

Stuart J. Moskovitz  
819 Highway 33  
Freehold, NJ 07728  
Pro Se

Township of Manalapan,  
  
Plaintiff

vs.

Stuart Moskovitz, Esq., Jane Doe and/or  
John Doe, Esq. I-V (these names being  
fictitious as their true identities are  
presently unknown) and XYZ  
Corporation, I-V (these names being  
fictitious as their true corporate  
identities are currently unknown)

Defendants (s)

.....

Stuart J. Moskovitz, Esq.,  
  
Third Party Plaintiff

vs.

Andrew Lucas, Richard Roe I-V (these  
names being fictitious as their true  
identities are presently unknown)

Third Party Defendants

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH COUNTY  
DOCKET No. MON-L-2893-07**

**CIVIL ACTION**

**ANSWER AND THIRD PARTY  
COMPLAINT**

Defendant and Third Party Plaintiff, Stuart J. Moskovitz, Esq., by way of  
Answer to the Complaint states as follows:

**PARTIES**

1. Defendant admits the allegations of paragraph 1 of the  
Complaint.

2. Defendant denies the allegation of paragraph 2 incorrectly referencing N.J.S.A. 40A:62-6, denies that Defendant was the attorney for the Township of Manalapan at all relevant times and admits the remainder of paragraph 2 of the Complaint.

3. Defendant denies the allegations of paragraph 3 of the Complaint.

4. Defendant admits the allegations of paragraph 4 of the Complaint.

5. Defendant denies the allegations of paragraph 5 of the Complaint.

6. Defendant denies the allegations of paragraph 6 of the Complaint.

7. Defendant admits the allegations of paragraph 7 of the Complaint.

8. Defendant admits the allegations of paragraph 8 of the Complaint.

9. Defendant denies the allegations of paragraph 9 of the Complaint.

10. Defendant denies the allegations of paragraph 10 of the Complaint.

11. Defendant denies the allegations of paragraph 11 of the Complaint.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and leave Plaintiff to its proofs.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the

Complaint and leave Plaintiff to its proofs.

## FACTS

1. Defendant admits the allegations of paragraph 1 of the Complaint.<sup>1</sup>
2. Defendant denies the allegations of paragraph 2 of the Complaint.
3. Defendant admits the allegations of paragraph 3 of the Complaint.
4. Defendant denies the allegations of paragraph 4 of the Complaint.
5. Defendant admits the allegations of paragraph 5 of the Complaint.
6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and leave Plaintiff to its proofs.
7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint and leave Plaintiff to its proofs.
8. Defendant admits the allegations of paragraph 8 of the Complaint.
9. Defendant admits the allegations of paragraph 9 of the

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<sup>1</sup>Plaintiff has chosen inexplicably to repeat paragraph numbers. All references to paragraph numbers of the Complaint shall, unless otherwise noted, be deemed to refer to the section of the Complaint to which the answering paragraph is responding.

Complaint.

10. Defendant admits the allegations of paragraph 10 of the

Complaint.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and leave Plaintiff to its proofs.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and leave Plaintiff to its proofs.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and leave Plaintiff to its proofs.

14. Defendant admits the allegations of paragraph 14 of the Complaint.

15. Defendant admits the allegations of paragraph 15 of the Complaint.

16. Defendant admits the allegations of paragraph 16 of the Complaint.

17. Defendant admits the allegations of paragraph 17 of the Complaint.

18. Defendant denies the allegations of paragraph 18 of the Complaint.

19. Defendant denies the allegations of paragraph 19 as incomplete

and therefore inaccurate and refers to the entire document in question for the response to this allegation.

20. Defendant denies the allegations of paragraph 20 as incomplete and therefore inaccurate and refers to the entire document in question for the response to this allegation.

21. Defendant denies the allegations of paragraph 21 as incomplete and therefore inaccurate and refers to the entire document in question for the response to this allegation.

22. Defendant denies the allegations of paragraph 22 as incomplete and therefore inaccurate and refers to the entire document in question for the response to this allegation.

23. Defendant denies the allegations of paragraph 23 as incomplete and therefore inaccurate and refers to the entire document in question for the response to this allegation.

24. Defendant denies the allegations of paragraph 24. In fact, Ms. Shepler received the PASI prior to the closing.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint and leave Plaintiff to its proofs.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and leave Plaintiff to its proofs.

27. Defendant denies the allegations of paragraph 27 of the

Complaint.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint and leave Plaintiff to its proofs.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint and leave Plaintiff to its proofs.

30. Defendant denies the allegations of paragraph 30 of the Complaint.

31. Defendant denies the allegations of paragraph 31 of the Complaint. In fact, Plaintiff has already received the funding from the County in the absence of any such clean up.

32. Defendant denies the allegations of paragraph 32 of the Complaint.

### **FIRST COUNT**

1. Defendant repeats all prior paragraphs of this Answer as though set forth at length herein.

2. Defendant neither admits nor denies the allegations contained in paragraph 2 because the allegation is a legal position for which no answer is required.

3. Defendant neither admits nor denies the allegations contained in

paragraph 3 because the allegation is a legal position for which no answer is required.

4. Defendant denies the allegations of paragraph 4. In fact, Defendant included language in the contract that could only be interpreted as requiring environmental inspection.

5. Defendant denies the allegations of paragraph 5 of the Complaint.

6. Defendant denies the allegations of paragraph 6 of the Complaint.

7. Defendant denies the allegations of paragraph 7 of the Complaint.

8. Defendant denies the allegations of paragraph 8 of the Complaint.

9. Defendant neither admits nor denies the allegations contained in paragraph 9 because the allegation is a legal position for which no answer is required.

## **SECOND COUNT**

1. Defendant repeats all prior paragraphs of this Answer as though set forth at length herein.

2. Defendant neither admits nor denies the allegations contained in paragraph 2 because the allegation is a legal position for which no answer is required.

3. Defendant neither admits nor denies the allegations contained in paragraph 3 because the allegation is a legal position for which no answer is required.

4. Defendant denies the allegations of paragraph 4 of the Complaint.
5. Defendant denies the allegations of paragraph 5 of the Complaint.
6. Defendant denies the allegations of paragraph 6 of the Complaint.
7. Defendant neither admits nor denies the allegations contained in paragraph 7 because the allegation is a legal position for which no answer is required.

### **THIRD COUNT**

1. Defendant repeats all prior paragraphs of this Answer as though set forth at length herein.
2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint and leave Plaintiff to its proofs.
3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint and leave Plaintiff to its proofs.
4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint and leave Plaintiff to its proofs.
5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint and leave Plaintiff to its proofs.

### SEPARATE DEFENSES

1. Plaintiff has failed to perform conditions precedent for recovery.
2. Plaintiffs has failed to state a cause of action against Defendant.
3. Defendant has violated no legal duty owing by him to the Plaintiff.
4. Plaintiff has failed to take steps necessary to preserve any rights it may have had to any relief under this Complaint.
5. Any damages sustained by the Plaintiff was the result of its own acts.
6. Plaintiff did not authorize the commencement of this action; it is brought without authority of the Plaintiff and therefore, not by the real party in interest.
7. Plaintiff failed to mitigate its damages.
8. Plaintiff has not been harmed because it retains the full protection of State Law against the sellers of the property regardless of the language in the Contract.
9. This action may not be maintained because it is precluded by the Tort Claims Act of New Jersey.
10. This action may not be maintained because Defendant is entitled to the full protection of the Township's Indemnification ordinance.
11. Plaintiff has suffered no damages caused by and of Defendant's

acts alleged in the Complaint.

12. Defendant has performed all of his statutory, contractual and ethical duties to the Plaintiff.

13. Defendant reserves the right to interpose such other defenses and objections as continuing investigation may disclose.

### **THIRD PARTY COMPLAINT**

#### **FIRST COUNT**

Defendant Stuart J. Moskovitz, by way of Third Party Complaint against Third Party Defendant Andrew Lucas, states, upon information and belief:

1. Third Party Plaintiff incorporates by reference all responses to the paragraphs of the Complaint as though set forth at length herein.

2. At all times relevant, Andrew Lucas was a member of the Township Committee, serving as Mayor in 2007.

3. In or about October, 2006, nearly one year after Defendant left the service as Township Attorney, Plaintiff exposed and removed the underground storage tank on the Dreyer property.

4. At that time, the Township Engineer, who had full knowledge of the existence of the underground storage tank in 2004, declared that when the underground storage tank was removed there was the “smell” of oil.

5. Previously, in 2004, the Plaintiff was fully aware that the property had an underground storage tank that had been in service on the

property, together with an above ground storage tank used in 2004 by the property owner.

6. Despite this knowledge, Plaintiff proceeded to agree to end a litigation with the owner of the property that had commenced in 2003, to avoid further litigation costs. Said settlement mandated that the Township obtain the property without regard to conditions or the underground storage tank of which they had full knowledge.

7. The Plaintiff was also aware that the State had informed the Plaintiff if it were to condemn the property after 2004, it would not contribute the \$250,000 in grant money if the Plaintiff were to acquire the property through condemnation, rather than purchase.

8. Despite the foregoing knowledge, Plaintiff agreed to an order that left the Plaintiff with no option but to obtain the property one way or the other, either by negotiating a sales price or through condemnation.

9. Plaintiff's then township attorney prepared the order, to which the Plaintiff agreed, without any qualification to account for any possible contamination resulting from the underground storage tank.

10. The same Township Engineer who served as Township Engineer in 2004, and who served as Township Engineer in 2006 and 2007, continued through 2005 to serve on many matters on which he had been involved prior to 2005, including numerous matters on which Defendant worked as Township Attorney.

11. At no time did that professional ever indicate that there was a

problem with the property which the Township was obligated to obtain due to the 2004 order.

12. The Preliminary Site Assessment Inspection Report prepared in 2005 and submitted to the Plaintiff prior to the closing by the Plaintiff on the property expressly stated that no evidence of contamination on this site had been found. Plaintiff received this report on May 26, 2005. The closing did not take place until June 8, 2005.

13. The day before the closing, Defendant had a conversation regarding the closing with both the Township Administrator, Alayne Shepler, and the township Chief Financial Officer, Phil Del Turco, neither of whom expressed any reservations about proceeding with the closing.

14. On June 9, 2005, Andrew Lucas wrote an email to Defendant, stating, "Stu: I just wanted to tell you what a great job you've been doing at the meetings. You've been extremely professional and have made us look brilliant for your appointment. Thanks again, Andrew."

15. This was, of course, prior to 2006, when Defendant refused to aid Third Party Defendant in his ill-advised attempt to be elected Monmouth County Freeholder.

16. When the Defendant prepared the Contract of Sale for the property, he made the contract contingent on receiving approvals of government funding, including State Green Acres funding.

17. Since any serious environmental condition on the site would have prevented funding, the Contract of Sale fully protected the Plaintiff from any

event related to the underground storage tank.

18. Moreover, state law provides in N.J.S.A. 58:10-23.11f.a(2)(a) as follows:

Whenever one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance. In an action for contribution, the contribution plaintiffs need prove only that a discharge occurred for which the contribution defendant or defendants are liable....

19. In other words, not only did Plaintiff have no choice in 2005 but to acquire the property regardless of the environmental condition of the property, but State Law provided the full financial remedy against the former owners in the event a clean-up was in fact necessary.

20. However, no clean-up was ever, in fact, necessary.

21. Subsequent to the closing, Plaintiff received correspondence from the State regarding Green Acres funding requiring only one step to be taken. A new deed was required to establish the exclusionary usage of the property due to Green Acres funding. There was no reference in that correspondence to any environmental concerns. That new deed was prepared by Defendant and accepted.

22. Moreover, in June 2005, subsequent to the closing, the Plaintiff received a letter from the State DEP recognizing the PASI filed by the Township Engineer, declaring the proposal to remove the closed-in-place tank

as reasonable. As for pesticides, all that was required was a statement that the “intended future use” does “not anticipate exposure of future users to potentially contaminated soils.” Plaintiff has already declared that the normal soil movement involved in building fields was sufficient on the adjoining fields – fields where the pesticide contamination was likely to be highest, because it was the actual location of the farming, and where children were most likely to be in contact with the soil – to not be a problem with respect to pesticides.

23. At no time did any government agency ever require any clean-up of any soil contaminants on this property.

24. To the contrary, the County has already provided full funding of their \$250,000 contribution for the acquisition of this property.

25. In other words, the claim that there was a requirement to clean up this soil because of negligence by Defendant is a myth at best, and outright fraud on the court and the taxpayers at worst.

26. Andrew Lucas was aware of all of the foregoing facts prior to conspiring to commence this litigation.

27. In late 2006, Plaintiff and Andrew Lucas were advised by the Township Attorney that there was no sustainable action against Defendant for legal malpractice given the facts of this case.

28. That Township Attorney was told that his services would not be needed in December, 2006 and he was not to attend the Township Committee meeting at that time.

29. Daniel J. McCarthy was asked to attend the Township Committee

meeting instead. Daniel J. McCarthy is a senior partner in the law firm of Rogut McCarthy Troy LLC. This is the firm to which Norman Kauff is of counsel.

30. In 2000, when Defendant was the mayor of Manalapan, he became concerned about both the competency and overbilling of Norman Kauff, the township attorney for Manalapan that year. He approached the other Township Committee members about removing Norman Kauff in 2001.

31. That became a long running battle between Norman Kauff, an extremely powerful county democratic boss, who proceeded to promise one township committee person the nomination for assembly, another the nomination for freeholder, and made other promises to other members of the democratically controlled township committee, for the purpose of turning them against Defendant. He delivered on those promises and succeeded in his mission.

32. He was retained in 2001 as the township attorney with Defendant being the sole negative vote.

33. In 2001, Mr. Kauff chose not to attend any meetings, presumably to avoid the confrontation with Defendant over his competence and billing. Nonetheless, he continued to receive a salary for attending meetings he never attended, adding to his pension, and consequently defrauding the state pension system.

34. When Defendant raised this issue, Mr. Kauff claimed he had missed the meetings because he was ill. The regional newspaper, The News

Transcript, investigated and determined that Mr. Kauff continued to attend meetings in other municipalities where he served in the same capacity.

35. Eventually Mr. Kauff resigned.

36. Mr. Kauff has continued to defame Defendant and to wage an endless battle against him in campaign literature, even in campaigns in which Defendant has not participated.

37. Mr. McCarthy has obtained numerous political appointments through Mr. Kauff, including appointments in Manalapan as Planning Board attorney and as special counsel.

38. In December, 2006, Mr. McCarthy advised the township committee to take steps against Defendant resulting in this litigation.

39. In February, at Mr. McCarthy's recommendation, the Plaintiff hired attorney David R. Weeks, the zoning board attorney in Mr. McCarthy's business location of Cranford, New Jersey, an attorney specializing in medical malpractice, to handle this litigation.

40. Andrew Lucas continued to advise his political associates throughout this process of all of the ongoing proceedings leading up to this investigation.

41. Due to health reasons, Mr. Lucas' former running mate, Joseph Locricchio, resigned from the Township Committee. He was replaced by Susan Cohen, presently a member of the Township Committee, who was reelected to a three year term this past November.

42. In the spring of 2007, prior to Mrs. Cohen's being appointed to

replace Mr. Locricchio, Mr. Lucas met with Mrs. Cohen and Steven McEnery, the republican municipal chairman, and indicated that the Township Committee had determined that no action would be taken against Defendant until he was presented with a letter setting forth the allegations of negligence and given the opportunity to respond.

43. Indeed, several months after Mr. Weeks' firm was hired and his illegally excessive contingent fee agreement was signed, he was advised that he did not have authority to commence litigation until such time as the letter was sent and a reasonable time afforded for response.

44. The letter was prepared by Caroline Casagrande, township attorney, and contained a demand that Defendant respond within 48 hours. Mr. Weeks himself declared that response time unreasonable and it was determined that the letter would be revised to permit more time.

45. The letter was never sent.

46. Recognizing that there was a growing rift between himself and Mrs. Cohen, who was supposed to be his running mate, Mr. Lucas decided to unilaterally suspend the Township Committee's decision.

47. Mr. Lucas had already arranged for himself and Mrs. Cohen to have separate campaign funds, clearly leading to separate and independent campaigns.

48. Mr. Lucas had already made it publicly clear through actions and comments that he was effectively running in conjunction with Drew Shapiro, a former Township Committee member attempting to return to his position,

despite the fact that they were running on different party lines.

49. Mr. Lucas became concerned that Mrs. Cohen's campaign would be significantly aided by Defendant and desired to prevent that from occurring.

50. Despite the fact that participation in a political campaign is a right protected by the first amendment, Mr. Lucas caused the immediate commencement of litigation prior to Mrs. Cohen's being seated on the Township Committee.

51. No vote was ever taken by the Township Committee to rescind the prerequisite of the initial letter to Defendant and the action was commenced with no resolution by the Township Committee so to do.

52. Mr. Lucas then conspired with Mr. McCarthy both in papers submitted to this Court and in demands made at Township Committee meetings, that Mrs. Cohen have no communication with Defendant whatsoever, a demand that would be unconstitutional even if a political campaign were not involved.

53. For a significant period, Mrs. Cohen complied with that demand, under threat by Mr. Lucas and Mr. McCarthy of expulsion from the Township Committee proceedings.

54. Mr. Lucas thereby succeeded in violating Defendant's first amendment rights to participate in the political process for the candidate of his choice, with the full cooperation of Mr. McCarthy who personally delivered the threats to Mrs. Cohen, insisting that they were legally well-founded.

55. All of the foregoing would and will justify a malicious prosecution

action. In that such an action in New Jersey may not be sustained as a counterclaim due to the requirement of a conclusion to the underlying litigation, that action will have to wait.

56. It is presented here, however, as the basis of a violation of Defendant's first amendment rights by Mr. Lucas, under color of state law.

57. Title 42, Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

58. Andrew Lucas acted in concert with other municipal officials to deprive Defendant of his first amendment right to participate in the political process for the candidate of his choice.

59. He did so under color of state law, seeking, with Mr. McCarthy's participation, the full weight of this Court of Law to enforce the no communication demand.

60. Third Party Defendant's action, in the name of Plaintiff, being totally devoid of merit, and indeed, not authorized by Plaintiff itself by legal resolution, was merely a means to prevent Defendant from communicating

with the candidate he fully expected to aid, and whom Andrew Lucas fully expected he would aid.

61. No remediation has been performed to date by the Plaintiff.

62. There is a six year statute of limitation for legal malpractice.

Defendant was the Township Attorney in 2005.

63. Plaintiff has no idea to date what amount, if anything, it is seeking from Defendant.

64. There was no basis on which to rush to commence this litigation other than to deprive Defendant of his constitutional rights.

65. Andrew Lucas, at taxpayer expense, deprived Defendant of his First and Fourteenth Amendment rights when he, under color of state law, and in conspiracy with other officials of Plaintiff, commenced this litigation and demanded that he immediately cease communication with Committeewoman Susan Cohen.

66. Such actions by Mr. Lucas amount to willful fraud, malice or misconduct, precluding the Township from defending him in this matter pursuant to its own ordinance.

67. The Township's ordinance also precludes any defense where the claim is for punitive or exemplary damages.

68. Because this claim involves an intentional tort, malicious and willful misconduct, it is outside the protection of the Tort Claims Act preventing the Township from defending Mr. Lucas in this matter. New Jersey law does not authorize a municipality to defend or indemnify such conduct.

69. Defendant is entitled to punitive damages against Third Party Defendant Andrew Lucas for his violation of Title 42, Section 1983 of the United States Code.

70. Title 42, Section 1988 of the United States Code provides that in any action or proceeding to enforce a provision of Section 1983, the Court may award reasonable attorney's fees [1988(b)] and expert's fees [1988(c)].

71. Defendant is entitled to attorneys' fees in the event this cause of action under Title 42, Section 1983 is successful, as well as the costs of litigation, including expert witness fees.

72. Defendant has incurred, and continues to incur significant damages in defending the malicious prosecution brought against him as the result of Andrew Lucas' attempt to deprive him of his constitutional rights. These include the value of all time expended in defense of this matter, which, under New Jersey Law is recoverable even by a pro se attorney.

WHEREFORE, Defendant demands judgment against Third Party Defendant Andrew Lucas for all actual damages, including the reasonable value of Defendant's time, punitive damages, attorneys' fees and the costs of litigation including expert witness fees, as well as any other remedies found to be just and proper.

## **SECOND COUNT**

Defendant Stuart J. Moskowitz, by way of Third Party Complaint against Third Party Defendants Richard Roe I-V, states, upon information and

belief:

1. At all times relevant, said Third Party Defendants were professionals, either engineers or attorneys, appointed by Plaintiff, with responsibilities concurrent with the events leading to the execution of the Court Order in 2004 mandating the acquisition of the Dreyer property.

2. It is the actions of these professionals, the full identity of whom is to be determined after commencement of discovery in this matter, that was the proximate cause of any damage to the Plaintiff, in the event it is determined that there was such damage.

3. Third Party Defendants Roe had knowledge of the existence of the underground storage tank prior to their actions leading to the execution of the Order precluding Defendant from avoiding the acquisition of the property regardless of the environmental conditions.

4. Defendant is entitled to full contribution and indemnification from Third Party Defendants Roe for any and all damages awarded in this litigation to Plaintiff.

WHEREFORE, Defendant demands full contribution and indemnification from Third Party Defendants Roe for all damages awarded to Plaintiff, jointly and severally.

## **REQUEST FOR STATEMENT OF DAMAGES**

**PLEASE TAKE NOTICE** that in accordance with Rule 4:5-2, the undersigned requests that within five (5) days of service hereof upon the Plaintiff, that Plaintiff serve a written statement of the amount of damages claimed in the above-entitled action.

## **DESIGNATION OF TRIAL COUNSEL**

Stuart J. Moskowitz is hereby designated as trial counsel, pursuant to Rule 4:25-4.

## **RULE 4:5-1 CERTIFICATION**

I certify that at this time, upon information and belief, this matter in controversy is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding and that no other action or arbitration proceeding is contemplated. I presently do not know of any other party who should be joined in this action.

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Stuart J. Moskowitz, Esq.  
Pro Se

Dated: December 11, 2007