website that I use really to communicate with Mrs. Kapustina and in connection with certain other things. In connection with me withdrawing as counsel from every -- I've got a couple other matters that I'm still attorney of record. They've been stayed, but, for example, there's an Appellate Division matter. We filed a notice of appeal. They filed a motion to withdraw as counsel. To my surprise, the bankruptcy was filed. The Appellate Division said our procedure is to dismiss the appeal without prejudice. After the bankruptcy proceedings are over, any party who wants to resurrect the appeal can do so. The only way I communicated was with a website, I believe it's of Mr. Kapustin's daughter, and I know that he received it because I got a call from Svetlana Zakarian. I don't even know how to pronounce the name.

MS. TEMKIN: Zakarian. I will spell it.

MR. DOBIS: So, that's it. It's not like I pick up the phone and talk to him. And as you know, I can't do that anyhow. Mr. Kapustin testified at his deposition, testified here in court that all communications are with Boris Parker.

I don't speak Russian. So, that creates a predicament for me. I'll do the best I can, your Honor.

THE COURT: All right. Let me ask you this, Mr. Rabinowitz. Has Mr. Lester identified any corporate officers other than Mr. Kapustin?

MR. RABINOWITZ: No, your Honor. There is another Global entity located in Finland that has a warehouse, and there may have been other -- may be or have been other owners or officers of that entity.

THE COURT: Are there -- in the records that were found at the two locations, is there any record of who the -- well, you can go to Whoisit.com, right, and identify the administrator of the websites, I believe?

MS. TEMKIN: We have that information, your Honor, and I believe the websites have been paid for. They just -- Mr. Kapustin just made a direction to shut them down.

THE COURT: Draft an order, give me the name of the administrator, and draft an order and I'll sign it directing him to appear here. And, Mr. Rabinowitz, I want you to tell Mr. Lester that if he identifies any officer or responsible person for the corporate entities other than Mr. Kapustin, he should identify them to the plaintiffs and notify me immediately. I can't imagine Mr. Kapustin didn't have some other officers. Do you have the corporate books?

MR. RABINOWITZ: They may be what we took possession

of in the Pennsylvania office. When you do a search on public access records, the only individual that you find related to these entities is Mr. Kapustin. Now, as I say, there was another Global entity called Global Cargo, and I believe that there is another individual involved, it's either his ex-wife or daughter or some relative that's involved with it.

MS. TEMKIN: And, your Honor, we will provide a transcript of Mr. Kapustin's deposition so far, what we had, to the trustee where Mr. Kapustin states that there is no other corporate officers.

THE COURT: Well, I'll direct the administrator to put up the orders on the websites, and if they've been prepaid, if you will, for some space on a server that generate an image, then they can at least continue through that time. I'll have to determine whether there's some other source of funds. Maybe we'll get $400,000 out of Mr. Hitrinov.

MR. RABINOWITZ: I think we're going to get a substantial sum of money in the initial offer, your Honor.

THE COURT: Keep the website up and running for a while. Of course, I've heard that song before.

MR. RABINOWITZ: Again, I make no representation. I have no agreement from him and no offer from him at this point in time. I can value the cause of action based on the information that I have. I think it is a valuable cause of action that we're going to pursue one way or the other.

THE COURT: All right. So, I'll look for your order on the websites, but as of now it should be directed to the administrator, I guess. But let's bring them here, him or her here.

MR. RABINOWITZ: And do you want the administrator here on the 20th, your Honor?

THE COURT: Sooner. I want you to find the administrator. Draft an order directing the administrator to appear, yes, appear on the 20th. In the meantime, you can have a discussion with them, here's what we want, we want you to put these things up on the website after you cleared all contents with all counsel of record in this matter and with the trustee.

MR. RABINOWITZ: Your Honor, can the order provide -- or if I can see a copy of the order before it is submitted, that it doesn't create an obligation on behalf of this estate? Because one of the things the trustee cannot do is incur obligations for which he cannot pay.

THE COURT: Sure.

MS. TEMKIN: Absolutely. Your Honor, I would just like to request assistance of Mr. Dobis in his communications with Mrs. Kapustina because she might know the address of that administrator to the extent that I don't have it.

MS. BROWN: She might actually be able to give it herself because she's running another website.

THE COURT: Sure. Mr. Dobis?

MR. DOBIS: I'm sorry. What do you want? You want contact for Irina?

MS. BROWN: Contact with Irina through you.

MR. DOBIS: I'll do the best I can.

MS. BROWN: She's a represented party.

THE COURT: Yes. And do you have her deposition scheduled?

MS. TEMKIN: We took her deposition and we haven't finished it, your Honor.

THE COURT: All right. Well, you can serve some other form of discovery request for the name of the administrator, correct?

MS. TEMKIN: Absolutely.

THE COURT: All right.

MS. TEMKIN: But I believe we elicited that information, at least I have the name and I might have an address. I just don't recollect for sure.

THE COURT: Why don't you just draft the order directing the administrator to put it back up. If they don't like it, they will complain.

MS. TEMKIN: We need to serve it, your Honor.

THE COURT: Of course.

MS. TEMKIN: That's why the address.

THE COURT: Yes. I'm just thinking out loud.

MS. TEMKIN: Absolutely.

THE COURT: It's important that those notices be up.

MS. TEMKIN: Absolutely, your Honor. That was our hugest disagreement, because the trustee was thinking in terms of selling the websites as an asset.

MR. RABINOWITZ: To the extent, your Honor, that the website is -- has proprietary value, the trustee would be statutorily obligated to try to realize upon that value. No such decision has been made. No business judgment has been exercised. But the fact of the matter is the trustee has a statutory charge to realize value on all assets of the estate.

THE COURT: Well, that may very well be, Mr. Rabinowitz, but this just proves to me or demonstrates the wisdom of my taking the -- revoking the referral. This Court issued an order, several orders directing that notices be placed on those websites because it was the most efficient and effective portal to communicate with a vast number of victims around the world who continue to call my chambers, send me e-mails, and complain about the conduct of Mr. Kapustin.

For the bankruptcy trustee, without any -- without even contacting this Court, without entering an appearance and saying I'm thinking about doing something that would have a major, potential major disruption of what your Honor had ordered is just remarkable to me. It just emphasizes how important it is for these matters all to be before this Court

and not some other court with someone acting at cross purposes of the order of this Court.

Those websites were used as a vehicle for fraud. They have now been, under the judgment of this Court, been utilized to help provide for any victims to be able to report that information, which is why I directed those orders to be placed, so that the websites could stop being used for fraud, which they were being used for fraud. They were still advertising thousands of vehicles, not 260, thousands of vehicles and soliciting money, some of the conduct occurring after the filing of this case.

MR. RABINOWITZ: Not by these corporate debtors, your Honor, by Mr. Kapustin.

THE COURT: Well, Mr. Kapustin is these corporate debtors.

MR. RABINOWITZ: He is not, your Honor. Respectfully, we can --

THE COURT: As a matter of bankruptcy law, you are right. As a matter of practicality and reality and RICO law, he is those corporate entities and they are him. They are clearly another layer of fraud utilized by Mr. Kapustin to shield his conduct from scrutiny and remedy for those he has defrauded. And the RICO remedies are clear. They are available on an interim basis. I made findings that supported that interim relief, and it will not be frustrated by this

trustee or anyone else.

So, submit an order directed to the administrator to place back on the website the notices and a mechanism to file appropriate claims with the Bankruptcy Court for anyone who claims to be a victim of Mr. Kapustin's enterprises.

MS. TEMKIN: Yes, your Honor.

MR. RABINOWITZ: Your Honor, in the interest of a full record, I just want the record to be clear, the trustee has taken no steps to attempt to sell the website, number one, and number two, the trustee understands, as required by Section 363(b) of the Bankruptcy Code, that were he to sell any asset of this estate, it would have to be by application to the court of competent jurisdiction, which now is this Court, on notice to all creditors, which would also include plaintiffs. So, one, no steps have been taken, no decisions have been made, no investigations have occurred, no analysis has occurred with regard to that, and were any step to be taken with regard to sale of an asset, it would have to be with this Court's approval on notice to all creditors.

THE COURT: That's certainly how we're going to proceed forward, Mr. Rabinowitz.

MR. RABINOWITZ: That's how this trustee always proceeds and would have proceeded had the reference not been withdrawn.

THE COURT: All right. Very good.

MS. TEMKIN: Just for the clarity of the record, the trustee in his reply on page 18 says, "In addition, by preserving the right to enforce prior orders of this Court regarding the websites, plaintiffs are interfering with trustee's duty to liquidate assets of the bankruptcy estate because the websites are assets." I'm not going to --

MR. RABINOWITZ: And they are assets, your Honor. By definition, under Section 541 of the Bankruptcy Code, every asset of these corporate debtors is an asset of the estate subject to the trustee's administration.

THE COURT: I can't imagine that websites used for purposes of fraud would have much goodwill attached to them.

MR. RABINOWITZ: They may be worthless, your Honor, but the trustee has a duty, which he takes seriously, to investigate that fact.

THE COURT: Well, he also has a duty to assure that anyone who has a potential claim has a full and fair opportunity to present it; does he not?

MR. RABINOWITZ: Absolutely.

THE COURT: Well, when you've got victims in St. Maarten who talked to Mr. Kapustin through a website, did you think that closing the website down would --

MR. RABINOWITZ: We didn't close the website down.

THE COURT: Well, selling it?

MR. RABINOWITZ: We haven't sold it, we haven't

closed it down.

THE COURT: Well, apparently he was thinking about it. That's enough for me.

All right. So, you're going to submit an order.

MS. TEMKIN: Yes, your Honor.

THE COURT: To get the website back up and running.

MS. BROWN: Yes.

THE COURT: And I need to enter an order withdrawing the reference, and, Mr. Rabinowitz, will you submit an order?

MR. RABINOWITZ: I will do that on notice, your Honor.

THE COURT: All right. Thank you.

MR. RABINOWITZ: Thank you, Judge.

THE COURT: All right. Do I need to do anything else now?

MS. TEMKIN: Setting a status conference, I think it would be beneficial for Mr. Parker to be here, I guess, especially --

THE COURT: It would be. Yes, I'll direct -- put in the order that -- I'll enter a text order, enter a text order directing Mr. Parker to be here for the status conference. I'll have my clerk do that.

MS. TEMKIN: Absolutely.

THE COURT: All right. Anything else?

MS. TEMKIN: Nothing.

THE COURT: Did you get a call from the gentleman from St. Maarten?

MS. BROWN: Your Honor, I received numerous calls and e-mails from St. Maarten, from Nigeria, from Caribbean islands, from everywhere.

THE COURT: I suppose you did.

MS. BROWN: And, your Honor, I just wanted to add that in the end, for our clients and for many other victims who have been contacting, this case is not so much about the money, but this case is about the justice, and they want the justice to prevail.

THE COURT: I understand. Well, I read the letter from the -- obviously referred to it, it's part of the record here, I consider it an application of a foreign entity. I find that that's the -- although this is really not an automatic stay anymore. The issue is really moot. But the clear interest of the Russian government in this is to protect its citizens from fraud perpetrated in the United States, and so often we hear about Russians perpetrating frauds of various kinds, I was even politely cautioned by counsel not to make assumptions at some point about Russians, but there's a certain irony here that we have someone operating from the United States victimizing people in the eastern European countries, and I made that finding, and it is -- it must be, I would say, very frustrating for someone to have relied on a

U.S. company and sent tens of thousands of dollars, and I recall the affidavits from the various plaintiffs in this matter, some of whom saved up their life savings to have a decent car and to have that website be the only portal by which they would communicate, so it's important that where the proofs vindicate, vindicate claims, that the remedies available under the statute be available if appropriate to the plaintiffs, and if that's a form of justice, then that's what the law, the statute requires, and this Court will not hesitate in enforcing those remedies as I have and will continue to do so. And nor will, in the spirit of Nortel and the other cases, will I allow the Bankruptcy Court to be used as a haven for those who would commit such crimes.

So, I'll look for Mr. Rabinowitz's order withdrawing the reference. I'll look for the order directed to the administrator to restore the website. And I'll have a text order entered directing Mr. Parker to be here on the 20th, at which point we'll have a status conference so that we can determine the best way forward for all the relevant parties.

But I encourage plaintiffs to work with Mr. Lester and Mr. Rabinowitz, recognizing that until such time as any application is made to resolve the bankruptcies, that there are other creditors out there who may be in some ways the victims as well, and it may be important to maintain the bankruptcy proceeding so that the interests of all parties are

respected and protected as contemplated by both equity, the RICO statute, and the Bankruptcy Code, which is designed to ensure that all parties having a valid claim have a fair opportunity to be heard and any assets distributed to them as well, if appropriate, under the law.

I don't -- is there any need for you to be -- the trustee to be an interested party? I think you are an interested party in the case brought by the, you being Mr. Lester is an interested party in the matter before me, the RICO matter, the first matter before me.

MR. RABINOWITZ: Your Honor, if in fact the action is now deemed the equivalent of a proof of claim, because your Honor is now administering the entire bankruptcy --

THE COURT: Well, it's not.

MR. RABINOWITZ: Then I'm not sure I would fully understand the relationship. How does the action -- your Honor has now taken jurisdiction of the Chapter 7 bankruptcy. One of the parts of the Chapter 7 bankruptcy is to fix the claims of creditors.

THE COURT: Yes. But it's broader than that. And I understand that that's their role as it relates to those defendants, to fix those claims. That would be one purpose of the 13-7152 matter, but there are non-debtor defendants, for example, Mr. Kapustin's wife. It could very well be, and I'm not making -- I don't mean to single her out, there may be

some defendant in this case who is holding assets that the trustee may claim are assets of the corporate entities that should be brought into the bankruptcy for distribution.

MR. RABINOWITZ: And we would take appropriate action for turn -- one of the powers the trustee has is turnover under 542 and we would seek to turn it over. The point I was, the limited point I was going to make in response to your Honor's question --

THE COURT: I'm just saying they're not co-equal. So, the trustee could be an interested party in the efforts of plaintiffs against third parties.

MR. RABINOWITZ: But we don't have to appear in the actions. Maybe I misunderstood you.

THE COURT: No, you don't have to appear. Just so -- you're not even on my docket.

MR. RABINOWITZ: So, we would be an interested party in the action. We would want to know if assets are identified that would be subject to the Chapter 7 trustee's administration.

THE COURT: Right.

MR. RABINOWITZ: The only point I was going to make is that we may not oppose a damage judgment against these debtors.

THE COURT: Well, you can always work on a consent judgment. I sign those all day long.

MR. RABINOWITZ: So that we are --

THE COURT: Save a lot of people a lot of money in time and effort.

MR. RABINOWITZ: But that's the point I was trying to make earlier and I did a very ineffective job, I understand that. I blame myself.

THE COURT: No, no. Please take my withdrawal of the reference as a compliment, Mr. Rabinowitz.

MR. RABINOWITZ: I understand. But here is the point I'm trying to make. The trustee may not have an interest in opposing the damage claim that these plaintiffs seek, and since we now stand in the shoes of the debtors and Mr. Kapustin no longer is an officer, director with the ability to control, there may be no dispute with regard to these corporate debtors' obligation to owe money to these plaintiffs, obviating the need for your Honor to incur judicial time and effort in fixing those claims.

THE COURT: Well, that would be up to the parties.

MR. RABINOWITZ: Understood.

THE COURT: I will leave that to your professional discretion. I've made preliminary findings. The proofs that I have seen are overwhelming. The defense is, underwhelming would be generous. There was no real defense other than, well, I'll just give them another car maybe.

MR. RABINOWITZ: We may be able to enter into a

consent judgment for a reasonable damage claim.

THE COURT: But the point is that there are other defendants.

MR. RABINOWITZ: And obviously the stay does not affect the proceeding from going forward, whatever stay existed previously did not stop the plaintiffs from going forward against those defendants.

THE COURT: If you work out a consent judgment as it relates to the claims against the corporate entities on behalf of the clients you represent and there's a fixing, if you will, of that claim, I certainly would be very likely to approve it.

MS. TEMKIN: Sure, your Honor.

THE COURT: I'll leave that to your discussions. But in the meantime, if you could, on Mr. Lester's behalf, enter with the clerk whatever notice is necessary to become an interested party in 13-cv-7152, then that will make sure that Mr. Lester is fully apprised of all the proceedings in this matter related to the bankruptcy.

MR. RABINOWITZ: Your Honor, I have a flight out of Newark tonight to Ohio, Columbus, Ohio for a business meeting. Would it be inappropriate to circulate the form of the order on Thursday?

THE COURT: That would be fine. Thank you. I think that would be fine. Any reason why?

MS. BROWN: No, your Honor.

MS. TEMKIN: That's fine.

THE COURT: I'll look for the order on Thursday.

MR. RABINOWITZ: Thank you, Judge.

MS. BROWN: Thank you.

THE COURT: All right. Thank you all. Thank you for being here, Mr. Dobis.

THE DEPUTY COURT CLERK: All rise.

(Proceedings concluded at 2:05 p.m..)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GLOBAL AUTO, INC., ET AL	:	13-CV-2479(SLT)
Plaintiffs,	:	U.S. Courthouse Brooklyn, New York
-against-	:	TRANSCRIPT OF PROCEEDINGS
	:	June 4, 2013 10:25 a.m.
HITRINOV, ET AL,	:	
Defendants.	:	

- - - - - - - - - - - - - - - X

BEFORE:
HONORABLE SANDRA L. TOWNES, U.S.D.J.

APPEARANCES:

For the Plaintiff: HARLAN GREENBERG, ESQ.
MARCUS NUSSBAUM, ESQ.

For the Defendant
Hitrinov and EUL: PETER SKOUFALOS, ESQ.

MSC: GARTH WOLFSON, ESQ.

Court Reporter: Holly Driscoll, CSR
Official Court Reporter
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Brooklyn, New York 11201
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Proceedings recorded by mechanical stenography, transcript produced by Computer-Assisted Transcript.

THE CLERK: Civil cause for a show cause hearing, docket number 13-CV-2479, Global Auto, Inc. versus Hitrinov, et al.

Counsel, please state your appearances beginning with plaintiff's counsel.

MR. GREENBERG: Harlan Greenberg, 20 Vesey Street, New York, New York.

MR. NUSSBAUM: And Marcus Nussbaum, of counsel to Mr. Greenberg.

MR. SKOUFALOS: Peter Skoufalos, Your Honor, representing Empire United Lines and Michael Hitrinov.

THE COURT: And spell your last name.

MR. SKOUFALOS: Skoufalos, S K O U F like Frank, A L O S like Sam.

THE COURT: Thank you.

MR. WOLFSON: And good morning, Your Honor, Garth Wolfson of Mahoney & Keane for the defendant, Mediterranean Shipping Company.

THE COURT: The plaintiff seeks a preliminary injunction in this case and are you planning to present evidence this morning?

MR. GREENBERG: We had not planned on doing so and I don't believe defense counsel --

MR. SKOUFALOS: Your Honor, we don't have any witnesses this morning.

THE COURT: All right. So, you're resting on your papers?

MR. GREENBERG: Correct.

THE COURT: All right. I have a question for plaintiff. Global Auto actually brought this action?

MR. GREENBERG: I believe we have three plaintiffs, Global Auto --

THE COURT: Yes.

MR. GREENBERG: -- G Auto Sales and Effect Auto Sales, so there's three plaintiffs. The majority of the vehicles that we're concerned with are owned by Effect Auto.

THE COURT: All right. Would you like to make any arguments on the record?

MR. GREENBERG: Well, Your Honor, just you have the papers and the papers I believe are rather detailed. The most important thing here is that there's a dispute over money. We believe the cars were unlawfully seized in an attempt to collect those funds.

THE COURT: Excuse me, let me interrupt you for a moment.

MR. GREENBERG: Sure.

THE COURT: Is it really a dispute over money or a dispute over a contract, a breach of contract?

MR. GREENBERG: Well, my clients believe that there was a loan made, money was collected, interest was

collected. I believe the dispute is the defendants believe it was some sort of investment in the vehicles, however, all the evidence is to the contrary in how these vehicles were transported.

THE COURT: What is the evidence to the contrary?

MR. GREENBERG: That it's not a partnership or an investment?

THE COURT: Right.

MR. GREENBERG: Well, one, my clients paid solely interest on the loans, they never paid any principal back as of yet. They were paying 18 percent interest, they were paying one and a half percent per month. There was never any ownership or agreement with specific vehicles that defendants were going to own and the vehicles that were sold previous to these cars being seized, defendants never received any compensation or any percentage of those vehicles, you know, profits or even the value of those vehicles. All that was paid to them was interest and my clients' understanding is when they accepted the money that it was a loan.

THE COURT: Let me ask you something, in this entire proceeding are there any written contracts?

MR. GREENBERG: Not to my knowledge, Your Honor.

THE COURT: All right.

MR. GREENBERG: If I may? The most relevant thing is that my clients -- defendants are going to argue that my

clients had turned over title of many vehicles to the defendants, specifically Empire, in terms of when they were shipping it. However, they're required to do so by federal maritime law, and their argument is that because we turned over the title, they somehow or another gained some sort of possessory interest in the vehicles and it's to the contrary. So, our point is that these vehicles were illegally seized in an attempt to collect a debt.

Secondly, the loans were made to solely Global, not to G Auto Sales or Effect and all the vehicles in the New Jersey lot are owned by Effect. There were only five vehicles, to my knowledge, that were owned by Global that were overseas in Finland and the few items that were shipped by G Auto Sales included a boat and a trailer and I believe another vehicle were solely owned by G Auto Sales.

THE COURT: Who is Svetlana?

MR. GREENBERG: She is the president of -- no, she works in the office -- she's an employee that works for Global and I believe Effect.

THE COURT: Now, the defendant argues that this loan was an investment arrangement and that the defendant loaned Kapustin -- how do you pronounce that name?

MR. GREENBERG: Capoostin (ph).

THE COURT: -- the money to purchase the cars at an interest rate of 1.5 percent per month and the loaned were

secured by the cars held in EUL's lots. So, under this arrangement the value of the cars in the lots had to exceed 60 percent of the outstanding loans. If the values of the cars did not, Effect Auto Sales would not release any particular car.

MR. SKOUFALOS: That would be Empire I believe, Your Honor.

THE COURT: Empire.

MR. SKOUFALOS: The defendant would not release any cars.

THE COURT: Yes, would not release any particular car until other cars were added to the inventory.

Isn't that agreement confirmed in some ways by the e-mails from Svetlana, the Global employee?

MR. GREENBERG: Your Honor, at the beginning of this arrangement defendant Mr. Hitrinov indicated that he was not an investment firm and was unwilling to make an investment in their business, so it was a loan.

THE COURT: Answer the question I asked you.

MR. GREENBERG: No, I understand. There was an exchange of e-mails during that period of time. My clients did not have any intention of ever providing 60 percent of vehicles or possessory interest in those items. At that point I believe the vehicles were already seized and my clients were trying to negotiate a way of getting them released. In fact,

some of those vehicles were already under contract to be sold to other individuals, some of them in this country and some of them overseas.

THE COURT: Yes, and?

MR. GREENBERG: Well, but there was never any agreement other than what Mr. Hitrinov believes was an investment in the vehicles. He used the term investment I believe in terms of trying to obtain more vehicles so he could secure his -- secure it against his loan, I don't believe that there was ever any 60 percent agreement.

THE COURT: But these e-mails discuss the 60 percent from Global inquiring as to the status. I read that as saying the status of the investment arrangement or asking for a balance, and this is quotes, balance spreadsheet.

In response to those e-mails the defendant's representative sent a spreadsheet listing cars and totaling up the value of the cars that are, quote, left presumably in the lots. At the bottom of that spreadsheet is an entry that reads line 60 percent, which is the way I read it, 60 percent of the value of the cars.

And below that is another spreadsheet listing the amount of outstanding principal and the total amount of that principal is recorded next to an entry line which reads total credit. The total credit is then subtracted from line 60 percent to yield the value of the cars "available for

release."

MR. GREENBERG: That was an attempt by our clients to get those vehicles released so that they could attempt to repay the debt, the loan, to Mr. Hitrinov. It was never with respect to an investment. It was never believed to be that he had any possessory interest in those vehicles. It was an agreement between the parties in an attempt to get the loan paid, not in an attempt to provide him with possessory interest.

THE COURT: What about this June 19th, 2011 e-mail that is an exhibit to the defendant's declaration: Svetlana involves the individual defendant that Global does not "have enough cars to secure the finance account" and that "to bring the finance account to a positive balance" Global "will bring cars to load."

MR. GREENBERG: That's Global, Your Honor, that's not Effect. You have to remember there are three separate plaintiffs here. The loan was to Global. The vehicles that are currently on the lot are owned by Effect.

THE COURT: Well, the argument of the defendant seems to be that this is all -- even though they're different corporate entities, this is all something owned by the individuals here, Mr. and Mrs. Kapustin.

MR. GREENBERG: Your Honor, they operated separately, they each had vehicles purchased under -- for

a variety of different reasons purchased through those corporations. Was there a crossover of help and office staff, there was, but they operated as individual corporations.

THE COURT: Two of them are together, you know, one is 2000 and the other is 2008, the address.

MR. GREENBERG: Thereby indicating -- they're next to each other, yes, but they obviously have separate addresses for the purpose of delineating which corporation is which and that, in fact, they each had their own offices.

THE COURT: All right. What about the argument of defendants that the motion for a preliminary injunction is largely moot because the vehicles shipped to Kotka, all but two cars, a boat and a trailer have already been sold.

MR. GREENBERG: Well, there still are obviously two cars there and there are twenty vehicles or less, depending upon what was sold, in New Jersey. So, there's still at least twenty vehicles being held.

THE COURT: All right. Would you like to be heard?

MR. SKOUFALOS: Thank you, Your Honor. This is a dispute between business partners essentially over controlling custody of certain vehicles that were intended for overseas sale. We tried to present a very detailed affidavit, a declaration by Mr. Hitrinov that we hope documents our interest in these vehicles, the client's

interest in these vehicle. And as Your Honor pointed out, we produced two years of correspondence that go back and forth on the basis of this balance and so on, and other e-mails, operational e-mails from Miss Svetlana basically saying release our car or if we have enough money and that's the way we've operated.

There is no dispute that there's an investment in excess of $450,000 here, there is no dispute that the parties acted in a manner that tried to protect my client's interest and investment in these companies by allowing him to control the release of the vehicles and they did this for two years. We shipped 540 vehicles, investment vehicles, maybe 670 total vehicles. Not all these vehicles were investment vehicles. Some were part of our pool and some were not and that's the way the parties operated quite happily.

Now, in contrast to what we've produced, all we have, Your Honor, are declarations by the plaintiffs that they owned the vehicles. Yet, surprisingly, there's not one piece of evidence before the Court that demonstrates ownership. So, they're essentially asking the Court to issue a mandatory injunction with the high burden that that entails changing the status quo, turning over the cars to them with not a shred of evidence of title. That goes to the clear showing standard that's required for a mandatory injunction

But if we turn to the second standard, extreme or severe damage, again, there's no evidence before the Court of that element here, that heightened showing of damages. The essence of the plaintiffs' claim is that they have sold these cars to third parties and, therefore, face contract liability to those third parties if they don't deliver these vehicles. That may be fine but we haven't seen those contracts, we don't know whether there is a time of the essence provision, which is what plaintiffs contend, and we also don't know what penalties are worth; for example, it may be I walk out of this contract, you owe me a $100 and that's a pretty easily monetized set of damages and, of course, irreparability speaks of non-monetary damages here, Your Honor, and we haven't seen anything that really moves towards the question of irreparable non-monetary damages because the evidence, the record is simply bare on these points.

Now, we do argue that in our papers but surprisingly in the reply papers they didn't dispute all these things that we raised. They actually didn't present any contrary evidence to our investment scheme that we detailed. They didn't argue about ownership issues. So, we just don't think that on the basis here of the record that the Court has whether the heightened showing of the mandatory injunction has actually been made out here at all, Your Honor, and therefore we respectfully request that that preliminary injunction showing

just hasn't been made and should be denied at this point

MR. GREENBERG: Your Honor, with respect to ownership, I was provided recently with titles of a number of the vehicles that are being held in Elizabeth, New Jersey, about ten of them, to Effect. The others are still -- were being held in the name of the company who my clients took loans from who they're paying loans on those vehicles back. All these vehicles, all these titles, which I'm glad to provide to the Court, are for the vehicles that are owned by Effect that are currently in the lot in New Jersey.

Again, Your Honor, the fact that at times titles were turned over to defendant during the processing of the vehicles in shipping them overseas is really proof of nothing since it's a requirement by the Federal Maritime Commission and Customs. If the Court wishes, I can provide you with these titles and I'll gladly forward them to defendants as soon as we leave.

THE COURT: Yes, you may do so but let me ask you this, the vehicles that are the subject of the request for injunctive relief, you agree that those vehicles have already -- well, most of them have already been sold?

MR. GREENBERG: Some of them. There's a couple of them that have been sold. The others have not been sold. They're basically in limbo because my clients couldn't market those vehicles because they were seized.

MR. SKOUFALOS: Your Honor, I failed to make a couple of points, may I add to my comments if I could?

THE COURT: Yes.

MR. SKOUFALOS: If there is any dispute about the question of ownership as such in my client, I think it's dispelled by Exhibit 12 of our papers which is the e-mail from Irina Kapustina, Mr. Kapustin's wife, and, by the way, this is a family affair, Global is owned by Sergey, Effect is owned by Irina and the other company, G Auto, is owned by a stepson of the couple. So, we've made our points about the sameness of these companies in terms of how they've been operating and how they failed to make a distinction.

Back to the all important question of ownership, the e-mail that we provided in Exhibit 12 is from Ms. Kapustina and it says quite clearly, ownership, your ownership in the vehicles, addressing Empire United Lines. The sole dissent we've had to that e-mail is that the translation is flawed. Of course, the word ownership is used in English in the e-mail so the translators couldn't get that wrong, but they question our translation based on it was done from a transliterated from the Cyrillic to Latin characters and then ultimately to the English.

They haven't offered, the plaintiffs, a contrary translation to that. We as a precaution went and got a second translation which I have with me which in my view corroborates

pretty much the first translator but on the all critical issue of whether they concede ownership, it's the same translation.

The final point I wanted to make is the last point of our memorandum of law on the concept of clean hands and whether as a court of equity a preliminary injunction can be issued in favor of a party that doesn't come to the court with clean hands.

Now, a couple of points we wanted to make; we've noted, and the plaintiffs have not disputed this, that Exhibit A of the plaintiffs' papers are fabricated documents. I don't say that easily. By that we mean they've been attributed as documents that we've created, so-called tariffs, but they're not our documents. We've set that out in Mr. Hitrinov's declaration.

The second point we wanted to make is this whole question of the 60 percent parameter that we detailed, silent in the plaintiffs' papers, not mentioned at all in a sense, we viewed it as something that should have been disclosed to the Court at some level, again that was not. And then we've disclosed in our papers the double-dealing by the plaintiffs, their effort to undermine our security interest and we presented an e-mail that was sent to the facility in Finland and to buyers over in Finland saying go get the Finnish police to get your cars. We view that as a taint on the application.

And the final thing is the, you know, the plaintiffs themselves have appended various lawsuits that my clients have been defendants on without showing how those cases have been resolved but they didn't disclose that the very cars that are the subject of this lawsuit in Elizabeth were the subject of a writ of execution in an unrelated civil action and also that the New Jersey Attorney General has signed a consent decree with Global, some of it involving fairly serious allegations of consumer fraud.

So, we just wanted to make that additional point that as a court of equity, the cleanliness, so to speak, with which plaintiffs come seeking equitable relief ought to be considered, Your Honor.

THE COURT: Yes, you can explain to me why you listed these lawsuits when they've all been settled or dismissed.

MR. GREENBERG: Well, Your Honor, there seems to be a course of conduct with Empire and Mr. Hitrinov in that there is business being transacted with individuals and when there's a dispute, Mr. Hitrinov seizes property which he doesn't have the right to do and puts the -- and elevates the storage fees and the shipping fees and all of the fees associated with holding those items thereby causing plaintiffs to seek help from the courts in terms of trying to resolve those issues. It's a course of conduct that has been going on

over a number of years. One of those cases I was involved with so I'm aware of the type of manipulation that's done to put the plaintiffs in a position where they are significantly harmed and have to bring action to the courts to try and get their property released.

THE COURT: Another concern that I have is that even in the declarations of the purported presidents of the corporations not one describes the manner in which the loans were originally made.

MR. GREENBERG: It was in our original papers in the summons and complaint. They were loans in order to facilitate cash flow so that the company, Global, can continue to operate and continue to ship and use Empire as their sole shipper. That was a portion of the complaint.

THE COURT: All right. Anything else?

MR. WOLFSON: Your Honor, if I may, just briefly?

THE COURT: Yes, you may.

MR. WOLFSON: For MSC; all of the defendants, I use that in quotes, that we've been referring to in the course of this hearing involved in this commercial dispute have not included my client, MSC. I know this has all been said in the papers so I'll just try to briefly point out, Your Honor asked whether there were any written contracts before and the answer was no and that may be the case as to the clients of my colleagues here but as to MDC there certainly were written

contracts. There was a service contract that MSC entered into with Empire. There were individual bills of lading that were issued with respect to all of the cargo that MSC carried and so we have not only written contracts but we have contracts backed up by the COGSA statute, United States Carriage of Goods by Sea Act, the Federal Bill of Lading Act, the Pomerene Act. This is an arm's length transaction and, moreover, there's no dispute anywhere that MSC carried out its contracts faithfully and without any problem. It carried the cargo -- it was an ocean carrier, it carried the cargo, it delivered the cargo and that was the end of it and MSC was entitled as a matter of law, as a matter of longstanding maritime law to rely on its shipper, on the party presenting goods for shipment, that it had the authority to ship those goods and that's what MSC did here. Again, there's no dispute as to any of this.

What there is is there's a bald-faced conclusory allegation that MSC was somehow in on it or in cahoots with Empire and colluding with Empire to defraud plaintiff of these automobiles.

THE COURT: That's the action in general but not with regard -- with regard to the preliminary injunction --

MR. WOLFSON: Yes, Your Honor.

THE COURT: -- your client is really not involved.

MR. WOLFSON: No.

THE COURT: And it's very nice of you to be here but you didn't have to.

MR. WOLFSON: That's kind of what I'm getting at, Your Honor, is unfortunately I think we were an afterthought to this argument, we were an afterthought to the TRO. The TRO, the applications, the order to show cause did not distinguish between defendants. They wanted it to be against everybody and the same thing happened with the complaint, it alleged that there was a fraud against everyone. There is still no evidence of any such fraud. What there is in this case, if you can break through it to see the history of it, is there was a lawyer who never saw the sea who sued --

THE COURT: Who never saw?

MR. WOLFSON: Saw the sea, sued Mr. Hitrinov and Empire and threw MSC into the complaint and said there is a RICO claim here, there's scheme to defraud. Your Honor knows what happened, that claim was dismissed. But with the power of the internet and electronic dockets somebody else saw it, copied it, same thing happened and now here again we are still here fighting this baseless allegation.

We are an ocean carrier, we have nothing to do with Mr. Hitrinov's business, whether it is loans or whether it is investment in these used cars at all. We performed our contracts. We put in these papers making this clear that this whole -- the only reason why MSC has been dragged into this is

because he read some newspaper article and, again, we put that in our papers and there has been no reply at all, nothing, nothing in the declarations about it. We have threatened Rule 11 sanctions, in my entire career I think I've done that once before, no response. And I'm just sort of -- it behooves me -- my client is very upset about this because you had this newspaper article to begin with and it affects his business standing.

THE COURT: It can be used later on, some lawyer can bring up the fact that there was a lawsuit.

MR. WOLFSON: They've had enough and I think the law is clear you can't as an attorney, as a party simply rely on something like that to suggest that there's some sort of course of dealing or some sort of pattern of fraud. Not only is it hearsay, it's below the standard of due diligence that Rule 11 requires and, Your Honor, we just think not only does the TRO have no application as to MSC but we just think it needs to be made clear that there is simply no likelihood of success on the merits here, this is a baseless claim.

Whether it's going to happen now or it's going to happen later, this claim -- there will be a motion to dismiss this claim, whether it is in the Southern District of New York, whether it is in the Eastern District of New York, that remains to be seen, however, we do not believe that there's

any basis for a TRO issuing against MSC in this case.

THE COURT: All right.

MR. GREENBERG: Your Honor, just one last thing, it's also our position that vehicles that were sold had specific title to our client and the position is that when those vehicles were sold, they were signed not by my client and we don't believe that the defendants Empire and Hitrinov had the right to sell those, sign those titles, they didn't have authorization to do so and was done --

THE COURT: Yes, but with regard to a preliminary injunction which is what we're here for today --

MR. GREENBERG: Well, this is what we're afraid of is that this is going to continue to occur.

THE COURT: All right. If there's nothing else, have a seat, I'll be back. I'm going to take a short recess and I'll be back in just a moment.

(Recess taken.)

(Continued on next page.)

THE COURT: All right. Based upon the submissions of counsel and the arguments of counsel this morning, plaintiffs' motion for injunctive relief is denied.

Preliminarily it is important to note that the relief plaintiffs are seeking is not a prohibitory injunction. Rather, plaintiffs are seeking a mandatory injunction.

The standard for issuing a mandatory injunction is more exacting than the standard for issuing a prohibitory injunction. To obtain a prohibitory injunction, a party must show "(A) irreparable harm and (B) either, one, likelihood of success on the merits or, two, sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of the hardships tipping decidedly toward the party requesting the preliminary relief," and I'm quoting from Citigroup Global Markets, Incorporated versus VCG Special Opportunities Master Fund Ltd.

The citation is 598 F.3d 30 at page 35, decided by the Second Circuit in 2010.

However, when a person seeks a mandatory preliminary injunction that alters the status quo by commanding some positive act, as opposed to a prohibitory injunction seeking only to maintain the status quo, a preliminary injunction "should issue only upon a clear showing that the moving party is entitled to the relief requested or where extreme

or very serious damage will result from a denial of preliminary relief."

Cacchillo, C A C C H I L L O, versus Insmed, Incorporated, 638 F.3d 401, at page 406, Second Circuit 2011, quoting Citigroup Global Markets.

Without any contracts, the evidence here is simply not sufficient to make either a clear showing of the right to relief or extreme or very serious damage. Therefore, as I said, the motion is denied.

We will send this to the magistrate judge and Judge Reyes is the magistrate judge who will contact you.

You have not had an initial conference?

MR. GREENBERG: No, Your Honor, I don't know -- no, we've not, Your Honor.

THE COURT: Okay. So, I will refer the case to Judge Reyes to schedule that.

MR. GREENBERG: Thank you, Your Honor.

THE COURT: Thank you.

MR. SKOUFALOS: Thank you. Good morning.

MR. WOLFSON: Thank you.

(Time noted: 11:20 a.m.)

(End of proceedings.)

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February 13, 2015

Magistrate Judge Ramon E. Reyes, Jr.
United States District Court
Eastern District of New York
225 Cadman Plaza East, Courtroom 208N
Brooklyn, New York 11201

Re: *Global Auto, Inc., et al., v. Hitrinov, et al.* Docket No.:13 Civ. 2479 (SLT)(RER)
Empire United Lines Co. Inc. et al. v. SK Imports Inc. et al. Docket No.:14-CV-2566
Letter Motion to Withdraw as Counsel by Attorneys Marcus A. Nussbaum and Harlan Greenberg

Dear Hon. Reyes:

Mr. Greenberg and I are the original attorneys of record for all plaintiffs in the above matter captioned as: *Global Auto, Inc., et al., v. Hitrinov, et al.* Docket No.:13 Civ. 2479. Neither Mr. Greenberg, nor I appeared nor represented any party in the second matter, captioned as *Empire United Lines Co. Inc. et al. v. SK Imports Inc.* et al. Docket No.:14-CV-2566, which has been consolidated with the first matter. For some of the same reasons outlined in the letter motion to withdraw as counsel by attorney Boris Parker, and in addition to the reasons set forth below, both Mr. Greenberg and I respectfully request that the Court grant our request to withdraw as counsel.

The procedural history regarding both of these cases, as well as the circumstances surrounding the Chapter 7 and Chapter 13 bankruptcy petitions filed by corporate plaintiffs and their owners in the 13-cv-2479 matter, is set forth at length in Mr. Parker's motion to withdraw, and is incorporated by reference. However, the undersigned does not agree with Mr. Parker's statement in his letter that "Counsels of record, Harlan Greenberg, Esq. and Marcus Nussbaum, Esq. remain on this matter and do not oppose this request." Specifically, Mr. Parker contacted me approximately two weeks ago to explain that he was planning on withdrawing from the matter, and suggested that I contact the attorneys for the trustee for the chapter 7 bankruptcy matter to discuss the possibility of entering into a retainer agreement on behalf of the bankruptcy estate. The foregoing is the extent of my discussion with Mr. Parker regarding my position on his motion for withdrawal. In addition to the foregoing, Mr. Greenberg and I wish to bring to the Court's attention the fact that we have not been engaged in this matter since August 13, 2013. This is due to the fact that the plaintiffs specifically fired Mr. Greenberg and I immediately subsequent to November 13, 2013, due to a disagreement between plaintiffs and us as to how to proceed forward with this matter. At that time, plaintiffs informed us that going forward, they would be working *solely* with attorney Boris Parker.

As the Court may be aware, the last substantive filing made by Mr. Greenberg and myself pertained to a Memorandum in Opposition to a Motion to Intervene [Docket 34] on August 13,

2013. Subsequent thereto, the undersigned filed affidavits of service with the Court [Dockets 40-42] on November 13, 2013. From that point on, Mr. Parker appeared on behalf of plaintiffs for all conferences before Your Honor, and made all filings with this court through his own ECF account, including the filing of an Amended Complaint [Docket 47]. Since November 13, 2013, the undersigned has had only one telephone conversation with the plaintiffs, which took place on February 11, 2015, in which plaintiffs requested, due to their poor understanding of English, that the undersigned explain to them the reasons set forth by Mr. Parker in his letter in support of his request to withdraw as counsel.

In addition to the foregoing, the plaintiffs have failed to pay legal fees incurred during our representation in this matter in the amount of approximately $10,000.00, which balance remains outstanding since November 13, 2013. As stated in Mr. Parker's letter, failure to pay legal fees is a proper grounds for seeking withdrawal.

For all of the foregoing reasons, including (1) plaintiffs' decision to fire Mr. Greenberg and myself and have Mr. Parker represent them; (2) a disagreement between plaintiffs and us as to how to proceed forward with this matter; (3) plaintiffs' failure to pay legal fees incurred during our representation in this matter in the amount of approximately $10,000.00; and (4) that fact that neither Mr. Greenberg nor I appeared nor represented any party in the second matter, captioned as *Empire United Lines Co. Inc. et al. v. SK Imports Inc.* et al. Docket No.:14-CV-2566, it is respectfully requested that the Court allow Mr. Greenberg and myself to withdraw as counsel for the plaintiffs and that the matter be stayed in order to allow plaintiffs time to retain new counsel.

We thank the Court in advance for its consideration of this request.

Sincerely,

/s/ MAN
Marcus A. Nussbaum, Esq. (MN9581)

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September 28, 2015

Via Email to skapustin@yahoo.com
GLOBAL AUTO, INC.
G AUTO SALES, INC.
EFFECT AUTO SALES, INC.
Attn: Sergey Kapustin

Caption: *Global Auto, Inc., et al., v. Hitrinov, et al.*
Docket No.: 13 Civ. 2479 (SLT)(RER)

Dear Mr. Kapustin:

I look forward to working with you in connection with the above-referenced matter. Our formal retainer agreement follows confirming the principal terms and scope of our engagement.

1. **Nature of Services.** GLOBAL AUTO, INC., G AUTO SALES, INC., and EFFECT AUTO SALES, INC. (the "Clients") hereby retain Marcus A. Nussbaum, Esq. ("Counsel") to perform the following services:

   Pro bono representation of the Clients solely for the purposes of appearing with Clients at a deposition on or about October 7, 2015 and defending the Clients at said deposition. Any representation outside of appearing at said deposition shall be covered by a separate retainer agreement.

2. **Respective Responsibilities of the Client and Counsel.** Counsel will represent the Client in connection with the matter described. The Client will cooperate with Counsel in discharging such responsibilities and will undertake any other Client responsibilities reasonably necessary with regard to the matter.

3. **Fees**. The above stated representation shall be *pro bono*.

4. **Costs and Expenses.** Not applicable.

5. **Billing.** Not applicable.

6. **Right to Withdraw.** The Client may terminate services to be rendered pursuant to this Agreement at any time upon written notice to Counsel. Counsel may terminate services to be rendered pursuant to this Agreement at any time upon written notice to the Client, subject to compliance with the Rules of Professional Conduct of the New York State Bar Association and applicable law and rules of the Court.

7. **No Guarantee.** Counsel has made no promises or guarantees to the Client about the outcome of the Client's matter, or the maximum amount of legal fees or costs which may be incurred, and nothing in this Agreement nor any estimates as to such matters shall be

construed as such a promise or guarantee.

8. **File Disposal**. The Client agrees that should Counsel request the Client's permission to dispose of a file(s) that have been inactive for a period of three (3) years, the Client has the option of picking up the files(s) and should the Client fail to do so, the Client consents to Counsel disposing of the file(s) in a manner Counsel sees fit.

9. **Miscellaneous.** To enable Counsel to effectively to provide these services, you agree to disclose fully and accurately all facts and keep Counsel appraised of all development relating to the matter. This constitutes the entire agreement between us and cannot be altered except by a writing signed by the two of us. Pursuant to Title 22 NYCRR, Part 137, should a fee dispute arise, you have the option of submitting such dispute for binding arbitration.

10. **Full Disclosure.** The Client acknowledges receiving a copy of this Agreement and having had all questions about the Agreement, if any, answered to the Client's satisfaction.

If all is in order, please sign and return a copy of this Agreement. I will then sign and return a fully executed copy to you.

Very truly yours,

By: _____
Marcus A. Nussbaum, Esq.

AGREED AND ACCEPTED:

GLOBAL AUTO, INC.
G AUTO SALES, INC.
EFFECT AUTO SALES, INC.

By: _____
Sergey Kapustin

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GLOBAL AUTO, INC., et al.,

Plaintiffs,

-against-

MICHAEL HITRINOV, et al.,

Defendants.

13 Civ. 2479 (SLT) (RER)
(and consolidated action)

CERTIFICATE OF DEFAULT

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ OCT 02 2015 ★
BROOKLYN OFFICE

TO: DOUGLAS C. PALMER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

I, Douglas C. Palmer, Clerk of Court of the United States District Court for the Eastern District of New York, do hereby certify that the plaintiffs GLOBAL AUTO, INC., G AUTO SALES, INC., EFFECT AUTO SALES, INC. in the case docketed as 13 Civ. 2479, and defendant SK IMPORTS, INC. d/b/a GLOBAL CARS in the case docketed as 14 Civ. 2566, have failed to appoint counsel by June 3, 2015, as required by the Court's May 27, 2015 Order, and are therefore in default. The default of the plaintiffs GLOBAL AUTO, INC., G AUTO SALES, INC., EFFECT AUTO SALES, INC. in the case docketed as 13 Civ. 2479, and defendant SK IMPORTS, INC. d/b/a GLOBAL CARS in the case docketed as 14 Civ. 2566 is hereby noted pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

Dated: Brooklyn, New York
Oct 2, 2015

DOUGLAS C. PALMER, Clerk of Court

By: Janet Hamilton
Deputy Clerk

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Ardak Akishev, *et al.* **Plaintiffs,** **v.** **G Auto Sales, Inc., *et al*,** **Defendants.**	**Civil Action No.** **13-cv-07152(NLH)(AMD)**

FIRST AMENDED CROSSCLAIM COMPLAINT OF DEFENDANTS SERGEY KAPUSTIN, G AUTO SALES, INC., GLOBAL AUTO SALES, INC., and EFFECT AUTO SALES, INC.

1. Crossclaim Plaintiffs SERGEY KAPUSTIN, GLOBAL AUTO, INC. ("Global Auto"), G AUTO SALES, INC. ("G Auto"), and EFFECT AUTO SALES, INC., ("Effect Auto") (collectively "Crossclaim Plaintiffs") by their undersigned attorney, as and for their Complaint against the Crossclaim Defendants herein, state as follows:

NATURE OF ACTION

2. This is an action in law for breach of contract, breach of fiduciary duty, conversion, tortious interference, fraud, piercing the corporate veil, replevin, injunctive relief, and transportation of at least one stolen vehicle across state lines.

3. Crossclaim Defendants Michael Hitrinov, a/k/a Michael Khitrinov, (herein after "Hitrinov") Empire United Lines Co. Inc. (herein after "Empire"), CarCont Oy, Ltd. (herein after "CarCont") (collectively, the "Empire Defendants"), are in the business of providing services as an ocean transportation intermediary, and operate as a non-vessel

operating common carrier ("NVOCC"). The Empire Defendants arrange for the transport of automobiles overseas for automobile dealerships and personal shippers, and contracted with Plaintiffs to use their services to ship Plaintiffs' automobiles from the United States to a warehouse owned and operated by CarCont, located in the Port of Kotka, which is a major Finnish sea port that serves the foreign trade of Finland and the United States.

4. Crossclaim Plaintiffs have been forced to assert the claims below as a result of the Empire Defendants' unlawful conversion of automobiles owned by Crossclaim Plaintiffs, and contracted for sale to Crossclaim Plaintiffs' customers.

5. As of now, the Empire Defendants are unlawfully holding 15 vehicles either belonging to Crossclaim Plaintiffs or contracted to customers. The Empire Defendants have previously represented to the Court that the vehicles were located in their warehouse in Elizabeth, New Jersey (the "Elizabeth Vehicles"). The titles to the Elizabeth Vehicles are currently in registry of this Court pursuant to the Order, dated July 14, 2015 (ECF 237). Court. Crossclaim Plaintiffs seek injunctive relief from this Court in the form of an order compelling Defendants to immediately release the Elizabeth Vehicles which unlawfully held by the Empire Defendants into the registry of this Court.

6. Crossclaim Plaintiffs have further been forced to bring the instant lawsuit in order to recoup for lost profits and lost business suffered by Crossclaim Plaintiffs as a result of the Defendants' breach of contract and other fraudulent and illegal activities, which have resulted in direct and consequential damages in excess of $1,000,000.

7. Crossclaim Plaintiffs initially filed the instant lawsuit in the Eastern District of New York, Civil Action 13-cv-2479. On October 1, 2015, Judge Townes of the EDNY dismissed that lawsuit without prejudice.

8. Crossclaim Plaintiffs file this Amended Crossclaim Complaint to continue pursuing their claims in this Court.

THE PARTIES

9. Crossclaim Plaintiff Sergey Kapustin ("Kapustin") is an adult individual residing at 303 Ridgeway Street, Philadelphia, PA. At all times relevant to this Amended Crossclaim Complaint Kapustin was a President of Crossclaim Plaintiff Global Auto, Inc.

10. GLOBAL AUTO, INC. ("Global Auto") is a New Jersey corporation with its primary place of business at 500 South Broad Street, Elizabeth, New Jersey 07202.

11. Crossclaim Plaintiff G AUTO SALES, INC. ("G Auto") is a New Jersey corporation with its primary place of business at 150-1 Carriage Lane, Delran, New Jersey 08075.

12. Crossclaim Plaintiff EFFECT AUTO SALES, INC. ("Effect Auto") is a New Jersey corporation with its primary place of business at 500 South Broad Street, Elizabeth, New Jersey 07202.

13. Crossclaim Defendant Empire United Lines Co., Inc. ("Empire") is a closely held New York Corporation with its primary place of business at 2303 Coney Island Avenue, Brooklyn, New York, 11223-3337.

14. Crossclaim Defendant CarCont Oy, Ltd. ("CarCont") is a business entity organized and existing under the laws of Finland with a principal place of business located at Merituulentia, 424 2nd Floor, Kotka, Finland, 48310.

15. Crossclaim Defendant Michael Hitrinov, a/k/a Michael Khitrinov ("Hitrinov") is an adult individual and is a resident of the State of New York who maintains a principal place of business at 2303 Coney Island Avenue, Brooklyn, NY 11223, and at Merituulentia, 424 2nd Floor, Kotka, Finland, 48310.

16. At all times relevant to the instant lawsuit, Hitrinov was the President and/or Chief Operating Officer and principal shareholder of Empire.

17. At all times relevant to the instant lawsuit, Hitrinov was the Chairperson of the Board of CarCont, with signatory authority and direct control over CarCont and is also its principal shareholder/member.

18. At all times relevant to the instant lawsuit, Empire, CarCont, and Hitrinov were united in interest such that they are one and the same.

19. At all times relevant to the instant lawsuit, Empire, CarCont, and Hitrinov were the alter egos of each other.

20. At all times relevant to the instant lawsuit, Hitrinov knowingly and intentionally used the corporate form of Empire and CarCont to perpetrate tortious and other wrongful conduct against the Crossclaim Plaintiffs.

21. At all times relevant to the instant lawsuit, Empire is and was licensed by the Federal Maritime Commission as an ocean freight forwarder and/or a non-vessel operating common carrier under license number 012052.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction over the claims in this action based on complete diversity of citizenship pursuant to 28 U.S.C. § 1332, the Crossclaim Plaintiffs being citizens of New Jersey for diversity purposes and Crossclaim Defendants being citizens of New York and Finland for diversity purposes, and the amount in controversy exceeding $75,000.00.

23. This Court also has supplemental jurisdiction over strictly state law causes of action pursuant to 28 U.S.C. § 1367 as such claims are also so closely related to the claims in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

24. This Court has personal jurisdiction over the all of the Crossclaim Defendants because they have conducted business in, and have had continuous and systematic contacts with the State of New Jersey at all times relevant to this action. The wrongful activities in this case are a direct result of the Crossclaim Defendants' purposeful interactions with Crossclaim Plaintiffs in the State of New Jersey, Defendants have purposefully availed themselves of the privilege of doing business in the State of New Jersey, and critical elements of Defendants' wrongdoing occurred in the State of New Jersey.

25. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the main action is situated, in this District.

STATEMENT OF FACTS

26. At all times relevant to this Amended Crossclaim Complaint, Crossclaim Plaintiffs were in the business of exporting used cars from the United States to Europe.

27. These automobiles were generally purchased by Crossclaim Plaintiffs used from dealers or at auctions in the United States and are then shipped from the United States overseas via ocean transport in containers (alternatively referred to as "cargo containers" or "cargo").

28. Empire, as an NVOCC, contracts with its customers as principal, agreeing to transport their goods on a voyage that includes an ocean leg.

29. An NVOCC commonly issues house bills of lading to its customers in its own name, even though it does not operate the ship that will carry the goods on the ocean voyage.

30. The NVOCC buys space on the carrying ship like any other customer, receiving a bill of lading from the owner or charterer of that ship when the goods are loaded on board.

31. At all times relevant hereto, a master service agreement (the "Service Agreement") existed between Empire and Mediterranean Shipping Company ("MSC"), which is not a party to this action.

32. Pursuant to the Service Agreement between Empire and MSC and CarCont, among others, Empire was able to obtain container space for Crossclaim Plaintiffs' cargo aboard vessels outbound from, inter alia, the Port of Elizabeth, New Jersey, on favorable terms.

33. From 2010 – 2012, Crossclaim Plaintiffs contracted with Hitrinov, Empire and CarCont, to secure shipping and warehouse services related to vehicles destined for Kotka, Finland, with the consignee on each shipping bill of lading designated as CarCont.

34. CarCont Ltd., a company controlled by Mikhail Hitrinov, was listed as the Consignee on the Bill of Lading for many of the vehicles in question, including those shipped to Kotka Finland on behalf of Plaintiffs Lisitsyn, Kondratuk, Batalov, Maniashin, and Yamkoviy.

35. From 2003 to 2008, Crossclaim Plaintiffs had a prior business relationship with Crossclaim Defendants, which then soured. In March 2010, Defendant Hitrinov contacted Sergey Kapustin and offered a low shipping rate to entice Crossclaim Plaintiffs to begin a new business relationship with Empire and CarCont. Crossclaim Plaintiffs agreed to ship with Empire, but did not agree to warehouse their vehicles with CarCont.

36. In September of 2010, Hitrinov invited Kapustin to a dinner meeting at a restaurant in Elizabeth, New Jersey, next to Empire's warehouse is which Empire was holding the Elizabeth Vehicles, including the vehicle at issue in Plaintiffs' First Amended Complaint reserved by Plaintiff Matveev.

37. At the meeting, Hitrinov offered Kapustin an open term credit line in the amount of $200,000 for use by all Crossclaim Plaintiffs. The line of credit would carry an annual interest rate of 18% percent and would require interest only payments. Hitrinov required that all shipping and storage fees would have to be paid separately by Crossclaim Plaintiffs, and they would need to maintain vehicles in storage with Defendants that had a minimum auction value of 60% of the outstanding line of credit balance.

38. Kapustin stated that the only way he would agree to the proposal was if the line of credit would be payable no sooner than 180 days after demand from Crossclaim Defendants. Hitrinov agreed to the terms.

39. Crossclaim Defendants proceeded to loan $170,000 to Crossclaim Plaintiffs in 2010 and then increased the line in 2011 and loaned another $280,120, for a total of $450,120.

40. Crossclaim Plaintiffs timely paid all interest and shipping and storage fees due and owing.

41. From March of 2010, through December of 2012, Hitrinov offered Crossclaim Plaintiffs the use of Empire's storage facilities in Elizabeth, New Jersey, for the storage of automobiles owned by Crossclaim Plaintiffs and for which Crossclaim Plaintiffs had not yet procured an overseas buyer.

42. Per the agreement between the parties, Hitrinov charged Crossclaim Plaintiffs a one-time flat fee for storage of $100.00 per vehicle, regardless of the length of time that the vehicles would be stored.

43. Global and Empire maintained a list of vehicles that were subject to the security arrangement.

44. Crossclaim Plaintiffs shipped cars to CarCont that were removed or cleared from the secured vehicle list and that were destined for transfer to Crossclaim Plaintiffs customers.

45. In addition, Crossclaim Plaintiffs shipped other cars, never secured by Crossclaim Defendants' loans, to CarCont, that were destined for transfer to Plaintiffs' customers.

46. By the fall of 2012, CarCont had in its inventory vehicles belonging to Crossclaim Plaintiffs that exceeded $800,000 in value. While at the same time, over $300,000 worth of vehicles that Crossclaim Plaintiffs owned directly or had a right to possesses (eight of the vehicles were floor financed with Palisades Dealer Funding, LLC) were located at Defendant Empire's Elizabeth, New Jersey, warehouse, including the vehicle purchased by Plaintiff Matveev.

47. In late fall, 2012, Crossclaim Plaintiffs began to experience problems with the release of their vehicles from Crossclaim Defendants. During this same time frame, other customers of Crossclaim Plaintiffs' were complaining that they were being overcharged by Crossclaim Defendants when they went to pick up their vehicles for import into the former Soviet Union.

48. As a result, Crossclaim Plaintiffs contracted with an alternative shipping company.

49. Upon learning that Crossclaim Plaintiffs had begun to use an alternate carrier, Crossclaim Defendants unilaterally attempted to alter the terms of the parties agreement, stating in an email dated December 18, 2012 that "effective immediately all the release for cars in a NJ warehouse is subject to $300 handling fees and $10/day storage."

50. On December 27, 2012, Hitrinov contacted Crossclaim Plaintiffs and demanded the repayment of the line of credit within 30 days, but refused to quantify the precise amount that needed to be repaid.

51. Crossclaim Plaintiffs contacted Hitrinov and reached an agreement with him by which Crossclaim Plaintiffs would pay the full auction value of each vehicle on the list of vehicles comprising the 60% security arrangement with Empire, and in return Defendants agreed to release the vehicles for which payment was rendered to Crossclaim Plaintiffs or their customers.

52. Crossclaim Plaintiffs proceeded to make payments in the amount of approximately $25,000 for the release of three separate vehicles, but after receiving payment, Defendants refused to release the vehicles and cut off communications.

53. Crossclaim Plaintiffs continued to reach out to Crossclaim Defendants in an attempt to establish a repayment structure, and to secure the release of vehicles that had a value to Crossclaim Plaintiffs in excess of three times the amount Hitrinov claims he "invested" with Crossclaim Plaintiffs. The communications were ignored.

54. Unknown to Crossclaim Plaintiffs at the time, in January of 2013, Crossclaim Defendants began to sell Crossclaim Plaintiffs' vehicles to third parties.

55. In March, 2013, Crossclaim Plaintiffs sent a representative to CarCont to check on the status of the 44 vehicles being held there.

56. Crossclaim Plaintiffs' representative discovered that all of the 44 vehicles were no longer at CarCont's warehouse.

57. Crossclaim Plaintiffs then hired legal counsel in Kotka, Finland, and notified

the authorities regarding the conversion of vehicles by Crossclaim Defendants and initiated an action in the Eastern District of New York in April of 2013, Court File No.: 13-CV-2479 (the "New York Action").

58. At the time the New York action initiated, Crossclaim Plaintiffs had 20 vehicles which were already being held in storage at Empire's warehouse in Elizabeth, New Jersey. See **Exhibit "2"**.

59. Subsequent to the initiation of that action, four of the twenty vehicles located in Elizabeth, N.J., were moved by Defendants to an unknown and undisclosed location.

60. The vehicle purchased by Plaintiff Matveev was released to Plaintiffs pursuant to the Court's Order, dated September 11, 2015 (ECF 264).

61. Titles to the 15 remaining Elizabeth Vehicles were placed into this Court's registry pursuant to the July 14, 2015 Order (ECF 237).

62. At the time the New York Action initiated, Effect Auto had already shipped 37 vehicles to Finland via Empire, all of which were already being held in storage at CarCont and Hitrinov's storage site in Kotka. A copy of the spreadsheet itemizing these vehicles is annexed hereto as **Exhibit "1"**.

63. At the time the New York Action initiated, Global Auto had already shipped 5 vehicles to Finland via Empire, all of which were already being held in storage at CarCont and Hitrinov's storage site in Kotka. See **Exhibit "3"**.

64. At the time the New York Action initiated, G Auto had already shipped 1 vehicle to Finland via Empire, which was being held in storage at CarCont and Hitrinov's storage site in Kotka, Finland. In addition to the aforementioned vehicle, G Auto shipped

a Yamaha boat and trailer, also held in storage in Kotka by CarCont. See **Exhibit "4"**.

65. The total auction value of the vehicles mentioned herein shipped and stored by Crossclaim Defendants for Crossclaim Plaintiffs is in excess of $1,100,000.00.

66. Crossclaim Defendants have unlawfully seized Crossclaim Plaintiffs' automobiles identified herein in **Exhibits "1" through "4"** and have refused to release them to their intended recipients, despite the fact that Crossclaim Plaintiffs have lived up to their contractual obligations and have paid Defendants in full for all shipping and storage charges. The freight charges (in the amount of $750.00 per vehicle) and storage fees (originally agreed to be in the amount of $100.00 per each vehicle stored in Elizabeth, New Jersey) for the automobiles described herein were paid in full to Empire by all three Crossclaim Plaintiffs..

67. Hitrinov has represented to the EDNY Court by affidavit that at his direction, the vehicles in Kotka, Finland, have been removed from CarCont's location and sold to third parties, after incurring additional costs in the way of necessary repairs and customs duties associated with import.

68. The EDNY Court ordered Defendants to produce documents verifying the repairs and the sale of the vehicles in CarCont's warehouse in Kotka, Finland, to third parties.

69. Empire, CarCont, and Hitrinov have failed to produce any actual sales records, any notifications of sale, documents showing independent vehicle valuation, purchase price, sale price, transfer of title records, bills of sale or any documents identifying the actual purchasers of the vehicles, or any financial records demonstrating payment or

transfer of funds for the vehicles at issue.

70. Hitrinov also represented to the EDNY Court by affidavit that the vehicles in Kotka, Finland, required payment of customs duties, and extensive repairs. Crossclaim Defendants have failed to produce any documentation of the customs duties, or of the claimed extensive repairs done to the vehicles, even after having been ordered to produce such documentation by the EDNY Court.

71. Hitrinov also set out on personal revenge campaign against Sergey Kapustin and continued to contact Crossclaim Plaintiffs' customers to defame Kapustin personally and to convince them to proceed with lawsuits against Kapustin when it was Crossclaim Defendants who unlawfully seized cars purchased by customers and entrusted by Crossclaim Plaintiffs to Crossclaim Defendants for shipment and delivery to customers.

72. As set forth below, Crossclaim Plaintiffs seek an award of damages in an amount sufficient to deter Crossclaim Defendants from further engaging in unlawful practices and violating Crossclaim Plaintiffs' rights, and to deter Defendants from performing this scheme to defraud upon anyone else.

CAUSES OF ACTION

COUNT I
BREACH OF CONTRACT

73. Crossclaim Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

74. Crossclaim Defendants materially breached the joint venture and agreement entered into with Crossclaim Plaintiffs by failing to honor the terms thereof and for failing

to perform in accordance with their promises actions.

75. Crossclaim Defendants refused to release vehicles despite shipping and storage charges being fully paid by Crossclaim Plaintiffs.

76. Crossclaim Defendants have made demand for payment on the line of credit extended to Crossclaim Plaintiffs, but on separate occasions have failed to honor the repayment terms agreed to by the parties.

77. Crossclaim Defendants have also converted for their own use, benefit and profit vehicles which are not subject to the parties venture and agreement and which significantly exceed in value over and over the obligations demanded by them.

78. Crossclaim Plaintiffs have fully performed on their obligations under the parties venture and agreement and have timely paid all interest and shipping and storage fees due and owing.

79. Crossclaim Defendants have acted in direct and unilateral violation of the terms the parties' venture and agreement with respect to each Crossclaim Plaintiff and are in breach therof.

80. As a direct and proximate result of Crossclaim Defendants' breach, Crossclaim Plaintiffs suffered damages and losses in an amount to be proven at trial.

COUNT II
BREACH OF FIDUCIARY DUTY

81. Crossclaim Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

82. At all times relevant hereto an agency and/or joint venture relationship

existed between Crossclaim Plaintiffs and Crossclaim Defendants Empire, CarCont, and Hitrinov.

83. Pursuant to the agency and/or joint venture relationship, Empire, CarCont, and Hitrinov owed Crossclaim Plaintiffs a duty of loyalty and a duty of the utmost good faith and fair dealing.

84. By reason of the aforesaid, Empire, Carcont, and Hitrinov breached their fiduciary obligations by, *inter alia*, imposing charges which were never agreed upon and converting Crossclaim Plaintiffs' assets which were the subject of the agency and/or joint venture relationship.

85. The actions of Empire, CarCont, and Hitrinov are willful, wanton and outrageous and justify the award of punitive damages.

86. Empire, CarCont, and Hitrinov are therefore jointly and severally liable for all harm and damages occasioned by the aforesaid unlawful conduct in an amount to be proven at trial.

COUNT III
CONVERSION

87. Crossclaim Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

88. Under New Jersey law, conversion is an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights. *LaPlace v. Briere*, 404 N.J. Super. 585, 595, (N.J. Super. Ct. App. Div. 2009).

89. By reason of the aforesaid, Empire, CarCont, and Hitrinov have unlawfully and without justification converted Crossclaim Plaintiffs' property, by *inter alia,* imposing charges which were never agreed upon, exercising control over Crossclaim Plaintiffs' vehicles after Crossclaim Plaintiffs' rightful demand for release of the vehicles.

90. Crossclaim Plaintiffs have suffered damage as a result of Crosslaim Defendants' conduct in an amount to be proven at trial.

91. Empire's, CarCont's, and Hitrinov's actions are also willful wanton and outrageous and justify the award of punitive damages.

COUNT IV
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

92. Crossclaim Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

93. By reason of the aforesaid, Empire, CarCont, and Hitrinov have intentionally interfered with Crossclaim Plaintiffs' relationships with actual and/or prospective customers and vendors and have interfered with Crossclaim Plaintiffs' ability to lawfully market and sell their motor vehicles and inventory in an orderly manner.

94. By reason of Hitrinov's personal revenge campaign against Sergey Kapustin, Hitrinov have intentionally interfered with Sergey Kapustin's relationships with actual and/or prospective customers and vendors and have interfered with Crossclaim Plaintiffs' ability to lawfully market and sell their motor vehicles and inventory in an orderly manner.

95. Crossclaim Plaintiffs have suffered damage as a result of Crossclaim Defendants' conduct in an amount to be proven at trial.

COUNT V
COMMON LAW FRAUD

96. Crossclaim Plaintiffs hereby incorporate by reference the allegations set forth above.

97. By reason of the aforesaid, Crossclaim Defendants Hitrinov, CarCont, and Empire, through fraud and deceit, induced Crossclaim Plaintiffs into shipping a significant quantity of goods for the purpose of placing the Crossclaim Plaintiffs in a hopeless position where they would succumb to said Crossclaim Defendants' unlawful demands for fear of losing revenues associated with the wrongfully seized cargo.

98. As set forth above, from approximately March of 2010 up through December of 2012, Crossclaim Plaintiffs, via Crossclaim Defendants Empire and CarCont, shipped numerous containers with automobiles acquired by Crossclaim Plaintiffs on behalf of foreign customers to ports abroad including, without limitation, the Port of Kotka, Finland.

99. The automobiles were shipped pursuant to an agreement between Crossclaim Plaintiffs and Empire that Crossclaim Plaintiffs would be charged one flat fee per container, which fee was calculated on a warehouse to warehouse basis.

100. As set forth above, some of the automobiles were stored at Empire's storage facilities in New Jersey pursuant to an agreement between Crossclaim Plaintiffs and Crossclaim Defendant Empire that Crossclaim Plaintiffs would be charged a one-time storage flat fee of $100.00 per vehicle, regardless of the length of time that the vehicles would be stored.

101. Pursuant to the agreements, Crossclaim Plaintiffs paid Crossclaim

Defendants in full for all shipping and storage charges.

102. The Defendants, during the course of negotiations concerning the agreements and during their execution and performance, failed to disclose that in the event that Crossclaim Plaintiffs were to discontinue the business relationship, that they would seize Crossclaim Plaintiffs' cargo, unless Crossclaim Plaintiffs agreed to pay brand new excessive charges not previously agreed upon.

103. The Crossclaim Defendants, during the course of negotiations concerning the agreements and during their execution and performance, failed to disclose their intent to sell Crossclaim Plaintiffs' cargo to satisfy payment of an unjust and unlawful debt arising out of the loans made to Crossclaim Plaintiffs.

104. After making demand for repayment of the credit line in late 2012, Defendants induced Crossclaim Plaintiffs to make payments in exchange for promises to release subject vehicles.

105. Crossclaim Defendants intentionally failed to honor their promises which they never intended to keep in the first place and kept Crossclaim Plaintiffs' payments as well as the vehicles, which they later claimed were sold to third parties.

106. Accordingly, the sum of at least $1,000,000.00 together with applicable punitive and treble damages in an amount to be determined by the Court, with all interest, attorneys' fees, costs and disbursements incurred in connection with this action, is due to Crossclaim Plaintiffs from the Crossclaim Defendants.

COUNT VI
ACTION TO PIERCE CORPORATE VEIL

107. Crossclaim Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

108. Crossclaim Plaintiffs aver that Crossclaim Defendant Hitrinov used the instrumentality and legal entity form of Crossclaim Defendants Empire and CarCont to knowingly perpetrate several distinct and separate torts set forth herein and to otherwise defraud the Crossclaim Plaintiffs. As a direct participant in the tortious conduct complained of herein, the individual Defendant Hitrinov is not entitled to the limited liability protections of the corporate or legal entity form.

109. In addition, Crossclaim Plaintiffs believe and therefore aver that Defendant Hitrinov, CarCont, and Empire are alter egos for one and another have misused the corporate form and disregarded corporate formalities to a degree where the distinction between the individual and corporate defendant and the distinction between the corporate defendants *inter se* has been rendered meaningless thereby rendering the entities a "sham" for purposes of this action.

COUNT VII
REPLEVIN
(N.J.S.A. 2B:50–1, *et seq.*)

110. Crossclaim Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

111. At all times mentioned herein, Crossclaim Plaintiffs were the lawful owners of pursuant to a certificate of title or had the lawful right to possession pursuant to a

consignment of the motor vehicles that are the subject of this action.

112. After the Crossclaim Defendants breached their contractual and fiduciary obligations, they refused to return the vehicles belonging to Crossclaim Plaintiffs despite demand.

113. Crossclaim Defendants have converted the motor vehicles to their own use and benefit for purposes of profit without Crossclaim Plaintiffs' authorization or consent.

114. Crossclaim Defendants by virtue of their unlawful conduct have thereby caused willful and deliberate injury to Crossclaim Plaintiffs.

115. Pursuant to an action for recovery of property under N.J.S.A. 2B:50–1, *et seq.*, Crossclaim Plaintiffs are entitled to have the motor vehicles in Crossclaim Defendants possession place into the registry of the Court prior to the entry of a final judgment.

COUNT VIII
INJUNCTIVE RELIEF

116. Crossclaim Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if set forth at length herein.

117. Crossclaim Plaintiffs seek injunctive relief in the form of an order and/or decree enjoining Crossclaim Defendants from exercising unlawful dominion and control over Crossclaim Plaintiffs' vehicles.

118. The titles to the Elizabeth Vehicles are currently in registry of this Court pursuant to the Order, dated July 14, 2015 (ECF 237).

119. Crossclaim Plaintiffs seek an order and/or decree directing Crossclaim Defendants to immediately release the Elizabeth Vehicles to the registry of this Court.

569. Crossclaim Defendants' conduct threatens immediate and irreparable harm to creditors of Crossclaim Plaintiffs' for which no adequate remedy at law exists.

REQUEST FOR RELIEF

WHEREFORE, as to the Amended Crossclaim Compaint, by reason of the aforesaid, Crossclaim Plaintiffs seeks the following:

1. An award of actual damages in excess of $1,000,000.00 as against Crossclaim Defendants, jointly and severally;

2. An award of punitive damages in excess of $1,000,000.00 as against all Crossclaim Defendants jointly and severally;

3. Treble damages as available under common law and any other applicable statutes;

4. Replevin of the 15 Elizabeth Vehicles still held by Crossclaim Defendants and directing Crossclaim Defendants to immediately release to the registry of this Court all Elizabeth Vehicles; and

5. Such other relief as may be deemed just and equitable.

Dated: October 9, 2015

/s/ Igor A. Voloshen
Igor A. Voloshen, Esq.
VOLOSHEN, DIVINSKY & ASSOCIATES
611 County Line Road,
Suite A
Huntingdon Valley, PA 19006
(215) 437-7854

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the First Amended Crossclaim Complaint on behalf of Defendants Sergey Kapustin, G Auto Sales, Inc., Global Auto Sales, Inc., and Effect Auto Sales, Inc. was served on this 9th day of October, 2015, via electronic service of the Court through ECF filing on all parties of record.

Dated: October 9, 2015

/s/ Igor A. Voloshen
Igor A. Voloshen, Esq.
VOLOSHEN, DIVINSKY & ASSOCIATES
611 County Line Road,
Suite A
Huntingdon Valley, PA 19006
(215) 437-7854

From Sergey Kapustin

Case 13 CIV 7152

Akishev et al. vs Kapustin et al

As this court is aware I personally and four of my companies Global Auto Usa, G Auto, Effect Auto and SK Imports were found liable to plaintiffs for $2,3 M.

In the first place I would like to enlighten the court as to how such a judgment was obtained by plaintiffs. As this court is aware the court previously issued the order limiting my expenses. As this court is aware such a restraining order was issued prior to any judgment. I would like to inform the court what was going in this case outside of the courtroom.

1. Maria Temkin, attorney for plaintiffs in this case, approached me after the restraining order was issued and explained to me that at that time I had no chance to defend myself or my companies. She explained to me that under such order I do not have any more option to pay for ANY attorney. Maria Temkin told me that she will attach any money I pay to any lawyer. Then Maria Temkin explained that this court will do anything for her. Anything, whatever she wants. She explained to me that she has a special relationship with the clerks in chambers. She threatened me that if from that point I would not follow her instructions she will ask the judge put me in jail and put members of my family in jail. Maria Temkin also promised me not to enforce the restraining order if I followed her instructions.

2. Maria Temken then told me that she would hire the lawyer for me and that this lawyer would come to court. She recommended several lawyers to me and gave me the phone numbers of the lawyers she chose. This is how I got the name of Igor Voloshen and his phone number. Maria Temkin then informed me that she made all arrangements for me with Igor Voloshen. When I called Mr Voloshen he stated to me that he was expecting my call since Maria Temkin had already called him.

3. When I met Mr Voloshen he explained to me that he will follow all the instructions from Maria Temkin. Mr Voloshen explained to me that he did not want to know anything about the case. He told me that all the documents will be written for him by Maria Temkin.

4. After I signed the retainer with Mr Voloshen, Maria Temkin offered to be my lawyer in the related case in Federal Court in New York. She promised to write for me all the letters and prepare for me all the answers for that case. She actually under threats forced me to mislead the parties in the New York case. For example, she told me not to produce any documents or records and to answer at my deposition that I do not have any records. I actually gave Mr. Voloshen 6 CDs and a full box of documents. Mr Voloshen gave all of these documents to Maria Temkin and then she wrote letters to the court in New York for me to say that I did not have any documents. Maria Temkin also told me not to give out the correct addresses of the ex employees of my companies to prevent them from being deposed. Maria Temkin told me to lie if I am asked at the deposition in New York about the phone numbers of anybody. She instructed me to lie and say that I have a new phone and I have no contacts in my phone. Maria Temkin also instructed me not to answer any questions at my deposition in New York if I feel I did not want to answer and then to go outside and call her for her instruction on how to answer.

5. Most of those instructions were given to me during the meeting between Maria Temkin and myself in the presence of Mr Voloshen. I was told by Maria Temkin all those misleading acts will help me and my family. The letters written for me for the Federal Court in New York were sent by Maria Temkin to Igor Voloshen.

6. I also feel obliged to inform the court how the hearing for damages on August 31, 2015 was planned by Maria Temkin. I was instructed by her to be ready to drop the defense when Mr. Voloshen gave me the sign. It was a hearing of the case Maria Temkin vs Maria Temkin. When the court asked at the hearing about the retainer of Mr. Voloshen she already knew that he was going to be getting $12,000 for being a pocket dog for Maria Temkin. An attorney who did not say a single world at the hearing and then did not show up at the next hearings, by Maria Temkin' s plan is getting from her a kickback for $12,000.

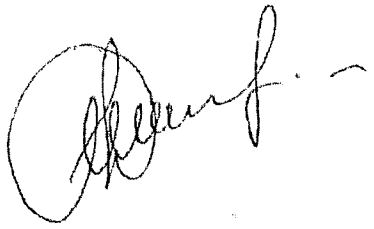
7. I also feel obligated to address the issue of the cross claim I technically filed in this court. Now for the first time in my life I have received a certified translation of the cross claim. I want to testify that never before has the cross claim document been translated to me. Maria Temkin and Mr Voloshen used me knowing that I cannot understand complicated legal documents in English. Now when I have read the cross claim document in Russian I want the court to be informed so I am not accused of lying at a later time. I reviewed the exhibits 1-4 to the cross claim with the list of cars. I can state that all the cars in those exhibits are sold to the buyers and the money for those cars was received by my companies. I feel obligated to point out that I cannot have any claims for cars I already sold and for which my companies have received the money. I do not want at a later time to be accused again of the selling the cars twice. Maria Temkin received all the documents showing that each and every car is sold and the money was received but as I see she continues to put me in trouble by making me file false claims. It is outrageous that this court penalized me for selling the cars twice but for Maria Temkin this court allows anything she wants.

8. I also would like to inform the court about the conspiracy between Mr Marcus Nussbaum my ex attorney in the New York case and Maria Temkin and Mr Voloshen against Michael Hitrinov and Empire United lines. I know about the conspiracy because I was invited to participate in it at a meeting between those lawyers. At this meeting Maria Temkin pronounced herself as the leading attorney of the legal team and said that her goal was to destroy Michael Hitrinov. Maria Temkin told Mr Nussbaum and Mr Voloshen that they must all listen to her instructions and they will all three make money. It was discussed at the meeting how to lie to multiple courts to make money on contingencies in all those courts by filing fabricated claims against Michael Hitrinov and Empire United Lines. I refuse to be a part of such a fraud under the leadership of Maria Temkin.

9. I intended and still intend to file the claim against Mr Nussbaum for the way he handled the New York case as my attorney. Even before the New York case was started Mr Nussbaum was suggesting to me how to get all the cars released without having to pay any money back to our investor Empire United Lines. Mr Nussbaum lied in all the documents in the New York case to try to get the cars released. When I informed Maria Temkin that it was my goal to proceed with my claim against Mr Nussbaum she told me not to even think about it and that she would restrict such a claim against a member of her new legal team thorough this court.

10. Neither me nor my companies were not represented by any attorney at the time when I signed anything assigning any claims or allowing the plaintiffs in this case to represent me. I was not even given any translation or explanation of any documents I had signed. As I stated above Igor Voloshen was a lawyer for Maria Temkin and not for me or my companies. I plan to proceed with the claim against Igor Voloshen as well.

I ask the court to consider this letter as a motion.



I ask this court:

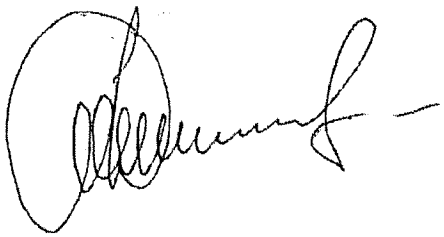
A) considering that it is clear that Igor Voloshen was hired by Maria Temkin to allow me and my companies to have a new fair hearing for damages. Please let me know when the next hearing will be so I can plan to attend.
B) allow me to continue with my claims against Mr Nussbaum and Mr Voloshen.
C) reverse the already granted to plaintiffs motion substituting me in my cross claim.
D) reverse the assignment of my cross claim and any other claim currently assigned to plaintiffs.

It is not fair to restrain me in expenses to the extent that I cannot get any attorney under the plaintiffs motion and then for plaintiffs lawyer Maria Temkin to use the restraining order to force me to accept her own lawyer. Even me who this court considers to be a liar is entitled to a fair due process.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 28,2016

Sergey Kapustin



Достопочтенному Ноэлю Л. Хиллману

От Сергея Капустина

Дело 13 CIV 7152

Акишев et alia против Капустина et alia

Как известно данному суду, я лично и четыре мои компании Global Auto USA, G Auto, Effect Auto и SK Imports были признаны обязанными выплатить истцам 2,3 млн долларов США.

Во-первых, я хотел бы проинформировать суд о том, как данное решение суда было получено истцами. Как известно данному суду, ранее судом был вынесен приказ, лимитирующий мои расходы. Как известно данному суду, этот запретительный приказ был вынесен до какого-либо суда. Я хотел бы проинформировать суд о том, что происходило вне зала суда по данному делу.

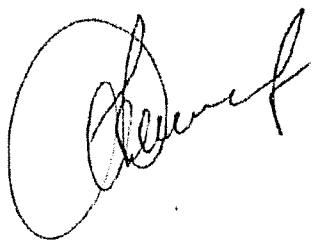
1. Мария Темкин, адвокат истцов по данному делу, подошла ко мне после вынесения запретительного приказа и объяснила, что с этого момента у меня нет никаких шансов защищать себя или мои компании. Она объяснила мне, что в соответствии с таким приказом у меня больше нет возможности платить НИКАКОМУ адвокату. Мария Темкин сказала, что она наложит арест на любые деньги, которые я заплачу какому-либо юристу. Затем Мария Темкин объяснила, что данный суд сделает для нее всё. Всё, что она захочет. Она объяснила мне, что у нее особые отношения с секретарями в судейской комнате. Она пригрозила мне, что если с этого момента я не стану следовать ее указаниям, она попросит судью посадить меня в тюрьму, а также посадить в тюрьму членов моей семьи. Мария Темкин также пообещала мне не приводить в исполнение запретительный приказ, если я буду следовать ее указаниям.
2. Мария Темкин затем сказала мне, что она наймет мне адвоката, и что этот адвокат придет в суд. Она порекомендовала мне несколько адвокатов и дала мне телефонные номера тех адвокатов, которых она выбрала. Именно таким образом я получил имя Игоря Волошена и номер его телефона. Мария Темкин затем проинформировала меня, что она обо всем для меня договорилась с Игорем Волошеным. Когда я позвонил г-ну Волошену, он заявил, что он ожидал мой звонок, так как Мария Темкин уже звонила ему.
3. Когда я встретился с г-ном Волошеным, он объяснил мне, что он будет следовать всем указаниям Марии Темкин. Он также объяснил мне, что он не хочет ничего знать о деле. Он сказал, что все документы будут написаны для него Марией Темкин.
4. После того, как я подписал с г-ном Волошеным договор о представительстве интересов в суде, Мария Темкин предложила быть моим адвокатом в родственном деле в федеральном суде штата Нью-Йорк. Она обещала написать за меня все письма и подготовить со мной все ответы по тому делу. Она при помощи угроз фактически вынудила меня ввести в заблуждение участников дела в Нью-Йорке. Например, она велела мне не предоставлять никакие документы или материалы, и отвечать во время дачи показаний, что у меня нет никаких материалов. На самом деле я передал г-ну Волошену шесть (6) компакт дисков и целую коробку документов. Мария Темкин также сказала мне не давать правильные адреса

бывших работников моих компаний, чтобы предотвратить дачу показаний ими. Мария Темкин сказала, что я должен лгать, если меня спросят во время дачи показаний в Нью-Йорке о чьих-либо телефонных номерах. Она проинструктировала меня, что я должен солгать и сказать, что у меня новый телефон и у меня нет никаких контактных номеров в телефоне. Мария Темкин также дала мне указание не отвечать на вопросы во время дачи показаний в Нью-Йорке, если я почувствую, что я не хочу на них отвечать, а затем выйти на улицу и позвонить ей, чтобы получить от нее инструкции, как отвечать.

5. Большинство этих указаний было дано мне во время наших встреч с Марией Темкин в присутствии г-на Волошена. Мне было сказано Марией Темкин, что все эти вводящие в заблуждение действия помогут мне и моей семье. Письма, написанные за меня в федеральный суд штата Нью-Йорк, были отправлены Марией Темкин Игорю Волошену.
6. Я также чувствую себя обязанным проинформировать суд о том, как слушание о возмещении убытков, состоявшееся 31 августа 2015г., было спланировано Марией Темкин. Я был ей проинструктирован быть готовым к отказу от защиты, когда г-н Волошен подаст мне знак. Это было слушание по делу Мария Темкин против Мария Темкин. Когда суд спросил меня во время слушания о договоре о моем представительстве интересов в суде г-ном Волошеным, она уже знала о том, что он должен был получить двенадцать тысяч долларов США за то, что он был карманной собачкой Марии Темкин. Адвокат, который не сказал ни слова во время слушания, а затем не появился на следующих слушаниях, в соответствии с планом Марии Темкин получает от нее откат в размере двенадцати тысяч долларов США.
7. Я также чувствую себя обязанным затронуть вопрос перекрестного иска, который я технически подал в данный суд. Сейчас, в первый раз в моей жизни я получил сертифицированный перевод перекрестного иска. Я хочу заявить, что никогда раньше документ перекрестного иска не был переведен для меня. Мария Темкин и г-н Волошен использовали меня, зная, что я не смогу понять сложные юридические документы на английском языке. Теперь, когда я прочитал документ перекрестного иска на русском языке, я хочу, чтобы суд был об этом проинформирован, чтобы впоследствии меня не обвинили во лжи. Я пересмотрел вещественные доказательства 1-4 перекрестного иска со списками машин. Я могу утверждать, что все машины в тех вещественных доказательствах были проданы покупателям и деньги за эти машины были получены моими компаниями. Я чувствую себя обязанным обратить внимание на то, что я не могу предъявлять иск на машины, которые я уже продал, и за которые мои компании получили деньги. Я не хочу, чтобы меня впоследствии снова обвинили за продажу машин дважды. Мария Темкин получила документы, показывающие, что все до единой машины были проданы и деньги были получены, но как я вижу она продолжает создавать для меня проблемы, заставляя меня подавать ложные иски. Возмутительно, что данный суд наказал меня за продажу машин дважды, однако Марии Темкин данный суд позволяет делать всё, что она хочет.
8. Я также хотел бы проинформировать суд о сговоре между г-ном Маркусом Насбаумом, моим бывшим адвокатом по делу в Нью-Йорке, и Марией Темкин и г-ном Волошеным против Майкла Хитринова и Empire United Lines. Я знаю об этом сговоре, потому что я был приглашен участвовать в нем во время встречи этих адвокатов. На этой встрече Мария Темкин провозгласила себя ведущим адвокатом юридической команды и сказала, что ее

цель была уничтожить Майкла Хитринова. Мария Темкин сказала г-ну Насбауму и г-ну Волошену, что они все должны слушаться ее указаний, и все трое получат деньги. В ходе встречи было обсуждено как лгать разным судам, чтобы сделать деньги на гонораре успеха во всех тех судах, путем подачи сфабрикованных исков против Майкла Хитринова и Empire United Lines. Я отказываюсь принимать участие в таком мошенничестве под руководством Марии Темкин.

9. Я намеревался и все еще намереваюсь подать иск против г-на Насбаума за то, каким образом он вел мое дело в Нью-Йорке в качестве моего адвоката. Даже до начала Нью-йоркского дела г-н Насбаум предлагал мне пути, как высвободить машины, не выплачивая никаких денег обратно нашему инвестору Empire United Lines. Г-н Насбаум лгал во всех документах Нью-йоркского дела, пытаясь высвободить машины. Когда я уведомил Марию Темкин, что моей целью является продолжение подачи иска против г-на Насбаума, она сказала мне даже и не думать об этом и что она заблокирует такой иск против члена новой юридической команды через суд.
10. Ни я, ни мои компании не были представлены никаким адвокатом в то время, когда я подписывал что-либо, уступая право требования или позволяя истцам в данном деле представлять меня. Мне даже не был предоставлен перевод или объяснение каких-либо документов, которые я подписывал. Как я заявил выше, Игорь Волошен был адвокатом Марии Темкин, а не моим или моих компаний. Я планирую подать иск против Игоря Волошена также.



Я прошу суд считать данное письмо ходатайством.

Я прошу данный суд:

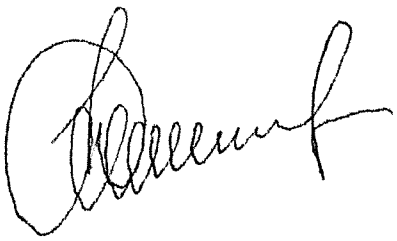
А) принимая во внимание очевидность того, что Игорь Волошен был нанят Марией Темкин, предоставить мне и моим компаниям право на новое беспристрастное слушание дела о возмещении убытков. Дайте мне пожалуйста знать, когда будет следующее слушание, чтобы я мог планировать присутствовать на нем.
Б) позволить мне продолжить подачу иска против г-на Насбаума и г-на Волошена.
В) отменить уже удовлетворенное ходатайство истцов, замещающее меня в моем перекрестном иске.
Г) отменить уступку требований по моему перекрестному иску или любому другому иску, в настоящее время возложенную на истцов.

Несправедливо ограничивать меня в расходах до такой степени, что я не могу нанять никакого адвоката, в соответствии с ходатайством истцов, а затем адвокату истцов Марии Темкин использвать запретительный приказ, чтобы вынудить меня принять ее собственного адвоката. Даже я, тот, кого суд считает лжецом, имею право на справедливый надлежащий процесс.

Я заявляю под страхом наказания за дачу ложных показаний в соответствии с законами Соединенных Штатов Америки, что вышеизложенное является подлинным и правильным.

Подписано 28 января 2016г.

Сергей Капустин



To Honorable Noel L. Hillman

From Sergey Kapustin

Case 13 CIV 7152

Akishev et al. vs Kapustin et al

As this court is already aware Maria Temkin and Anna Brown hired Igor Voloshen for me in order to obtain the judgment against me, get the claims and fabricated cross claims assigned to them using the fact that I do not understand English and stripped me and my companies from any chance of defense by different threats to me and to my ex family.

1. Recently Maria Temkin and Anna Brown obtained the permission from this court to get new titles and sell two cars:

2008 Ford Edge 2FMDK48C28BA53175
1999 Mercedes Benz 420 WDBGA43G5XA425678

I want this court to know that these two cars were already sold by my companies to two different buyers and the money for those two cars was received in full from the customers. The fact the DMV titles were never transferred to new buyers by Global companies for those two cars does not mean anything because for cars intended for export it is not required to transfer the title and Global companies never transferred any DMV titles to any of buyers or investors.

Maria Temkin, Anna Brown and Igor Voloshen are very much aware of the fact that those cars were already sold and that the money was received in full from the buyers. Maria Temkin by different threats and by becoming my attorney to represent me in federal court in New York asked me to hide the fact that these cars were sold already so that she can sell these cars again for their own pockets. Such double sales may cause me and my companies new allegations in new cases. I remember when by error my companies sold some cars twice this court stopped my business and even closed my websites. But Maria Temkin gets whatever she wants and she can sell the cars twice and get away with it.

2. In my letter to the court from January 28, 2016, I informed the court that Maria Temkin demanded me to accept Igor Voloshen as my lawyer and promised me not to enforce the court order limiting my expenses. For six months Maria Temkin and Anna Brown were not interested in my expenses because they were working as lawyers for me and my companies in the federal court in New York case. Now after my letter to the court a few days ago me and my ex family received the request to report the sources of income. For six months when I had to dance under Maria Temkin □s music my income wa interest. But after I informed the court about the conspiracy that Maria Temkin tried to make me be a part of she decided to ask me and my ex family for the source of my income.

3. I understand Maria Temkin, Anna Brown, Igor Voloshen, and Marcus Nussbaum continue to hide their correspondence from the court. I insist that all the documents from Igor Voloshen to this court were written by Maria Temkin. I insist that all my letters to federal court in New York were written by my attorney Maria Temkin then sent to attorney Igor Voloshen who Maria Temkin hired to be a shield representing Maria Temkin instead of representing me and

my companies. I insist that it is a conspiracy between those 3 lawyers for the purpose to make money on fabricated claims at my expense and the expense of innocent investors as companies whose money were used to buy the cars.

4. After further reviewing the Russian translation of the cross claims I realized that my personal name was used as a claimant. As I stated before I only received the translation of the cross claims in January 2016. Thus, how can I have any claims personally? This is another trick by Maria Temkin and her legal team. I personally never received any money from Empire United Lines, I personally never paid any money to Empire United Lines. I demand to withdraw my personal name from such a nonsense cross claim fabricated by Maria Temkin, Igor Voloshen, and Marcus Nussbaum. Such a false representation stating that I may have a personal claim will bring me to more litigation that I do not want.

5. As I already stated in my letter from January 28, 2016 ALL cars in the fabricated cross claims listed in exhibit 1-4 are sold by my companies to the end buyers. ALL the cars in Elizabeth are sold to Global companies buyers. Maria Temkin and Igor Voloshen asked me to lie to the court on the fact that cars are sold but I have decided to tell the truth. Maria Temkin, Anna Brown, Igor Voloshen, and Marcus Nussbaum should not be allowed to proceed with fabricated by them cross claims and should not be allowed to collect money for the cars already sold. Global companies are paid in full and at this time have no claim for any cars in exhibit 1-4 to cross claim.

6. I also again would like to address the participation of Marcus Nussbaum in this case. Mr. Nussbaum contacted me in about December 2012. He offered to be our corporate attorney. He explained to me that he obtained my number from Igor Cherkassky , the owner of the company Unitrans -PRA. Mr. Nussbaum explain to me that the goal of Mr. Cherkassky was to destroy his competition Empire United Lines and the president of Empire United Lines Michael Hitrinov. Mr. Nussbaum became our corporate lawyer and invented the scheme of how to get the cars released and not to pay any money back. Mr. Nussbaum lied to us as their clients and lied to the court in New York. Today Mr. Nussbaum is a part of Maria Temkin □s legal team.

I was present at the meeting when Maria Temkin promised Mr. Nussbaum a protection for all his schemes and lies in exchange for getting paid by him from his cases against Empire United Lines. Since it was represented to me that Maria Temkin is my lawyer I did not object at that time. The real reason why all those lawyer conspirators are hiding from the court their correspondence is clear.

7. I recently learned that now Anna Brown is accusing me of acting on a Russian forum as Alexandr Bogdanov. Maria Temkin and Igor Voloshen and Marcus Nussbaum are all very much aware who Alexandr Bogdavov is. Igor Voloshen has multiple text messages, messages on his Viber and e-mails to and from Alexandr Bogdanov. Igor Voloshen even spoke with Alexandr Bogdanov on the phone on several occasions. Mr. Nussbaum also has multiple communication records with Mr. Bogdanov such as e-mails and text messages. Maria Temkin was coordinating the campaign of Alexandr Bogdanov and other lawyer conspirators. Both Anna Brown and Maria Temkin are all aware who is Alexandr Bogdanov but are hiding it from the court. I also have all reason to believe that Irina Patrushev , partici[ating on the same forum , is a nickname used by Anna Brown or someone acting By Anna Brown Instructions. to provide instructions.

I ask the court to consider this letter as a motion.

I ask this court:

A) to stop Maria Temkin, Anna Brown, and Igor Voloshen from selling the two cars described above and to allow the buyers to get their cars.
B) to stop Maria Temkin from proceeding with the fabricated by her cross claims. The court should not allow new lies because of my previous wrongdoing.
C) to disqualify Maria Temkin and Anna Brown from this case based on the fact that they were already acting on my behalf and on behalf of my companies as my lawyers in federal court in New York.
D) to order Maria Temkin, Anna Brown, Igor Voloshen, and Marcus Nussbaum to show me and other people in this court the correspondence between them. Also order to show the correspondence with Alexandr Bogdanov.
E) to order Igor Voloshen, Maria Temkin, and Anna Brown to return the full box of original documents and 6 disks me and my companies produced. Those documents and discs are needed by my ex family to defend themselves.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 22 , 2016

Sergey Kapustin

WESTLAW

2015 WL 8780547
Only the Westlaw citation is currently available.
United States District Court,
N.D. Georgia, Atlanta Division.

Hutt v. Erbey
United States District Court, N.D. Georgia, Atlanta Division. December 14, 2015 Slip Copy 2015 WL 8780547 *(Approx. 6 pages)*

Helene Hutt, Derivatively on behalf of Ocwen Financial Corporation, Plaintiff,

v.

William C. Erbey, Ronald M. Faris, Ronald J. Korn, William H. Lacy, Robert A. Salcetti, Barry N. Wish, Wilbur L. Ross, John V. Britti, Ocwen Financial Corporation (Nominal Defendant), Defendants.

1:15-cv-891-WSD
Signed 12/14/2015

Attorneys and Law Firms

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OPINION AND ORDER

WILLIAM S. DUFFEY, JR UNITED STATES DISTRICT JUDGE

*1 This matter is before the Court on Defendants Ocwen Financial Corporation's ("Ocwen" or the "Company"), William C. Erbey's, Ronald M. Faris', and John V. Britti's (together, the "Moving Defendants") Motion to Transfer Venue [27] (the "Motion").[1] Also before the Court is the Moving Defendants' Motion to Stay Discovery and Pretrial Deadlines Pending Ruling on Motion to Transfer Venue [30] and Plaintiff Helene Hutt's ("Hutt") Motion for Oral Argument [37] on the Moving Defendants' Motion to Transfer Venue.

I. INTRODUCTION

This matter involves two separate lawsuits. The first, Sokolowski v. Erbey, et al., Case No. 9:14-cv-81604 (S.D. Fla. 2014) (the "Sokolowski Action"), is a shareholder derivative action filed in the United States District Court for the Southern District of Florida on December 24, 2014. The second is the shareholder derivative action filed by Hutt on March 27, 2015, in this Court (the "Hutt Action," the Sokolowski and Hutt Actions will sometimes be referred to as the "Actions"). The Sokolowski Action and the Hutt Action are both shareholder derivative actions brought on behalf of Ocwen against the Company, and against Ocwen's Board of Directors and certain of its executive officers (the "Individual Defendants").[2]

The Moving Defendants argue that the Actions involve substantially similar issues, and that the first-filed rule requires the transfer of the Hutt Action to the Southern District of Florida.

II. BACKGROUND

A. Sokolowski Action

The Sokolowski Action is a shareholder derivative action brought on behalf of Defendant Ocwen against the Company and the Individual Defendants. (Sokolowski Action Am. Compl. [25] at 1). Sokolowski also names Altisource Portfolio Solutions, S.A., Altisource Residential Corporation, Altisource Asset Management Corporation, and Home Loan Servicing

SELECTED TOPICS

Change of Venue or Place of Trial

Support of the Change of Venue Petition

Secondary Sources

s 7:16. Change of venue

1 Lane Goldstein Trial Technique § 7:16 (3d ed.)

...The statutes and codes of all states have made provision for changes of venue in the various courts throughout the country. Generally, a plaintiff's initial choice of venue should be given deference by...

s 58. Convenience of witnesses and ends of justice

77 Am. Jur. 2d Venue § 58

...Even though venue is properly laid, statutes may permit a change of venue when the convenience of witnesses and the ends of justice will be promoted by the change.In order to prevail on a motion for a ...

s 60. Convenience of witnesses and ends of justice-Factors determining convenience

77 Am. Jur. 2d Venue § 60

...The convenience of parties who are expected to be witnesses is not to be considered, since they are not such witnesses as are contemplated by the statute authorizing a change of venue for the convenien...

See More Secondary Sources

Briefs

Brief for Petitioner Piper Aircraft Company

1981 WL 390478
PIPER AIRCRAFT COMPANY, Petitioner, v. Gaynell REYNO. Hartzell Propeller, Inc., Petitioner, v. Gaynell Reyno.
Supreme Court of the United States
May 08, 1981

...FN1. Respondent Gaynell Reyno, who brought this action as personal representative of the Estates of William Fehilly, Liam Stewart Fehilly, William James McDougall Storm, David Vincent Moran, and Peter ...

Brief for Petitioner Hartzell Propeller, Inc

1981 WL 390485
HARTZELL PROPELLER, INC., Petitioner, v. Gaynell REYNO, Respondent.
Supreme Court of the United States
May 08, 1981

...FN* Counsel of record FN* Petitioner Hartzell Propeller, Inc. has no parent company or other affiliate except for its subsidiary Piqua Aircraft Company. The opinion of the United States District Court ...

Petition for a Writ of Certiorari

2008 WL 4462097
Marcel WINDT; E.T. Meijer, In Their Capacity as Trustees in Bankruptcy for KPNQwest, N.V., Petitioners, v. QWEST COMMUNICATIONS INTERNATIONAL, INC., John A. McMaster; Joseph P. Nacchio; Robert S. Woodruff, Respondents.
Supreme Court of the United States
Oct. 03, 2008

Solutions as "Aider and Abettor Defendants." (Id. ¶¶ 51-69). The Sokolowski Action was filed in the Southern District of Florida on December 24, 2014. (Sokolowski Action at [1]).

The derivative claims in the Sokolowski Action are based on the allegations that: (1) the Individual Defendants engaged in self-serving transactions between Ocwen and the Aider and Abettor Defendants;[3] (2) the Individual Defendants failed to implement internal controls to prevent home mortgage servicing abuses;[4] (3) the Individual Defendants caused Ocwen to make false and misleading statements concerning its financial conditions, internal controls, and regulatory compliance;[5] (4) the Individual Defendants violated internal Ocwen policies;[6] and (5) when Ocwen's wrongful conduct was revealed, Ocwen's value and share price was adversely affected.[7]

*2 Sokolowski asserts claims against the Individual Defendants for: (1) violations of Section 14(a) of the Exchange Act; (2) violations of Section 20 of the Exchange Act; (3) breach of fiduciary duty, waste of corporate assets, and breach of duty of loyalty; (4) unjust enrichment; and (5) beach of the duty of candor. (Sokolowski Action Am. Compl. ¶¶ 245-273).

B. Hutt Action

The Hutt Action was filed in this Court on March 27, 2015. The Hutt Action is also a shareholder derivative action brought on behalf of Defendant Ocwen against the Company and the Individual Defendants. (Compl. [1] ¶ 1).[8]

The derivative claims in this case are, like the Sokolowski Action, based on allegations that: (1) the Individual Defendants engaged in self-serving transactions between Ocwen and the Aider and Abettor Defendants;[9] (2) the Individual Defendants failed to implement internal controls to prevent home mortgage servicing abuses;[10] (3) the Individual Defendants caused Ocwen to make false and misleading statements;[11] (4) the Individual Defendants violated internal Ocwen policies;[12] and (5) Ocwen's wrongful conduct reduced Ocwen's value and share price.[13]

Like the Sokolowski Action, Hutt asserts claims in this case against the Individual Defendants for: (1) violations of Section 14(a) of the Exchange Act;[14] (2) breach of fiduciary duty; (3) waste of corporate assets; (4) gross mismanagement; (5) unjust enrichment (against only Defendant Erbey); and (6) aiding and abetting fiduciary violations. (Id. ¶¶ 253-285).

C. Venue

Hutt alleges that venue in the Northern District of Georgia is appropriate under 28 U.S.C. § 1391 because (i) one or more of the Defendants either resides or maintains executives offices in the Northern District of Georgia; (ii) a substantial portion of the transactions and wrongs complained of herein occurred in the Northern District of Georgia; and (iii) Defendants received substantial compensation and other transfers of money in the Northern District of Georgia by doing business and engaging in activities having an effect in the Northern District of Georgia. (Compl. ¶ 8). Hutt alleges that Ocwen is a corporation organized and existing under the laws of Florida, with its principal executive office located in Atlanta, Georgia. (Id. ¶ 10). The Individual Defendants are citizens of Florida, Wisconsin, Texas, Georgia, and the U.S. Virgin Islands. (Id. ¶¶ 11-18).

The Motion to Transfer Venue was filed on June 23, 2015. The Moving Defendants argue the Sokolowski Action, which was pending when the Hutt Action was filed, is "virtually identical" to the Hutt Action. (Mot. at 2). They argue the first-filed rule requires the Hutt Action to be transferred to the Southern District of Florida, where the Sokolowski Action is pending. (Id.).[15]

III. DISCUSSION

A. Legal Framework

*3 "Where two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit under the first-filed rule." Manuel v. Convergys Corp., 430 F.3d 1132, 1135 (11th Cir. 2005) (citations omitted). Under the first-filed rule, "when parties have instituted competing or parallel litigation in separate courts," the court that "initially seized the controversy" should hear the case. See Collegiate Licensing Co. v. Am. Cas. Co., 713 F.3d 71, 78 (11th Cir. 2013) (citations omitted). Where a case involves overlapping issues and parties, the court that "initially seized the controversy" generally is entitled to decide whether the second-filed action should be dismissed, stayed, or consolidated with the first-filed action. Id. The first-filed rule is intended "to avoid interference" with the jurisdiction of another

...KPNQwest N.V. is a former Dutch telecommunications company in liquidation in the Netherlands. Petitioners Marcel Windt and E.T. Meijer ("Trustees") are trustees for the bankruptcy estate. Shares in KPN...

See More Briefs

Trial Court Documents

In re Zacky Farms, LLC

2013 WL 1386900
In re ZACKY FARMS, LLC, a California limited liability company, Debtor-In-Possession.
United States Bankruptcy Court, E.D. California.
Apr. 03, 2013

...Chapter 11 DCN: FWP-25 Hearing Date: February 20, 2013 Time: 2:00 p.m. Courtroom: 32 501 I Street, 6 Floor Sacramento, CA 95814 The Joint Motion For Approval Of Settlement Among The Official Committee ...

In re Zacky Farms, LLC

2013 WL 2470971
In re ZACKY FARMS, LLC, a California limited liability company, Debtor-In-Possession.
United States Bankruptcy Court, E.D. California.
June 06, 2013

...FN1. This amended order amends the February 21, 2013 order [Docket No. 1078] solely with respect to paragraphs 9 and 11 herein as set forth in the Stipulation Among Movants and the Official Committee o...

In re Project Orange Associates, LLC

2010 WL 6982729
In re: PROJECT ORANGE ASSOCIATES, LLC, Debtor.
United States Bankruptcy Court, S.D. New York.
Apr. 29, 2010

...FN1. Subsequent to the hearing on this motion, the Court sustained the United States Trustee's Objection to the Debtor's application to retain DLA Piper LLP (US). In re Project Orange Assocs. LLC, No. ...

See More Trial Court Documents

federal court. It seeks "to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result." See Int'l Fid. Ins. Co. v. Sweet Little Mexico Corp, 665 F.3d 671, 678 (5th Cir. 2011).

To determine whether two actions pending in different federal courts involve "overlapping issues," the court examines whether (1) "the core issue" is the same in both actions, (2) the proof required would likely be identical, and (3) if the two actions overlap "on the substantive issues." Id.; Save Power Ltd. v. Syntek Fin. Corp., 121 F.3d 947, 951 (5th Cir. 1997). If the district court finds a likelihood of substantial overlap "the proper course of action [is] for the court to transfer the case to the [first-filed] court to determine which case should, in the interests of sound judicial administration and judicial economy, proceed." See Cadle Co. v. Whataburger of Alice, Inc., 174 F.3d 599, 606 (5th Cir. 1999). A party must show "compelling circumstances" to convince a court to depart from the first-filed rule. See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Haydu, 675 F.3d 1169, 1174 (11th Cir. 1982).

B. Analysis

The Sokolowski Action and the Hutt Action are both shareholder derivative actions brought on behalf of Ocwen against the Company and the Individual Defendants. The Sokolowski Action also names the Aider and Abettor Defendants as defendants.[16] The Aider and Abettor Defendants' conduct appears to be intertwined with the core claims Hutt alleges against the Individual Defendants. The Sokolowski Action, thus, includes all of the defendants in the Hutt Action.

Sokolowski and Hutt base their claims on allegations that: (1) the Individual Defendants engaged in self-serving transactions between Ocwen and the Aider and Abettor Defendants; (2) the Individual Defendants failed to implement internal controls to prevent home mortgage servicing abuses; (3) the Individual Defendants caused Ocwen to make false and misleading statements concerning its financial conditions, internal controls, and regulatory compliance; (4) the Individual Defendants violated internal Ocwen policies; and (5) when Ocwen's wrongful conduct, caused by the Individual Defendants, was revealed, Ocwen's value and share price was adversely affected.

Finally, both Sokolowski and Hutt assert claims against the Individual Defendants for: (1) violations of Section 14(a) of the Exchange Act; (2) breach of fiduciary duty; (3) waste of corporate assets; and (4) unjust enrichment. Sokolowski asserts the same claims Hutt asserts, with the exception of claims for gross mismanagement and aiding and abetting fiduciary violations, which are based on the same allegations as those asserted in the Sokolowski Action. In short, the claims asserted in the Sokolowski Action and the Hutt Action are virtually identical.

The complaints in the Sokolowski Action and the Hutt Action on their face show that these "two actions involv[e] overlapping issues and parties," creating a "strong presumption" that the Hutt Action should be transferred to the United States District Court for the Southern District of Florida. See Manuel, 430 F.3d at 1135. The core issues of the Individual Defendants' breach of their fiduciary duties, self-dealing, and the harm that their actions, and the actions they compelled Ocwen to take, are the same in both the Sokolowski Action and the Hutt Action. See Int'l Fid, 665 F.3d at 678. The proof Sokolowski and Hutt need to succeed on these claims is nearly identical, and these two actions overlap on the substantive issues. See id. It is undisputed that the Sokolowski Action was the first-filed action. Hutt has not shown "compelling circumstances" to convince the Court to ignore the first-filed rule. See Merrill Lynch, 675 F.3d at 1174.

*4 Hutt asserts several shallow, unpersuasive arguments to avoid transfer. Hutt claims that only the Special Litigation Committee ("SLC"), appointed by Ocwen's Board of Directors (the "Board") has the authority to make decisions regarding this litigation. (Resp. [29] at 12-13). Hutt does not offer any authority to support that the appointment of the SLC precludes the Individual Defendants from seeking a court to enforce the first-filed rule.

Hutt next argues that Sokolowski's original complaint only named Messrs. Erbey, Faris, Korn, Lacy, Wish, and Salcetti as defendants. (Id. at 15). Only after Sokolowski became aware of Hutt's September 2, 2014, demand letter to the Board, did Sokolowski file his Amended Complaint, adding Mr. Britti and Mr. Ross as defendants. (Id). Hutt does not offer any authority to support that an initial failure to name two directors as defendants precludes application of the first-filed rule where, at the time transfer was requested, all of the parties in the second case are parties in the first-filed case. Hutt's arguments are unconvincing.[17]

Hutt finally argues that Sokolowski initiated the Sokolowski Action despite having an outstanding litigation demand to which the Board had not yet responded. (Resp. at 16-17) (citing Fla. Stat. Ann. § 607.07401). Hutt asserts that Sokolowski "raced to the courthouse" in order to file his action first. (Resp. at 16-20).

The facts do not support this litigation position. Sokolowski alleges that he made his initial demand on the Board on February 11, 2014, and further alleges that the Board failed to respond to the demand in the ninety days allowed by Section 607.07401. (Sokolowski Action Am. Compl. at 1). Sokolowski filed his derivative over ninety days after his February 11, 2014, demand. (Sokolowski Action at [1]). Sokolowski's conduct can hardly be viewed as "racing" to the courthouse.

Sokolowski made his demand on the Board approximately four months before Hutt made her demand on the Board, and he initiated the Sokolowski Action approximately three months before the Hutt Action was filed. Hutt's argument that Sokolowski "raced" to the courthouse is unsupported and inconsistent with the evidence. [18], [19]

***5** Hutt has not met her burden to show "compelling circumstances" to support that the Court should depart from the first-filed rule. [20] The Hutt Action is required to be transferred to the United States District Court for the Southern District of Florida. [21]

C. Request for Attorneys' Fees

The Moving Defendants argue that Hutt's counsel's conduct in filing the Hutt Action, and refusing to consent to its transfer to the Southern District of Florida, warrants an award of attorneys' fees under 28 U.S.C. § 1927. Section 1927 states:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927. Section 1927 allows a district court to "assess attorney's fees against litigants, counsel, and law firms who willfully abuse judicial process by conduct tantamount to bad faith." Avirgan v. Hull, 932 F.2d 1572, 1582 (11th Cir. 1991).

While the filing of the Hutt Action in this Court shows suspect professional judgment and has burdened the parties and the Court, the record here is insufficient for the Court to find that Hutt's counsel "unreasonably and vexatiously" multiplied the proceedings, or acted in bad faith, by filing the Hutt Action. Venue in the Northern District of Georgia is proper under 28 U.S.C. § 1391, because Ocwen's principal executive office is in this district, and Hutt alleges that certain transactions and wrongs of which Hutt complained occurred in this district. 28 U.S.C. § 1391(b)(2); (Compl. ¶ 8). There also is no evidence that Hutt's counsel knew the Sokolowski Action was pending in the Southern District of Florida when the Hutt Action was filed. The Court concludes that Hutt's counsel's decision to file the Hutt Action does not rise to the level of bad faith, and attorneys' fees are not awarded under 28 U.S.C. § 1927.

IV. CONCLUSION

***6** For the foregoing reasons,

IT IS HEREBY ORDERED that the Moving Defendants' Motion to Transfer Venue [27] is **GRANTED IN PART** and **DENIED IN PART**. It is **GRANTED** with respect to the Moving Defendants' request to transfer this case. It is **DENIED** with respect to the Moving Defendants' request for attorneys' fees.

IT IS FURTHER ORDERED that this action is **TRANSFERRED** to the United States District Court for the Southern District of Florida.

IT IS FURTHER ORDERED that the Motion to Stay Discovery and Pretrial Deadlines Pending Ruling on Motion to Transfer Venue [30] and the Motion for Oral Argument [37] are **DENIED**.

SO ORDERED this 14th day of December, 2015.

All Citations

Slip Copy, 2015 WL 8780547

Footnotes

1 Defendants Robert A. Salcetti, Barry N. Wish, William H. Lacy, Ronald J. Korn, and Wilbur R. Ross join [28] the Motion.

2 The Individual Defendants are: (1) William C. Erbey; (2) Ronald M. Faris; (3) Ronald J. Korn; (4) William H. Lacy; (5) Robert A. Salcetti; (6) Barry N. Wish; (7) Wilbur R. Ross; and (8) John V. Britti.

3 (Sokolowski Action Am. Compl. ¶¶ 5-8, 12, 15, 19-20, 22, 51-69, 74-76, 109, 114, 258-65).

4 (Id. ¶¶ 1, 13, 15, 23, 85, 91-82, 97, 99-101, 109-10, 123-27).

5 (Id. ¶¶ 10-14, 18-19, 93-96, 118, 121-26, 141-42, 221-33, 245-54).

6 (Id. ¶¶ 148-85).

7 (Sokolowski Action Am. Compl. ¶¶ 25, 111, 132-33, 234-44).

8 Before this action was filed, Hutt, on March 25, 2015, filed the identical complaint in the United States District Court for the Southern District of Florida. Hutt v. Erbey, et al., Case No. 9:15-cv-80392 (S.D. Fla. 2015). Two days later, on March 27, 2015, Hutt voluntarily dismissed the complaint filed in Florida, and refiled the same complaint in this Court.

9 (Compl. ¶¶ 3, 11, 55-81, 102-04, 160, 115-17, 125, 137, 179-85, 188, 208-10).

10 (Id. ¶¶ 3, 95-99, 157-62, 196, 12, 216-19).

11 (Id. ¶¶ 3, 109-229).

12 (Id. ¶¶ 25-37, 112-13).

13 (Id. ¶¶ 167, 200, 205, 213, 230-32).

14 The subset of the Individual Defendants against whom the Section 14(a) claim is asserted is Defendants Erbey, Faris, Korn, Lacy, Ross, Salcetti, and Wish.

15 The Moving Defendants also seek their attorneys' fees under 28 U.S.C. § 1927. (Mot. at 3).

16 The Aider and Abettor Defendants are four Ocwen-affiliated spin-off companies controlled by Mr. Erbey. (Compl. ¶ 11).

17 Hutt argues that her Complaint contains additional details and allegations, noting that her Complaint is 187-pages long, compared with the 107-page Amended Complaint in the Sokolowski Action. (Id. at 16). Hutt argues further that the relevant period for her allegations commences on March 1, 2013, as opposed to May 2, 2013 in the Sokolowski Action, and includes allegations regarding two additional Securities and Exchange Commission filings as a result. (*Id.*).

> Hutt's identical complaint, when initially filed in the Southern District of Florida, totaled 128 pages due to the spacing and formatting requirements of that district. Comparing apples to apples, Hutt's Complaint is 21 pages longer than the Amended Complaint in the Sokolowski Action. The length of Hutt's Complaint, however, does not establish that her allegations or claims are substantially different from those in the Amended Complaint in the Sokolowski Action. The Court has reviewed both complaints, and concludes that both Actions involve overlapping issues and parties. The first-filed rule does not require identical claims, but only that the two actions contain overlapping issues and parties. See Int'l Fid., 665 F.3d at 678.

18 The Court notes that it has previously applied the first-filed rule even where the first-filed complaint may have been the result of a race to the courthouse. See Travel Spike, LLC v. Travel Ad Network, Inc., No. 1:11-CV-3199-RWS, 2012 WL 887591, at *2 (N.D. Ga. Mar. 15, 2012). To the extent that Hutt asserts that her Complaint is superior to the Amended Complaint in the Sokolowski Action, it is up to the United States District Court for the Southern District of Florida to decide whether to stay one of these actions, consolidate them, or dismiss one of them. See Cadle, 174 F.3d at 606.

19 Hutt moves the Court to allow oral argument on the Motion, arguing that the Moving Defendants' Reply "attempts to gloss over [the] fact" that the Sokolowski Action was filed in contravention to Florida law. The Court has considered this argument and concludes, including based on its own research, that the Sokolowski Action complied with the requirements of Section 607.07401 of the Florida Business Corporation Act and that, even if it did not, the first-filed rule still applies. Oral argument on this issue is denied.

20 Hutt suggests that the Section 1404(a) factors do not favor transferring the Hutt Action to the Southern District of Florida. See Manuel, 430 F.3d at 1135 & n.1; (Resp. at 20-22). The Court is not transferring venue based on 28 U.S.C. § 1404(a), but rather under the first-filed rule. The Court notes, however, that several factors, including trial efficiency and the interest of justice, would warrant transfer of this action under the more common Section 1404(a) transfer factors.

21 The Court notes that another action against Ocwen, Mr. Erbey, and Mr. Faris is pending in the United States District Court for the Southern District of Florida See In re Ocwen Financial Corporation Securities Litigation, Case No. 9:14-cv-81057 (S.D. Fla. 2014). That action is based on allegations that Ocwen, Mr. Erbey, and Mr. Faris violated federal securities laws by making false and misleading statements to the public. That conduct is, in part, the same conduct at issue in the Sokolowski Action and the Hutt Action, and the action is pending before the same Southern District of Florida judge that is adjudicating the Sokolowski Action. Transferring the Hutt Action to the Southern District of Florida will preserve judicial resources by allowing the same district court to adjudicate these cases with the same factual allegations.

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