

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER  
*Justice*

PART IA Part 16

Domen Holding Co.

INDEX NO. 123782/00

- v -

Irene S. Aranovich, et al.

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 003

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

**FILED**  
JAN 21 2005  
NEW YORK COUNTY CLERK'S OFFICE

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the stipulations between the parties, dated January 12, 2005, which resolved the instant matter and the related matter under index number 122189/03.

Dated: JAN 18 2005

Alice Schlesinger  
**ALICE SCHLESINGER** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 16

-----x  
DOMEN HOLDING CO., a Partnership,

Plaintiff,

Index # 00123182/00

- against -

STIPULATION OF SETTLEMENT

IRENE S. ARANOVICH, JORGE ARANOVICH, and  
GEOFFREY WARREN SANDERS,

Defendants.  
-----x

**FILED**

**JAN 21 2005**

NEW YORK  
COUNTY CLERK'S OFFICE

**WHEREAS**, Plaintiff Domen Holding Co. ("Plaintiff") is the owner and landlord of the building known as and located at 301 East 73rd Street, New York, New York (the "Building");

**WHEREAS**, Defendants Irene S. Aranovich ("I. Aranovich") and Jorge Aranovich ("J. Aranovich") are the tenants of record of Apartment 7B (the "Subject Apartment") at the Building, and I. Aranovich and Defendant Geoffrey Warren Sanders ("Sanders") are the occupants of the Subject Apartment;

**WHEREAS**, Plaintiff commenced the above-captioned action (the "Action") against Defendants I. Aranovich, J. Aranovich and Sanders (collectively "Defendants") by Summons and Verified Complaint dated November 13, 2000 and filed November 14, 2000 (the "Complaint");

**WHEREAS**, Defendant I. Aranovich, by her counsel, Lynn M. Kelly, Esq., MFY Legal Services, Inc. (Adele Bartlett, Esq., of counsel), answered the Complaint by Verified Answer dated December 13, 2000 (the "Answer");

**WHEREAS**, Defendants J. Aranovich and Sanders each appeared in this Action *pro se* and interposed written answers dated December 20, 2000;

**WHEREAS**, Plaintiff interposed a Reply to Counterclaim dated December 27, 2000 in

the Action;

**WHEREAS**, pursuant to an order dated October 29, 2001, the Supreme Court granted I. Aranovich's motion to dismiss the Action;

**WHEREAS**, pursuant to an order dated January 7, 2003, the Appellate Division, First Department affirmed the Supreme Court's dismissal of the Action;

**WHEREAS**, pursuant to an order dated November 24, 2003, the Court of Appeals restored the Action to the calendar;

**WHEREAS**, Plaintiff commenced a separate action before this Court entitled *Domen Holding Co., a Partnership v. Irene S. Aranovich and Jorge Aranovich*, N.Y. County Index No. 122189/03 (the "Second Action") against I. Aranovich and J. Aranovich (collectively the "Aranovich Defendants") by Summons and Verified Complaint dated and filed December 30, 2003 (the "Second Action Complaint");

**WHEREAS**, Plaintiff's motion to amend its bill of particulars brought on by order to show cause dated January 20, 2004 ("Plaintiff's OSC") in this Action is presently pending;

**WHEREAS**, the Aranovich Defendants appeared in the Second Action *pro se* and interposed a written Verified Answer, Affirmative Defense, and Counterclaim dated February 20, 2004 (the "Second Action Answer");

**WHEREAS**, Plaintiff interposed a written Reply to Counterclaim dated March 3, 2004 in the Second Action;

**WHEREAS**, by decision and order dated July 15, 2004 (the "Order"), I. Aranovich's motion to amend the Answer filed in the Action was granted;

**WHEREAS**, the parties wish through this agreement to globally settle the Action and the Second Action.

**NOW, THEREFORE**, it is hereby agreed, by and between the parties to the Action and the Second Action, individually and through their respective attorneys, that:

1. The Action and Plaintiff's OSC are marked off calendar pursuant to the terms hereof.
2. Defendants shall not serve notice of entry of the Order unless and until this Action is restored to this Court's calendar as provided herein.
3. Plaintiff's OSC shall not be determined on the merits unless and until this Action is restored to this Court's calendar as provided herein.
4. J. Aranovich warrants and represents that he is not an occupant of the Subject Apartment and hereby surrenders any right he may have to possession of the Subject Apartment to I. Aranovich, and assigns to I. Aranovich any right and/or claim to any security deposit held by Plaintiff in connection thereto. Plaintiff discontinues the Action and the Second Action as to J. Aranovich with prejudice and without costs and/or attorneys' fees to either party as against the other, and the caption of this Action shall be deemed amended accordingly. J. Aranovich hereby withdraws his counterclaims interposed in the Section Action with prejudice.
5. The parties acknowledge that this agreement settles the claims in the Second Action with respect to all parties without costs and/or attorneys' fees to any party or parties as against the other and that the claims in the Second Action are subsumed in this agreement. Attached hereto as Exhibit A is a stipulation discontinuing the Second Action.
6. Between execution of this agreement and February 14, 2006, Plaintiffs may move to restore the Action to the calendar upon motion supported affidavit(s) of persons with actual knowledge, alleging that at any time on or prior to January 31, 2006, the I Aranovich or Sanders have committed or permitted to exist nuisance-type conduct at the Building of the nature alleged in the underlying Action. In lieu of a sworn statement by a person with actual knowledge or a principal of Plaintiff, an attorney at Greer & Associates P.C., or other counsel of Plaintiff's choosing, may submit an affirmation regarding the facts of the alleged nuisance-type conduct with specificity based upon interviews with the person involved in the alleged conduct and

further attesting why an affidavit of that person could not be obtained.

7. In the event the motion is granted, the allegations contained in (i) the Complaint and (ii) the Bill of Particulars (collectively, the "Allegations") that relate to conduct by any of the Defendants [prior to January 1, 1997] shall be withdrawn with prejudice and only the Allegations with respect to conduct occurring after January 1, 1997 shall remain, <sup>and (iii) the I. Aranovich</sup> The withdrawal contemplated in this paragraph shall in no way affect the sufficiency of the Notice of Termination which served as a predicate notice to the Action, or the allegations of the complaint itself in the Action.

8. If Plaintiff fails to move to restore the Action to the calendar pursuant to the provisions of paragraph 6 by February 14, 2006, the Action shall be deemed discontinued with prejudice, without costs and/or attorneys' fees to either party as against the other.

9. If Plaintiff fails to move to restore the Action to the calendar pursuant to the provisions of paragraph 6 by February 14, 2006, Plaintiff and I. Aranovich hereby agree to enter into a two year renewal lease effective commencing March 1, 2006 for the Subject Apartment at a monthly rent of \$1161.86 plus the then-prevailing rental increase set by the New York City Rent Guidelines Board. Plaintiff shall send to I. Aranovich a renewal lease on February 15, 2006. On or before March 15, 2006, I. Aranovich shall return an executed copy of the renewal lease to Plaintiff along with the applicable security deposit increase.

10. Upon execution hereof, I. Aranovich shall pay August, September, October, November, December, 2004 and January 2005 use and occupancy of \$6,971.16 by cashier's check or money order.

11. I. Aranovich shall pay monthly use and occupancy of \$1161.86 commencing February 1, 2005 and continuing through the earlier of (i) commencement of the lease pursuant to paragraph 9, or (ii) any order of the Court directing or affecting such payments. I. Aranovich's tender of use and occupancy, and Plaintiff's acceptance of use and occupancy, shall in no way be

*of termination of tenancy to be reinstated, subject to any rights of appeal of the order*  
VAG  
MBP

further attesting why an affidavit of that person could not be obtained.

7. In the event the motion is granted, the allegations contained in (i) the Complaint and (ii) the Bill of Particulars (collectively, the "Allegations") that relate to conduct by any of the Defendants [prior to January 1, 1997] shall be withdrawn with prejudice and only the Allegations with respect to conduct occurring after January 1, 1997 shall remain. <sup>and (i/c) the I. Aranovich</sup> The withdrawal contemplated in this paragraph shall in no way affect the sufficiency of the Notice of Termination which served as a predicate notice to the Action, or the allegations of the complaint itself in the Action.

8. If Plaintiff fails to move to restore the Action to the calendar pursuant to the provisions of paragraph 6 by February 14, 2006, the Action shall be deemed discontinued with prejudice, without costs and/or attorneys' fees to either party as against the other.

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Alternative defenses shall be reinstated, subject to any rights of appeal or the order

UAG  
CJA

further attesting why an affidavit of that person could not be obtained.

7. In the event the motion is granted, the allegations contained in (i) the Complaint and (ii) the Bill of Particulars (collectively, the "Allegations") that relate to conduct by any of the Defendants [prior to January 1, 1997] shall be withdrawn with prejudice and only the Allegations with respect to conduct occurring after January 1, 1997 shall remain. <sup>and (iii) the I. Aranovich</sup> The withdrawal contemplated in this paragraph shall in no way affect the sufficiency of the Notice of Termination which served as a predicate notice to the Action, or the allegations of the complaint itself in the Action.

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10. Upon execution hereof, I. Aranovich shall pay August, September, October, November, December, 2004 and January 2005 use and occupancy of \$6,971.16 by cashier's check or money order.

11. I. Aranovich shall pay monthly use and occupancy of \$1161.86 commencing February 1, 2005 and continuing through the earlier of (i) commencement of the lease pursuant to paragraph 9, or (ii) any order of the Court directing or affecting such payments. I. Aranovich's tender of use and occupancy, and Plaintiff's acceptance of use and occupancy, shall in no way be

Alternative defenses shall be reinstated, subject to any rights of appeal of the Order

VOG  
JAN 2005

deemed to vitiate the Notice of Termination upon which the Action is predicated. The tender of a bill by Plaintiff to I. Aranovich which refers to the use and occupancy payments as rent shall no way be deemed to vitiate the Notice of Termination. The use and occupancy payments shall be made as follows:

- a. on or before the first day of each month, Plaintiff shall send to I. Aranovich a bill for the amount due for use and occupancy for that month;
- b. on or before the tenth day of each month, I. Aranovich shall mail the use and occupancy payment for that month via check or money order to Plaintiff;
- c. if Plaintiff claims not to have received that month's use and occupancy payment by the fifteenth day of the month, Plaintiff and/or Plaintiff's counsel shall serve MFY by fax and mail with a five day notice and shall mail a copy of such notice to I. Aranovich.
- d. If Plaintiff still claims not to have received the use and occupancy payment within five days after having served the notice in 10(c), Plaintiff may move this Court for appropriate relief.
- e. If Plaintiff is required to serve notice pursuant to paragraph "c" hereof on more than two occasions prior to February 14, 2006, then it may impose a late fee of \$25.00 for any subsequent failure to mail use and occupancy timely as required by paragraph "b" hereof.
- f. If at any time between the execution of this agreement and February 14, 2006 I. Aranovich believes a breach of the warranty of habitability has occurred or developed, application may be made to the Court for appropriate relief.

12. The parties agree that \$53,261.78 in use and occupancy is outstanding through July 31, 2004.

13. Without admission by either party, and in settlement, and full satisfaction of its

claims for said use and occupancy to July 31, 2004, including but not limited to the claims Plaintiff asserts in the Action and the Second Action, and in consideration and full satisfaction of Defendants' defenses and counterclaims sounding in breach of warranty of habitability interposed in the Action and Second Action, Plaintiff agrees to accept and Defendants to pay \$38,261.78. This amount shall be paid by cashier's check or money order upon execution of this agreement.

14. I. Aranovich shall sign up for regularly scheduled monthly extermination of the Subject Apartment, as needed, by placing her name on the form provided by Building staff each month for tenants desiring extermination services. I. Aranovich shall provide Plaintiff's exterminator access to the Subject Apartment accordingly. Plaintiff's exterminator shall make reasonable attempts to schedule the extermination of the Subject Apartment in the early mornings. To the extent that any violations of record against the Building and/or the Subject Apartment exist as a result of any complaints filed by Defendants with respect to the Subject Apartment, I. Aranovich shall allow access to the Subject Apartment to the Housing Preservation and Development inspectors and shall otherwise reasonably cooperate with Plaintiff in its effort to have any such violation(s) removed and/or discharged of record.

15. The obligations set forth in this agreement that each party owes to the other parties and the performance of those obligations are unique and irreplaceable. Accordingly, each party is free to seek specific enforcement of this agreement in this Court.

16. This agreement sets forth all of the promises, agreements, covenants, terms, conditions, inducements, and understandings between the parties, and no promises, agreements, covenants, terms, conditions, inducements, and understandings exists between them other than as set forth in this agreement.

17. This agreement may not be modified orally. Any changes or modifications to this agreement must be in writing and signed by the parties and by the attorneys for the parties, if any.

18. The terms of this agreement are the result of extensive negotiations between the parties. All parties shall be deemed to have drawn these documents in order to avoid any negative inference by any court as against the preparer of any portion of the document.

19. Each party shall absorb its own costs and attorneys' fees.

20. Any notice required to be given to Plaintiff pursuant to this agreement shall be sent to Plaintiff's counsel by overnight delivery, as follows:

Greer & Associates, P.C.  
Attn: Ida Rae Greer, Esq.  
665 Broadway, Suite 805  
New York, New York 10012

Any notice required to be given to Defendants pursuant to this agreement shall be sent by overnight delivery as follows:

To I. Aranovich: Lynn M. Kelly, Esq.  
MFY Legal Services, Inc.  
Attn: Adele Bartlett, Esq., of Counsel  
299 Broadway  
New York, New York 10007

To Sanders: 301 East 73rd St., Apt. 7B  
New York, New York 10021

21. The provisions of this agreement are independent and separable from each other and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in parts.

22. Defendants hereby release and discharge Plaintiff, its managing agent, its employees, agents, partners, members, officers and directors, their heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims,

and demands whatsoever, in law, admiralty or equity, which against the Plaintiff, its managing agent, its employees, agents, partners, members, officers and directors, their heirs, executors, administrators, successors and assigns, Defendants ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever relating to the allegations and defenses in the Action, Second Action and this agreement, from the beginning of the world to the day of the date of this agreement.

23. Provided that Plaintiff has not sought to compel any one or more of the Defendants' specific performance of any of the terms of this agreement, and provided that this Action has not been restored and/or Plaintiff has not sought to restore this Action to the calendar (as provided herein above), and provided Defendants have otherwise fully complied with all terms of this agreement, effective February 15, 2006, Plaintiff hereby releases and discharges Defendants, their heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the Defendants and their heirs, executors, administrators, successors and assigns Plaintiff ever had, now has or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever relating to the allegations and defenses in the Action and this agreement, from the beginning of the world to the day of the date of this agreement.

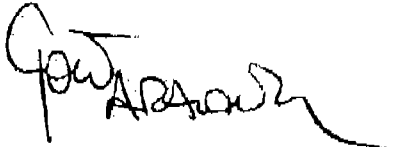
24. This agreement may be executed in counterparts. *a FAIR copy of this agreement shall be deemed original.*

25. This Court (Schlesinger, J.S.C.) shall retain jurisdiction over the Action and any and all claims with respect to the enforcement of this agreement.

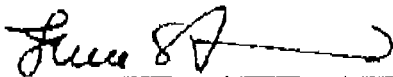
Dated: New York, New York  
January 12, 2005



Greer & Associates, P.C.  
Attorneys for Plaintiff in the Action and  
Second Action  
665 Broadway, Sta. 805  
New York, N.Y. 10012



Jorge Aranovich <sup>of Second Avenue</sup>  
Defendant in the Action, *Pro Se*  
6406 Forward Ave.  
Pittsburgh, Pa. 15217



Irene S. Aranovich  
Defendant in the Second Action, *Pro Se*  
301 East 73<sup>rd</sup> St., Apt. 7B  
New York, N.Y. 10021



Adele Bartlett,  
of counsel to Lynn M. Kelly, Esq.  
MPY Legal Services, Inc.  
Attorneys for Defendant Irene S. Aranovich in  
the Action  
299 Broadway, 4<sup>th</sup> Fl.,  
New York, N.Y. 10007

Geoffrey Warren Sanders  
Defendant in the Action, *Pro Se*  
301 East 73<sup>rd</sup> St., Apt. 7B  
New York, N.Y. 10021



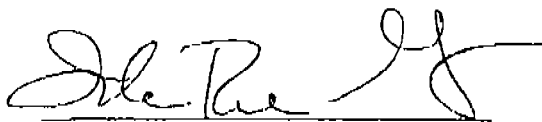
Domen Holding Co.  
Plaintiff in the Action and the Second Action  
351 East 83<sup>rd</sup> Street  
New York, N.Y. 10028

SO ORDERED

**ALICE SCHLESINGER**

Hon. Schlesinger, J.S.C.

Dated: New York, New York  
January 12, 2005

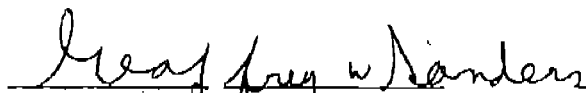


Greer & Associates, P.C.  
Attorneys for Plaintiff in the Action and  
Second Action  
665 Broadway, Ste. 805  
New York, N.Y. 10012

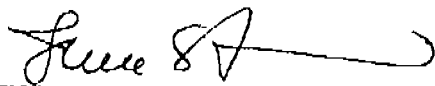


Adele Bartlett,  
of counsel to Lynn M. Kelly, Esq.  
MFY Legal Services, Inc.  
Attorneys for Defendant Irene S. Aranovich in  
the Action  
299 Broadway, 4<sup>th</sup> Fl.,  
New York, N.Y. 10007

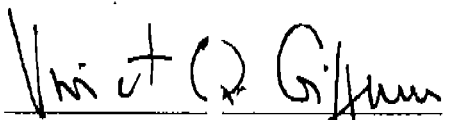
Jorge Aranovich <sup>at Second Avenue</sup>  
Defendant in the Action, *Pro Se*  
6406 Forward Ave.  
Pittsburgh, Pa. 15217



Geoffrey Warren Sanders  
Defendant in the Action, *Pro Se*  
301 East 73<sup>rd</sup> St., Apt. 7B  
New York, N.Y. 10021



Irene S. Aranovich  
Defendant in the Second Action, *Pro Se*  
301 East 73<sup>rd</sup> St., Apt. 7B  
New York, N.Y. 10021



Domen Holding Co.  
Plaintiff in the Action and the Second Action  
351 East 83<sup>rd</sup> Street  
New York, N.Y. 10028

SO ORDERED

---

Hon. Schlesinger, U.S.C.

Dated: New York, New York  
January 12, 2005



Greer & Associates, P.C.  
Attorneys for Plaintiff in the Action and  
Second Action  
665 Broadway, Ste. 805  
New York, N.Y. 10012




Adele Bartlett,  
of counsel to Lynn M. Kelly, Esq.  
MFY Legal Services, Inc.  
Attorneys for Defendant Irene S. Aranovich in  
the Action  
299 Broadway, 4<sup>th</sup> Fl.,  
New York, N.Y. 10007

Jorge Aranovich <sup>at Second Avenue</sup>  
Defendant in the Action, *Pro Se*  
6406 Forward Ave.  
Pittsburgh, Pa. 15217

Geoffrey Warren Sanders  
Defendant in the Action, *Pro Se*  
301 East 73<sup>rd</sup> St., Apt. 7B  
New York, N.Y. 10021



Irene S. Aranovich  
Defendant in the Second Action, *Pro Se*  
301 East 73<sup>rd</sup> St., Apt. 7B  
New York, N.Y. 10021



Domen Holding Co.  
Plaintiff in the Action and the Second Action  
351 East 83<sup>rd</sup> Street  
New York, N.Y. 10028

SO ORDERED



Hon. Schlesinger, J.S.C.

**ALICE SCHLESINGER**  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DOMEN HOLDING CO.,

Plaintiff,

-against-

IRENE S. ARANOVICH and, JORGE  
ARANOVICH,

Defendants.

Index No. 122189/03

**STIPULATION  
DISCONTINUING ACTION  
WITH PREJUDICE**

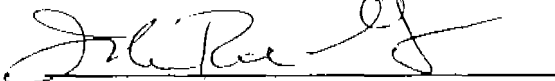
IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys of record for such parties and the pro se party Defendants of record to the above-entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above-entitled action be, and the same hereby is discontinued without costs and/or attorneys fees incurred in this action to any party as against the other with prejudice, as all claims made in this action are subsumed and have been settled within the action entitled *Domen Holding Co. v.*

*Irene S. Aranovich, Jorge Aranovich and Geoffrey Warren Sanders, N.Y. County Index*


No. 123182/00. This stipulation may be filed without further notice with the Clerk of the Court

*Signatures by fax shall be deemed originals for purposes of this stipulation. jws*  
Dated: New York, New York  
January 12, 2005

GREER & ASSOCIATES, P.C.



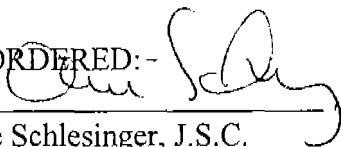
By: Ida Rae Greer, Esq.  
Attorneys for Plaintiff  
665 Broadway, Suite 805  
New York, New York 10012  
(212) 253-1900



Irene S. Aranovich  
Pro-Se Defendant

Jorge Aranovich  
Pro-Se Defendant

SO ORDERED:-



Alice Schlesinger, J.S.C.

**ALICE SCHLESINGER  
J.S.C**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DOMEN HOLDING CO.,

Plaintiff,

-against-

IRENE S. ARANOVICH and, JORGE  
ARANOVICH,

Defendants.

Index No. 122189/03

STIPULATION  
DISCONTINUING ACTION  
WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys of record for such parties and the pro se party Defendants of record to the above-entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above-entitled action be, and the same hereby is discontinued without costs and/or attorneys fees incurred in this action to any party as against the other with prejudice, as all claims made in this action are subsumed and have been settled within the action entitled *Domen Holding Co. v.*

*Irene S. Aranovich, Jorge Aranovich and Geoffrey Warren Sanders, N.Y. County Index*

No. 123182/00. This stipulation may be filed without further notice with the Clerk of the Court

Dated: New York, New York  
January 12, 2005

GREER & ASSOCIATES, P.C.

By: *Ida Rae Greer*  
Ida Rae Greer, Esq.  
Attorneys for Plaintiff  
665 Broadway, Suite 805  
New York, New York 10012  
(212) 253-1900

*Irene S. Aranovich*  
Irene S. Aranovich  
Pro Se Defendant

*Jorge Aranovich*  
Jorge Aranovich  
Pro-Se Defendant

SO ORDERED:  
ALICE SCHLESINGER  
Alice Schlesinger, J.S.C.