

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* PETER D.
GRUBEA,

Plaintiff,

v.

ROSICKI, ROSICKI & ASSOCIATES, P.C., *et al.*,

Defendants.

12 Civ. 7199 (JSR)

**STIPULATION AND
[PROPOSED] ORDER OF
SETTLEMENT AND
DISMISSAL**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (the “United States” or “Government”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York; the relator Peter Grubea (“Relator”), by his authorized representatives; and defendants Rosicki, Rosicki & Associates, P.C. a law firm specializing in mortgage foreclosures (“Rosicki”), Enterprise Process Service, Inc., a process service company wholly owned by two Rosicki partners (“Enterprise”), and Paramount Land, Inc., a title search company wholly owned by the same two Rosicki partners (“Paramount”; collectively with Rosicki and Enterprise, “Defendants”; and together with the Government and Relator, the “Parties”), by their authorized representatives;

WHEREAS, on or about September 24, 2012, the Relator filed a complaint under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, against Defendants and others alleging, *inter alia*, that Defendants violated the FCA by falsely inflating expenses for

foreclosure-related services and passing those inflated expenses on to the Federal National Mortgage Association (“Fannie Mae”) and others;

WHEREAS, on or about February 28, 2013, the Relator filed a First Amended Complaint and on or about June 27, 2014, the Relator filed a Second Amended Complaint (the “Relator’s Complaint”);

WHEREAS, on or about March 27, 2018, the Government filed a Complaint-in-Intervention against Defendants;

WHEREAS, on or about July 12, 2018, the Government filed a First Amended Complaint, (the “Government Complaint”) against Defendants, alleging that from 2009 to July 12, 2018 (the “Covered Period”), Defendants engaged in a scheme whereby they generated false and inflated expenses for service of process, title searches, and other expenses attendant to mortgage foreclosures or evictions, and submitted those expenses to various mortgage servicers with knowledge that the expenses ultimately would be paid by Fannie Mae. The conduct described in this Paragraph is the “Covered Conduct” for purposes of this Stipulation; and

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Defendants in the Government Complaint and the Relator’s Complaint, for the Covered Conduct, as well as identical conduct by Defendants pertaining to expenses attendant to evictions during the Covered Period, in which those expenses ultimately were paid by the United States Department of Veterans’ Affairs (the “VA Covered Conduct”);

NOW, THEREFORE, upon the Parties' agreement, IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.
2. Defendants admit, acknowledge and accept responsibility for the following conduct:
 - a. Rosicki is a New York law firm whose main practice area is mortgage foreclosures. During the Covered Period, the two founding partners of Rosicki also owned affiliated entities that performed services attendant to mortgage foreclosures, including Enterprise, which is a process service company, and Paramount, which is a title search company.
 - b. During the Covered Period, Rosicki was the primary client of Enterprise and Paramount, which also shared Rosicki's human resources, information technology, payroll, and corporate accounting departments. Additionally, Enterprise shared office space with Rosicki in its Batavia, New York office.
 - c. At all times during the Covered Period, Rosicki was approved by Fannie Mae to perform all legal work associated with foreclosures on residential properties for which Fannie Mae owned the mortgage loans, and entered into a retention agreement with Fannie Mae for this purpose. That retention agreement incorporated all of the requirements in the Fannie Mae Servicing Guide (the "Servicing Guide").
 - d. To receive payment for the costs and expenses of performing work on behalf of Fannie Mae in connection with a mortgage foreclosure, Rosicki submitted invoices to the mortgage servicer responsible for servicing the mortgage loan associated with the foreclosure, and the mortgage servicer approved and paid those invoices. Rosicki understood that generally the mortgage servicer then submitted a claim to Fannie Mae for reimbursement of the costs and expenses submitted by Rosicki to the servicer.

- e. At all times during the Covered Period, the Servicing Guide required that all foreclosure costs and expenses billed by a foreclosure law firm to a mortgage servicer—which would then be submitted by the mortgage servicer to Fannie Mae for payment—must be “actual, reasonable and necessary.” The Servicing Guide also stated that foreclosure law firms “must make every effort to reduce foreclosure-related costs and expenses in a manner that is consistent with all applicable laws.”
- f. Rosicki understood the requirements of the Servicing Guide and represented at various times, to Fannie Mae and to mortgage servicers, that it was complying with those requirements.
- g. In fact, however, during the Covered Period, certain of the costs billed by Enterprise and Paramount for services related to foreclosures and evictions were not consistent with the Servicing Guide. Specifically, on certain invoices for service of process (*i.e.*, delivery or attempted delivery of legal papers) upon defendants and other interested parties, Enterprise added additional charges to the costs charged by independent contractors and otherwise took actions that increased costs and expenses. Similarly, on certain invoices for foreclosure searches and title continuations, Paramount added additional charges to the costs charged by independent contractors and otherwise took actions that increased costs and expenses.
- h. Rosicki submitted the expenses described above to the mortgage servicers for payment, with the understanding that the servicers generally would pass some or all of those expenses on to Fannie Mae and that Fannie Mae would reimburse for them.

3. Defendants shall pay to the Government within 30 days of the Effective Date (defined below in Paragraph 27) the sum of \$4,600,000 plus interest, which shall be compounded annually at a rate of 2.72% accruing from the Effective Date to the date of the payment (the “Settlement Amount”), in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney’s Office for the Southern

District of New York. Of the Settlement Amount, \$2,300,000 constitutes restitution to the United States. Defendants shall be jointly and severally liable for the Settlement Amount.

4. Defendants shall undertake the following steps:
 - a. Within 30 days of the Effective Date, Defendants shall provide a copy of this Stipulation to each of their employees and to all independent contractors who perform tasks for or on behalf of Defendants related to service of process or title searches (collectively, the “Distributees”).
 - b. Within 90 days of the Effective Date, Rosicki shall submit to the United States Attorney’s Office for the Southern District of New York and the Federal Housing Finance Administration (“FHFA”), in conformity with Paragraph 26 herein, a compliance plan that sets forth in detail the steps Rosicki will take to ensure that, for foreclosure-related or eviction-related services performed on behalf of any agency of the United States or a government-sponsored enterprise (“GSE”), the foreclosure-related or eviction-related expenses charged by Defendants comply with the requirements promulgated by the relevant agency or GSE, including all policies and procedures that Rosicki will implement for this purpose. Also within 90 days of the Effective Date, Rosicki shall furnish a copy of the compliance plan to the other Defendants, as well as the Distributees, and thereafter shall furnish a copy of the compliance plan to all new Distributees hired or engaged by the Defendants. Defendants also shall conduct an annual training for all employees on adherence to the compliance plan.

- c. Starting six months after the Effective Date and continuing annually for five years thereafter, and so long as Rosicki provides services to any agency of the United States or a GSE, Rosicki shall generate a written report that details 1) the steps that Rosicki took to ensure that Defendants' foreclosure expenses met the applicable agency or GSE standards; and 2) any changes to the compliance program in the previous period. Rosicki shall certify the report and submit it to the United States Attorney's Office and the FHFA in conformity with Paragraph 26 herein.
- d. Rosicki shall publicly disclose its affiliation with Enterprise and Paramount on its website.

5. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct or the VA Covered Conduct they have undertaken, or that has been performed by another on their behalf.

6. Subject to the exceptions in Paragraphs 10 and 15 below (concerning excluded claims and bankruptcy proceedings), and conditioned upon Defendants' full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the United States

pursuant to Paragraph 3 above, the United States releases Defendants, including their subsidiaries and corporate predecessors, successors and assigns, from any civil or administrative monetary claim that the United States has for the Covered Conduct and the VA Covered Conduct under the FCA, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Defendants from liability of any kind.

7. Defendants fully and finally release the United States, its agencies, officers, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, employees, servants, or agents related to the Covered Conduct and the VA Covered Conduct and the United States' investigation, prosecution and settlement thereof.

8. Conditioned on Defendants' timely payment of the full Settlement Amount pursuant to Paragraph 3 above, the Relator, for himself and his heirs, successors, attorneys, agents, and assigns, releases Defendants, including their subsidiaries and corporate predecessors, successors and assigns, as well as all of their current and former officers, directors, employees, attorneys, and other agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that the Relator has against Defendants arising from the Covered Conduct as alleged in the Relator's Complaint; provided, however, that nothing in this Stipulation shall preclude Relator from seeking to recover his reasonable expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d). For avoidance of doubt, this release does not include

Relator's claims against Defendants in the Relator Complaint as to which the United States did not intervene.

9. In consideration of the execution of this Stipulation by the Relator and the Relator's release as set forth in Paragraph 8 above, Defendants, including their subsidiaries, predecessors, and corporate successors and assigns, as well as all of their current and former officers, directors, employees, attorneys, and other agents, release the Relator and his successors, heirs, assigns, attorneys, and other agents, from any and all manner of claims, proceedings, liens, and causes of action of any kind or description that Defendants have against Relator arising from the Covered Conduct as alleged in the Relator's Complaint.

10. Notwithstanding the releases given in Paragraph 6 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability, including but not limited to the suspension and debarment rights of any federal agency;
- d. any liability to the United States (or its agencies) for any conduct other than the Covered Conduct and the VA Covered Conduct;
- e. any liability based upon obligations created by this Stipulation; and
- f. any liability of individuals.

11. Defendants shall be in default of this Stipulation if Defendants fail to make the required payment set forth in Paragraph 3 above on or before the due date for such payment, or if they fail to comply materially with any other term of this Stipulation that applies to them (“Default”). The Government shall provide written notice to Defendants of any Default in the manner set forth in Paragraph 26 below. Defendants shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default (“Uncured Default”), interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance of the Settlement Amount, beginning ten (10) calendar days after mailing of the notice of Default. In the event of an Uncured Default, Defendants shall agree to the entry of a consent judgment in favor of the United States against Defendants in the amount of the Settlement Amount as attached hereto as Exhibit A. The United States may also, at its option, (a) rescind this Stipulation and reinstate the claims asserted against Defendants in the Government Complaint; (b) seek specific performance of this Stipulation; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing Defendants by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. Defendants shall not contest any offset imposed or any collection undertaken by the Government pursuant to this Paragraph, either administratively or in any Federal or State court. In addition, Defendants shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including attorneys’ fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, Defendants shall not plead, argue, or otherwise raise any

defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct or the VA Covered Conduct.

12. The Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; Relator agrees and confirms that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

13. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct or the VA Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action.

14. Defendants represent and warrant that they have reviewed their financial situation, that they are currently not insolvent as such term is defined in 11 U.S.C. § 101(32), and that they reasonably believe that they shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendants were or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

15. If within 91 days of the Effective Date of this Stipulation or any payment made under this Stipulation, Defendants commence any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of Defendants' debts, or seeking to adjudicate Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or for all or part of Defendants' assets, Defendants agree as follows:

- a. Defendants' obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and Defendants shall not argue or otherwise take the position in any such case, action, or proceeding that (i) Defendants' obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Defendants were insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to Defendants.
- b. If any of Defendants' obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its option, may rescind the release in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the release in Paragraph 6 above. Defendants agree that (i) any such claim, action, or proceeding brought by the Government would not be subject to an "automatic stay" pursuant to 11 U.S.C.

§ 362(a) as a result of the case, action, or proceeding described in the first sentence of this Paragraph, and Defendants shall not argue or otherwise contend that the Government's claim, action, or proceeding is subject to an automatic stay; (ii) Defendants shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government within 60 calendar days of written notification to Defendants that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 27, 2018; and (iii) the Government has a valid claim against Defendants in the amount of the Settlement Amount and the Government may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

c. Defendants acknowledge that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

16. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Office of Management and Budget ("OMB") Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published at 2 C.F.R. §§ 200 *et seq.*; the Department of Health and Human Services adoption of the OMB Guidance provided at 45 C.F.R. § 75, subpart E *et seq.*; the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47 where applicable; or otherwise as specified by federal statutes, regulations or the terms and conditions of a Federal award)

incurred by or on behalf of Defendants, including their present or former officers, directors, employees, and agents in connection with:

- (1) the matters covered by this Stipulation;
- (2) the United States' audit(s) and civil investigation(s) of matters covered by this Stipulation;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with matters covered by this Stipulation (including attorneys' fees);
- (4) the negotiation and performance of this Stipulation; and
- (5) any payment Defendants make to the United States pursuant to this Stipulation and any payment Defendants may make to the Relator, including expenses, costs and attorneys' fees;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as "Unallowable Costs").

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Defendants shall identify and

repay by adjustment to future claims for payment or otherwise any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by Defendants from the United States. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States, including the Department of Justice and/or the affected agencies, reserves its right to audit, examine, or re-examine Defendants' books and records and to disagree with any calculation submitted by Defendants or any of their subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amounts of such payments.

- d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

17. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

18. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing

in this Stipulation shall preclude the Relator from seeking to recover his expenses or attorneys' fees and costs from Defendants, pursuant to 31 U.S.C. § 3730(d).

19. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

20. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

21. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties.

22. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

23. This Stipulation is binding on Defendants' successor entities.

24. This Stipulation is binding on the Relator's successors, transferees, heirs, and assigns.

25. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in

PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

26. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES AND THE FHFA:

Cristine Irvin Phillips
Andrew E. Krause
Joseph N. Cordaro
Assistant United States Attorneys
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
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joseph.cordaro@usdoj.gov

TO DEFENDANTS:

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Tracy Burnett, Esq.
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260 Madison Avenue
New York, NY 10016
dhorwitz@mclaughlinstern.com
tburnett@mclaughlinstern.com

TO RELATOR:

Brian M. Feldman, Esq.
Harter, Secrest & Emery
1600 Bausch & Lomb Place
Rochester, NY 14604-2711
bfeldman@hselaw.com

27. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
November 27, 2018

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: 

CRISTINE IRVIN PHILLIPS
ANDREW E. KRAUSE
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New York, New York 10007
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Attorney for the United States of America

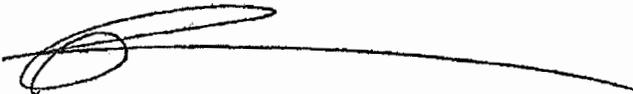
RELATOR

Dated: Williamsville, NY
November 20, 2018

By: 

Peter Grubea
Relator

Dated: Rochester, New York
November 20, 2018

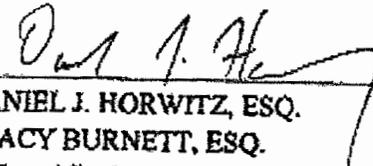
By: 

BRIAN M. FELDMAN, ESQ.
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Attorneys for Relator

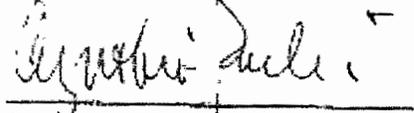
DEFENDANTS

Dated: New York, New York
November 26, 2018

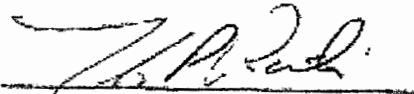
By: 
DANIEL J. HORWITZ, ESQ.
TRACY BURNETT, ESQ.
McLaughlin & Stern, LLP
260 Madison Avenue
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Attorneys for Defendant

Rosicki, Rosicki & Associates, P.C.

By: 
[Name]

Enterprise Process Service, Inc.

By: 
[Name] THOMAS P. ROSICKI

Paramount Land, Inc.

By: 
[Name]

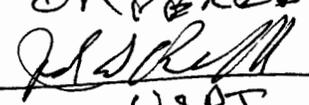
SO ORDERED

USDS
12-2-18

EXHIBIT A

For the United States

Dated: New York, New York
November __, 2018

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: _____
CRISTINE IRVIN PHILLIPS
ANDREW E. KRAUSE
JOSEPH N. CORDARO
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, New York 10007

For Defendants

Dated: New York, New York
November __, 2018

By: _____
DANIEL J. HORWITZ, ESQ.
TRACY BURNETT, ESQ.
McLaughlin & Stern, LLP
260 Madison Avenue
New York, New York 10016

SO ORDERED:

HON. JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

Dated: _____, 2018