



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

February 23, 2012

Alan J. Berkeley, Esq.
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006-1600

Re: *SEC v. Koss Corporation et al.*
Civil Action No. 2:11-cv-00991 (E.D. Wis.)
Waiver Request under Rule 505 of Regulation D

Dear Mr. Berkeley:

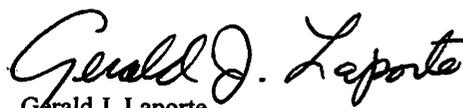
This responds to your letter dated February 23, 2012, written on behalf of Koss Corporation, and constituting an application for waiver relief under Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933 (the "Securities Act"), 17 CFR 230.505(b)(2)(iii)(C).

On behalf of Koss Corporation, you requested a waiver of any disqualification from eligibility for the exemption available under Rule 505 that arose by reason of entry on this date of two separate Final Judgments in *SEC v. Koss Corporation et al.*, Civil Action No 2:11-cv-00991 (E.D. Wis.) (the "Final Judgments"). One Final Judgment, against Koss Corporation, permanently restrains and enjoins Koss Corporation from violating Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rules 12b-20, 13a-1, 13a-11, and 13a-13 under that statute. Koss Corporation understands that that Final Judgment may have disqualified the company for five years as an issuer subject to the type of injunction described in Rule 262(a)(4) under the Securities Act by reason of Rule 505(b)(2)(iii). The other Final Judgment, against Michael J. Koss, President and Chief Executive Officer of Koss Corporation, permanently restrains and enjoins Mr. Koss from aiding and abetting any violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 under that statute. Koss Corporation understands that the Final Judgment entered against Mr. Koss may have disqualified the company for five years as an issuer with an officer or other relevant related party subject to the type of injunction described in Rule 262(b)(2) under the Securities Act by reason of Rule 505(b)(2)(iii).

For purposes of this letter, we have assumed as facts the representations set forth in your letter. We also have assumed that Koss Corporation will comply with the Final Judgment entered against it described above. On the basis of your letter, I have determined that you have made a showing of good cause under Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny to Koss Corporation the exemption otherwise available to it under Rule 505 by reason of entry of the Final Judgments if Koss Corporation complies with the condition to the waiver granted below.

Accordingly, pursuant to delegated authority, on behalf of the Division of Corporation Finance, I hereby grant a waiver to Koss Corporation from any disqualification from the exemption otherwise available under Rule 505 that arose by reason of entry of the Final Judgments, subject to the condition that Koss Corporation provide written disclosure to investors describing the nature of the Final Judgments in any offering for which it claims the Rule 505 exemption for five years following entry of the Final Judgments.

Very truly yours,


Gerald J. Laporte
Chief, Office of Small Business Policy

February 23, 2012

Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: In the Matter of Koss Corporation (File No C-07630)

Dear Mr. Laporte:

We are writing on behalf of our client, Koss Corporation (“Company”). As we previously advised, Judge Randa entered Final Judgments in SEC v. Koss Corp., No. 2:11-cv-00991, Final Judgments (E.D. Wis. Feb. 23, 2012). The Final Judgments are attached.

Pursuant to Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933 (“Securities Act”), we are requesting a waiver of disqualification from reliance on Rule 505 of Regulation D that may be applicable to the Company pursuant to Rules 262(a)(4) and 262(b)(2) of Regulation A as a result of the Final Judgments against the Company and Michael Koss, its President and Chief Executive Officer.

We understand that the Division of Enforcement has no objection to the grant of the requested waiver.

Background

This matter arises as a result of the embezzlement from the Company of more than \$30 million by Sujata Sachdeva, the Company’s former Principal Accounting Officer, Secretary and Vice-President of Finance. Ms. Sachdeva was convicted and is currently serving an eleven year sentence. The Commission also initiated an action against Ms. Sachdeva pursuant to which she was enjoined from violating reporting and recordkeeping and anti-fraud provisions of the securities laws and barred from acting as an officer or director of a public company.

The Company and Mr. Koss consented to entry of the Final Judgments without admitting or denying the allegations set forth in the Securities and the Exchange Commission (“Commission”) Complaints. The Final Judgments (i) permanently restrain and enjoin the Company from violating Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, (ii) permanently restrain and enjoin Mr. Koss

from aiding and abetting violations of such provisions, and (iii) require Mr. Koss to reimburse the Company, as he has now done, \$242,419 in cash and 160,000 options pursuant to Section 304 of the Sarbanes-Oxley Act.

Discussion

The Company understands that entry of the Final Judgments may disqualify it from relying on Rule 505 of Regulation D promulgated under the Securities Act, insofar as the injunctions set forth in the Final Judgments may be deemed to cause the Company to be enjoined as set forth in 17 C.F.R. § 230.505(b)(2)(iii) as an issuer described in 17 C.F.R. §230.262(a)(4), with respect to the Company, and 17 C.F.R. §230.262(b)(2), with respect to Mr. Koss. The Commission has the authority to waive the effects of the disqualification upon a showing of good cause that disqualification is not necessary under the circumstances. See 17 C.F.R. §230.505(b)(2)(iii)(C).

The Company requests that the Commission waive the effects of the disqualification that the Final Judgments may have under Rule 505 of Regulation D on the following grounds:

(1) The conduct related to the alleged violations by the Company and Mr. Koss does not pertain to Regulation D or any financing or capital formation transaction.

(2) The Commission's Complaints against the Company and Mr. Koss did not allege violations of any anti-fraud statutes or rules.

(3) The Company and Mr. Koss were victims of Ms. Sachdeva's fraud.

(4) Mr. Koss had no direct involvement in the fraud. Mr. Koss caused the Company to take immediate and decisive action upon discovery of the embezzlement, as more fully described below, which allowed law enforcement to arrest Ms. Sachdeva on the next business day after Mr. Koss became aware of the matter.

(5) Promptly upon discovery of the embezzlement, the Company notified the Commission and requested NASDAQ to suspend trading of the Company's stock (shortly after resumption of trading, the Company's stock price returned to pre-disclosure levels). In addition, the Company's board of directors launched an independent internal investigation into the matter. The Company and Mr. Koss fully cooperated with law enforcement authorities and the Commission staff in their investigations. The Company, at Mr. Koss' direction, undertook significant remedial measures, including engaging external experts to review and make recommendations regarding the Company's system of internal controls and accounting procedures. The Company implemented such recommendations.

(6) Promptly upon discovery of the embezzlement, the Company also disclosed the news and announced that its previously issued financial statements

could no longer be relied upon and thereafter filed amended and restated financial statements as required. The Company dismissed Ms. Sachdeva and other accounting staff from employment with the Company.

(7) The disqualification of the Company from relying on Rule 505 of Regulation D would be unduly and disproportionately severe given the nature of the alleged violations by the Company and Mr. Koss and the extent to which a disqualification may affect the business operations of the Company by impairing the ability to issue securities in a "Rule 505 offering" to raise new capital. Moreover, the loss of a "Rule 505 offering" is particularly significant to the Company given that it is a smaller reporting company, for which an offering within the dollar amount limitations of Rule 505 would provide critical and material financial support.

(8) The disqualification of the Company from relying on Rule 505 of Regulation D would be unduly and disproportionately severe, given that (i) there is no connection between the embezzlement or the alleged securities violations by the Company or Mr. Koss and Rule 505 of Regulation D, and (ii) these are settled matters compelling prospective compliance with provisions of the Exchange Act and Mr. Koss' additional reimbursements of cash and options, and not imposing any monetary sanctions or bars from service as an officer or director of a public company.

* * * *

In light of the grounds for relief discussed above, we believe that disqualification is not necessary or appropriate, in the public interest, or consistent with the protection of investors, and that the Company showed good cause that relief should be granted. Accordingly, we respectfully urge the Commission to waive the disqualification provision of Rule 505 of Regulation D to the extent that it may be applicable to the Company by virtue of the Final Judgments.¹

If you have any questions regarding this request, please contact me at 202-778-9398.

Very truly yours,



Lauren B. Pryor

¹ We note in support of this request that the Commission granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons and/or in similar circumstances. *See, e.g.,* Gen. Elec. Co., SEC No-Action Letter (Aug. 11, 2009); Am. Int'l Group, Inc., SEC No-Action Letter (Feb. 21, 2006); Sybaris Clubs Int'l, Inc., SEC No-Action Letter (July 1, 1996); The Cooper Cos., Inc., SEC No-Action Letter (Dec. 20, 1994); Michigan Nat'l Cor., SEC No-Action Letter (Dec. 17, 1993); Gen. Elec. Co., SEC No-Action Letter (May 24, 1988). *See also* Citigroup Global Mkts. Inc., SEC No-Action Letter (Dec. 23, 2008); UBS Secs. LLC et al., SEC No-Action Letter (Dec. 23, 2008); Prudential Fin., Inc., SEC No-Action Letter (Sept. 4, 2008); First Southwest Co., SEC No-Action Letter (May 27, 2008); Hartford Inv. Fin. Servs., LLC, et al., SEC No-Action Letter (May 14, 2008); Gabelli Funds LLC, SEC No-Action Letter (Apr. 24, 2008); Pritchard Capital Partners, LLC et al., SEC No-Action Letter (Apr. 23, 2008).

Final Judgments

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

**UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)**

Plaintiff,)

v.)

Civil Action No. 2:11-cv-00991

**KOSS CORPORATION and)
MICHAEL J. KOSS,)**

Defendants.)

FINAL JUDGMENT AS TO DEFENDANT KOSS CORPORATION

The United States Securities and Exchange Commission (“Commission”), having filed a Complaint, and Defendant Koss Corporation (“Defendant”), having entered a general appearance, consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this judgment (“Order”) without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Order:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from violating Section 13(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13] thereunder by filing materially inaccurate or misleading statements with the Commission in information or documents required to be filed with the Commission pursuant to Section 12 of the Exchange Act.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] by failing:

- (a) to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;
- (b) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - (i) transactions are executed in accordance with management's general or specific authorization;
 - (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
 - (iii) access to assets is permitted only in accordance with management's general or specific authorization; and
 - (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall comply with the following undertakings and agreements.

- (a) Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.
- (b) Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.
- (c) Defendant entered into the Defendant's Consent filed in this proceeding voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission or by anyone else to induce Defendant to enter into the Consent.
- (d) Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.
- (e) Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.
- (f) Consistent with 17 C.F.R. 202.5(f), the Defendant's Consent resolves only the claims against Defendant in this civil proceeding. Defendant acknowledges that

no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability.

- (g) Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.

- (h) Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is

without factual basis; and (ii) Defendant withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

- (i) Defendant waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.
- (j) In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of

such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Order.

Dated: January 23, 2012

JON W. SANFILIPPO
Clerk of Court

By: s/Linda M. Zik
Deputy Clerk

misleading statements with the Commission in information or documents required to be filed with the Commission pursuant to Section 12 of the Exchange Act.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] by knowingly providing substantial assistance to an issuer in failing:

- (a) to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;
- (b) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - (i) transactions are executed in accordance with management's general or specific authorization;
 - (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
 - (iii) access to assets is permitted only in accordance with management's general or specific authorization; and

- (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] by failing to include certifications in the form required by the rule or including certifications that are false.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is ordered to reimburse Koss Corporation ("Koss") for \$242,419 in cash and 160,000 of options pursuant to Section 304 of the Sarbanes-Oxley Act [15 U.S.C. § 7243]. This bonus reimbursement, together with his previous voluntary reimbursement of bonus amounting to \$208,895 represents Defendant's entire fiscal year 2008, 2009 and 2010 incentive bonuses. Defendant shall satisfy his reimbursement obligation by: (1) paying to Koss \$242,419 within 30 days of the entry of this Final Judgment; and (2) forfeiting to Koss his 160,000 options granted to him in July 2009 within 30 days of this Final Judgment. Defendant shall deliver to counsel for Plaintiff Securities and Exchange Commission proof of satisfying this reimbursement obligation and his previous voluntary reimbursement of \$208,895.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall not seek indemnification from Koss or any other entity or person for the payments required by this Final Judgment.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall comply with the following undertakings and agreements.

- (a) Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.
- (b) Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.
- (c) Defendant entered into the Defendant's Consent filed in this proceeding voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission or by anyone else to induce Defendant to enter into the Consent.
- (d) Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.
- (e) Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed

with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

- (f) Consistent with 17 C.F.R. 202.5(f), the Defendant's Consent resolves only the claims against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability.
- (g) Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the Complaint in this action.
- (h) Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that

imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; and (ii) Defendant withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

- (i) Defendant waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.
- (j) In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable

notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Order.

Dated: February 23, 2012

JON W. SANFILIPPO
Clerk of Court

By: s/Linda M. Zik
Deputy Clerk