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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Applicant	Geller, Pamela
Applied for Mark	STOP THE ISLAMISATION OF AMERICA
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Mark: Stop the Islamisation of America

Applicant: Pamela Geller

Examining Attorney: Maria-Victoria Suarez  
Law Office 108

SERIAL NO: 77940879

**EX PARTE APPEAL**

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COMES NOW the Applicant, Pamela Geller, by Counsel undersigned, and hereby respectfully appeals Examining Attorney's refusal to register the mark STOP THE ISLAMISATION OF AMERICA in standard characters.

## **DESCRIPTION OF THE RECORD**

### **I. Prosecution History.**

Applicant filed the STOP THE ISLAMISATION OF AMERICA ("Mark") Mark Registration Application ("Application") with the United States Patent and Trademark Office ("UPTO" or "Office") on February 21, 2010. Examining Attorney initially refused to register the Mark in a non-final Office action ("NFOA") on April 28, 2010. Applicant filed her response to Examining Attorney's NFOA on July 26, 2010 ("Response"). Ultimately, Examining Attorney refused to register the Mark in a final Office action ("FOA") on January 19, 2011, based on her conclusion that the Mark "consists of or includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs or national symbols. Trademark Act Section 2(a), 15 U.S.C. § 1052(a)." Applicant timely filed her Notice of Appeal to the Trademark Trial and Appeal Board ("TTAB") on July 11, 2011.

### **II. Overview of Examining Attorney's Position Supporting NFOA Refusal to Register Mark.**

In her NFOA, Examining Attorney took the position that the Mark is disparaging to Muslims in violation of 15 U.S.C. § 1502(a) on two grounds: (1) that the meaning of the word "Islamisation," based on one of two meanings provided by a single online dictionary definition, means converting to Islam, or being in conformity with Islamic principles and teachings, and when this definition is combined with the word "Stop," the Mark refers to Muslims in a disparaging manner because by definition it implies that conversion or conformity to Islam is

something that needs to be stopped; and (2) that the Mark, which identifies informational services regarding terrorism (i.e., “providing information regarding understanding and preventing terrorism”), “implies that Islam is associated with violence and threats” and because “many Muslims view terrorists as illegitimate adherents of Islam,” linking Islam with terrorism “would be disparaging to a substantial group of Muslims.”

### **III. Overview of Applicant’s Response to NFOA in Support of Registration of Mark**

In response to the NFOA, Applicant demonstrated that among *Muslims* specifically, and among professionals and academics who actually use the term, the proper and common use of the word “Islamisation” (alternatively spelled “Islamization”), is the political movement prevalent in a society or societal unit which seeks to embrace a political doctrine that calls for the application of Shariah (*i.e.*, Islamic law) as the supreme law of the society. While Islamisation and the call to create a Shariah-adherent political order does include the call to convert non-Muslims, that is not what marks Islamisation as a political and social movement or ideology, and it is not how Muslims themselves understand the word, nor is it how professionals and academics in the relevant disciplines use the word. (Resp. at 3-8).

Rather, Islamisation is specifically the politicization of a Muslim’s religious faith in that Shariah, in its classic and extant form, demands that a society’s laws must all be predicated upon and subservient to Shariah and its legal jurisprudence called *fiqh*. Islamisation even in its “moderate” form demands that no secular law may contradict any Shariah dictate. The prototypical examples of this form of Islamisation are the constitutional or legal provisions in Muslim-dominated countries that include a “Shariah-supremacy” clause providing that no secular law passed by the political branches may contradict Shariah. (Resp. at 3-8).

In short, the Islamisation of a society is the conversion to a theocratic political order

organized and enforced by the dictates of Shariah. Per Shariah, there is no possibility of a “separation of mosque and state.” Shariah applies to all political, social, religious, and military institutions within a society that has undergone Islamisation. (Resp. at 3-8)

Thus, Applicant’s Response asserted that Muslims who support America’s constitutional republic based upon laws emanating from the will of the people and not from a divine source, and as such consonant with the Establishment Clause of the First Amendment to the Constitution of the United States, would not be disparaged by the use of the Mark. Moreover, the Response further made clear that even that subset of Muslims who adhere to a doctrine of Islamisation and the use of Islamic law as the law of the land would not be disparaged by the Mark because this subgroup understands that the United States is predicated upon the Constitution and the principles embodied in the First Amendment. (Resp. at 9-12).

#### **IV. Overview of Examining Attorney’s Position Supporting FOA Refusal to Register Mark**

In her FOA, Examining Attorney once again concluded that the Mark disparaged Muslims because Muslims would link the Mark with opposition to Islam simply. Examining Attorney provided absolutely no evidence for this proposition and indeed, as will be set forth below in the Legal Argument section, the evidence provided in the FOA actually supports Applicant’s position that law abiding, patriotic Muslims actually reject Islamisation and would thus not be disparaged by the Mark.

#### **STANDARD OF REVIEW**

The United States Court of Appeals for the Federal Circuit has determined that the burden of proving that a mark violates Section 2(a) of the Trademark Act rests with the USPTO. *In re Boulevard Entm’t, Inc.*, 334 F.3d 1336, 1339, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003) (discussing a “scandalous” mark and citing *In re Mavety Group, Ltd.*, 33 F.3d 1367, 31 USPQ2d

1923 (Fed. Cir. 1994)). When deciding whether a mark is disparaging, the TTAB has recognized that

the guidelines for determining whether a mark is scandalous or disparaging are ‘somewhat vague’ and the ‘determination [of whether] a mark is scandalous [or disparaging] is necessarily a highly subjective one.’ *In re Hershey*, 6 USPQ2d 1470, 1471 (TTAB 1988). Because the guidelines are somewhat vague and because the determination is so highly subjective, we are inclined to resolve doubts on the issue of whether a mark is scandalous or disparaging in favor of applicant and pass the mark for publication with the knowledge that if a group does find the mark to be scandalous or disparaging, an opposition proceeding can be brought and a more complete record can be established. Cf. *In re Gourmet Bakers, Inc.*, Serial No. 755,278, 173 USPQ 565 (TTAB 1972) (“It has been recognized by this and other tribunals that there is no easy applicable objective test to determine whether or not a particular mark, as applied to specific goods, is merely descriptive or merely suggestive. The distinction between marks which are ‘merely descriptive’ and marks which are ‘suggestive’ is so nebulous that more often than not it is determined largely on a subjective basis with any doubt on the matter being resolved on applicant’s behalf on the theory that any person who believes that he would be damaged by the registration will have an opportunity under Section 13 to oppose the registration of the mark and to present evidence, usually not present in the ex parte application, to that effect.”).

*In re In Over Our Heads, Inc.*, 16 USPQ2d 1653, 1990 TTAB LEXIS 52, 4-6 (TTAB 1990) [not precedential].

## LEGAL ARGUMENT

### I. The FOA Fails to Carry Its Burden that the Mark Is Disparaging

As the FOA correctly notes, the analysis required to find a mark disparaging is twofold: first, the Office must determine what the mark means to the group with particular sensitivities; and, second, the Office must determine if that particular understanding of the Mark is disparaging to the group at issue. *In re Lebanese Arak Corp.*, 94 USPQ2d 1215, 1217 (TTAB 2010); *see also Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705 at 1740-41, *rev’d on other grounds*, 284 F. Supp. 2d 96, 68 USPQ2d 1225 (D.D.C. 2003), *remanded*, 415 F.3d 44, 367 U.S. App. D.C. 276, 75 USPQ2d 1525 (D.C. Cir. 2005), *on remand*, 567 F.Supp.2d 46, 87 USPQ2d

1891 (D.D.C. 2008), *aff'd* 565 F.3d 880, 385 U.S. App. D.C. 417, 90 USPQ2d 1593 (DC Cir. 2009) (T.T.A.B. 1999) (“Our analysis is essentially a two-step process in which we ask, first: What is the meaning of the matter in question, as it appears in the marks and as those marks are used in connection with the services identified in the registrations? Second, we ask: Is this meaning one that may disparage Native Americans?”). The only evidence in the record as to the meaning of “Islamisation” to the actual group of concern, Muslims, demonstrates that “Islamisation” means a legal-political process wherein a society or political order adopts Islamic law as its normative, legal, and political construct.

**A. The FOA Mischaracterizes the Record and Improperly Characterizes the Meaning of the Mark to Muslims**

Initially, Examining Attorney’s NFOA relied exclusively on a single online dictionary source which included definitions of “Islamize,” which the source appears to suggest is a synonym for “Islamisation.” (NFOA, Atts. Nos. 1-2). While one of those definitions captured a broader meaning of conformity with Islamic principles and conversion to Islam (NFOA, Att. No. 1), the more specific definition notes that “Islamize” means conformity with Islamic law. (NFOA, Att. No. 2).<sup>1</sup>

In response to this reliance on an online dictionary definition, Applicant included in her Response evidence of how Muslims themselves actually use the word “Islamisation.” (Resp. at 2-9). This evidence demonstrates beyond debate that “Islamisation” is not used by Muslims in the broad, generic way consonant with “Islamic.” Rather, Muslims understand “Islamisation” as a term of art to incorporate the political-legal movement to convert a society or politic into a

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<sup>1</sup> In the FOA, Examining Attorney simply compounds her error by citing additional online dictionaries which also utilize both meanings—a broader, more generic meaning more akin to the word “Islamic” (FOA, Att. No. 1) and a more specific meaning of to “cause people, institutions, or countries to follow Islamic law.” (FOA, Att. No. 4).

political society predicated upon and governed by Islamic law (*i.e.*, Shariah). Specifically, the Response carefully and extensively cited to authoritative Muslim references for the genesis of the word “Islamisation” and provided actual uses of that word by Muslims. (Resp. at 4-8 & accompanying exhibits). Beyond this quite exclusive and specific use of the word “Islamisation” by Muslims, Applicant also provided a random (one out of every ten citations) survey of all legal and academic references to “Islamisation” available on LexisNexis. (Resp. at 8-9 and accompanying exhibits). In each of these professional and academic references, the word “Islamisation” was used to describe a political-legal effort or movement targeting a specific political order or the world at large wherein civil liberties and freedom generally are surrendered to Islamic law—often associated with oppressive gender- and religious-based discrimination (*i.e.*, against women and non-Muslims). (Resp. at 4-8).

It is noteworthy that in her FOA, Examining Attorney literally ignored all of the documented evidence of how Muslims have actually used and understood the term “Islamisation” as a distinctly political-legal movement, and, instead, grossly mischaracterized the Response as if it had relied exclusively on the professional and academic literature. Thus, Examining Attorney wrote in the FOA:

Here, the applicants indicate that “professionals and academics use the term ‘Islamisation’ to refer to a destructive and violent movement to impose Shariah as the law of the land often at the expense of women and religious minorities.” Applicants’ response at 9. Thus, the proposed-mark would not be perceived in a disparaging manner by Muslims. Rather, the connotation would be a positive one as an American Muslim would never desire to be ruled by Shariah law.

However, the standard for whether matter may be disparaging is not limited to the sensibilities of professionals or academics. When religious beliefs or tenets are involved, the proper focus is on the group of persons that adhere to those beliefs or tenets. *In re Lebanese Arak Corp.*, 94 USPQ2d 1215 at 1217 (TTAB 2010). On page 7 of their response, the applicants contend that “law abiding and civilly responsible Muslim Americans do not advocate the Islamisation of the U.S. because they understand that would mean that the U.S. Constitution is no longer the supreme law of the land and the First Amendment’s protection of religious freedom and

prohibition against the establishment of a government religion would no longer be valid.” Yet, this statement is not supported by evidence. *The applicants do not offer any evidence of how this Muslim “man in the street” would understand the term “Islamisation” or the phrase “Stop the Islamisation of America.”*

FOA at 5 (of the unnumbered digital pdf file) (emphasis added). Yet, as the record in this matter demonstrates, it is precisely Applicant’s Response which provides the Muslim understanding of both the genesis and the actual use of the term “Islamisation.” The professional and academic literature was provided simply to provide confirmation that the Muslim use is in fact the general and correct use.

**B. The FOA Improperly Cites to How an Unrepresentative and Arbitrary Selection of Non-Muslims Understand the Mark.**

Beyond the mischaracterization of the evidence in the record, Examining Attorney attempts to craft a work-around to avoid the overwhelming weight of the evidence as to the meaning of “Islamisation” to Muslims themselves. Thus, in the FOA, Examining Attorney abandons any effort whatsoever to evidence how Muslims understand “Islamisation” and instead cherry picks select comments left on Applicant’s Web log that appear to be hostile to Islam simply. (FOA at 6-7 [of the unnumbered digital pdf file]). But, there is no evidence in the record whatsoever that these comments are more than the rants of a few select individuals. More, there is no evidence in the record that these arbitrarily selected comments are in fact the actual marketplace or the intended audience of the Applicant’s goods and services.

Moreover, when searching for the meaning of a mark beyond the understanding of that mark by the actual sub-group whose sensibilities are at issue, the test is not how some fringe members of the public respond to the Mark. Rather, the test, as specifically articulated by the TTAB, is “the nature of the goods and/or services; and the manner in which the mark is used in the marketplace in connection with the goods and/or services.” *In re Lebanese Arak Corp.*, 94

USPQ2d 1215 at 1217 (TTAB 2010). Thus, the question is not how some anonymous, cherry-picked commenter responds on a Web log, but rather how Applicant uses the Mark “in the marketplace in connection with the goods and services.”

Indeed, Examining Attorney continued to fail to grasp this test when she turned to an organization in Europe called “Stop the Islamisation of Europe.” (*See* FOA at 7-8 [of the unnumbered digital pdf file]). The mere fact that a Web site is linked at Applicant’s Web log hardly establishes the “association” alleged in the FOA. Indeed, hundreds of Web sites are linked at Applicant’s Web log, as is typical on Web logs, without intending or meaning an “association” exists. Moreover, the test is not how non-Muslim Europeans use the term “Islamisation,” but rather how Applicant uses the Mark in the marketplace with her goods and services. It is telling in the extreme that Examining Attorney could find no similar such use of the Mark by Applicant (or anyone else) in the Applicant’s marketplace.

In conclusion, neither the NFOA nor the FOA even approach satisfying the requisite burden necessary to deny Applicant’s Mark because both efforts have failed to understand the meaning and import of the Mark by actual Muslims and with regard to how Applicant uses the Mark in the marketplace in connection with Applicant’s goods and/or services. The Mark’s use of the term “Islamisation,” quite simply, is not understood by Muslims nor by the professional and academic classes who use the term as relating to Islam qua Islam. Rather, the term is quite narrowly focused on a political-legal movement that works to destroy civil liberties and to supplant the rule of man-made law with a theologically-centered law understood to be divine.

**C. The FOA Provides No Evidence that the Mark Disparages Muslims.**

As discussed in detail in the Response to the NFOA, Examining Attorney’s entire argument in the NFOA that the Mark disparages Muslims is based on the false syllogism that (1)

if “Islamisation” refers to *all things Islamic*; and (2) if the Mark suggests Applicant seeks to “Stop” all things Islamic (or, alternatively, links all things Islamic to terrorism), then (3) any Muslim who embraces any aspect or part of Islam will be disparaged. (Resp. at 2-4). This faulty syllogism is repeated in the FOA. (FOA at 8-9 [of the unnumbered digital pdf file]). It is of course obvious that if the word “Islamisation” in the Mark in fact does not refer to all things Islamic, but rather only those groups and movements which seek to compel a political order to adopt Islamic law as the law of the land, law abiding and patriotic Muslims would in fact not be disparaged by the Mark. And, the FOA actually demonstrates this point.

Thus, Examining Attorney cites a letter by a group of British Muslims apparently upset by a demonstration held outside a mosque somewhere in England. The British Muslims actually make the point that they oppose the “Islamicizing” of Britain and want to work with the group Stop the Islamisation of Europe, to whom the letter was addressed. Indeed, what the entire letter illustrates quite clearly is that this group of law abiding and patriotic British Muslims wanted to be certain that the SIOE group make clear that they don’t oppose all things Islamic, rather just “Islamisation.” It is no coincidence that the Examining Attorney only quoted from the letter selectively, leaving out the portion where the British Muslims join hands, as it were, with the SIOE group in opposing Islamisation. In fact, the purpose of the letter was to point out *an activity* the British Muslims were concerned about—*i.e.*, SIOE’s demonstration outside a specific mosque whose attendees and leadership apparently do not advocate Islamisation. In other words, the British Muslim group, called British Muslims for Secular Democracy (“BMSD”), was not “disparaged” by the name STOP THE ISLAMISATION OF EUROPE—indeed they applauded the effort to stop the Islamisation of Europe—rather, the British Muslims were concerned that the SIOE group had targeted the wrong mosque! The letter, which is attached to the FOA at

Attachments Nos. 87-88, is worth quoting in full:

Dear Mr. Gash,

We are a group of Muslim democrats who are committed to the values that define the British state, including legal and constitutional equality for all, equal rights for women and minorities, and religious freedom, including the right to be free of faith.

We take such pride in these virtues that we actively seek to defend them against any individual, political group or organised religious outfit which seeks to impose their religious beliefs upon others (thereby infringing the right of all people to practice any religion or to be free of any religion).

As an attendee at our counter-demonstration against Al-Muhajiroun on 31st October 2009, you would have seen for yourself how we thwarted their attempts to portray themselves as representatives of the British Muslim community. Not only did they abandon their “March for Sharia” at the last minute, but we were joined by pro-democracy activists of all faiths and none, and from a wide range of backgrounds (including the English Democrats). This was hailed by both Muslims and non-Muslims as a victory for freedom and democracy.

We have come to know about your proposed demonstration outside Harrow Mosque on 13th December 2009, opposing the building of the mosque extension. According to your letter to the Harrow Times on your website – which appears not to have been published in the paper as yet – you believe that, “Muslims are attempting to make Islam the dominant theocratic-political system across the world and are actively eradicating democracy, non-Islamic cultures and all other religions.”

***To counter this assertion, we would like to point out that just like the majority of law-abiding British Muslims and non-Muslims, we too are extremely concerned about the rise of extremism and political Islam in Britain, which has been used to justify or demand non-democratic practices. On this issue, I am sure your organisation and ours share a common concern and would like to see a halt to the spread of these.***

***We acknowledge that in the past several mosques and madrassahs have been involved in anti-democratic activities and extremism, through the political and religious leanings of their management and patrons.***

***This undermines the confidence of the peace-loving British public and results in fragmented communities.***

It is clear that mosques and madrassahs should not be used as a vehicle for hate-preaching and spreading discord within society. In this vein, we would like to

point out that just because Muslims attend certain mosques out of pure necessity, this does not mean that they subscribe to the views of the mosque committees and management. More likely, it signifies that they have no other choice and are not organised enough to be able to challenge such community leadership.

***We also maintain that the vast majority of British Muslims are law-abiding citizens who are happy with secular democracy and do not wish to Islamicise Britain or Europe. We would like to fight for the rights of ordinary British Muslims to practice their religion, free of any coercion by organised hard-line groups who follow a particular brand of Islam based on rigid interpretations of Islamic teachings.*** By demonstrating outside a mosque under the banner, “Stop the Islamisation of Europe,” ordinary peace-loving British Muslims end up feeling threatened and have begun to believe that their fundamental right to practice their religion is being curtailed. In any case, Harrow is an exemplar of good community relations, facilitated by strong communication and co-operation between different faith communities and various agencies such as the police and the local council. Our Director Tehmina Kazi can testify to this, as she has lived in Harrow for over 20 years. Individuals affiliated with Harrow Central Mosque joined our counter-protest against Al Muhajiroun and their leading members wholeheartedly support the merits of secular democracy alongside BMSD

Your campaign is also fuelling the notion that somehow organisations such as SIOE are against all Muslims and the religion Islam in itself. This is being used by the extremist elements within Muslim communities to enhance their recruitment.

We therefore urge you to call off your protest and start open dialogue with British Muslims for Secular Democracy and other pro-democracy groups, so that we could jointly work together in reducing the spread of fascism and extremism from our communities.

We look forward to your response.

Yours sincerely,

Dr Shaaz Mahboob

Vice Chair  
British Muslims for Secular Democracy

FOA, Atts. Nos. 87-88 (emphasis added).

Thus, the very letter Examining Attorney presents for the proposition that the mere words, STOP THE ISLAMISATION OF AMERICA, would disparage law abiding and patriotic

American Muslims actually demonstrates the point that these Muslims in fact embrace those words and that calling. The British Muslims were just concerned about a specific activity of the SIOE group and indeed sought to work cooperatively with SIOE.

Thus, the USPTO has failed to apply the correct meaning and understanding of the Mark, and, as a result, has concluded that the Mark disparages Muslims when in fact the Mark actually encourages them to “work together in reducing the spread of fascism and extremism from our communities.” As such, the TTAB should reverse the FOA and order the registration of Applicant’s Mark.

## **II. The Office Action’s Refusal to Grant the Trademark Violates the Applicant’s Free Speech Rights Under the First Amendment to the Constitution.**

The USPTO’s refusal to grant the trademark violates Applicant’s free speech rights under the First Amendment to the U.S. Constitution. Specifically, Congress has, through the Lanham Act, established a public forum for those who seek to register a trademark. *See, e.g., Redmond v. Jockey Club*, 244 Fed. Appx. 663, 668 (6th Cir. Ky. 2007) (explaining that a horse registry was a limited public forum); *see generally Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985) (“The [Supreme] Court has adopted a forum analysis as a means of determining when the Government’s interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for [expressive] purposes.”).

Applicant reasserts that her trademark is protected speech under the First Amendment, either as commercial speech or as political speech. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (recognizing “that expression on public issues ‘has always rested on the highest rung of the hierarchy of First Amendment values’” and that “[Speech] concerning public affairs is more than self-expression; *it is the essence of self-government*”) (citations omitted). By restricting Applicant’s speech based upon some perceived, yet undocumented harm

to some ambiguous group's reputation based upon the content and viewpoint of the speech, the USPTO is engaging in an unlawful and unconstitutional infringement of Applicant's free speech rights. Indeed, the viewpoint-based restrictions applied here are unconstitutional even in a nonpublic forum. *See Perry Educ. Ass'n v. Perry Local Educators*, 460 U.S. 37, 46 (1983) (holding that in a nonpublic forum, the government "may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view"); *see also Nieto v. Flatau*, No. 7:08-cv-185H(2), 2010 U.S. Dist. Lexis 55938 (E.D.N.C. Mar. 31, 2010) (holding that a speech restriction on a military base, a nonpublic forum, was viewpoint based as applied to speech that was perceived to be anti-Islam in violation of the First Amendment). As such, the Office Action's refusal to register the trademark is unconstitutional under any forum analysis.

Applicant, however, recognizes that the United States Court of Appeals for the Federal Circuit has, on several occasions, rejected the notion that an applicant for a trademark registration has a First Amendment claim when the USPTO rejects a Mark based on its viewpoint. *See, e.g., In re Blvd. Entm't*, 334 F.3d 1336, 67 U.S.P.Q.2D 1475 (Fed. Cir. 2003). Given the commercial and legal importance of statutory trademark protection in the modern context, Applicant believes the Federal Circuit is wrong and that the United States Supreme Court would apply a standard forum analysis if given the opportunity.

### **III. Conclusion**

For the foregoing reasons, Applicant respectfully requests that the TTAB reverse the FOA and order the registration of the Mark.

[Signature page follows.]

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2011, a copy of the foregoing was filed electronically.

LAW OFFICES OF DAVID YERUSHALMI, P.C.

/s/ David Yerushalmi  
David Yerushalmi, Esq.