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Via ECF and FAX (212-952-2777)

Hon. Shirley Werner Kornreich
Supreme Court of the State of New York
County of New York
60 Centre Street, Room 228
New York, New York 10007

Re: Michel Kadosh v. David Kadosh, et al.
Index No. 651834/2010

Dear Justice Kornreich:

We write to respond to the July 28 letter to the Court from Frank Perrone, counsel for David Kadosh and the other defendants ("Defendants' Letter"). As set forth below, while we regret our collective settlement efforts have been derailed, there is no escaping the fact that there was no enforceable "deal" reached by the parties. First, as Michel Kadosh represented to the Court on Friday, there was a material mistake as to the escrowed amount – a reduced pot for distribution by almost $1 million – that materially altered the parties' understanding of the economics of the proposed framework. Second, as Defendants' Letter makes clear, there also was never a "meeting of the minds" because, beyond the material mistake concerning the escrow, Dr. Kadosh's apparent understanding of the structure of the "deal" – the idea that potentially $100,000 in funds would be distributed 50/50 by the parties to a charity – contradicts the parties' allocution, which had no such provision. While we continue to hope an agreement may be reached to resolve this matter, the record is clear that there is no enforceable agreement.

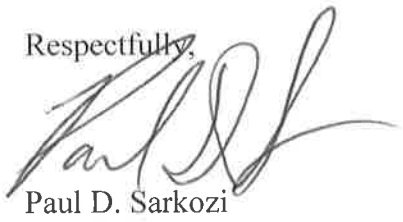
First, as the Court is well aware, the $7.038 million that the Receiver Robert Lewis indicated was in escrow on Friday was materially lower than the $7.9 million escrow amount that *David Kadosh* had represented on Thursday. The parties pursued negotiations based on the amount the *David* had represented were available, and Michel Kadosh stated on Friday that he did not know the amount was less. Defendants' contention that correspondence between Mr. Lewis and counsel in March 2015 – *more than a year ago* – somehow proves that Michel Kadosh must have known on Thursday that the escrowed amount was $7 million, not $7.9 million, is neither persuasive nor factually accurate. Michel said in open court on Friday that he did not know the escrowed amount was not $7.9 million and said that he would not have agreed to the "deal" if he had known how little remained in escrow.

Significantly, and in marked contrast, David Kadosh admitted in Court on Friday that he did not believe the $7.9 million figure to be accurate when he provided it to the Court on Thursday. Rather, and remarkably, he stated that, notwithstanding his representation, he understood that the amount was less than $7.5 million. Against this admission, it is apparent that David's representation as to the amount in escrow on Thursday was reckless, if not knowingly inaccurate. On that basis alone, David Kadosh should be estopped from trying to enforce a settlement that was based on his own misrepresentation.

Second, Defendants' Letter provides a second compelling reason for the so-called "deal" to be held unenforceable. Defendants' Letter contends that the "deal" that was reached required any distribution beyond $600,000 to be directed by each brother to charity. While such a proposal was discussed prior to lunch on Thursday, both Michel and his counsel understood that the separate proposal as to funds above $600,000 had been *superseded* by a flat amount that the Court could distribute in full as it deemed appropriate. Indeed, and notably, neither of the parties' allocutions makes any reference to treating any portion of the damages pool as distinct or to be given to charity, or that any portion would be distributed other than on the basis of what the Court would decide. Thus, there was not even a meeting of the minds as to the terms and framework of the settlement even before the parties realized that the amount in escrow was far less than they believed.

Finally, given the substantial tension between the parties, the revelation that David had made a representation and conducted settlement negotiations based on an escrow amount that he knew was inflated (or at the very least recklessly inflated) has caused substantial complications in the settlement discussions. While our client remains willing to reach a mutually acceptable settlement agreement if at all possible, he respectfully urges the Court to reject any effort to enforce a so-called agreement that was predicated on mistake, no meeting of the minds, and possibly an intentional or reckless misrepresentation of material fact.

Respectfully,



Paul D. Sarkozi

cc: Frank L Perrone, Esq. (*Counsel for Defendants*)(by e-mail only)