UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9361 / September 14, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 67860 / September 14, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3464 / September 14, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30202 / September 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15024

In the Matter of

WALTER V. GERASIMOWICZ, MEDITRON ASSET MANAGEMENT, LLC, MEDITRON MANAGEMENT GROUP, LLC,

Respondents.

REPLY IN FURTHER SUPPORT OF THE DIVISION OF ENFORCEMENT'S APPLICATION FOR DAMAGES

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In their May 17, 2013 Response to the Division's May 3, 2013 Damages Brief ("Response"), Respondents admit, as they must, the conduct detailed in the Order,[1] but argue instead that the Court should assess disgorgement, prejudgment interest, and penalties in an amount less than that urged by the Division. Respondents' "arguments," which make only passing, boilerplate reference to any case law, all boil down to the same assertion: that because Respondents did not personally enjoy the benefits of the money they siphoned off from the Fund and stole from investors, but, instead, lost it by using it to prop up SMC, a failing electrical subcontractor, they should not bear the costs of this defalcation. Thus, Respondents urge, the Court should show them some leniency in assessing the financial costs to them of losing what in many instances was their victims' life savings, hinting that this loss was merely an unfortunate incident and, as Respondent Gerasimowicz asserts, is not without costs to him personally.[2] Finally, Respondents claim that they are vigorously trying to recover the sums lost through a series of quixotic litigations and potential litigations that will seek recovery from the claimed malefactors from SMC, including, among others, from SMC's former staff. Respondents further claim that one of these actions has been settled "for as much as $2.4 million for MREP." (Gerasimowicz Decl. ¶ 8.)

This recitation omits several salient facts, however. What Respondents fail to advise the Court is that:

- Respondents paid $150,000 – funds that might be among those stolen from investors – to purchase the rights to pursue the lawsuits against SMC's personnel, rather than pay that money to defrauded investors. (*See* May 13, 2013 Motion by Chapter 7 Trustee in SMC Bankruptcy Action, attached hereto as Exhibit 1.)

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1 All capitalized words not defined herein have the definitions ascribed to them in the Division's May 3, 2013 Damages Brief ("Dam. Br.").

2 Gerasimowicz even argues that his lifelong medical issues somehow insulate him from the consequences of his fraud. *See* Gerasimowicz's May 17, 2013 Declaration ("Gerasimowicz Decl.") at ¶¶ 13-15.

- Contrary to the claim that Respondents are "actively and vigorously pursuing restitution for investors" (Response 1), not one of the quixotic lawsuits referenced is being prosecuted or is contemplated to be pursued in the name of the Fund investors, but are being furthered in the name of Gerasimowicz. (*See* Assignment Agreement attached as Exhibit A to Exhibit 1.) There is absolutely nothing preventing Gerasimowicz from pocketing for his own use any potential recoveries – if any – from his various law suits, absent a significant Order in this administrative proceeding.

- The so-called $2.4 million "settlement" is nothing of the sort. Instead, it is a "settlement" for $500,000, which even if it were not most likely uncollectible, has been "waived" by Gerasimowicz. (*See* Dec. 26, 2012 Motion for Judgment, attached as Exhibit 2 hereto, at ¶ 12).

- Regardless of whether or not Gerasimowicz was himself "a victim of affiliated persons of SMC as the investors were" (Response 1), it was Gerasimowicz alone who made the baffling decision to siphon off Fund assets to prop up a company that was failing almost from the day he made the investment. (*See generally* Order).

- Gerasimowicz concealed from investors the fact that their savings had been thrown away, into unredeemable Notes, or simply to pay off SMC's creditors. He lied to investors who sought to redeem, lied in Quarterly Communiques listing the Funds' largest holdings, consistently refusing to mention SMC even when it was the vast majority of the Fund's holdings, and repeatedly sent investors false and misleading NAV's and account summaries that lied about the value of their holdings. (*See, e.g.,* Order ¶¶ 20-44; Trial Exs. 17, 22, 24, 26, 56, 66-67, 84-89, 137, 257).

- Finally, after his scheme with the Fund collapsed, Gerasimowicz was negotiating with another investment firm to sell them his clients and his staff. As the May 28, 2013 letter attached hereto as Exhibit 3 indicates, during the pendency of the Administrative Proceeding, Gerasimowicz met with management at Fogel Neale Wealth Management, LLC ("FNWM") and told them that this

> multi-count proceeding involving allegations of widespread fraud was a mere "minor regulatory issue." Prior to the settlement of the case at bar, Gerasimowicz received $10,000 from FNWM for transitioning his clients to their care.

Moreover, Respondents focus solely on the looting of the Fund, which, although the focus of the Division's action, is not the only violative behavior described in the Order. In addition to this misappropriation, Respondents also concealed from Fund investors dramatic deviations in the Fund's investment strategy (Order ¶¶ 3, 35-44), failed to disclose a material conflict of interest arising from the fact that Respondents had their own investment of $2 million in SMC (Order ¶ 3), misrepresented MAM's regulatory assets under management (Order ¶¶ 4, 45), and violated the custody rule applicable to registered investment advisors by failing to distribute annual audited financial statements to Fund investors. (Order ¶¶ 5, 46-49).

The fact remains that Respondents knew that they were committing a major fraud that ended up wiping out investors. Their intent and scienter is established by the great lengths to which they went to conceal their misdeeds. If they believed that their conduct was blameless, they would not have spent years trying to ensure that no investor discovered their acts.

Defendants have also omitted some very salient recent history, particularly with respect to the bankruptcy proceedings involving SMC, demonstrating the lengths Respondents have gone to in order to shelter assets from any Court Order. As reflected in the Chapter 7 Trustee's Motion of May 13, 2013 with annexed Exhibits (attached hereto as Exhibit 1), Gerasimowicz has offered $150,000 to the bankruptcy trustee to buy an assignment of SMC's rights to pursue actions against those who purportedly breached certain duties owed toward SMC. Under the proposed assignment, all rights of SMC and its estate will be assigned solely to Gerasimowicz (*see* Trustee Motion ¶ 14-15, and Exhibit A). To the extent that any recoveries exceed certain limits, the assignment agreement contemplates a portion of those recoveries will be shared with

SMC's estate. (Trustee Motion ¶ 15 and Exhibit A, ¶¶ 3, 5). Notably, there is nothing in this assignment that gives any rights, or hope, to Fund investors. Nor is there any explanation of why Gerasimowicz is spending such substantial sums in contemplation of anticipated litigation against many of SMC's former low-level employees, rather than paying back investors.

Furthermore, Gerasimowicz sought to have the assignment approved on an expedited basis, and sought a shortening of bankruptcy procedural rules regarding such motions, notwithstanding that the acts to which the litigations relate occurred, for the most part, almost three years ago. The only potential explanation for this is that Gerasimowicz is seeking the consummation of the assignment, and the divestment of certain assets, prior to any Order by this Court directing him to pay the Meditron Fund investors he defrauded. The Joint Industry Board, a creditor of SMC, objected to the assignment (JIB Objection, attached hereto as Exhibit 4), pointing out that Gerasimowicz has defaulted on an almost $500,000 stipulation whereby he agreed to be jointly liable for SMC's obligations under its collective bargaining agreement, leading to the entry of a $675,000 default judgment against him in federal court. (JIB Objection ¶ 9). The JIB Objection also noted that Gerasimowicz is subject to a million dollar action by American Safety Casualty Insurance Company. On May 24, 2013, the Bankruptcy Court approved the assignment.

I

A SIGNIFICANT DISGORGEMENT ORDER IS WARRANTED

As set forth in the Division's Memorandum, Respondents' disgorgement has three components: (1) disgorgement of the funds stolen from the Meditron Fund; (2) disgorgement of Respondent's management fees during the time they stole the investors' money; and (3) prejudgment interest.

A. **Respondents Should Disgorge the Approximately $2.7 Million Siphoned Off From the Meditron Fund.**

As explained in the Division's Opening Brief, and as set forth in the Order agreed to by Respondents, approximately $2.7 million was siphoned off from the Fund. Respondents' defense is that "Respondents – especially Gerasimowicz – neither received nor benefitted from almost all the 'over $2.7 million' in such 'diverted' funds." (Response 5). Respondents assert that the nominal owner of SMC, MREP, was only 1% owned by Gerasimowicz. (Response 5). Thus, it is contended, at most Respondents only received 1% of the diverted funds. But this is a complete *non sequitur*.

It is utterly beside the point whether or not, at the end of the day, Respondents kept the money they stole, and the Division has never argued to the contrary. At all relevant times, Respondents were in complete control of the flow of funds. They, and they alone, made the decision to siphon off over $2.7 million belonging to investors in the Meditron Fund. (Order ¶¶ 21, et seq.). They alone decided to memorialize a small portion of those transfers as unsecured and worthless Notes at below market rate. (Order ¶ 25; Trial Exs. 17, 22, 24, 26, and 257). They alone decided to liquidate the publicly traded and listed equities that they represented to investors would be the focus of the Fund (Order ¶ 22), and use the proceeds to pay off SMC's creditors, including its union obligations, as well as SMC's bonding company. (Trial Ex. 260).

In stark contrast, not a single Fund investor made any decision regarding the looting of their investments. Nor could they, since at all instances Respondents lied about the investments, lied about the strategy followed by the Fund, lied about what the Fund was invested in, and lied about the value of each investor's investment. (*See, e.g.*, Order ¶¶ 12-16, 35-44; *see also* Trial Exs. 57, 66-67, 72, 84-89, 160, 192).

As set forth earlier, the mere fact that Respondents subsequently lost the money they stole is irrelevant. Indeed, as the unrebutted case law adduced by the Division clearly establishes, "to withhold the remedy of disgorgement or penalty simply because a swindler claims that she has already spent all the loot and cannot pay would not serve the purposes of the securities laws." *SEC. v. Inorganic Recycling Corp.*, 2002 WL 1968341, *4 (S.D.N.Y. Aug. 23, 2002); *see also SEC v. Thomas James Assocs., Inc.* 738 F. Supp. 88, 95 (W.D.N.Y. 1990) (violator cannot escape disgorgement obligation simply because "he is no longer in possession of such funds due to subsequent, unsuccessful investments"). *See* Dam. Br. at 11-12, and cases cited therein.

Furthermore, Respondents also fail to advise the Court that, even though SMC ultimately collapsed, during the time it continued to be propped up by infusions of cash diverted from the Fund, Respondents continued to enjoy significant benefits from its survival. ***First***, they do not mention that they had made significant infusions of their own capital into SMC (Order ¶¶ 3, 17, SEC Trial Exs. 142 and 143 (included with Response), at Schedule F (listing $2 million loan to SMC from Gerasimowicz, and $160,000 loan from MAM)), a conflict of interest that was never disclosed to investors. By keeping SMC alive with money stolen from Fund investors, Respondents sought to increase the chance that their personal debts would be paid off. ***Second***, Respondents had another fund, MREP, invested in SMC, ultimately holding a 100% ownership interest. (Order ¶¶ 10-11, 17-19). By propping up SMC with money from the Fund, Respondents held off having to report a loss to MREP investors. ***Third***, at least half a million dollars of Fund assets were paid directly to satisfy debts to other parties, debts that Respondents might have otherwise had to pay out of their own pocket. (Trial Ex. 260). By paying these debts

rather than reaching into their own pockets, Respondents wrongfully obtained significant benefits, benefits that should now be disgorged.

Consequently, by diverting Fund assets, Respondents either avoided recognizing losses either directly or in their other business lines, or paid off debts for which they might otherwise be liable. Each of these is a significant benefit wrongfully conferred on Respondents.

B. Respondents Should Disgorge Their Compensation

Respondents argue that, with respect to the Division's analysis regarding the disgorgement of management fees, the Division neglected to deduct business expenses from that total. Thus, according to Respondents, the proper figure "totals only $391,909.89." (Response 7). As set forth in Respondents' Exhibit C, Respondents calculated MAM business expenses totaling $350,234.98.

However, Respondents inexplicably include in that total various amounts that cannot constitute legitimate business expenses. For example, they include numerous payments to Gerasimowicz, as well as several payments to either SMC or to cash. Respondents have proffered no evidence to support their claims that these payments are appropriate "business expenses." As set forth in the attached May 31, 2013 Declaration of Staff Accountant Doreen Rodriguez ("May 31 Rodriguez Decl.," attached hereto as Exhibit A), MAM's business expenses total at most $228,520.16. Using Respondents' own calculations (*see* Response Exhibit C), the Meditron Fund represents 48.44% of MAM revenues, and thus 48.44%, or $110,695.17, of MAM's expenses could be attributed to the Meditron Fund to offset management fees. Excluding the Fund's share of MAM business expenses as well as $200,000 in redemptions from the Fund by Gerasimowicz (dated November 19, 2009 and January 11, 2010, inadvertently

included in the Division's $811,093.15 calculation),[3] the Division respectfully seeks disgorgement of $500,397.98 in management fees.

C. Prejudgment Interest Is Appropriate

It is well established that the court has broad discretion to order the payment of prejudgment interest. *See SEC v. O'Meally*, 2013 WL 878631, at *5 (S.D.N.Y. Mar. 11, 2013) (*citing SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996)); *see also SEC v. Constantin*, 2013 WL 1828815, at *4 (S.D.N.Y. Apr. 25, 2013) (award of prejudgment interest, though discretionary, is well-established in securities fraud actions). There is strong public policy underlying the award of prejudgment interest, as it "serves the important purpose of deterrence, which is central to securities law." *SEC v. Sheyn,* 2010 WL 3290977, at *7 (S.D.N.Y. Aug. 9, 2010). Furthermore, requiring the payment of prejudgment interest "prevents a defendant from obtaining the benefit of what amounts to an interest-free loan procured as a result of the illegal activity." *O'Meally*, 2013 WL 878631, at *5 (quotations omitted).

In deciding whether an award of prejudgment interest is warranted, a court should consider "(i) the need to fully compensate the wronged party for actual damages suffered, (ii) considerations of fairness and the relative equities of the award, (iii) the remedial purpose of the statute involved, and/or (iv) such other general principles as are deemed relevant by the court." *SEC v. Boock*, 2012 WL 3133638, at *5 (S.D.N.Y. Aug. 2, 2012) (*quoting First Jersey Sec.*, 101 F.3d at 1476). In an enforcement action brought by a regulatory agency, however, "the remedial purpose of the statute takes on special importance." *Id.* (*quoting First Jersey*, 101 F.3d at 1476).

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[3] In its moving papers, the Division inadvertently included $200,000 that, upon further review and analysis, seem to have constituted Gerasimowicz's redemption of his own interests in the Fund. As these are not management fees or other compensation but a return of a prior investment, the Division is no longer seeking their disgorgement, and now excludes that limited sum from its analysis.

Here, prejudgment interest is appropriate in order to vindicate fully the remedial purposes of the securities laws. As set forth in the consented-to Order and above, Respondents' illegal conduct was flagrant and longstanding. Respondents repeatedly misappropriated funds from the Meditron Fund over a two-year period, destroying the Fund and harming Fund investors. During this period, Respondents also enjoyed the benefits of their wrongdoing, namely, compensation in the form of advisory fees taken from the Meditron Fund and the use of the misappropriated funds to sustain SMC and thus protect their own substantial personal investments in SMC.

Accordingly, Respondents should be held jointly and severally liable for prejudgment interest calculated under the IRS' underpayment rate running from October 1, 2011 (the first day of the month following the final misappropriation of Meditron Fund monies) to the present.[4] *See, e.g., Constantin*, 2013 WL 1828815, at *4 (court may order prejudgment interest "for the entire period from the time of defendants' unlawful gains to the entry of judgment") (quotation omitted); *O'Meally*, 2013 WL 878631, at *5 (IRS underpayment rate reflects "what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from its fraud").

II
SIGNIFICANT PENALTIES ARE WARRANTED

The parties have stipulated that third tier penalties are appropriate. Respondents do not contest that the Court can, pursuant to law, impose penalties exceeding $60 million (Response 9), but merely argue that such penalties would be inappropriate here. Nor do Respondents contest that the majority of the factors governing the imposition of penalties, such as the harm to others, whether or not fraud is involved, etc., militate in favor of significant penalties. Rather, Respondents assert that the Court should take notice of (1) Gerasimowicz's permanent bar, and

[4] It is well established that when disgorgement is ordered in an SEC initiated proceeding, the IRS underpayment rate is appropriate. *See Boock*, 2012 WL 3133638, at *5 fn.3 (citation omitted).

thus the lowered potential for future violations requiring deterrence, (2) the personal losses suffered by Gerasimowicz, and his purported lack of personal enrichment, and (3) Gerasimowicz's having "filed suit for the benefit of investors." (Response 10-11). Each of these defenses fails, and fails badly.

First, the fact that Gerasimowicz will no longer be legally allowed to work in the financial services industry does not preclude imposition of a significant penalty. *SEC v. Daly*, 572 F. Supp. 2d 129, 133-34 (D.D.C. 2008) (rejecting a similar claim, and holding that a significant penalty is justified to both punish the violator and deter other individuals).

Second, Gerasimowicz's personal issues and sufferings do not preclude the imposition of a significant penalty. *See, e.g., SEC v. Kane*, 2003 WL 1741293, at *4 (S.D.N.Y. Apr. 1, 2003) ("in light of the goal of deterrence, a defendant's claims of poverty cannot defeat the imposition of a civil penalty by a court."). As the *Kane* court noted:

> While the court may take the defendant's current financial difficulties into account, these circumstances alone cannot negate the need for a severe civil penalty. Even if [Defendant's] proffered representations concerning his bleak financial condition are complete and accurate, his financial problems, including his inability to work again as a stock broker, are the natural consequences of his fraudulent conduct. [Defendant's] predicament is shared by many defendants in similar cases, and if given the weight that [Defendant] urges, a defendant's impecuniosity could preclude the imposition of a meaningful penalty in even those cases involving the most egregious fraud. In addition, the court agrees with the Commission that it should not ignore the possibility that a defendant's fortunes will improve, and that one day the SEC will be able to collect on even a severe judgment.

Id. See also SEC v. Murray, 2013 WL 839840, at *5 (E.D.N.Y. Mar. 6, 2013) (claims of poverty cannot defeat the imposition of a disgorgement order or civil penalty). Moreover, regardless of what Gerasimowicz claims now, the fact remains that about a week ago he was sufficiently flush

enough to pay $150,000 to purchase various lawsuits and has committed to what the bankruptcy trustee refers to as the "extremely costly" pursuit of those actions. (Ex. 1, ¶ 20). Finally, as noted above, Respondents did receive significant benefits from the fraud at issue.

Third, no reduction in penalty amount is due to Gerasimowicz for his purported efforts on behalf of investors. As noted, that these actions will be pursued in the name of investors is simply one more falsehood in Respondents' pyramid of dishonesty. Not one of these efforts is being prosecuted on behalf of investors, but are being pursued solely in Gerasimowicz's name, with the potential for certain excess payments to the estate of SMC. (*See* Assignment Agreement, Exhibit A to Exhibit 1). Nor is there any reason to think that recovery for SMC would in any way benefit the Fund investors, since there is no documentation for the bulk of the transfers, and there are millions of dollars in claims ahead of them. (*See, e.g.*, Trial Exs. 142 and 143, Schedules D and E). Notably, at no time has Gerasimowicz even offered to extinguish his own interests in favor of the Fund. *Kane*, 2003 WL 1741293, at *4 ("That the defendant did not gain financially from his illegal activities, in and of itself, does not exert mitigating force in the court's crafting of a civil penalty.").

Nor does *SEC v. Moran*, 944 F. Supp. 286 (S.D.N.Y. 1966), upon which Respondents place heavy reliance, bear the weight Respondents put on it. The behavior cited in *Moran* involved no fraudulent intent, solely negligence, *Moran*, 944 F. Supp. at 297, and thus is inapposite to a case like this, where a widespread fraud is admitted. *See, e.g., SEC v. DiBella*, 2008 WL 6965807, at *6 (D. Conn. Mar. 13, 2008) (distinguishing *Moran* and finding its penalty discussion inapplicable to cases involving fraud). The other case cited by Respondents in connection to their argument on penalties, *SEC v. Razmilovic*, 822 F. Supp. 2d 24 (E.D.N.Y. 2011), also does not argue for leniency. In that case, the Court rejected the claim that $720,000

in penalties would be appropriate, instead ordering penalties exceeding $20 million.[5] Other courts have imposed similarly significant penalties. *See, e.g., SEC v. Mantria*, 2012 WL 3778286, at *3 (D. Colo. Aug. 20, 2012) (imposing penalties exceeding $37 million); *SEC v. Pentagon Capital Management PLC*, 2012 WL 1036087, at *9-10 (Mar. 28, 2012) (imposing penalty exceeding $38 million even though defendants were not personally enriched by scheme); *see also Constantin*, 2013 WL 1828815, at * 4 ("Given the sweeping nature of defendants' fraud, the exact number of violations committed by the Defendants is nearly impossible to determine. Accordingly, we conclude that defendants should be charged a flat penalty equal to the gross amount of pecuniary gain as a result of the total number of violations.") (imposing penalty exceeding $1 million) (internal quotations and citations omitted).

CONCLUSION

Respondents' violations and disregard of their fiduciary obligations devastated the investors who entrusted them with their finances. The Division therefore respectfully requests that the Court impose the appropriate disgorgement and penalties as set forth above.

Dated: May 31, 2013
New York, New York

DIVISION OF ENFORCEMENT

By: _____

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[5] The case of *SEC v. Universal Express, Inc.* 646 F. Supp.2d 552 (S.D.N.Y. 2009), referred to by Respondents in passing, also involved total penalties of $1.5 million.

Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
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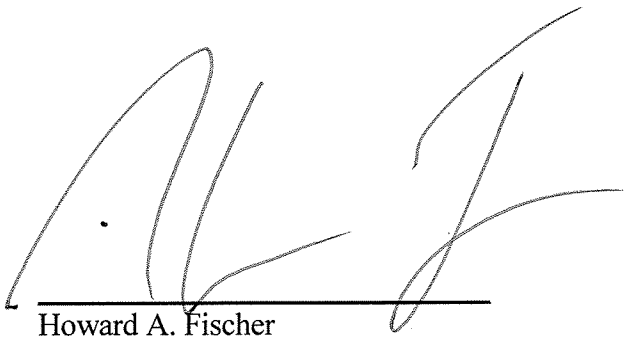

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ADMINISTRATIVE PROCEEDING
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In the Matter of

WALTER V. GERASIMOWICZ, MEDITRON ASSET MANAGEMENT, LLC, MEDITRON MANAGEMENT GROUP, LLC,

Respondents.

DECLARATION OF DOREEN RODRIGUEZ IN SUPPORT OF DIVISION OF ENFORCEMENT'S REPLY BRIEF

I, Doreen Rodriguez, pursuant to 28 U.S.C. § 1746, do hereby declare as follows:

1. I am over 18 years of age and am employed as a staff accountant in the New York Regional Office of the Securities and Exchange Commission ("SEC"). I have been employed by the SEC for over seventeen years. My duties include, but are not limited to, assisting in the investigation of possible violations of the federal securities laws and assisting trial counsel in analyzing and compiling data for litigations. In November, 2012, I was assigned to start reviewing and compiling data in the above-captioned matter, and in February 2013, I was assigned to assist in preparing for the administrative proceeding therein.

2. I make this declaration in support of the Division of Enforcement's May 31, 2013 Reply Brief.

3. I make this declaration based upon personal knowledge, information, and belief. The sources of my information and the bases of my belief are voluminous documents obtained by the SEC staff that I have reviewed extensively and information provided to me by other members of the SEC staff.

4. I have reviewed, among other things, bank and brokerage records for Respondents Walter V. Gerasimowicz ("Gerasimowicz") and Meditron Asset Management, LLC ("MAM"), as well as for the Meditron Fundamental Value/Growth Fund ("Meditron Fund"). I have also reviewed SEC Trial Exhibits and documents produced and prepared by Respondents, and have been advised by other members of the SEC staff of facts learned in the course of the investigation resulting in the administrative proceeding.

5. Attached to my May 3, 2013 Declaration in Support of Division of Enforcement's Damages Brief ("May 3 Rodriguez Decl.") was a consolidated schedule of the management and

performance fees taken from the Meditron Fund by Respondents between October 2009 through January 2012. (See Rodriguez Damages Brief Decl. at ¶¶ 5, 6 for listing of documents reviewed and analyzed in preparing that schedule).

6. After submitting the May 3 Rodriguez Decl., I subsequently learned that two transfers to Gerasimowicz made on November 19, 2009 and January 11, 2010 totaling $200,000 were redemptions by Gerasimowicz of his personal investments in the Meditron Fund, rather than management fees taken from the Meditron Fund. Those amounts should be excluded from my initial $811,093.15 calculation, resulting in $611,093.15 in management fees taken from the Meditron Fund by Respondents.

7. I have reviewed Respondents' Exhibit C calculating $350,234.98 in purported business expenses payments made by MAM. As a result of this review, I have determined that Respondents' Exhibit C inappropriately included the following:

a. Multiple entries for payments to Gerasimowicz, totaling $116,728.63.

b. 9/23/11 entry for $2,838.91 to Blue Cross. Upon reviewing SEC Trial Exhibit 149, I determined that this was actually a deposit rather than a payment of an expense.

c. 12/30/11 entry for $1,000 to Cash.

d. 5/11/12 entry for $1,147.28 to SMC.

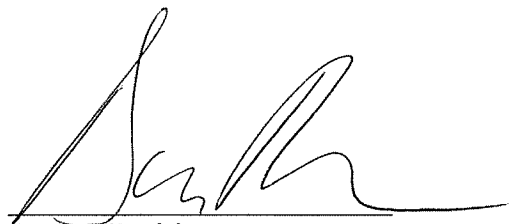
8. Offsetting these entries from Respondents' $350,234.98 in purported business expenses, I calculated that MAM incurred $228,520.16 in business expenses.

9. Relying upon Respondents' analysis, set forth in Exhibit C, which determined that the Meditron Fund represented 48.44% of MAM revenues, I next calculated that 48.44% of

MAM's $228,520.16 in business expenses, or $110,695.17, could be legitimately attributed to the Meditron Fund.

10. Finally, I offset the Division's $611,093.15 in management fees taken from the Meditron Fund by Respondents by the allowable $110,695.17 in MAM business expenses for a total of $500,397.98.

Pursuant to 28 U.S.C. § 1746, I, Doreen Rodriguez, declare under penalty of perjury that the foregoing is true and correct.



Doreen Rodriguez

Executed on May 30, 2013
New York, New York

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
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In re:

SMC ELECTRICAL CONTRACTING INC., Chapter 7
Case No. 11-14599-SMB

Debtor.
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CHAPTER 7 TRUSTEE'S MOTION SEEKING THE ENTRY OF AN ORDER SCHEDULING A HEARING ON SHORTENED NOTICE AND AN ORDER APPROVING THE ASSIGNMENT AGREEMENT BY AND BETWEEN THE CHAPTER 7 TRUSTEE, ON BEHALF OF THE DEBTOR'S ESTATE, AND THE DEBTOR'S FORMER PRESIDENT, WALTER V. GERASIMOWICZ

To: The Honorable Stuart M. Bernstein
United States Bankruptcy Judge

Salvatore LaMonica, Esq., the Chapter 7 Trustee (the "Trustee") of the estate of SMC Electrical Contracting Inc. (the "Debtor"), by his counsel, LaMonica Herbst & Maniscalco, LLP, submits this motion (the "Motion"), seeking the entry of an Order scheduling a hearing on shortened notice and the entry of an Order, pursuant to, *inter alia*, §§ 105 and 363 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 9006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving the assignment agreement (the "Agreement"), annexed as Exhibit "A", by and between the Trustee, on behalf of the Debtor's estate, and the Debtor's former president, Walter V. Gerasimowicz ("Walter"), whereby Walter seeks to acquire certain assets of the estate as set forth and defined in the Agreement as the Cardenas Litigation, the Dellis Litigation and the Doumazios Judgment (the

Cardenas Litigation, the Dellis Litigation and the Doumazios Judgment are collectively referred to herein as the "Litigations"), and respectfully represents as follows:

JURISDICTION, VENUE AND STATUTORY PREDICATE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought in this Motion are Bankruptcy Code §§ 105 and 363 and Bankruptcy Rules 2002, 6004, 9006 and 9014.

PROCEDURAL BACKGROUND

3. On September 30, 2011 (the "Filing Date"), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Southern District of New York (the "Court").

4. The Debtor continued in possession of its property and the management of its business affairs as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108. No trustee, examiner or statutory committee has been appointed.

5. By Order of the Court dated February 4, 2013, this case was converted to one under chapter 7 of the Bankruptcy Code.

6. Salvatore LaMonica, Esq., has been appointed the interim Chapter 7 Trustee (the "Trustee") of this estate, has duly qualified and now the permanent Trustee administering this estate.

SUMMARY OF RELIEF REQUESTED

7. By this Motion, the Trustee respectfully requests that the Court schedule a hearing on shortened notice and approve the Agreement by and among the Trustee, on behalf of the Debtor's estate, and Walter whereby Walter seeks to acquire the estate's rights and interest in and to the Litigations.

FACTUAL BACKGROUND

8. On or about June 13, 1997, the Debtor was incorporated under the laws of New York State. The Debtor is owned by Meditron Real Estate Partners LLC ("Meditron"), and Walter is the Chairman, CEO and fund manager of Meditron. Prior to the conversion of the case, the Debtor was an electrical contractor that provided electrical installation, repair and servicing to owners, general contractors and other users of electrical products and services.

9. On or about December 24, 2012 (approximately two months after the Filing Date), the Debtor commenced an action in the Supreme Court of the State of New York, County of New York (the "State Court") under the caption: *SMC Electrical Contracting, Inc., Chapter 11 Debtor and Debtor-In-Possession v. Metrotek Construction Group, Inc., The Cardenas Group, Inc., James Cardenas, 52-12 Palisades Construction, James Cardenas Jr., Vladimir Somarriba, Jose Martinez and Sandra Morgan,* Index No. 159152/2012 (the "Cardenas Litigation"). In the complaint, the Debtor alleged, among other things, breach of contract, breach of fiduciary duty and conversion arising from the operation of a competing electrical contracting and general contracting business out of Debtor's offices, as well as using Debtor's employees and resources while one of the named defendants, James Cardenas, was working as the Debtor's Chief Operating Officer. According to Walter, the Cardenas Litigation is currently pending in State Court.

10. Further, on or about June 10, 2011, Meditron commenced an adversary proceeding [Adv. Proc. No. 11-1349] against Theodore Doumazios as part of the chapter 7 bankruptcy proceeding of Theodore Doumazios ("Doumazios") [Case No. 11-41621] that was pending in the United States Bankruptcy Court, Eastern District of New York. In or around January, 2013, Meditron and Doumazios entered into a stipulation of settlement whereby Doumazios consented to a judgment in the amount of $500,000.00 in the favor of Meditron, which was non-dischargeable under Bankruptcy Code § 523(a)(2), (4) and (6). On or about January 24, 2013, the Court so-ordered the stipulation and the judgment was entered in favor of Meditron (the "Doumazios Judgment").

11. Walter also seeks to commence a second action on behalf of the Debtor in State Court under the caption: *SMC Electrical Contracting, Inc. v. George Dellis, George Douvelis, Pantelis Aslanis, Payiota Doumazios, Thomas Gizas, James Tomboris, Robert Paese, Rita Giampilis, Spiro Kitovas, George Rodas, Andreas Saviddes, Trident Construction Corp., First Central Electrical Co., Inc., Rodel Construction, Bareburger Inc., Bareburger Group LLC, Sitrix Funds, Delta Electric, Delta Equity, Megaris Electrical Contracting, and Racanelli Construction* (the "Dellis Litigation"). The Dellis Litigation will be an action for breach of fiduciary duty, misappropriation, conversion, diversion of the Debtor's assets, unjust enrichment, and fraud against the Debtor's former superintendent, George Dellis, former purchasing agent, George Douvelis, former controller Pantelis Aslanis, and other former key employees of Debtor and various companies owned and operated by them. Specifically, Walter seeks to allege the wrongful diversion of the Debtor's contracts, money, materials and manpower and resources to companies owned by them, embezzled funds, caused the Debtor to enter into and make payments based on sham contacts with entities owned by them, and attempted to defraud the Debtor by

diverting its funds to through the creation of a second business entity with a name similar to the Debtor.

12. Shortly after the conversion of the case and the appointment of the Trustee, Walter approached the Trustee about acquiring the estate's rights and interest in and to the Litigations. The Trustee reviewed information regarding the Litigations, their status and the costs related to the pursuit of these claims. Based upon that information and the projected costs to this no asset estate, the Trustee determined that it was in the best interest of the estate and its creditors to enter into the proposed Agreement.

13. Subject to the Court's approval, the Trustee, on behalf of the Debtor's estate, now seeks to assign the estate's rights and obligations in connection with the Litigations to Walter as set forth in the Agreement. The salient terms of the Agreement are set forth below. All parties, however, are encouraged to review the Agreement for the specific terms.

THE AGREEMENT

14. Under the terms of the Agreement, the Trustee has agreed to transfer, convey and assign to Walter any and all of the right, title and interest that the Debtor and the Debtor's estate has in and to the Litigations. Walter will assume all of the obligations, duties, undertakings, terms, conditions, costs and liabilities of the Trustee, the Debtor or the Debtor's estate with respect to the Litigations.

15. Under the Agreement, Walter will pay the estate the sum of $150,000.00 (the "Initial Sum") and the estate will be entitled to a sliding scale of any of the gross recovery as set forth in the Agreement. Specifically, under the Agreement, the estate will receive the following percentage of all recoveries obtained in the Litigations: i) 30% of the gross recovery in excess of $350,000.00 and up to $600,000.00; ii) 20% of the gross recovery in excess of $600,000.00 and

up to $1,000,000.00; and iii) 10% of the gross recovery in excess of $1,000,000.00. The Trustee is currently holding the Initial Sum pending the Court's approval of the Agreement. The Initial Sum will be deemed property of the Debtor's estate upon the Court's approval of the Agreement.

16. Walter will be solely responsible for all costs, professional fees and litigation expenses in connection with the pursuit of the Litigations. Walter will have no claim against the Trustee, the Debtor or the Debtor's estate for the reimbursement of such costs, professional fees or any other litigation expenses.

17. Further, the Trustee, on behalf of the Debtor's estate, shall have a first priority security interest in the estates' sliding scale recovery. Moreover, the Trustee has the right, but not the obligation, to file a UCC-1 Financing Statement.

18. Upon the assignment, the Trustee will not be a named as a party in the Litigations, however, any settlement agreement, dismissal or any other agreement affecting the disposition of these Litigations will require the Trustee's written approval that will not be unreasonably withheld.

19. Moreover, the Trustee, or the Trustee's professionals, have not made, and do not make, any representations or warranties as to the claims asserted or the underlying causes of action in the Litigations and nothing referenced in the Agreement will deemed a waiver or release of any other rights or claims of whatever kind or nature, the Trustee, the Debtor or the Debtor's estate may have against any party.

REASONING IN SUPPORT OF A PRIVATE SALE

20. Prior to enter into the Agreement, the Trustee and Walter, through their retained professionals, had numerous conversations about the Debtor's current obligations, including the status of the Litigations. The pursuit of these Litigations could be an extremely costly endeavor

for the Debtor's estate, which currently has no assets. Moreover, the party acquiring the Litigations is also the party with first-hand knowledge of the facts of the Litigations. Therefore, the chances of a recovery are much greater if the Litigations are pursued by Walter. Further, the estate will be greatly enhanced given that it will be paid, not only the Initial Sum, but a percentage of the gross recovery. If not for the proposed Agreement, the Trustee would most likely have to hire special litigation counsel, assuming counsel were interested given that this is a no asset estate. Under the terms of the Agreement, however, the estate does not have to bear any of the risks and costs for the Litigations, but still will share in the recovery. Consequently, the Trustee effectively receives the benefit without the burden.

21. Moreover, the Trustee is only assigning the Litigations and no other potential claims the estate may have. Indeed, the Trustee is not assigning, waiving or releasing rights or claims of whatever kind or nature, the Trustee, the Debtor or the Debtor's estate may have against any other party.

22. The Trustee submits that it is the best interest of the estate for the Court to approve the proposed Agreement. The Trustee does not believe that any other third-party would be interested in acquiring the Litigations on terms more favorable than that set forth in the Agreement. Further, the Trustee, since his appointment, has not been approached by anyone interested in pursuing these Litigations other than Walter. Nonetheless, all interested parties are being notified of the proposed Agreement. If the Trustee is contacted by another party interested in an assignment of the Litigations on terms more favorable than the Agreement, the Trustee will certainly consider any such proposal. Accordingly, the Trustee submits that this Agreement is in the best interest of the estate.

BASIS FOR THE RELIEF REQUESTED

23. Bankruptcy Code § 363(b) provides that a "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . " 11 U.S.C. § 363(b). A trustee must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., Licensing By Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997); *Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Crop.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989).

24. As set forth above, sound business reasons exist to assign the Litigations for the Initial Sum and a percentage of the recoveries. Therefore, the Trustee submits that it is the best interest of the estate and the creditors to approve the proposed Agreement.

A. APPROVAL OF THE SALE FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

25. The Trustee is unaware of any liens on the Litigations. Therefore, the proposed sale under the terms of the Agreement will be free and clear of all liens, claims and encumbrances as none exist at this time.

26. Under Bankruptcy Code § 363(f), the Trustee may sell property of the estate free and clear of any interest in such property of an entity other than the estate only if, at least one of the following conditions is satisfied:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
(2) such entity consents;
(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
(4) such interest is in bona fide dispute; or
(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

27. Since Bankruptcy Code § 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to approve the Agreement, which "free and clear" of liens, claims, encumbrances and interests. *See*, 11 U.S.C. § 363(f); *Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (recognizing that Bankruptcy Code §363(f) is written in disjunctive, and holding that court may approve sale "free and clear" provided that at least one subsection of section 363(f) is met), *cert. dismissed*, 503 U.S. 978 (1992); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

B. SHORTENED NOTICE

28. The Trustee respectfully requests that the Court schedule the hearing seeking approval of the Agreement on shortened notice. The quickest pursuit of these Litigations will create an estate and provide for maximum recovery. These Litigations have effectively been on hold since the case was converted to decided how best to proceed. Rapid approval of the Agreement will now allow Walter to pursue the various claims as set forth above. Lastly, in reaching the Agreement, Walter was concerned that the Agreement had to be approved quickly so he could maximize his recovery. Consequently, the Trustee is moving on shortened notice for approval of the Agreement.

29. The Trustee maintains that the approval of this Agreement is in the best interest of the estate as it will bring money into an otherwise no asset estate and allow the estate to have all the benefits and none of the burdens in pursuing these Litigations. Accordingly, the Trustee submits that cause exists for the Trustee's Motion to be heard by this Court on shortened notice.

30. The "notice" required by Bankruptcy Code § 363(b)(1) is "such notice as is appropriate in the particular circumstances." 11 U.S.C. § 102(1)(A). Courts are authorized to shorten the 20-day notice period generally applicable to asset sales, or direct another method of giving notice, upon a showing of "cause." F.R.B.P. 2002(a) (2). Creditors are entitled to notice "reasonably calculated to apprise the creditor of the pendency of the bankruptcy proceeding and give the creditor an opportunity to object or otherwise respond." *In re Riverchase Vessels, L.P.*, 184 B.R. 35, 39 (Bankr. M.D. Tenn. 1995). Due process is satisfied if parties in interest are given "an opportunity to present their objections." *Mullane*, 339 U.S. at 314 (*emphasis added*). Bankruptcy Rule 9006(c) provides that the Court may reduce the prescribed period for notice of this Motion:

> (c) Reduction.
>
> (1) In General. Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.
>
> (2) Reduction Not Permitted. The court may not reduce the time for taking action pursuant to Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

F.R.B.P. 9006(c).

31. Since the general rule is that time periods in the rules may be reduced, and the reduction sought herein is not expressly precluded by Bankruptcy Rule 9006(c)(2), this Court may, in its discretion, shorten the time for notice of this Motion.

32. Here, the Trustee, as a fiduciary, is duty bound to preserve the estate's assets for the benefit of its creditors. The Trustee has determined that an expedited hearing is critical to the approval of the Agreement.

33. Under Bankruptcy Rules 2002(a) and (c) and 6004, the Trustee is required to notify its creditors and certain other parties in interest.

34. This Motion, with its exhibits, and a copy of the Order Scheduling Hearing on Shortened Notice will be served by **overnight or electronic mail** to: (i) the Office of the United States Trustee; (ii) the Debtors' counsel; (iii) Walter's counsel, Simos Dimas, Esq., at 70 Broad Street, New York, New York 10004; and (iv) all parties that have filed a notice of appearance in the case. A copy of the Order Scheduling a Hearing on Shortened Notice will be served by **first-class mail** to: (i) the Debtor's known creditors; and (ii) all government agencies and taxing authorities required to receive notice of proceedings under the Bankruptcy Rules. The Trustee submits that such notice is sufficient, that such notice complies with Bankruptcy Rule 2002(c), and that no further notice is required.

35. Pursuant to Bankruptcy Rule 9014, the Trustee proposes that objections, if any, to the Motion must be in writing, filed on the date set forth by the Court, conform with the Bankruptcy Rules and the Local Rules of the Court and must be filed with the Court electronically in accordance with General Order M-242 by registered users of the Court's electronic Court Filing System and by all of the parties in interest on a 3.5 inch disk preferably in Portable Document Format, Microsoft Word or other windows-based word processing format, with a courtesy copy to the Chambers of the Honorable Stuart M. Bernstein, and served upon, so as to be received by: (i) LaMonica Herbst & Maniscalco, LLP, the attorneys for the Trustee,

Attn: Gary F. Herbst, Esq.; and (ii) Walter's counsel, Simos Dimas, Esq., at 70 Broad Street, New York, New York 10004.

36. No prior request for the relief sought herein has been made to this or any other court.

37. For all the foregoing reasons, the relief requested herein is appropriate and in the best interest of all interested parties, this estate and its creditors.

WHEREFORE, the Trustee requests that the Court enter an Order scheduling a hearing on shortened notice to approve the Agreement by and among the Trustee, on behalf of the Debtor's estate and Walter and together with such other and further relief as the Court deems just and proper.

Dated: May 13, 2013
Wantagh, New York

LAMONICA HERBST & MANISCALCO, LLP
Attorneys for the Trustee

By: *s/ Gary F. Herbst*
Gary F. Herbst, Esq.
Member
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
Ph. 516.826.6500

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ASSIGNMENT AGREEMENT

This assignment agreement (the "**Assignment**"), dated April 30, 2013, by and between Salvatore LaMonica, the Chapter 7 Trustee (the "**Trustee**" or the "**Assignor**") of the bankruptcy estate of SMC Electrical Contracting Inc. (the "**Debtor**"), and Walter V. Gerasimowicz, an individual (the "**Assignee**").

RECITALS

WHEREAS, on or about June 13, 1997, the Debtor was incorporated in New York and is owned by Meditron Real Estate Partners LLC ("Meditron");

WHEREAS, the Debtor was an electrical contractor that provided electrical installation, repair and servicing to owners, general contractors and other users of electrical products and services;

WHEREAS, on September 30, 2011 (the "Filing Date"), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court, Southern District of New York (the "Court");

WHEREAS, the Debtor continued in possession of its property and the management of its business affairs as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108;

WHEREAS, no trustee, examiner or statutory committee was appointed during the chapter 11 proceeding;

WHEREAS, on or about December 24, 2012, the Debtor commenced an action in the Supreme Court of the State of New York, County of New York (the "State Court") under the caption: *SMC Electrical Contracting, Inc., Chapter 11 Debtor and Debtor In Possession v. Metrotek Construction Group, Inc., The Cardenas Group, Inc., James Cardenas, 52-12 Palisades Construction, James Cardenas Jr., Vladimir Somarriba, Jose Martinez and Sandra Morgan,* Index No. 159152/2012 (the "Cardenas Litigation");

WHEREAS, in the complaint, the Debtor alleges, among other things, breach of contract, breach of fiduciary duty and conversion arising from the operation of a competing electrical contracting and general contracting business out of Debtor's offices, as well as using Debtor's employees and resources while one of the named defendants, James Cardenas, was working as the Chief Operating Office of the Debtor;

WHEREAS, the Cardenas Litigation is currently pending in State Court;

WHEREAS, on or about June 10, 2011, Meditron commenced an adversary proceeding [Adv. Proc. No. 11-1349] against Theodore Doumazios as part of the chapter 7 bankruptcy proceeding of Doumazios [Case No. 11-41621] that was pending in the United States Bankruptcy Court, Eastern District of New York;

WHEREAS, in January 24, 2013, Meditron and Theodore Doumazios ("Doumazios") entered into a stipulation of settlement whereby Doumazios consented to a judgment in the amount of $500,000.00 in the favor of Meditron (the "Doumazios Judgment") that was non-dischargeable under Bankruptcy Code § 523(a)(2), (4) and (6);

WHEREAS, on or about January 24, 2013, the Court so-ordered the stipulation and the Doumazios Judgment was entered in favor of Meditron;

WHEREAS, by Order of the Court dated February 4, 2013, the Debtor's case was converted to one under Chapter 7 of the Bankruptcy Code;

WHEREAS, Salvatore LaMonica, Esq., was appointed the interim Chapter 7 Trustee of this estate, has since duly qualified and is now the permanent Trustee of the estate;

WHEREAS, the Assignee, on behalf of the Debtor, seeks to commence an action in State Court by filing a complaint under the caption: *SMC Electrical Contracting, Inc. v. George Dellis, George Douvelis, Pantelis Aslanis, Payiota Doumazios, Thomas Gizas, James Tomboris, Robert Paese, Rita Giampilis, Spiro Kitovas, George Rodas, Andreas Saviddes, Trident Construction Corp., First Central Electrical Co., Inc., Rodel Construction, Bareburger Inc., Bareburger Group LLC, Sitrix Funds, Delta Electric, Delta Equity, Megaris Electrical Contracting, and Racanelli Construction* (the "Dellis Litigation");

WHEREAS, shortly after his appointment, the Trustee reviewed the facts in connection with the Cardenas Litigation, as well as the pursuit of claims in the potential Dellis Litigation;

WHEREAS, after review, the Trustee and Walter Gerasimowicz ("Walter"), the former Chairman of the Debtor, through their respective counsels, engaged in multiple discussions about the Cardenas and Dellis Litigation, as well as the enforcement of the Doumazios Judgment;

WHEREAS, during those meetings, Walter expressed an interest in purchasing the estate's rights and interest in these claims and the Doumazios Judgment;

WHEREAS, the Trustee, on behalf of the Debtor's estate, now desires to assign the estate's rights and obligations arising under the Cardenas Litigation, Dellis Litigation and the Doumazios Judgment to Assignee, and Assignee desires to accept the assignment of the Trustee's rights and obligations arising under the Cardenas Litigation, Dellis Litigation and enforcement of the Doumazios Judgment, subject to and in accordance with Court approval.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Trustee and Assignee agree as follows:

1. Upon the Court's approval of this Assignment (the "Effective Date"), the Trustee transfers, conveys and assigns to the Assignee any and all of the right, title and interest that the Debtor and the Debtor estate has in and to the Cardenas Litigation, Dellis Litigation and the enforcement of the Doumazios Judgment.

2. As of the Effective Date, Assignee accepts the assignment and assumes all of the obligations, duties, undertakings, terms, conditions, costs and liabilities of the Trustee, the Debtor or the Debtor's estate with respect to the Cardenas Litigation, Dellis Litigation and the enforcement of the Doumazios Judgment.

3. Upon execution of this Assignment, the Assignee shall pay, by wire transfer, to the Trustee, on behalf of the Debtor's estate, an initial sum of $150,000.00 (the "Initial Sum") as partial consideration for the assignment of the Cardenas Litigation, Dellis Litigation and right to enforce the Doumazios Judgment. In addition, the Trustee, on behalf of the estate, shall be entitled to the following percentage of all recoveries obtained by Assignee in connection with the Cardenas Litigation, Dellis Litigation and the enforcement of the Doumazios Judgment: i) 30% of the gross recovery in excess of $350,000.00 up to $600,000.00; ii) 20% of the gross recovery in excess of $600,000.00 up to $1,000,000.00; and iii) 10% of the gross recovery in excess of $1,000,000.00. The Trustee shall hold the Initial Sum in the Trustee account pending the Court's approval of this Assignment. Upon the Court's approval of this Assignment, the funds shall be deemed property of the estate.

4. The Assignee is solely responsible for all costs, professional fees and litigation expenses in connection with the Cardenas Litigation, Dellis Litigation and the enforcement of the Doumazios Judgment and the Assignee shall have no claim against the Trustee, the Debtor or the Debtor's estate for the reimbursement of such costs, professional fees or any other litigation expenses.

5. The Assignee hereby grants to the Trustee, on behalf of the Debtor's estate, on the terms and conditions set forth herein, a first priority security interest in the: i) 30% of the gross recovery in excess of $350,000.00 up to $600,000.00; ii) 20% of the gross recovery in excess of $600,000.00 up to $1,000,000.00; and iii) 10% of the gross recovery in excess of $1,000,000.00 in connection with the Cardenas Litigation, Dellis Litigation and the enforcement of the Doumazios Judgment. The Trustee has the right, but not the obligation, to file a UCC-1 Financing Statement.

6. Upon the assignment of the Cardenas Litigation and Dellis Litigation, the Trustee shall not be a named party in these Litigations.

7. Any settlement agreement, dismissal or any other agreement affecting the disposition of the Cardenas Litigation, Dellis Litigation or the enforcement of the Doumazios Judgment shall require the Trustee's written approval which shall not be unreasonably withheld.

8. The Assignee represents and warrants that: (i) he has reviewed the appropriate documents and made its own analysis and decision to enter into this Assignment; (ii) he is duly organized and existing and has the full right, power, legal capacity and authority to execute and deliver this Assignment and to consummate the transactions contemplated hereby; (iii) he has the full power and authority to enter into and consummate all transactions contemplated by this Assignment, and that this Assignment constitutes a legal, valid and binding obligation of the Assignee, enforceable against it in accordance with its terms; and (iv) no consent or approval of any governmental authority is required for the execution and delivery of this Assignment by the Assignee.

9. The Trustee or the Trustee's professionals have not made, and do not make, any representations or warranties as to the claims asserted or the underlying causes of action in the Cardenas Litigation, the Dellis Litigation or on the enforceability of the Doumazios Judgment.

10. Further, nothing referenced in this Assignment shall be deemed a waiver or release of any other rights or claims of whatever kind or nature, the Trustee, the Debtor or the Debtor's estate may have against any party.

11. If any further documentation is necessary to effectuate the assignment by the Trustee of the estate's rights and interests in the Cardenas Litigation, Dellis Litigation and the enforcement of the Doumazios Judgment to the Assignee and/or the assumption of all duties by the Assignee thereunder, the Assignor and Assignee shall cooperate with each other by promptly signing such documentation (provided it does not change any of the substantive rights of the Trustee or Assignee in this Assignment).

12. This Assignment and the obligations of the parties hereunder shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, and shall be governed by and construed in accordance with the laws of the State of New York. Walter has the right to assign this Assignment and his obligations hereunder, subject to approval by the Trustee, provided such assignment shall not affect the rights and interests of the Trustee under this Agreement.

13. This Assignment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. For purposes of executing this Assignment, the parties agree that facsimile signatures, or signatures in PDF or other electronic format, shall be treated as original signatures for all purposes.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Assignment to be duly executed as of the day and year first above written.

ASSIGNOR:

SALVATORE LAMONICA,
CHAPTER 7 TRUSTEE

By: *s/ Gary F. Herbst*
Name: Gary F. Herbst
Title: Counsel to the Chapter 7 Trustee

ASSIGNEE:
Walter V. Gerasimowicz

By: *s/ Walter V. Gerasimowicz*
Name: Walter V. Gerasimowicz

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 7
Theodore Doumazios,	:	
	:	Case No. 11-41621-nhl
Debtor.	:	
	:	
Meditron Real Estate Partners, L.L.C.,	:	
	:	
Plaintiff	:	
	:	
- against –	:	Adv. Pro. No. 11-1349-nhl
	:	
Theodore Doumazios,	:	
Defendant.	:	

MOTION FOR JUDGMENT DETERMINING DEBT TO BE NONDISCHARGEABLE, APPROVING SETTLEMENT STIPULATION AND COMPROMISING ADVERSARY PROCEEDING

TO: THE HONORABLE NANCY HERSHEY LORD,
UNITED STATES BANKRUPTCY JUDGE

Meditron Real Estate Partners, L.L.C. ("Meditron"), by its undersigned counsel, respectfully states as follows:

SUMMARY OF RELIEF REQUESTED

1. Meditron commenced an adversary proceeding (the "Proceeding") against the above-captioned debtor (the "Debtor") on June 10, 2011, seeking a judgment under sections 523 and 727 of title 11, United States Code (the "Bankruptcy Code"). By this motion (the "Motion"), Meditron now seeks to settle and compromise the Proceeding pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Rules") on the terms set forth in the Judgment attached hereto as Exhibit 1 and the stipulation (together with the exhibits annexed thereto, the "Stipulation") accompanying this Motion as Exhibit 2.

2. The proposed settlement should be approved by this Court, based upon the reasons set forth in more detail below. In summary, however, the Judgment and Stipulation[1] will grant Meditron a judgment against the Debtor in a greatly reduced amount, will permit the Debtor to exit his bankruptcy case with a discharge of all other debts, will require the Debtor to cooperate with Meditron in possible further litigation (as defined below, the "Action") and, if the Debtor fully cooperates with Meditron, will completely satisfy the Judgment.

JURISDICTION, VENUE AND STATUTORY BASES FOR REQUESTED RELIEF

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of this case is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for this motion are sections 102(1) and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002 and 9019.

BACKGROUND

5. On March 1, 2011 (the "Filing Date"), Theodore Michael Doumazios (the Debtor" or the "Defendant") filed a voluntary petition (Case Docket No. 1) under chapter 7 of title 11, United States Code (the "Bankruptcy Code").

6. On March 1, 2011, Lori Lapin Jones was appointed as trustee (the "Trustee") of the Debtor's chapter 7 case (Case Docket No. 2).

7. On June 10, 2011, Meditron Real Estate Partners, LLC ("Meditron" or the "Plaintiff") commenced an adversary proceeding (the "Adversary Proceeding") under adversary number 11-09349-nhl against the Debtor by filing and serving a summons

[1] The summary description of the Judgment and the Stipulation set forth herein is qualified in its entirety by the actual terms of the Judgment, the Stipulation and the exhibits thereto. The terms of the Judgment, the Stipulation and the exhibits thereto will control in the event of any inconsistency between the summary description set forth herein and those documents.

and complaint, dated June 9, 2011 (Adv. Docket No. 1, the "Complaint"), against the Debtor.

8. Among other things, the Complaint sought a judgment against the Debtor (a) pursuant to § 727 of the Bankruptcy Code denying his discharge and (b) pursuant to § 523 of the Bankruptcy Code, declaring the debts owed by the Debtor to Meditron, in the amount of $2,382,724.10, to be non-dischargeable.

9. By answer, dated July 7, 2011 (Adv. Docket No. 3, the "Answer"), the Debtor, by his then-counsel, filed and served his answer and affirmative defenses.

10. On June 20, 2012, the Trustee filed her final account, certification that the estate has been fully administered and application to be discharged (Case Docket No. 26, entered June 20, 2012, the "Final Report").

THE STIPULATION

11. Both Meditron and the Debtor believe that the Judgment and Stipulation are in the best interests of the Debtor and his bankruptcy estate, and that issuance of the Judgment and approval of the Stipulation will avoid the costs and uncertainty of litigation. Interested parties are referred to the Judgment and Stipulation for a complete understanding of their respective terms.[2]

12. The most important terms of the Judgment and Stipulation are:

a. Cooperation. The Debtor shall use his best efforts to cooperate with Meditron in connection with any litigation or other proceeding arising under, arising out of or relating to the prosecution of an action or actions to be filed by Meditron, and/or its subsidiaries, parents, or affiliates until such

[2] The summary description of the Judgment and the Stipulation set forth herein is qualified in its entirety by the actual terms of the Judgment, the Stipulation and the exhibits thereto. The terms of the Judgment, the Stipulation and the exhibits thereto will control in the event of any inconsistency between the summary description set forth herein and those documents.

prospective action is resolved, dismissed or a final judgment is entered. The Stipulation sets forth several cooperative actions that the Debtor is expected to take.

b. Judgment. The Stipulation is expressly subject to and contingent upon the entry of, among other things, a judgment (the "Judgment") of the Court pursuant to §523(a)(2), (4) and (6) of the Bankruptcy Code, determining the Adversary Proceeding and granting Meditron a non-dischargeable judgment against the Debtor in the sum of $500,000 (the "Judgment").

c. Forbearance. As consideration for this Stipulation and the Judgment,

   i. Meditron agrees not to levy upon the Debtor's real or personal property;

   ii. Meditron will not seek execution of the Judgment; and

   iii. Upon the resolution, dismissal or entry of final judgment of the Action,

      1. Meditron's forbearance under this Stipulation shall become permanent; and

      2. Meditron shall issue a satisfaction of judgment to the Debtor.

d. Default. Should the Debtor fail to cooperate as set forth in the Stipulation and/or the Judgment, Meditron may (i) request the Court to reopen the Debtor's chapter 7 case and seek to amend the amount of the Judgment to increase the amount due to not more than $2,382,724.10 *plus* the costs, including attorney fees, of obtaining the Amended Judgment, *plus* interest at the federal judgment rate from the Effective Date on the total amount of the Amended Judgment and (ii) exercise all of its legal rights against the Debtor on account of the Judgment or the Amended

Judgment.

LEGAL BASIS FOR RELIEF SOUGHT

13. Rule 9019(a) empowers the Bankruptcy Court to approve compromises and settlements if they are in the best interests of the estate. The Court's approval is committed to its sound discretion, and may not be set aside "except upon a showing of plain error or abuse of discretion." *Anaconda-Ericson, Inc. v. Hessen (In re Teletronics Services, Inc.)*, 762 F.2d 185, 189 (2d Cir. 1985).

14. In making its determination, the Court should not substitute its judgment for that of the trustee or debtor-in-possession, or decide the legal and factual issues raised by the matter sought to be settled. Rather, it should "canvass" the issues to ascertain that the settlement does not fall below the minimal bounds of reasonableness.

> In undertaking an examination of the settlement, we emphasize that this responsibility of the bankruptcy judge, and ours upon review, is not to decide the numerous questions of law and fact raised by appellants but rather to canvass the issues and see whether the settlement "fall[s] below the lowest point in the range of reasonableness,"

Cosoff v. Rodmen (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir.), *cert. denied*, 464 U.S. 822 (1983); *Accord Anaconda-Ericson, Inc. v. Hessen (In re Teletronics Services, Inc.)*, 762 F.2d at 189; *In re Lion Capital Group*, 49 B.R. 163, 175 Bank. S.D.N.Y. 1985); *In re Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y., 1984), *aff'd*, 50 B.R. 764 (S.D.N.Y 1984), *aff'd* 50 B.R. 764 (S.D.N.Y. 1985).

15. Further, in assessing a settlement, the Court should give due consideration to the informed judgments of the debtor and its counsel, and the principle that the law favors compromise. *In Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991), the Bankruptcy Court observed:

> Further, the court need not conduct a wholly independent investigation in formulating its opinion as to the reasonableness of a settlement. We may give weight to the informed judgments of the trustee or debtor-in-possession and their counsel that a compromise is fair and equitable . . . and consider the competency and experience of counsel who support the compromise. . . . And indeed, a court may approve a settlement even if it believes that the trustee or debtor-in-possession ultimately would be successful at trial. . . . Finally, we must consider the principle that "the law favors compromise."

(internal citations omitted).

16. Finally, as the Court of Appeals for the Eleventh Circuit stated, "public policy strongly favors pre-trial settlement in all types of litigation because such cases, depending on their complexity, can occupy a court's docket for years on end, depleting resources of parties and the taxpayers while rendering meaningful relief increasingly elusive." *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996). In addition, as the Eleventh Circuit went on to state in *Munford*, "litigation costs are particularly burdensome on a bankrupt estate given the financial instability of the estate."

REQUEST FOR RELIEF

17. Meditron respectfully submits that when this Court "canvasses" the issues surrounding the proposed settlement, it should conclude that the settlement does not "fall below the lowest point in the range of reasonableness."

18. By issuing the Judgment and approving the Stipulation, both Meditron and the Debtor will avoid uncertain and likely expensive litigation, Meditron will be granted a judgment against the Debtor in a greatly reduced amount, the Debtor will be able to exit his bankruptcy case with a discharge of all other debts, the Debtor will cooperate with Meditron in the Action and, if the Debtor fully cooperates with Meditron, the Judgment will be satisfied.

19. In short, both Meditron and the Debtor believe that settling, instead of litigating, is the best course. Continued litigation would be time consuming, expensive

and unlikely to be cost effective for both parties. Therefore, both Meditron and the Debtor, after consultation with their respective counsel,[3] have elected to settle the Proceeding.

NOTICE

20. The Trustee has filed her Final Report and has no interest in the proposed settlement.[4] Similarly, upon information and belief, the Trustee has issued distributions to the Debtor's creditors and their standing as creditors has been discharged so that they are no longer entitled to notice ordinarily required by § 102 of the Bankruptcy Code and Rules 2002 and 9019.

21. Meditron respectfully submits that the only parties with an interest in the relief sought are the Debtor, Mr. Gelberg and the United States Trustee, and the likelihood of an objection to the requested relief by those parties is small. Therefore, Meditron will instead provide notice only to the Debtor, Mr. Gelberg, the Trustee and the United States Trustee.

22. Under the particular circumstances set forth, Meditron respectfully requests that the above notice provisions be considered as adequate and sufficient notice of the Motion.

NO PREVIOUS MOTION

23. No previous motion for the relief sought herein has been made to this or any other court.

REQUEST FOR WAIVER OF MEMORANDUM OF LAW

[3] Although Stuart P. Gelberg, Esq. no longer represents the Debtor in the Proceeding, he nevertheless continues to be active in aiding the Debtor in representing himself.

[4] In a telephone conversation on October 4, 2012, Meditron's counsel spoke to the Trustee and confirmed that she did not have any ongoing interest in the Debtor's case or the Proceeding. Nevertheless, Meditron will serve her with all relevant papers.

24. Meditron respectfully submits that the discussion of the factual basis and legal support for the relief requested herein is sufficient and in accordance with Local Bankruptcy Rule 9013-1(a), and therefore respectfully requests that no further pleadings or memoranda are required, unless further ordered by the Court.

WHEREFORE, Meditron respectfully requests that the Court issue the Judgment in the form annexed hereto as Exhibit A and grant Meditron such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 26, 2012

LAW OFFICE OF IRA R. ABEL
Attorney for Meditron Real Estate Partners, L.L.C., Plaintiff

By: /s/
Ira R. Abel
30 Vesey Street
15th Floor
New York, NY 10007
[redacted]

HEARING DATE: January 22, 2013
HEARING TIME: 10:30 A.M.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 7
Theodore Doumazios,	:	
	:	Case No. 11-41621-nhl
Debtor.	:	
	:	
Meditron Real Estate Partners, L.L.C.,	:	
	:	
Plaintiff	:	
	:	
- against –	:	Adv. Pro. No. 11-1349-nhl
	:	
	:	
Theodore Doumazios,	:	
Defendant.	:	

NOTICE OF MOTION FOR JUDGMENT AND ORDER DETERMINING DEBT TO BE NONDISCHARGEABLE, APPROVING SETTLEMENT STIPULATION AND COMPROMISING ADVERSARY PROCEEDING

PLEASE TAKE NOTICE, that upon the motion, dated December 26, 2012 (the "Motion") Meditron Real Estate Partners, L.L.C. ("Meditron"), shall move before the Honorable Nancy Hershey Lord, United States Bankruptcy Judge, at the United States Bankruptcy Court, Conrad B. Duberstein Courthouse, 271 Cadman Plaza East, Brooklyn, NY 11201-1800 on **January 22, 2013 at 10:30 a.m.**, or as soon thereafter as counsel may be heard, for entry of a judgment and order, (1) that settles and compromises the above-captioned adversary proceeding against Theodore Doumazios (the "Debtor"), and (2) grants Meditron a non-dischargeable judgment against the Debtor in the amount of $500,000.00.

PLEASE TAKE FURTHER NOTICE, that responses or objections, if any, to the relief requested in the Motion shall be (i) filed with the Clerk of the Bankruptcy Court on the Court's ECF system; (ii) served upon (a) the Law Office of Ira R. Abel, 30 Vesey

Street, 15th Floor, New York, NY 10007, Attn: Ira R. Abel, Esq. and (b) the United States Trustee, 271 Cadman Plaza East, Suite 4529, Brooklyn, NY 11201and (iii) delivered to the chambers of the Honorable Nancy Hershey Lord, United States Bankruptcy Judge, so that same are received **on or before 4:00 p.m. on January 15, 2013.**

PLEASE TAKE FURTHER NOTICE, that if you have no objections to the relief requested in the Motion, you need not appear at the hearing.

PLEASE TAKE FURTHER NOTICE, that if no responses or objections to the Motion are timely filed and received, an order may be entered granting the Motion.

Dated: New York, New York
December 26, 2012

LAW OFFICE OF IRA R. ABEL

By: /s/
Ira R. Abel
30 Vesey Street
15th Floor
New York, NY 10007
212.799.4672
Ira R. Abel, Esq.

Name	Email Address(if available)	Address
Theodore Michael Doumazios	[redacted]	[redacted]
Stuart P. Gelberg, Esq.	[redacted]	
Lori Lapin Jones, Esq.	[redacted]	
United States Trustee		271 Cadman Plaza East Suite 4529 Brooklyn, NY 11201
Meditron Real Estate Partners, L.L.C.	[redacted]	[redacted]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 7
Theodore Doumazios,	:	
	:	Case No. 11-41621-nhl
Debtor.	:	
Meditron Real Estate Partners, L.L.C.,	:	
Plaintiff	:	
- against –	:	Adv. Pro. No. 11-1349-nhl
Theodore Doumazios,	:	
Defendant.	:	

JUDGMENT AND ORDER DETERMINING DEBT TO BE NONDISCHARGEABLE, APPROVING STIPULATION AND GRANTING RELATED RELIEF

Findings of Fact

A. On June 10, 2011, Meditron Real Estate Partners, LLC ("Meditron" or "Plaintiff") commenced an adversary proceeding (this "Adversary Proceeding") against Theodore Doumazios (the "Debtor" or the "Defendant" and together with Meditron, the "Parties") by filing and serving a summons and complaint (Adv. Docket No. 1, the "Complaint") seeking, among other things, a judgment (1) denying the Debtor's discharge pursuant to section 727 of title 11, United States Code (the "Bankruptcy Code") and (2) excepting the debts, totaling not less than $2,382,724.10 (the "Judgment Amount"), owed by the Debtor to Meditron from discharge pursuant to section 523 of the Bankruptcy Code.

B. On July 7, 2011, the Debtor filed an answer to the Complaint (Adv. Docket No. 3, the "Answer").

C. On July 11, 2011, this Court entered a pretrial order (Adv. Docket No. 4, the "Pretrial Order") that, among other things, set deadlines for (1) scheduling a

conference pursuant to Rule 26(f) of the Federal Rules of Bankruptcy Procedure (the "Rules"), (2) setting a deadline for the completion of discovery and (3) setting a deadline for filing a joint pre-trial memorandum.

D. By Order to Show Cause entered December 15, 2011 (Adv. Docket No. 7, the "Order to Show Cause"), this Court set a deadline for the Parties to set forth in writing why this Adversary Proceeding should not be dismissed for the Parties' failure to file the Joint Pretrial Memorandum.

E. By affirmation in response, filed December 16, 2011 (Adv. Docket No. 8, the "Affirmation in Response"), the Debtor responded to the Order to Show Cause.

F. By affirmation in opposition, filed December 30, 2011 (Adv. Docket No. 11, the "December Affirmation in Opposition"), Meditron responded to the Order to Show Cause.

G. By reply affirmation, filed January 3, 2012 (Adv. Docket No. 12, the "Reply Affirmation"), the Debtor responded to the Affirmation in Opposition.

H. By Order entered February 8, 2012 (Adv. Docket No. 15, the "February Order Scheduling Evidentiary Hearing"), among other things, this Court (1) scheduled an evidentiary hearing to be held on April 18, 2012 to consider the issues raised by the Order to Show Cause and (2) directed the Parties to file a Joint Pretrial Order in compliance with the Pretrial Order.

I. By motion, entered February 10, 2012 (Adv. Docket No. 17, the "Gelberg Motion to Withdraw"), the Debtor's counsel requested that he be permitted to withdraw as the Debtor's counsel in this Adversary Proceeding.

J. By Order, entered April 6, 2012 (Adv. Docket No. 24, the "Order Scheduling Status Conference"), among other things, this Court scheduled a hearing to

be held on May 22, 2012 to determine whether proper service of the Complaint was effected in this Adversary Proceeding.

K. By Order, entered April 20, 2012 (Adv. Docket No. 27, the "Withdrawal Order"), the Debtor's counsel was authorized to withdraw as the Debtor's counsel in this Adversary Proceeding.

L. By motion, entered May 14, 2012 (Adv. Docket No. 28, the "Motion to Exclude"), the Debtor moved, among other things, to dismiss this Adversary Proceeding.

M. By motion, entered May 22, 2012 (Adv. Docket No. 29, the "Tischler Motion to Withdraw"), Meditron's counsel requested that he be permitted to withdraw as Meditron's counsel in this Adversary Proceeding.

N. By Order, entered May 24, 2012 (Adv. Docket No. 30, the "May Scheduling Order"), this Court adjourned (1) the evidentiary hearing to determine whether proper service of the Complaint was effected in this Adversary Proceeding (2) the status conference and (3) the Motion to Exclude to June 26, 2012.

O. By affirmation, filed June 26, 2012 (Adv. Docket No. 34, the "June Affirmation in Opposition"), Meditron responded to the Motion to Exclude.

P. By Order to Show Cause, entered June 29, 2012 (Adv. Docket No. 35, the "June Order to Show Cause"), this Court directed the Parties to show cause why this Adversary Proceeding should not be dismissed for failure to prosecute.

Q. By letters, (a) dated July 12, 2012 (Adv. Docket Nos. 37 and 38), (b) dated August 9, 2012 (Adv. Docket Nos. 39 and 40) and (c) dated September 5, 2012 (Adv. Docket Nos. 41, 42 and 43), all matters were adjourned to October 30, 2012.

R. By Notice of Presentment of Judgment Determining Debt to be Nondischargeable, Approving Settlement Stipulation and Compromising Adversary Proceeding, dated October , 2012, (Case Docket No. _____, the "9019 Motion"), Meditron sought, among other things, entry of a Judgment and Order Determining Debt to be Nondischargeable, Approving Stipulation and Granting Related Relief (the "Judgment").

BASED UPON THE RECORD MADE BEFORE ME AND UPON ALL OF THE PRIOR PROCEEDINGS IN THIS ADVERSARY PROCEEDING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The 9019 Motion is granted.

2. The Stipulation of Settlement, a copy of which is annexed hereto, be and hereby is approved.

3. Pursuant to §523(a)(2), (4) and (6) of the Bankruptcy Code, Meditron is granted a non-dischargeable judgment against the Debtor in the sum of $500,000 (the "Judgment").

4. The Clerk of this Court be, and hereby is, directed to issue such Judgment, substantially in the form hereof.

5. Should the Debtor fail to cooperate as set forth in the Stipulation:

   a. Meditron may request the Court to reopen the Debtor's chapter 7 case pursuant to § 350 of the Bankruptcy Code;

   b. Sufficient "cause" for such request shall be an affidavit or certification by or on behalf of Meditron setting forth the Debtor's default or defaults under the Stipulation of Settlement.

   c. Upon the re-opening of the Debtor's case, the Clerk of this Court shall issue an amended judgment substantially in the form annexed

to the Stipulation of Settlement as Exhibit B (the "Amended Judgment") in favor of Meditron, provided this Court has determined that the Debtor had defaulted under the terms of the Stipulation of Settlement, which Amended Judgment shall increase the amount of the Judgment to $2,382,724.10 *plus* the costs, including attorney fees, of obtaining the Amended Judgment, *plus* interest at the federal judgment rate from the Effective Date (as defined in the Stipulation of Settlement) on the total amount of the Amended Judgment.

6. The automatic stay pursuant to 11 U.S.C. §362 of the Bankruptcy Code is hereby VACATED as to Meditron, except as is otherwise expressly set forth in the Stipulation of Settlement.

7. So much of the Complaint that seeks a judgment pursuant to 11 U.S.C. § 727 denying the Debtor a discharge is dismissed.

8. Notice of the Judgment is found to be adequate and sufficient.

9. The Motion sufficiently sets forth the rules and statutory provisions upon which it is based, the legal authorities that support the requested relief and the factual grounds for relief in accordance with Local Bankruptcy Rule 9013-1(a) and no further papers are required.

Dated: Brooklyn, New York
January , 2013

Hon. Nancy Hershey Lord
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 7
Theodore Doumazios,	:	
	:	Case No. 11-41621-nhl
Debtor.	:	
	:	
Meditron Real Estate Partners, L.L.C.,	:	
	:	
Plaintiff	:	
	:	
- against –	:	Adv. Pro. No. 11-1349-nhl
	:	
Theodore Doumazios,	:	
Defendant.	:	

STIPULATION OF SETTLEMENT

RECITALS:

A. On March 1, 2011 (the "Filing Date"), Theodore Michael Doumazios (the Debtor" or the "Defendant") filed a voluntary petition (Case Docket No. 1) under chapter 7 of title 11, United States Code (the "Bankruptcy Code").

B. On March 1, 2011, Lori Lapin Jones was appointed as trustee (the "Trustee") of the Debtor's chapter 7 case (Case Docket No. 2).

C. On June 10, 2011, Meditron Real Estate Partners, LLC ("Meditron" or the "Plaintiff") commenced an adversary proceeding (the "Adversary Proceeding") under adversary number 11-09349-nhl against the Debtor by filing and serving a summons and complaint, dated June 9, 2011 (Adv. Docket No. 1, the "Complaint"), against the Debtor.

D. Among other things, the Complaint sought a judgment against the Debtor (a) pursuant to § 727 of the Bankruptcy Code denying his discharge and (b) pursuant to

§ 523 of the Bankruptcy Code, declaring the debts owed by the Debtor to Meditron to be non-dischargeable.

E. By answer, dated July 7, 2011 (Adv. Docket No. 3, the "Answer"), the Debtor, by his then-counsel, filed and served his answer and affirmative defenses.

NOW, THEREFORE, it is hereby stipulated and agreed by each of the parties to this stipulation (the "Stipulation"), which Stipulation when "so ordered" by a United States Bankruptcy Judge, shall constitute an order of this Court with respect to the subject matter hereof as follows:

1. The Approval Order.

   a. This Stipulation is expressly subject to and contingent upon the entry of (i) an order of the United States Bankruptcy Court (the "Court") approving this Stipulation (the "Approval Order") and (ii) a judgment of the Court substantially in the form annexed hereto as Exhibit A (the "Judgment") determining the Adversary Proceeding.

   b. On the later of (i) the date the Approval Order is entered or (ii) the date the Judgment is entered, both this Stipulation and the Judgment shall become effective against the Debtor and Meditron (the "Effective Date").

   c. If the Court does not issue the Approval Order or the Judgment, then this Stipulation shall be null, void, and of no force or effect and this Stipulation, the Judgment, or any negotiations and writings in connection with this Stipulation and/or the Judgment shall in no way be construed as or deemed to be evidence against or an admission on by Meditron or by the Debtor regarding any claims, allegations or answers that each may have

against the other.

2. Cooperation. From and after the Effective Date, the Debtor shall use his best efforts to cooperate with Meditron in connection with any litigation or other proceeding arising under, arising out of or relating to the prosecution of an action or actions (the "Action") to be filed by Meditron, and/or its subsidiaries, parents, affiliates, shareholders, officers, directors, partners, attorneys, representatives, agents and employees, and the assigns and successors in interest of any of the foregoing entities and individuals through and including the resolution, dismissal or entry of final judgment of the Action. The Debtor's cooperation under this Stipulation and the Judgment shall include, without limitation:

a. providing Meditron with copies of all documents and correspondence in his possession that are requested by Meditron;

b. directing the Debtor's counsel retained prior to or subsequent to March 1, 2011 to cooperate fully with Meditron's counsel with respect to the Action, including producing (i) the attorneys' complete file, (ii) the attorneys' complete work product and (iii) the attorneys' complete internal memoranda and email, correspondence, working papers, and reports *except that* Stuart P. Gelberg, Esq. shall not be required to produce his complete work product or his internal memoranda and email, correspondence, working papers, and reports unless requested by the Debtor to do so;

c. answering interrogatories in a timely manner, attending depositions, settlement conferences and trial and fully participating in the prosecution

of the Action;

d. providing assistance to Meditron's counsel, experts and consultants;

e. providing truthful testimony in all hearings, proceedings and/or examinations; and

f. meeting and conferring with Meditron's counsel in the prosecution of the Action.

3. Forbearance. As consideration for this Stipulation and the Judgment:

a. Meditron agrees not to levy upon the Debtor's real or personal property;

b. Meditron will not seek execution of the Judgment; and

c. Upon the resolution, dismissal or entry of final judgment of the Action,

i. Meditron's forbearance under this Stipulation shall become permanent; and

ii. Meditron shall issue a satisfaction of judgment to the Debtor.

4. Default.

a. Should the Debtor fail to cooperate as set forth in this Stipulation and/or the Judgment:

i. Meditron may request the Court to reopen the Debtor's chapter 7 case;

ii. The Debtor shall not oppose Meditron's request to reopen the Debtor's chapter 7 case;

iii. Meditron may request the Court to amend the amount of the Judgment to increase the amount due to not more than $2,382,724.10 *plus* the costs, including attorney fees, of obtaining

the Amended Judgment, *plus* interest at the federal judgment rate from the Effective Date on the total amount of the Amended Judgment; and

iv. Meditron may exercise all of its legal rights against the Debtor on account of the Judgment or the Amended Judgment.

b. Should the Debtor commence a case under title 11, United States Code prior to the resolution, dismissal or entry of final judgment of the Action, the Debtor shall not oppose any request by Meditron to seek relief from the automatic stay to continue the Action and enforce the Debtor's obligation to provide cooperation as set forth in this Stipulation and the Judgment and/or the Amended Judgment.

5. The parties hereto represent and warrant to each other that: (a) the signatories to this Stipulation are authorized to execute this Stipulation; (b) each party has full power and authority to enter into this Stipulation; and (c) this Stipulation is duly executed and delivered and constitutes a valid binding agreement in accordance with its terms.

6. This Stipulation, the Judgment and/or the Amended Judgment constitute the entire agreement between the parties with respect to the subject matter herein and supersede all prior agreements and understandings, written and oral, between the parties with respect to the subject matter hereof.

7. This Stipulation may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation to present any copy,

copies, facsimiles or portable document format signed by the parties hereto to be charged.

8. The provisions of this Stipulation shall be binding upon the parties' respective successors and assigns.

9. The Court shall retain jurisdiction over the subject matter of this Stipulation, including the interpretation thereof, to resolve all disputes relating thereto, to enforce this Stipulation, enter, and enforce the Judgment and/or the Amended Judgment.

10. The parties agree to execute any additional documents reasonably required from time to time hereafter to effect this Stipulation, the Judgment and/or the Amended Judgment.

Theodore Doumazios, Debtor and Defendant

By: _____
Theodore Doumazios
[redacted]

LAW OFFICE OF IRA R. ABEL
Attorney for Meditron Real Estate Partners, L.L.C., Plaintiff

By: _____
Ira R. Abel
520 Eighth Avenue
Suite 2001
New York, NY 10018
[redacted]

Exhibit A

Judgment

Exhibit B

Amended Judgment

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 7
Theodore Doumazios,	:	
	:	Case No. 11-41621-nhl
Debtor.	:	
	:	
Meditron Real Estate Partners, L.L.C.,	:	
	:	
Plaintiff	:	
	:	
- against –	:	Adv. Pro. No. 11-1349-nhl
	:	
	:	
Theodore Doumazios,	:	
Defendant.	:	

JUDGMENT AND ORDER DETERMINING DEBT TO BE NONDISCHARGEABLE, APPROVING STIPULATION AND GRANTING RELATED RELIEF

Findings of Fact

A. On June 10, 2011, Meditron Real Estate Partners, LLC ("Meditron" or "Plaintiff") commenced an adversary proceeding (this "Adversary Proceeding") against Theodore Doumazios (the "Debtor" or the "Defendant" and together with Meditron, the "Parties") by filing and serving a summons and complaint (Adv. Docket No. 1, the "Complaint") seeking, among other things, a judgment (1) denying the Debtor's discharge pursuant to section 727 of title 11, United States Code (the "Bankruptcy Code") and (2) excepting the debts, totaling not less than $2,382,724.10 (the "Judgment Amount"), owed by the Debtor to Meditron from discharge pursuant to section 523 of the Bankruptcy Code.

B. On July 7, 2011, the Debtor filed an answer to the Complaint (Adv. Docket No. 3, the "Answer").

C. On July 11, 2011, this Court entered a pretrial order (Adv. Docket No. 4, the "Pretrial Order") that, among other things, set deadlines for (1) scheduling a

conference pursuant to Rule 26(f) of the Federal Rules of Bankruptcy Procedure (the "Rules"), (2) setting a deadline for the completion of discovery and (3) setting a deadline for filing a joint pre-trial memorandum.

D. By Order to Show Cause entered December 15, 2011 (Adv. Docket No. 7, the "Order to Show Cause"), this Court set a deadline for the Parties to set forth in writing why this Adversary Proceeding should not be dismissed for the Parties' failure to file the Joint Pretrial Memorandum.

E. By affirmation in response, filed December 16, 2011 (Adv. Docket No. 8, the "Affirmation in Response"), the Debtor responded to the Order to Show Cause.

F. By affirmation in opposition, filed December 30, 2011 (Adv. Docket No. 11, the "December Affirmation in Opposition"), Meditron responded to the Order to Show Cause.

G. By reply affirmation, filed January 3, 2012 (Adv. Docket No. 12, the "Reply Affirmation"), the Debtor responded to the Affirmation in Opposition.

H. By Order entered February 8, 2012 (Adv. Docket No. 15, the "February Order Scheduling Evidentiary Hearing"), among other things, this Court (1) scheduled an evidentiary hearing to be held on April 18, 2012 to consider the issues raised by the Order to Show Cause and (2) directed the Parties to file a Joint Pretrial Order in compliance with the Pretrial Order.

I. By motion, entered February 10, 2012 (Adv. Docket No. 17, the "Gelberg Motion to Withdraw"), the Debtor's counsel requested that he be permitted to withdraw as the Debtor's counsel in this Adversary Proceeding.

J. By Order, entered April 6, 2012 (Adv. Docket No. 24, the "Order Scheduling Status Conference"), among other things, this Court scheduled a hearing to

be held on May 22, 2012 to determine whether proper service of the Complaint was effected in this Adversary Proceeding.

K. By Order, entered April 20, 2012 (Adv. Docket No. 27, the "Withdrawal Order"), the Debtor's counsel was authorized to withdraw as the Debtor's counsel in this Adversary Proceeding.

L. By motion, entered May 14, 2012 (Adv. Docket No. 28, the "Motion to Exclude"), the Debtor moved, among other things, to dismiss this Adversary Proceeding.

M. By motion, entered May 22, 2012 (Adv. Docket No. 29, the "Tischler Motion to Withdraw"), Meditron's counsel requested that he be permitted to withdraw as Meditron's counsel in this Adversary Proceeding.

N. By Order, entered May 24, 2012 (Adv. Docket No. 30, the "May Scheduling Order"), this Court adjourned (1) the evidentiary hearing to determine whether proper service of the Complaint was effected in this Adversary Proceeding (2) the status conference and (3) the Motion to Exclude to June 26, 2012.

O. By affirmation, filed June 26, 2012 (Adv. Docket No. 34, the "June Affirmation in Opposition"), Meditron responded to the Motion to Exclude.

P. By Order to Show Cause, entered June 29, 2012 (Adv. Docket No. 35, the "June Order to Show Cause"), this Court directed the Parties to show cause why this Adversary Proceeding should not be dismissed for failure to prosecute.

Q. By letters, (a) dated July 12, 2012 (Adv. Docket Nos. 37 and 38), (b) dated August 9, 2012 (Adv. Docket Nos. 39 and 40) and (c) dated September 5, 2012 (Adv. Docket Nos. 41, 42 and 43), all matters were adjourned to October 30, 2012.

R. By Notice of Presentment of Judgment Determining Debt to be Nondischargeable, Approving Settlement Stipulation and Compromising Adversary Proceeding, dated October , 2012, (Case Docket No. _____, the "9019 Motion"), Meditron sought, among other things, entry of a Judgment and Order Determining Debt to be Nondischargeable, Approving Stipulation and Granting Related Relief (the "Judgment").

BASED UPON THE RECORD MADE BEFORE ME AND UPON ALL OF THE PRIOR PROCEEDINGS IN THIS ADVERSARY PROCEEDING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The 9019 Motion is granted.

2. The Stipulation of Settlement, a copy of which is annexed hereto, be and hereby is approved.

3. Pursuant to §523(a)(2), (4) and (6) of the Bankruptcy Code, Meditron is granted a non-dischargeable judgment against the Debtor in the sum of $500,000 (the "Judgment").

4. The Clerk of this Court be, and hereby is, directed to issue such Judgment, substantially in the form hereof.

5. Should the Debtor fail to cooperate as set forth in the Stipulation:

   a. Meditron may request the Court to reopen the Debtor's chapter 7 case pursuant to § 350 of the Bankruptcy Code;

   b. Sufficient "cause" for such request shall be an affidavit or certification by or on behalf of Meditron setting forth the Debtor's default or defaults under the Stipulation of Settlement.

   c. Upon the re-opening of the Debtor's case, the Clerk of this Court shall issue an amended judgment substantially in the form annexed

to the Stipulation of Settlement as Exhibit B (the "Amended Judgment") in favor of Meditron, provided this Court has determined that the Debtor had defaulted under the terms of the Stipulation of Settlement, which Amended Judgment shall increase the amount of the Judgment to $2,382,724.10 *plus* the costs, including attorney fees, of obtaining the Amended Judgment, *plus* interest at the federal judgment rate from the Effective Date (as defined in the Stipulation of Settlement) on the total amount of the Amended Judgment.

6. The automatic stay pursuant to 11 U.S.C. §362 of the Bankruptcy Code is hereby VACATED as to Meditron, except as is otherwise expressly set forth in the Stipulation of Settlement.

7. So much of the Complaint that seeks a judgment pursuant to 11 U.S.C. § 727 denying the Debtor a discharge is dismissed.

8. Notice of the Judgment is found to be adequate and sufficient.

9. The Motion sufficiently sets forth the rules and statutory provisions upon which it is based, the legal authorities that support the requested relief and the factual grounds for relief in accordance with Local Bankruptcy Rule 9013-1(a) and no further papers are required.

Dated: Brooklyn, New York
January , 2013

Hon. Nancy Hershey Lord
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 7
Theodore Doumazios,	:	
	:	Case No. 11-41621-nhl
Debtor.	:	
	:	
Meditron Real Estate Partners, L.L.C.,	:	
	:	
Plaintiff	:	
	:	
- against –	:	Adv. Pro. No. 11-1349-nhl
	:	
	:	
Theodore Doumazios,	:	
Defendant.	:	

AMENDED JUDGMENT AND ORDER

Findings of Fact

A. On June 10, 2011, Meditron Real Estate Partners, LLC ("Meditron" or "Plaintiff") commenced an adversary proceeding (this "Adversary Proceeding") against Theodore Doumazios (the "Debtor" or the "Defendant" and together with Meditron, the "Parties") by filing and serving a summons and complaint (Adv. Docket No. 1, the "Complaint") seeking, among other things, a judgment (1) denying the Debtor's discharge pursuant to section 727 of title 11, United States Code (the "Bankruptcy Code") and (2) excepting the debts, totaling not less than $2,382,724.10 (the "Judgment Amount"), owed by the Debtor to Meditron from discharge pursuant to section 523 of the Bankruptcy Code.

B. On July 7, 2011, the Debtor filed an answer to the Complaint (Adv. Docket No. 3, the "Answer").

C. On July 11, 2011, this Court entered a pretrial order (Adv. Docket No. 4, the "Pretrial Order") that, among other things, set deadlines for (1) scheduling a conference pursuant to Rule 26(f) of the Federal Rules of Bankruptcy Procedure (the "Rules"), (2) setting a deadline for the completion of discovery and (3) setting a deadline for filing a joint pre-trial memorandum.

D. By Order to Show Cause entered December 15, 2011 (Adv. Docket No. 7, the "Order to Show Cause"), this Court set a deadline for the Parties to set forth in writing why this Adversary Proceeding should not be dismissed for the Parties' failure to file the Joint Pretrial Memorandum.

E. By affirmation in response, filed December 16, 2011 (Adv. Docket No. 8, the "Affirmation in Response"), the Debtor responded to the Order to Show Cause.

F. By affirmation in opposition, filed December 30, 2011 (Adv. Docket No. 11, the "December Affirmation in Opposition"), Meditron responded to the Order to Show Cause.

G. By reply affirmation, filed January 3, 2012 (Adv. Docket No. 12, the "Reply Affirmation"), the Debtor responded to the Affirmation in Opposition.

H. By Order entered February 8, 2012 (Adv. Docket No. 15, the "February Order Scheduling Evidentiary Hearing"), among other things, this Court (1) scheduled an evidentiary hearing to be held on April 18, 2012 to consider the issues raised by the Order to Show Cause and (2) directed the Parties to file a Joint Pretrial Order in compliance with the Pretrial Order.

I. By motion, entered February 10, 2012 (Adv. Docket No. 17, the "Gelberg Motion to Withdraw"), the Debtor's counsel requested that he be permitted to withdraw as the Debtor's counsel in this Adversary Proceeding.

J. By Order, entered April 6, 2012 (Adv. Docket No. 24, the "Order Scheduling Status Conference"), among other things, this Court scheduled a hearing to be held on May 22, 2012 to determine whether proper service of the Complaint was effected in this Adversary Proceeding.

K. By Order, entered April 20, 2012 (Adv. Docket No. 27, the "Withdrawal Order"), the Debtor's counsel was authorized to withdraw as the Debtor's counsel in this Adversary Proceeding.

L. By motion, entered May 14, 2012 (Adv. Docket No. 28, the "Motion to Exclude"), the Debtor moved, among other things, to dismiss this Adversary Proceeding.

M. By motion, entered May 22, 2012 (Adv. Docket No. 29, the "Tischler Motion to Withdraw"), Meditron's counsel requested that he be permitted to withdraw as Meditron's counsel in this Adversary Proceeding.

N. By Order, entered May 24, 2012 (Adv. Docket No. 30, the "May Scheduling Order"), this Court adjourned (1) the evidentiary hearing to determine whether proper service of the Complaint was effected in this Adversary Proceeding (2) the status conference and (3) the Motion to Exclude to June 26, 2012.

O. By affirmation, filed June 26, 2012 (Adv. Docket No. 34, the "June Affirmation in Opposition"), Meditron responded to the Motion to Exclude.

P. By Order to Show Cause, entered June 29, 2012 (Adv. Docket No. 35, the "June Order to Show Cause"), this Court directed the Parties to show cause why this Adversary Proceeding should not be dismissed for failure to prosecute.

Q. By letter, entered July 11, 2012 (Adv. Docket No. 38, the "Letter"), all matters were adjourned to August 21, 2012.

R. By motion, entered _____, 2012 (Adv. Docket No. _____, the "9019 Motion"), Meditron sought entry of a Judgment and Order Determining Debt to be Nondischargeable, Approving Stipulation and Granting Related Relief (the "Judgment").

S. On _____, 2012, this Court entered the Judgment.

T. By [Affidavit or Certification], dated _____, 20___, _____, the [title] of Meditron, set forth the Debtor's default or defaults under the Stipulation.

U. By Order, entered _____, _____ (Docket No. _____) the Debtor's case was reopened.

V. This Court has determined that the Debtor has defaulted under the terms of the Stipulation of Settlement.

BASED UPON THE RECORD MADE BEFORE ME AND UPON ALL OF THE PRIOR PROCEEDINGS IN THE DEBTOR'S CASE AND THE ADVERSARY PROCEEDING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Pursuant to §523(a)(2), (4) and (6) of the Bankruptcy Code, Meditron has a non-dischargeable judgment against the Debtor in the sum of $2,382,724.10, *plus* all costs, including attorney fees, of obtaining this amended judgment (the "Amended Judgment") *plus* the costs, including attorney fees, of obtaining the Amended Judgment, *plus* interest at the rate of nine percent (9%) per annum from the Effective Date (as defined in the Stipulation of Settlement) on the total amount of the Amended Judgment.

2. The Clerk of this Court be, and hereby is, directed to issue such Amended Judgment, substantially in the form hereof.

3. The automatic stay pursuant to 11 U.S.C. §362 of the Bankruptcy Code is hereby VACATED as to Meditron.

Dated:Brooklyn, New York
, 20____

_____
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 7
Theodore Doumazios,	:	
	:	Case No. 11-41621-nhl
Debtor.	:	
	:	
Meditron Real Estate Partners, L.L.C.,	:	
	:	
Plaintiff	:	
	:	
- against –	:	Adv. Pro. No. 11-1349-nhl
	:	
	:	
Theodore Doumazios,	:	
Defendant.	:	

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

Ira R. Abel certifies under penalty of perjury that the following is true and correct:

I am not a party to this proceeding, am over 18 years of age and reside in New York, New York.

On December 26, 2012, I served the Motion for Judgment Determining Debt to be Nondischargeable, Approving Settlement Stipulation and Compromising Adversary Proceeding, together with all exhibits annexed thereto and notice thereof by electronic mail to the entities set forth on the annexed list.

Dated: New York, New York
December 26, 2012

/s/ Ira Abel
Ira R. Abel

SERVICE LIST

Name	Email Address
Theodore Michael Doumazios	[redacted]
Stuart P. Gelberg, Esq.	[redacted]
Lori Lapin Jones, Esq.	[redacted]
Meditron Real Estate Partners, L.L.C.	[redacted]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 7
Theodore Doumazios,	:	
	:	Case No. 11-41621-nhl
Debtor.	:	
	:	
Meditron Real Estate Partners, L.L.C.,	:	
	:	
Plaintiff	:	
	:	
- against –	:	Adv. Pro. No. 11-1349-nhl
	:	
	:	
Theodore Doumazios,	:	
Defendant.	:	

CERTIFICATE OF SERVICE BY FIRST CLASS MAIL

Ira R. Abel certifies under penalty of perjury that the following is true and correct:

I am not a party to this proceeding, am over 18 years of age and reside in New York, New York.

On December 27, 2012, I served the Motion for Judgment Determining Debt to be Nondischargeable, Approving Settlement Stipulation and Compromising Adversary Proceeding, together with all exhibits annexed thereto and notice thereof, by first class mail in a sealed, properly addressed wrapper, postage prepaid, upon the entities set forth on the annexed list.

Dated: New York, New York
December 27, 2012

/s/ Ira Abel
Ira R. Abel

SERVICE LIST

Name	Address
Theodore Michael Doumazios	[redacted]
Stuart P. Gelberg, Esq.	
Lori Lapin Jones, Esq.	
United States Trustee	271 Cadman Plaza East Suite 4529 Brooklyn, NY 11201
Meditron Real Estate Partners, L.L.C.	[redacted]

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May 28, 2013

VIA EMAIL (FischerH@Sec.gov) AND REGULAR MAIL

Howard Fischer, Esq.
Senior Trial Counsel
Room 17-216
Securities & Exchange Commission
3 World Financial Center
New York, NY 10281.

Dear Mr. Fischer:

I write in response to your request for information regarding Fogel Neale Wealth management, LLC's ("FNWM") dealings with Walter Gerasimowicz ("WG") and/or any of his entities. The information you requested is more specifically set forth in your May 17, 2013 e-mail. Before doing so, I once again apologize for the delay in responding to your inquiries. For what it is worth, I, rather than my partners am responsible for the delay.

As to your inquiry, we had no relationship with any of WG's entities. Our relationship was solely with WG individually. We first learned of WG in late November 2012 when FNWM's President, Ralph Fogel, received a call from a business acquaintance, Louise Jones. Ms. Jones knew WG and thought that Ralph might be interested in talking WG regarding his (WG's) wealth management business. Ms. Jones mentioned that WG was having what she called a minor regulatory problem. She, however, did not know the details of the "problem."

Ralph met with WG on November 29, 2012 to discuss the possibility of WG joining FNWM. Based upon that meeting, Ralph thought that there might be some synergies and wanted to explore the opportunity further. To that end, Ralph and Philip Fogel, one of our partners, met with WG on December 4, 2012. At the end of that meeting Ralph told WG that Ms. Jones had mentioned that WG was having "a problem." Ralph asked WG what the nature of the problem was. WG indicated that he had a minor regulatory issue.

WG called us the following day, December 5, 2012. According to WG he needed to do a deal right away. Ralph, Philip and our operations manager, Eric Immerman, met with WG later that day. At that time WG disclosed that the SEC had filed a complaint. WG also said that his custodian, Charles Schwab, had cut off WG's access to their platform. It was clear that irrespective of the outcome of the SEC complaint, we had an opportunity to secure additional clients. If, at the end of the day, WG was barred from the industry, any clients that we took over would hopefully stay with us. If, on the other hand, WG was not barred from the industry he could potentially joined us in one capacity or another, again depending upon the outcome SEC's complaint. Our Chief Compliance Officer and Partner, Joseph Stineman, met with WG on December 11, 2012.

Ralph and Philip then negotiated an "interim" arrangement with WG. Until such time as the SEC complaint was resolved, i.e., WG was allowed to work in the industry, FNWM would pay him as a consultant a fixed fee of $5,000 a month and hire his assistant Teodora Tantcheva at the same salary WG was paying her, $75,000 per year. She was hired on January 23, 2013. There is no written agreement with WG.

90 Broad Street, Suite [illegible]
New York, NY [illegible]
Tel: 212.849.0922
Fax: 212.849.0923
Web: www.fogelneale.com

The agreement with WG was contingent upon on the majority of his clients transitioned to FNWM. Before entering into the agreement, however, same was reviewed by both our Chief Compliance Officer/Partner, Joseph Stineman and myself.

In connection with the agreement, WG's assistant provided us with a spreadsheet with client information necessary to transfer the clients. That spreadsheet is too large to attach in printed form. Philip Fogel will forward a copy of the spreadsheet to you under separate cover.

On December 10, 2012 we submitted the information that WG had given us to TD for them to generate account opening paperwork. The account transfers took place between January 10, 2013 and March 13, 2013 (not accounting for small residual sweeps which followed). The majority of the transfers (both in terms of assets and accounts) were completed by February, 15 2013.

On February 1, 2013 WG was paid $10,000 ($5,000 for February 2013 and an advance payment of $5,000 for March 2013). There were no other payments to WG; nor will there be in light of the May 3, 2013 order. On February 19, 2013 Ms. Jones was paid a onetime referral fee of $10,000 for her introduction to WG.

The clients who transitioned to FNWM that are still under management are as follows:

[redacted]

The clients who transitioned to FNWM and who are no longer under management are as follows:

[redacted]

Please do not hesitate to contact me or our Chief Compliance Officer, Joseph Stineman should you require anything further. Meanwhile, I once again apologize for the delay in responding to your inquiry.

Sincerely,

Steve Lang, Esq.

CC: Ralph Fogel, Philip Fogel, Joseph Stineman, Eric Immerman

[redacted]

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Hearing Date: May 23, 2013
10:00 a.m.

David R. Hock
COHEN, WEISS AND SIMON LLP
330 W. 42nd Street, 25th Floor
New York, New York 10036
(212) 563-4100 (telephone)
(646) 473-8220 (facsimile)
dhock@cwsny.com
Counsel for the Joint Industry Board of the Electrical Industry

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 7
SMC ELECTRICAL CONTRACTING INC.,	)	11-14599 (smb)
	)	
Debtor.	)	
	)	

OBJECTION OF THE JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY TO THE CHAPTER 7 TRUSTEE'S MOTION SEEKING THE ENTRY OF AN ORDER SCHEDULING A HEARING ON SHORTENED NOTICE AND AN ORDER APPROVING THE ASSIGNMENT AGREEMENT BY AND BETWEEN THE CHAPTER 7 TRUSTEE, ON BEHALF OF THE DEBTOR'S ESTATE, AND THE DEBTOR'S FORMER PRESIDENT, WALTER V. GERASIMOWICZ

The Joint Industry Board of the Electrical Industry (the "Joint Board"), a creditor and a party-in-interest in this proceeding, by and through its undersigned counsel, respectfully submits this objection to the Chapter 7 Trustee's Motion Seeking The Entry Of An Order Scheduling A Hearing On Shortened Notice and An Order Approving The Assignment Agreement By And Between The Chapter 7 Trustee, On Behalf Of The Debtor's Estate, And The Debtor's Former President, Walter V. Gerasimowicz [Docket No. 163] (the "Motion"), and states as follows: