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November 15, 2011

BY ECF

Hon. Arthur D. Spatt
United States District Judge
Eastern District of New York
100 Federal Plaza
U.S. Courthouse
Central Islip, New York 11722

Re: *Excelsior Capital, LLC v. Devine*, Civil Case No. 2:10-cv-01319-ADS-ARL
(E.D.N.Y.)

Dear Judge Spatt:

I am a principal of Judd Burstein, P.C., counsel for plaintiff Excelsior Capital, LLC ("Plaintiff") in the above-referenced action. I write to respectfully request that Your Honor so-order the enclosed Stipulation and [Proposed] Order of Dismissal, which (a) dismisses Plaintiff's Civil R.I.C.O. claims with prejudice; (b) dismisses Plaintiff's remaining state law claims without prejudice for lack of subject matter jurisdiction; and (c) dismisses the third party claims of defendant-third-party-plaintiff Christopher Devine without prejudice for lack of subject matter jurisdiction. All counsel have executed the enclosed.

Respectfully yours,



Judd Burstein

Enclosure

cc: All counsel (by ECF and e-mail)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EXCELSIOR CAPITAL, LLC,

Plaintiff,

- against-

CHRISTOPHER DEVINE, BRUCE BUZIL,
ROBERT E. NEIMAN and GREENBERG
TRAURIG, LLP,

Defendants.

-----X
CHRISTOPHER DEVINE,

Third-Party Plaintiff,

-against-

THE ESTATE OF C. ROBERT ALLEN, III, by its
Executrix GRACE M. ALLEN, and LUKE ALLEN.

Third-Party Defendants.

-----X
IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys of record for plaintiff Excelsior Capital, LLC's ("Excelsior") and the Defendants that:

1. Excelsior's claims for relief under Civil R.I.C.O., 18 U.S.C. § 1961, *et. seq.* against Defendants (the First through Sixth Claims for Relief in Excelsior's Complaint) (the "RICO Claims") are dismissed with prejudice and without costs or attorneys fees to any party.
2. Excelsior's remaining state law claims against Defendants (the Seventh through Ninth Claims for Relief in Excelsior's Complaint) (the "State Law Claims") are dismissed without prejudice for lack of subject matter jurisdiction and without costs or attorneys fees to any party.
3. Excelsior's Complaint is dismissed without prejudice and without costs or

STIPULATION AND
[PROPOSED] ORDER OF
DISMISSAL

Case No. 10-CV-01319(ADS)(ARL)


attorneys fees to any party, except that the RICO Claims are dismissed with prejudice and without costs or attorneys fees to any party.

4. Defendant Christopher Devine's Third-Party Complaint is dismissed without prejudice and without costs or attorneys fees to any party for lack of subject matter jurisdiction.


5. This Stipulation and Proposed Order may be signed in counterparts.

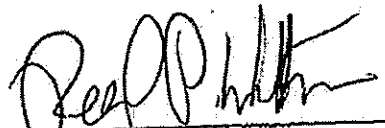
6. For the purposes of this Stipulation and Proposed Order, faxed and electronically transmitted signatures will be deemed original.

JUDD BURSTEIN, P.C.

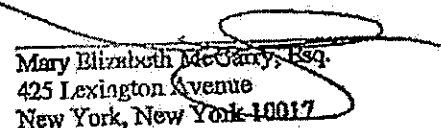

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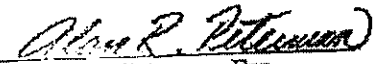

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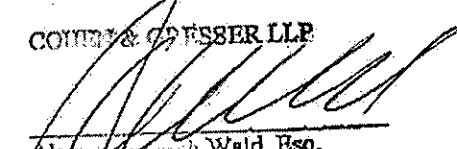
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IT IS SO ORDERED

HON. ARTHUR D. SPATT, U.S.D.J.