

UNITED STATES BANKRUPTCY COURT SOUTHERN  
DISTRICT OF NEW YORK

-----X  
IN RE:

SOUND SHORE MEDICAL CENTER OF WESTCHESTER

Case No: 13-22840-  
(RDD)

Debtors.  
-----X

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

PLEASE TAKE NOTICE that a hearing will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, on December 2<sup>nd</sup>, 2013, at his Courtroom at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York 10601, at 10:00 a.m. (Prevailing Eastern Time) on that day or as soon thereafter as counsel may be heard, upon the motion of Robert. J. Eisen, attorney for Rosa Lopez (“Lopez”), for an order pursuant to 11 U.S.C. § 362, Local Bankruptcy Rule 4001-1, and Fed. R. Bankr. P. 9014 requesting relief from the automatic stay Rosa Lopez’s action against the Sound Shore Medical Center of Westchester (“Sound Shore”) now pending in Supreme Court of the State of New York, County of Bronx, captioned Rosa Lopez v. 233<sup>rd</sup> Street Realty Corp and Sound Shore Medical Center of Westchester, and bearing Index Number 306250/12 (“the Supreme Court action”). In support of this motion, Rosa Lopez state by her attorney, that Sound Shore has insurance coverage in the amount of 3 million dollars which is available to cover Ms. Lopez’s claims in the State Court action, and that a relief from the stay will not prejudicially impact the debtor or the bankruptcy

estate, as Ms. Lopez will limit any recovery against Sound Shore in the State Court action to the foregoing available insurance coverage.

**RELEVANT BACKGROUND**

The Supreme Court action is one for serious and permanent personal injuries sustained by Rosa Lopez who tripped and fell in a defective parking lot establishment located at the premises known as 1600 East 233<sup>rd</sup> Street, Bronx, New York. A copy of the Summons and Complaint is attached hereto as Exhibit "A". Copies of the Defendants' Answers are attached hereto as Exhibit "B". The Supreme Court action has been pending for approximately one year and the plaintiff was waiting for defendants to appear for depositions when Sound Shore allegedly filed its voluntary Petition for Bankruptcy pursuant to 11 U.S.C. section 362. It should be noted that counsel for the plaintiff has not been served with any papers with respect to the bankruptcy petition.

At the time of the accident, Sound Shore was insured under policy of insurance issued by Physicians Reciprocal Insurers with limits of \$3,000,000.00 per occurrence ("these policy limits"). Ms. Lopez agrees to pursue only the foregoing available insurance coverage of Sound Shore and will not pursue or be entitled to recover from the debtor's estate or personal assets thereof to the extent that any judgment, assessment, and/or recovery against Sound Shore in the State Court action exceeds said available coverage. In the event a judgment, assessment and/or recovery is entered or obtained against Sound Shore in favor of Ms. Lopez in the State Court action, Ms. Lopez agrees and shall recover of Sound Shore only from and up to these policy limits of said policy's proceeds in satisfaction of any judgment, assessment and/or recovery against Sound Shore in the State Court action; nor shall Ms. Lopez attempt to enforce all or any part of said judgment, assessment and/or recovery against Sound Shore in the State Court action

in excess of these policy limits of said policy's proceeds, or recover all or any part of said judgment, assessment and/or recovery in the State Court action from the personal assets of Sound Shore. By reason of the foregoing, Sound Shore's total exposure in the State Court action is limited to the extent of these policy limits only of said policy's proceeds. For these reasons, and the judicial economy that will be served by reducing the Lopez claim to a liquidated sum, the Court should lift the automatic stay with regard to the State Court action, and allow Lopez to pursue his claim against Sound Shore in the State Court action limited solely to obtaining a judgment in an amount not in excess of these policy limits of the foregoing available insurance coverage and/or proceeds of said policy.

#### ARGUMENT

U.S.C. section 362(d)(1) provides that the "Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay ... for cause." Further, "actions which are only remotely related to the case under Title 11 or which involve rights of third parties often will be permitted to proceed in another forum." 2 Collier on Bankruptcy section 362.07[3]. The test for whether a stay should be lifted to permit state court actions to proceed involves consideration of the following factors: (a) whether great prejudice to either the bankruptcy estate of the debtor will result from the continuation of the state proceedings; (b) whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor of permitting proceedings to go forward; and (c) whether the non-debtor party has a likelihood of prevailing on the merits. See e.g. *In Re Pro Football Weekly, Inc.* 60 B.R. 824, 826 (D. N.E. Ill. 1986); *In Re Salisbury*, 123 B.R. 913, 915 (S.D. Ala. 1990); *In Re Block Laundry Machine Co.*, 37 B.R. 564, 566 (Bankr. N.D. Ohio 1984). Here each of these factors favor Fullerton. In addition, "a

decision to lift the stay is not an adjudication of the validity or avoidability of the claim, but [rather, a decision to lift the stay is merely] a determination that [their] claim is sufficiently plausible to allow its prosecution elsewhere.” See *Grella v. Salem Five Cent Savings Bank*, 42 F. 3d 26, 34 (1994).

In the first instance, continuation of the Lopez claim in the State Court action will not result in any prejudice or hardship to the debtor or the bankruptcy estate. It will not diminish the estate of the debtor because the debtor’s \$3,000,000.00 of available insurance covers both the defense of the claim and the covered damages.

On the other hand, Lopez has already suffered significant harm as a result of the debtor’s alleged negligence, and will be further prejudiced by awaiting the resolution of the debtor’s bankruptcy petition before proceeding for recovery against the foregoing insurance available to the debtor. Furthermore, the rights and responsibilities of the non-debtor Defendants in the Supreme Court case can be adjudicated therein, but would not be addressed in the Bankruptcy forum. Therefore, since the relief from the stay will have no effect on the bankruptcy estate, Lopez’s request should be granted.

In addition, as significant sums have been heretofore offered to settle the State Court action, it is safe to say that the parties most interested in the State Court action believe that Lopez has a likelihood of prevailing on the merits.

Moreover, resolving the personal injury action will have the added advantage of quantifying or liquidating the Lopez claim. To the extent that any verdict or judgment against Sound Shore in the State Court action exceeds Sound Shore’s available Insurance coverage, Lopez agrees not to pursue Sound Shore’s personal estate or assets. Therefore, there can be no prejudice to the debtor by lifting the stay. There is irreparable prejudice to Lopez on the other

hand, if he is denied his right to pursue his claim of serious injury and derivative damages in the State Court action. Finally, Sound Shore has no equity in the subject insurance policy, and thus the policy is not needed for an effective reorganization.

Accordingly, it is respectfully requested that this Court lift the automatic stay and allow the State Court action to proceed. See *In Re L.G. Salem Ltd. Partnership*, 140 B.R. 932, 935 (Bankr. D.Mass. 1992); *Worcester County National Bank v. Resnik*, 9 B.R. 891, 892 (Bankr. D. Mass. 1981).

CONCLUSION

Lopez respectfully requests an Order granting him relief from the automatic stay in Order that they may proceed with his personal injury and derivative claim against Sound Shore in the State Court action.

Dated: New York, NY  
October 21, 2013

Respectfully Submitted,  
Subin Associates

By:



Robert J. Eisen, Esq.  
Attorneys for Rosa Lopez  
150 Broadway, 23<sup>rd</sup> Floor  
New York, NY 10038

To: Burton S. Weston  
Garfunkel Wild, P.C.  
111 Great Neck Road – 6<sup>th</sup> Floor  
Great Neck, NY 11021

Office of the United States Trustee  
U.S. Federal Office Building  
201 Varick Street, Suite 1006  
New York, NY 10014

O'Connor, McGuinness, Conte, Doyle  
Oleson, Watson & Loftus, LLP  
One Barker Avenue  
White Plains, NY 10601

Camacho, Mauro & Mullholland, LLP  
350 Fifth Avenue – Suite 5101  
New York, NY 10118

# **Exhibit “A”**

INDEX # \_\_\_\_\_

FILED \_\_\_\_\_

FILE #: 20457

SUPREME COURT of the STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
ROSA LOPEZ

Plaintiff(s),

-against-

233RD STREET REALTY CORP., and SOUND SHORE  
MEDICAL CENTER OF WESTCHESTER

Defendant(s)  
-----X

To the above named Defendant(s)

Index No.

Plaintiff(s) designates  
BRONX

County as the place of trial

The basis of venue is

PLAINTIFF'S RESIDENCE

Summons with Notice

PLAINTIFF reside(s) at

1855 SCHIEFFELIN AVENUE

County of BRONX

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: July 10, 2012

Defendant's Addresses:



BY: HERBERT S. SUBIN, ESQ.

This SUMMONS AND COMPLAINT and the papers on which it is based, are certified pursuant to Section 130-1.1-a of the rules of the Chief Administrator (22NYCRR)

**SUBIN ASSOCIATES, LLP**

Attorney(s) for Plaintiff(s)

Office and Post Office Address

150 Broadway

New York, New York 10038

(212) 285-3800

Notice: The object of this action is to recover for personal injury due to defendant(s) negligence

The relief sought is Monetary Damages

Upon your failure to appear, judgment will be taken against you by default with interest from 10/6/2011 and the costs of this action

**DEFENDANT(S) ADDRESS(ES)**

233RD STREET REALTY CORP.  
955 Esplanade  
Pelham Manor, NY 10803

SOUND SHORE MEDICAL CENTER OF WESTCHESTER  
16 Guion Place  
New Rochelle, NY 10802



FILE #: 20457

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X VERIFIED COMPLAINT  
ROSA LOPEZ

Plaintiff(s),

-against-

233RD STREET REALTY CORP., and SOUND SHORE  
MEDICAL CENTER OF WESTCHESTER

Defendant(s)

-----X  
Plaintiff, complaining of the defendants, by her attorney, upon information and belief,  
respectfully allege(s):

AS AND FOR A FIRST CAUSE OF ACTION IN BEHALF  
OF PLAINTIFF ROSA LOPEZ

1. That at all the times herein mentioned, the defendant SOUND SHORE MEDICAL CENTER OF WESTCHESTER hereinafter referred to as "SOUND SHORE", was and still is a corporation doing business in the State of New York.
2. That at all the times herein mentioned, the defendant SOUND SHORE MEDICAL CENTER OF WESTCHESTER was a partnership duly organized and existing under the laws of the State of New York.
3. That at all the times herein mentioned, the defendant SOUND SHORE MEDICAL CENTER OF WESTCHESTER, was a partnership transacting business in New York.
4. That at all the times herein mentioned, the defendant SOUND SHORE, was the owner of the premises located at 1600 East 233<sup>rd</sup> Street Bronx, New York 10466 which included a parking lot.
5. That at all the times herein mentioned, the defendant SOUND SHORE, its agents, servants and/or employees operated the aforementioned premises including the parking lot.

6. That at all the times herein mentioned, the defendant, its agents, servants and/or employees maintained the aforementioned premises including the parking lot.

7. That at all the times herein mentioned, the defendant SOUND SHORE, its agents, servants and/or employees managed the aforementioned premises including the parking lot.

8. That at all the times herein mentioned, the defendant SOUND SHORE, its agents, servants and/or employees controlled the aforementioned premises including the parking lot.

1. That at all the times herein mentioned, the defendant 233<sup>RD</sup> STREET REALTY CORP., hereinafter referred to as "233<sup>RD</sup>," was and still is a corporation doing business in the State of New York.

9. That at all the times herein mentioned, the defendant 233<sup>RD</sup>, was the owner of the premises located at 1600 East 233<sup>rd</sup> Street Bronx, New York 10466 which included a parking lot.

10. That at all the times herein mentioned, the defendant 233<sup>RD</sup>, its agents, servants and/or employees operated the aforementioned premises including the parking lot.

11. That at all the times herein mentioned, the defendant 233<sup>RD</sup>, its agents, servants and/or employees maintained the aforementioned premises including the parking lot.

12. That at all the times herein mentioned, the defendant 233<sup>RD</sup>, its agents, servants and/or employees managed the aforementioned premises including the parking lot.

13. That at all the times herein mentioned, the defendant 233<sup>RD</sup>, its agents, servants and/or employees controlled the aforementioned premises including the parking lot.

14. That at all the times herein mentioned, it was the duty of the defendant(s), their agents, servants and/or employees to keep and maintain said premises including the parking lot in a reasonable state of repair and in a good and safe condition, and not to suffer and permit said premises to become unsafe and dangerous to pedestrians and/or customers.

15. That at all the times herein mentioned, the plaintiff was lawfully upon the aforesaid premises.

16. That on or about 10/6/2011, while plaintiff ROSA LOPEZ was lawfully in the

aforementioned premises plaintiff was caused to be injured by reason of the willful, wanton and gross negligence, carelessness and want of proper care of the defendant(s), their agents, servants and/or employees.

17. That the said incident and resulting injuries to the plaintiff were caused through no fault of his/her own but were solely and wholly by reason of the negligence, willful, wanton and gross negligence of the defendants, their agents, servants and/or employees in that the defendants suffered, caused and/or permitted and/or allowed portions of said premises, particularly the parking lot, to be, become and remain in a dangerous, defective and/or structurally defective, hazardous, unsafe, broken, cracked, uneven, holey, chipped, peeling, littered with dirt and debris, poorly lighted, irregular loose condition; in allowing and permitting a large portion of said parking lot to be and remain in such a state of disrepair and/or negligent repair for such a long and unreasonable length of time so as to cause injuries to the plaintiff; in failing to repair and in improperly repairing; in creating and maintaining a menace, hazard, nuisance and trap thereat; in failing to properly maintain said premises and in improperly maintaining said premises; and in generally being negligent and reckless in the premises; all in violation of the laws, statutes, ordinances and regulations made and provided for the safe and proper operation, ownership, maintenance and control of said premises. Plaintiff further relies upon the doctrine of Res Ipsa Loquitor.

18. That this action falls within one or more of the exceptions set forth in CPLR 1602.

19. Both actual and constructive notice are claimed. Actual notice in that the defendants, their agents, servants and/or employees had actual knowledge and/or created the complained of condition; constructive notice in that the condition existed for a long and unreasonable period of time.

20. That by reason of the foregoing, plaintiff ROSA LOPEZ was caused to sustain serious, harmful and permanent injuries, has been and will be caused great bodily injuries and pain, shock, mental anguish; loss of normal pursuits and pleasures of life; has been and is informed and verily believes maybe permanently injured; has and will be prevented from

attending to usual duties; has incurred and will incur great expense for medical care and attention; in all to plaintiff's damage, both compensatory and exemplary in an amount which exceeds the jurisdictional limits of all lower courts and which warrants the jurisdiction of this Court.

WHEREFORE, the plaintiff(s) demands judgment against the defendants on the First Cause of Action in an amount which exceeds the jurisdictional limits of all lower courts and which warrants the jurisdiction of this Court, together with the costs and disbursements of each cause of action.

Yours, etc.

SUBIN ASSOCIATES, LLP  
Attorneys for Plaintiffs  
150 Broadway  
New York, New York 10038

# **Exhibit “B”**

20457  
ER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
ROSA LOPEZ,

Index No.: 306250/12

Plaintiff,

Verified Answer

-against-

233<sup>RD</sup> STREET REALTY CORP., and SOUND  
SHORE MEDICAL CENTER OF WESTCHESTER,

Defendants.  
-----X

Defendant, 233<sup>rd</sup> STREET REALTY CORP s/h/a 233<sup>rd</sup> STREET REALTY CORP.

by its attorneys, CAMACHO MAURO MULHOLLAND, LLP, as and for an answer to the  
plaintiff's complaint, respectfully alleges:

1. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.
2. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.
3. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.
4. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.
5. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.
6. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.
7. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

8. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

1. Admits.

9. Denies and leaves all matters of law to the Honorable court.

10. Denies and leaves all matters of law to the Honorable court.

11. Denies and leaves all matters of law to the Honorable court.

12. Denies and leaves all matters of law to the Honorable court.

13. Denies and leaves all matters of law to the Honorable court.

14. Denies and leaves all matters of law to the Honorable court.

15. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

16. Denies.

17. Denies.

18. Denies and leaves all matters of law to the Honorable court.

19. Denies.

20. Denies upon information and belief.

*AS AND FOR A FIRST AFFIRMATIVE DEFENSE*

The defendant not being fully advised as to all the facts and circumstances surrounding the incident complained of, hereby assert and reserve unto themselves the defenses of accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense which the further investigation of this matter may prove applicable herein.

*AS AND FOR A SECOND AFFIRMATIVE DEFENSE*

The complaint fails to state a claim upon which relief may be granted.

*AS AND FOR A THIRD AFFIRMATIVE DEFENSE*

Pursuant to CPLR Article 16, the liability of defendant, 233<sup>rd</sup> STREET REALTY CORP s/h/a 233<sup>rd</sup> STREET REALTY CORP. to the plaintiff herein for non-economic loss is limited to defendant, 233<sup>rd</sup> STREET REALTY CORP s/h/a 233<sup>rd</sup> STREET REALTY CORP., equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

*AS AND FOR A FOURTH AFFIRMATIVE DEFENSE*

Plaintiff has recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economical loss and any future such loss or expense will, with reasonable certainty, be replaced or indemnified in whole or in part from collateral sources. Any award made to plaintiff shall be reduced in accordance with the provisions of CPLR 4545(c).

*AS AND FOR A FIFTH AFFIRMATIVE DEFENSE*

Any damages sustained by the plaintiff were caused by the culpable conduct of the plaintiff, including contributory negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiff, then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

*AS AND FOR A SIXTH AFFIRMATIVE DEFENSE*

Plaintiff may have failed to mitigate damages.



***AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE***

Plaintiff's alleged loss and damage, if any, resulted wholly and solely from the fault, neglect and want of care of the Plaintiff or persons or parties other than Defendant, for whose acts said Defendant is not liable or responsible and not as a result of any negligence.

***AS AND FOR A EIGHT AFFIRMATIVE DEFENSE***

This defendant is entitled to a set-off if any tort feisor has or will settle with plaintiffs pursuant to G.O.L. 15-108.

***AS AND FOR A NINTH AFFIRMATIVE DEFENSE***

That by entering into the activity in which the plaintiff(s) was engaged at the time of the occurrence set forth in the complaint, said plaintiff(s) knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff(s) herein as alleged in the complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiff(s) in his activities and such risks were assumed and accepted by him in performing and engaging in said activities.

***AS AND FOR A TENTH AFFIRMATIVE DEFENSE***

Whatever injuries and/or damages sustained by the plaintiff at the time and place alleged in the complaint, were due to the acts of parties over whom the defendant was not obligated to exercise any control or supervision.

***AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE***

The injuries sustained by plaintiff, if any, were not proximately caused by any act of omission of answering defendant.

***AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE***

The complaint must be dismissed, as answering defendant owed no duty to plaintiff.

*AS AND FOR A CROSS-CLAIM FOR CONTRIBUTION*

That if plaintiff was caused to sustain damages by reason of the claims set forth in the complaint, all of which are specifically denied, such damages were sustained by reason of the acts, conduct, misfeasance or nonfeasance, of co-defendant SOUND SHORE MEDICAL CENTER OF WESTCHESTER, their agents, servants and/or employees, and not by this answering defendant, and if any judgment is recovered by plaintiff against this answering defendant, such defendant will be damaged thereby, and co-defendant, SOUND SHORE MEDICAL CENTER OF WESTCHESTER is or will be responsible therefore in whole or in part.

*AS AND FOR A CROSS-CLAIM FOR INDEMNITY*

That if plaintiff was caused to sustain damages by reason of the claims set forth in the complaint, all of which are specifically denied, and if any judgment is recovered by the plaintiff against this answering defendant, that under a contract entered into between the parties or by reason of express or implied warranty, the co-defendant, SOUND SHORE MEDICAL CENTER OF WESTCHESTER, will be liable over to this answering defendant pursuant to the terms of the indemnity agreement in said contract or warranty, for the full amount of any verdict or judgment awarded to the plaintiff against this answering defendant, together with attorneys fees, costs and disbursements.

*AS AND FOR A THIRD CROSS-CLAIM  
(Kinney Claim)*

Upon information and belief, the co-defendants SOUND SHORE MEDICAL CENTER OF WESTCHESTER entered into a written contract and/or lease with regard to the premises in question. The written contract and/or lease was in full force and effect on the date of plaintiff's incident. Under the terms of the written contract and/or lease, the co-

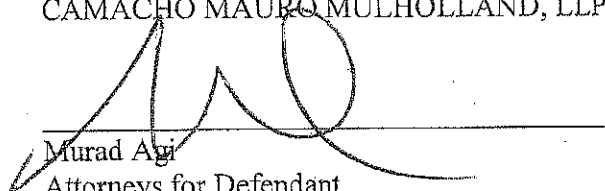
defendant agreed to purchase a liability policy for the benefit of an providing coverage for this defendant for claims such as those asserted by plaintiff in this action. Upon information and belief, the defendant failed to obtain such a liability insurance policy as required by the terms of the written contract and/or lease. This failure by the co-defendant is a breach of the written contract and/or lease.

By reason of the foregoing, this defendant has been damaged and is entitled to indemnification for any verdict or judgment that plaintiff may obtain against it including, but not limited to, attorneys fees, costs or disbursements.

WHEREFORE, defendant, 233<sup>rd</sup> STREET REALTY CORP s/h/a 233<sup>rd</sup> STREET REALTY CORP., demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York  
September 13, 2012

CAMACHO MAURO MULHOLLAND, LLP



Murad Agi

Attorneys for Defendant  
233rd Street Realty LLC s/h/a  
233rd Street Realty Corp  
350 Fifth Avenue – Suite 5101  
New York, New York 10118  
(212) 947-4999  
Our File No.: UTMV-3248-M

To: (See Affidavit attached)

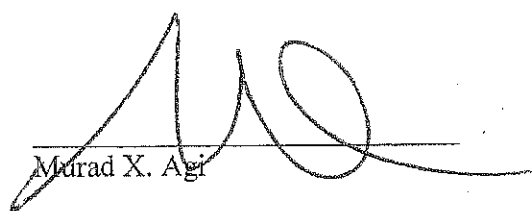
STATE OF NEW YORK)  
COUNTY OF NEW YORK) ss:

Murad X. Agi, being duly sworn, deposes and says:

That he is the attorney for the defendant in the within action; that he has read the within Answer and knows the contents thereof, and that same is true to his own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the sources of his information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendant is that the defendant is not within the county where deponent has his/her office.

  
Murad X. Agi

Sworn to before me this  
18<sup>th</sup> day of September, 2012

  
\_\_\_\_\_

PHILIP J. ODETT  
Notary Public, State of New York  
No. 020D6178156  
Qualified in New York County  
Commission Expires - Nov. 19, 2015

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

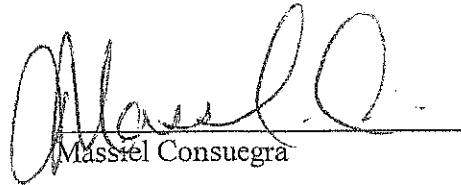
Massiel Consuegra, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Bronx, New York.

That on September 13, 2012, deponent served the within *Verified Answer* upon the attorneys/individuals listed below, at his/her/its addresses which were so designated by said attorneys for said purpose, by depositing a true copy of same enclosed in a post paid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York:

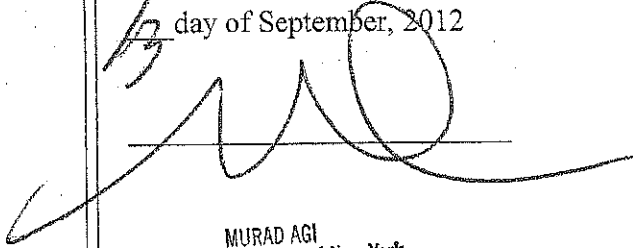
TO:

Herbert S. Subin  
Subin Associates, LLP  
150 Broadway  
New York, New York 10038  
(212) 285-3800  
(646) 867-8059 Fax  
Attorneys for Plaintiff



Massiel Consuegra

Sworn to before me this  
13 day of September, 2012



MURAD AGI  
Notary Public, State of New York  
No. 02AG6106624  
Qualified in Suffolk County  
Commission Expires March 8, 2014

Index No. 306250

Year 2012

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

ROSA LOPEZ,

Plaintiff,

- against -

233<sup>RD</sup> STREET REALTY CORP., and SOUND SHORE MEDICAL CENTER OF  
WESTCHESTER,

Defendants.

**Answer**

**CAMACHO MAURO MULHOLLAND, LLP**

*Attorneys for Defendant*

233rd Street Realty LLC s/h/a 233rd Street Realty Corp

Empire State Building

350 Fifth Avenue - Suite 5101

New York, New York 10118

(212) 947-4999

**Our File No.: UTMV-3248-M**

To: \*\*\*

Attorney(s) for: \*\*\*

Service of a copy of the within \*\*\* is hereby admitted.

Dated: \*\*\*

.....  
Attorney(s) for \*\*\*

**PLEASE TAKE NOTICE**

That the within is a (certified) true copy of a \*\*\*\*  
entered in the office of the clerk of the within named Court on \*\*\*\*.

NOTICE OF  
ENTRY

That an Order of which the within is a true copy will be presented for settlement to the Hon. \*\*\*\*  
one of the judges of the within named Court, at \*\*\*\*, on \*\*\*\* at \*\*\*\*.

NOTICE OF  
SETTLEMENT

Dated: New York, New York  
September 13, 2012

**CAMACHO MAURO MULHOLLAND, LLP**

*Attorneys for Defendant*

233rd Street Realty LLC s/h/a 233rd Street Realty Corp

Empire State Building

350 Fifth Avenue - Suite 5101

New York, New York 10118

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

20457

-----X  
ROSA LOPEZ,

Index No. 306250/12

VERIFIED ANSWER

ER

Plaintiff,

-against-

233<sup>RD</sup> STREET REALTY CORP., and SOUND SHORE  
MEDICAL CENTER OF WESTCHESTER,

Defendants.  
-----X

The defendant, SOUND SHORE MEDICAL CENTER OF WESTCHESTER, by its attorneys, O'CONNOR McGUINNESS CONTE DOYLE OLESON WATSON & LOFTUS, LLP., answering plaintiff's Complaint herein:

FIRST: Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs numbered "1", "2", "3", "1 (2<sup>nd</sup>)", "9", "10", "11", "12", "13", "14" and "15", of the complaint herein.

SECOND: Denies each and every allegation contained in Paragraphs numbered "4", "5", "16", "17", "19" and "20", deny of the complaint herein.

THIRD: Denies each and every allegation contained in Paragraphs numbered "6", "7", "8" and "18" of the complaint herein and leaves all questions of law to the Court.

AS AND FOR A FIRST SEPARATE AFFIRMATIVE COMPLETE AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND SHORE MEDICAL CENTER OF WESTCHESTER, ALLEGES:

FOURTH: That there was no negligence, fault or culpable conduct on the part of the defendant, SOUND SHORE MEDICAL CENTER OF WESTCHESTER, causing the damages alleged in the complaint; furthermore, there was contributory negligence, assumption of risk, contributory fault and/or culpable conduct attributable to the plaintiff, to the extent of total and/or partial diminution of damages alleged in the complaint.

AS AND FOR A SECOND SEPARATE AFFIRMATIVE COMPLETE  
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND  
SHORE MEDICAL CENTER OF WESTCHESTER, ALLEGES:

FIFTH: At the time of trial, this answering defendant will ask the Court to charge the jury on the issues of indemnification and/or apportionment or contribution among all responsible tort feasons.

AS AND FOR A THIRD SEPARATE AFFIRMATIVE COMPLETE  
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND  
SHORE MEDICAL CENTER OF WESTCHESTER, ALLEGES:

SIXTH: The alleged acts and/or omissions, if any, were not the proximate cause of plaintiff's injuries.

AS AND FOR A FOURTH SEPARATE AFFIRMATIVE COMPLETE  
AND/OR PARTIAL DEFENSE, THE DEFENDANT, SOUND  
SHORE MEDICAL CENTER OF WESTCHESTER, ALLEGES:

SEVENTH: That, the plaintiff's complaint fails to set forth facts sufficient upon which to base a cause of action against the defendant.

EIGHTH: As a result of the foregoing, the plaintiff's complaint must be dismissed as a matter of law.

AS AND FOR A CROSS COMPLAINT, THE DEFENDANT, SOUND SHORE  
MEDICAL CENTER OF WESTCHESTER, DEMANDS THAT THE ULTIMATE  
RIGHTS OF SOUND SHORE MEDICAL CENTER OF WESTCHESTER, BY WAY OF  
CROSS COMPLAINT PURSUANT TO CPLR 3019 AND/OR BY INDEMNIFICATION AND  
APPORTIONMENT OF RESPONSIBILITY AGAINST THE DEFENDANT, 233<sup>RD</sup> STREET  
REALTY CORP., BE DETERMINED UPON THE TRIAL OF THE ISSUES HEREIN:

NINTH: It is alleged in the complaint that the damages sustained by the plaintiffs were the result of the negligence of the defendant, and this cross complaining defendant begs leave to refer to the complaint at the time of trial. If the plaintiff was caused to sustain damages as alleged in the complaint and this cross complaining defendant is also found negligent, it will be entitled to be indemnified, either in whole or in part as the case may be, by the defendant, 233<sup>RD</sup> STREET REALTY CORP., for the portion of damages which were caused by its negligence, respectively, together with attorneys' fees, costs and disbursements to this cross complaining defendant.



WHEREFORE, the defendant, SOUND SHORE MEDICAL CENTER OF WESTCHESTER, demands judgment as follows:

(a) dismissing the plaintiff's complaint, together with the costs and disbursements of this action;

(b) in the alternative, if the plaintiff prevails, the defendant demands judgment determining the respective percentages of fault on the part of the defendant, and the plaintiff and thereby reducing the amount of the damages as against the defendants by the respective percentage of fault of the plaintiff;

(c) determining the respective percentages of fault on the part of each responsible defendant and determining the amount of indemnity owing respectively, if any, among the responsible defendants, each to the other, either in whole or in part as the case may be, together with the costs and disbursements of this action.

Dated: White Plains, New York  
August 28, 2012

Yours etc.,



WILLIAM R. WATSON  
O'CONNOR McGUINNESS CONTE DOYLE  
OLESON WATSON & LOFTUS, LLP  
Attorneys for Defendant  
SOUND SHORE MEDICAL CENTER OF  
WESTCHESTER  
Office & P.O. Address  
One Barker Avenue  
White Plains, New York 10601  
(914) 948-4500

TO: SUBIN ASSOCIATES, LLP  
Attorney for Plaintiff  
150 Broadway  
New York, New York 10038  
(212) 285-3800


STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF WESTCHESTER    )

WILLIAM R. WATSON, being an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

I am a member of law firm of O'CONNOR McGUINNESS CONTE DOYLE OLESON WATSON & LOFTUS, LLP., attorneys for the defendant, SOUND SHORE MEDICAL CENTER OF WESTCHESTER, herein. I have read the annexed Verified Answer, know the contents thereof and the same are true to my knowledge except as to those matters therein stated to be based upon information and belief, and as to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon correspondence and general investigation furnished by the said defendant.

The reason I make this affirmation instead of said defendant is because your affirmant is in possession of material upon which this action is based.

Dated: White Plains, New York  
August 28, 2012



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WILLIAM R. WATSON

Luis De León, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 150  
Broadway, 23<sup>rd</sup> Floor, New York, N.Y. 10038.

On October 21, 2013 deponent served the within **NOTICE OF MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY** upon:

**Burton S. Weston**  
**Garfunkel Wild, P.C.**  
111 Great Neck Road – 6<sup>th</sup> Floor  
Great Neck, NY 11021

**Office of the United States Trustee**  
**U.S. Federal Office Building**  
201 Varick Street, Suite 1006  
New York, NY 10014

**O'Connor, McGuinness, Conte, Doyle**  
**Oleson, Watson & Loftus, LLP**  
One Barker Avenue  
White Plains, NY 10601

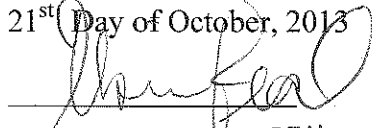
**Camacho, Mauro & Mullholland, LLP**  
350 Fifth Avenue – Suite 5101  
New York, NY 10118

these/this being the address(es) designated by said attorney(s) for that purpose by depositing a  
true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository  
mailbox maintained at 150 Broadway, 23<sup>rd</sup> Floor, New York, N.Y. 10038 under the exclusive  
care and custody of the United States Postal Service within the State of New York.



Luis De León

Sworn to before me this  
21<sup>st</sup> Day of October, 2013



ELSIE REAL  
Notary Public, State of New York  
No. 01RE6194863  
Qualified in ~~Bronx~~ Richmond County  
Commission Expires October 14, 2014

Index No.306250/2012

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
ROSA LOPEZ,

Plaintiff(s),

-against-

233<sup>RD</sup> STREET REALTY CORP., and SOUND SHORE MEDICAL CENTER OF  
WESTCHESTER,

Defendant (s).  
-----X

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

**SUBIN ASSOCIATES, LLP**

*Attorneys for Plaintiff(s)*

*Office and Post Office Address, Telephone:*

150 Broadway, 23<sup>rd</sup> Floor  
NEW YORK, NY 10038  
TELEPHONE 212-285-3800

**"WE DO NOT ACCEPT SERVICE BY ELECTRONIC TRANSMISSION (FAX)"**

*Service of a copy of the within is hereby admitted  
Dated;*

.....  
*Attorney(s) for*

**PLEASE TAKE NOTICE**

*That the within is a (certified) true copy of an ORDER entered in the office  
NOTICE OF of the clerk of the within named court on ,2013.  
ENTRY*

*That an Order of which the within is a true copy will be presented for  
NOTICE OF settle to the Hon.one of the judges of the within  
SETTLEMENT named court, aton, 2013, at 10:00 a.m.  
Dated:*

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_) SS.:

Luis De Leon, being duly sworn, deposes and says: