

APPENDIX A

***State of New York
Court of Appeals***

***Decided and Entered on the
sixteenth day of October, 2018***

Present, Hon. Janet DiFiore, Chief Judge, presiding.

Mo. No. 2018-762
Veeramuthu P. Gounder,
Appellant,
v.
Communicar, Inc. et al.,
Respondents.

Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is ORDERED, that the motion is dismissed upon the ground that this Court does not have jurisdiction to entertain a motion for leave to appeal from the order of the Appellate Division entered in this proceeding commenced in the Civil Court of the City of New York (*see* NY Const, art VI, § 3[b][7]; CPLR 5602[a]).

/s/ John P. Asiello

John P. Asiello
Clerk of the Court

[SEAL]

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**Supreme Court of the State of New York
Appellate Division: Second Judicial Department**

M244637
E/sl

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
FRANCESCA E. CONNOLLY
VALERIE BRATHWAITE
NELSON, JJ.

2017-11422

**DECISION & ORDER
ON MOTION**

Veeramuth P. Gounder,
plaintiff, v Communicar, Inc.,
et al., defendants.

(Appellate Term Docket No.
2015-00102QC; Civil Court
Index No. CV92419/11)

Motion by Veeramuth P. Gounder for leave to appeal to this Court from an order of the Appellate Term, Second, Eleventh, and Thirteenth Judicial Districts, dated May 17, 2017, which affirmed an order of the Civil Court of the City of New York, Queens County, entered December 17, 2014.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

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ORDERED that the motion is denied.

ENTER:

/s/ Aprilanne Agostino

Aprilanne Agostino
Clerk of the Court

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**At a term of the Appellate Term of the
Supreme Court of the State of New York
for the 2nd, 11th & 13th Judicial Districts**

**MICHELLE WESTON, J.P. SEPTEMBER 22,
THOMAS P. ALIOTTA 2016 TERM
DAVID ELLIOT, JJ. 2015-00102 Q C**

----- x

VEERAMUTHU P. GOUNDER,

Appellant,

-against-

**Lower Court #
CV 92419/11**

**COMMUNICAR, INC. and
THE BOARD OF DIRECTORS,**

Respondents.

----- x

The above named appellant having appealed to this court from an **ORDER** of the **CIVIL COURT OF THE CITY OF NEW YORK, QUEENS COUNTY** entered on **DECEMBER 17, 2014** and the said appeal having been submitted by **APPELLANT IN PERSON** and submitted by **ROBERT C. ANGELILLO, ESQ.** counsel for the respondents and due deliberation having been had thereon; it is hereby,

ORDERED AND ADJUDGED that the order entered December 17, 2014 is affirmed, without costs.

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Weston, J.P., Aliotta and Elliot, JJ., concur.

VEERAMUTHU P. GOUNDER
94-11 SPRINGFIELD BOULEVARD
QUEENS VILLAGE, N.Y. 11428

ENTER:

/s/ Paul Kenny [/s/ PK]

ROBERT C. ANGELILLO; ESQ. **PAUL KENNY**
ARKIN SOLBAKKEN, LLP. **CHIEF CLERK**
750 LEXINGTON AVENUE, **APPELLATE TERM**
25TH FL.
NEW YORK, N.Y. 10022

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 2nd, 11th & 13th JUDICIAL
DISTRICTS

----- x

PRESENT : WESTON, J.P., ALIOTTA and ELLIOT, JJ.

----- x

VEERAMUTHU P. GOUNDER,

Appellant, NO. 2015-102 Q C

-against-

DECIDED

COMMUNICAR, INC. and
THE BOARD OF DIRECTORS, (May 17, 2017)

Respondents.

----- x

Appeal from an order of the Civil Court of the City of New York, Queens County (William A. Viscovich, J.), entered December 17, 2014. The order denied plaintiffs motion to vacate a prior order of the same court entered October 1, 2014 granting defendants' unopposed motion to, among other things, dismiss the action, and, upon such vacatur, to restore the action to the trial calendar.

ORDERED that the order entered December 17, 2014 is affirmed, without costs.

In the endorsed complaint in this action, plaintiff, who is self-represented, states that he seeks to recover the principal sum of \$25,000 based on breach of contract or warranty, loss of time from work, and loss of use of property. By order entered May 23, 2013, the

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Civil Court (Barry A. Schwartz, J.) consolidated for all purposes this action, bearing index No. 92419/11, with two others, bearing index Nos. 32361/12 and 27168/12, under index No. 92419/11.

Defendants moved, pursuant to CPLR 3126, for an order precluding plaintiff from testifying at trial, based on his failure to provide relevant testimony at a court-ordered deposition, and thereupon dismissing the action, and for other relief. Plaintiff failed to submit any opposition papers to the motion, although he appeared and orally argued against it. In an order entered October 1, 2014, the Civil Court (William A. Viscovich, J.) granted defendants' motion "in the absence of opposition," and dismissed the action. By order entered December 3, 2014, this court dismissed plaintiffs appeal from that order on the ground that no appeal lies from an order entered upon the default of the appealing party. Plaintiff then moved to vacate the October 1, 2014 order dismissing the action and to restore the action to the trial calendar. By order entered December 17, 2014, the Civil Court (William A. Viscovich, J.) denied plaintiff's motion. Plaintiff appeals from the December 17, 2014 order.

Plaintiff was obligated to demonstrate both a reasonable excuse for his prior default and a potentially meritorious opposition to defendants' motion (*see Brinson v Pod*, 129 AD3d 1005 [2015]; *see also* CPLR 5015[a][1]). In his motion papers, plaintiff denied that he had received defendants' motion papers. Defendants refuted this claim by their submission of an attorney's affirmation of service, showing that they had

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sent plaintiff their motion papers by Federal Express to the address plaintiff had stated on the summons with endorsed complaint, and their submission of a copy of a tracking update from Federal Express showing that the papers had been delivered to plaintiff at that address. These papers raised a presumption that defendant's motion papers had been properly served, and plaintiff's conclusory denial of receipt, without more, was insufficient to rebut the presumption (see *Kihl v Pfeffer*, 94 NY2d 118, 122 [1999]; *Udell v Alcamo Supply & Contr. Corp.*, 275 AD2d 453, 453-454 [2000]). Since plaintiff failed to establish a reasonable excuse for his default, his motion was properly denied, and thus we do not consider whether plaintiff established a potentially meritorious opposition to defendants' motion.

We note that throughout the course of this litigation, plaintiff has submitted copious materials to the courts, but has not followed established rules of procedure, and has instead requested leniency on account of his pro se status. However, a litigant who appears pro se does so at his or her own peril and acquires no greater right than that of any other litigant (see *Roundtree v Singh*, 143 AD2d 995 [1988]; *CMP Protective & Investigative Group, Inc. v Antongiorgi*, 44 Misc 3d 143[A], 2014 NY Slip Op 51328[U] [App Term, 2d Dept. 2d, 11th & 13th Jud Dists 2014]).

Accordingly, the order entered December 17, 2014 is affirmed.

Weston, J.P., Aliotta and Elliot, JJ., concur.

**APPELLATE TERM OF THE SUPREME COURT
OF THE STATE OF NEW YORK FOR THE
2ND, 11TH & 13TH JUDICIAL DISTRICTS**

MICHELLE WESTON, J.P.
THOMAS P. ALIOTTA
DAVID ELLIOT, JJ.

----- x -----
Veeramuthu P. Gounder, DECISION & ORDER
Appellant, v Communicar, Inc., ON MOTION
et al, Respondents. Appellate Term
Lower Court # CV 02419/11 Docket No.
2015-102 Q C

Motion by appellant for leave to reargue an appeal from an order of the Civil Court of the City of New York, Queens County, entered October 1, 2014, which was determined by decision and order of this court dated May 17, 2017, or, in the alternative, for leave to appeal to the Appellate Division from the decision and order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

ENTER:

/s/ Paul Kenny [/s/ PK]
Paul Kenny
Chief Clerk

**APPELLATE TERM OF THE SUPREME COURT
OF THE STATE OF NEW YORK FOR THE 2ND, 11TH
& 13TH JUDICIAL DISTRICTS**

MICHAEL L. PESCE, P.J.
MICHELLE WESTON
DAVID ELLIOT, JJ.

----- x -----
Veeramuthu P. Gounder, DECISION &
Appellant, v Communicar, Inc. ORDER ON
et al., Respondents. MOTION

Lower Court # CV-092419/11 Appellate Term
----- x ----- Docket No.
2014-2681 Q C

Appeal from an order of the Civil Court of the City
of New York, Queens County, entered October 1, 2014.

On the court's own motion, it is

ORDERED that the appeal is dismissed.

Appellant did not submit any papers in opposition to respondent's motion giving rise to the October 1, 2014. No appeal lies from an order entered upon the default of the appealing party (*see CPLR 5511; Benitez v Olson*, 29 AD3d 503 [2006]; *Viggiani v Grodotzke*, 306 AD2d 273 [2003]; *see also M & C Bros., Inc. v Thrum*, 75 AD3d 869 [2010]). Appellant's remedy, if he be so advised, is to move in the Civil Court to vacate the default order.

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Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Motion denied. There is no basis whatsoever for vacating the Order of Dismissal. The court simply refers to its previous order. There is nothing that has changed in the interim that the court can find that would indicate that the Plaintiff would cooperate now. If further motions are brought, the court could clearly consider sanctions against the Plaintiff.

/s/ William A. Viscovich
12/17/14 Judge of the Civil Court

WILLIAM A. VISCOVICH
JUDGE, CIVIL COURT

Adjournments

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**Civil Court of the
City of New York
County of Queens
Part 34**

**Index Number 92419/11
Motion Cal # 4
Motion Seq. #
Paper Submitted to
Special Term
on September 18, 2014**

VEERAMUTHU P. GOUNDER

Plaintiff,
against [Entered
COMMUNICAR, INC. and Oct. 1, 2014]
THE BOARD OF DIRECTORS
Defendant,

DECISION/ORDER

Recitation, as required by CPLR §2219(a),
of the papers considered in the review of this
Motion

Papers	Numbered
Notice of Motion and Affidavits	
Annexed.....	<u>1</u>
Order to Show Cause and	
Affidavits Annexed.....	
Answering Affidavits.....	
Replying Affidavits.....	
Exhibits.....	
Supplemental Affidavit.....	

Motion by defendants to preclude plaintiff from
testifying at trial and for other relief is granted in the
absence of oppositions as set forth below.

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The court finds that plaintiff failed to provide testimony at his examination before trial (EBT) in violation of the court's September 3, 2013 order.

The court has done everything possible to allow plaintiff to proceed with his case. However, examination of 43 pages of the EBT transcript clearly demonstrate either plaintiff's lack of desire or inability to cooperate. The court has never seen a transcript so devoid of anything useful whatsoever. Plaintiff is uncooperative, argumentative and has generally exhibited a total disregard of the process of litigation and his obligations as a party thereto. Despite the fact that this court and its court attorney and even defendant's counsel have attempted to explain the rules and procedures regarding discovery and motion practice, the plaintiff has demonstrated in court the same lack of cooperation shown throughout the EBT transcript.

Due to plaintiff's refusal to provide any relevant testimony at his EBT, plaintiff hereby precluded from testifying at trial in the above consolidated actions pursuant to CPLR § 3126(2). Without such trial testimony, plaintiff will be unable to prove his claim. As such, dismissal of all three consolidated cases is warranted under CPLR § 3126(3).

Accordingly, the motion by defendants to preclude and, thereupon, for dismissal of the complaint. is granted as to all three actions.

Furthermore, in the event plaintiff initiates *any* future litigation against defendant Communicar, Inc., which is found to be duplicative of the above-captioned

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consolidated actions, plaintiff should be aware that he may be assessed sanctions.

The foregoing constitutes the decision and order of this court.

9/30/14 /s/ William A. Viscovich
Date **HON. WILLIAM A. VISCOVICH**
Judge, Civil Court

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ENTER:

/s/ Paul Kenny
Paul Kenny
Chief Clerk [/s/ PK]
DEC 03 2014

APPENDIX B

**Civil Court of the City
of New York**
County of Queens
~~Small Claims Part~~

Return Date: 12/17/14
Index #: CV-092419-11/QV
Motion Calendar
No.: _____
Motion Sequence
No.: #3 _____

VEERAMUTHA P.
GOUNDER
Claimant(s)

DECISION/ORDER

Against
COMMUNICAR INC
& THE BOARD OF
DIRECTORS
Defendant(s)

Present
Hon. William A. Viscovich

Recitation, as required by CPLR 2219(a), of the papers
considered in the review of this Motion to:

**Vacate the Default judgment and restore the
action to the trial calendar.**

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	_____
Order to Show Cause and Affidavits Annexed	1
Answering Affidavits	2
Replying Affidavits	_____
Exhibits	_____
Other	_____

**Civil Court of the
City of New York** Index Number
County of Queens CV-092419-11/
Part 30 Motion Cal # 6
Motion Seq. #

Veeramuthu P. Gounder

Claimant(s)/Plaintiff(s)/Petitioner(s) (Entered
against Sep. 3, 2013)

Communicar, Inc. and
the Board of Directors

Defendant(s)/Respondent(s),

DECISION/ORDER

Recitation, as required by CPLR §2219(a),
of the papers considered in the review of this
Motion

Papers	Numbered
Notice of Motion and Affidavits	
Annexed.....	<u>1-2</u>
Order to Show Cause and	
Affidavits Annexed.....	
Answering Affidavits.....	
Replying Affidavits.....	
Exhibits.....	
Supplemental Affidavit.....	

Upon the foregoing cited papers, the Decision/
Order on this Motion to compel discovery is as follows:

- 1) Plaintiff shall appear for an examination before trial on 9/27/13, 10:00 a.m. at Barrister Court

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Reporting, 88-36 Sutphin Blvd, and shall produce all documents in support of is claim and all documents demanded by Defendant by demands dated August 22, 2012. Plaintiff shall be precluded form offering any documents at trial not produced at the examination before trial.

2) The trial shall be adjourned From 9/10/13 to 1/15/14 and cases brought under Index No. 27168/12 and Index No. 32361/12 shall also be adjourned to 1/15/14.

9/3/13 /s/ Date Judge, Civil Court

- 3) Within 30 days after the deposition defendant will provide plaintiff with any documents that defendant intends to submit.

Civil Court of the Index Number
City of New York 92419-11/ 21
County of Q Motion Cal. # 7
Part 34 Motion Seq. #

VEERAMUTHU P. GOUNDER

Claimant(s)/Plaintiff(s)/Petitioner(s) (Entered
against Aug. 10, 2012)

COMMUNICAR, INC.

Defendant(s)/Respondent(s),

DECISION/ORDER

Recitation, as required by CPLR §2219(a),
of the papers considered in the review of this
Motion

Papers	Numbered
Notice of Motion and Affidavits	
Annexed.....	
Order to Show Cause and	
Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	
Exhibits.....	
Supplemental Affidavit.....	

Upon the foregoing cited papers, the Decision/
Order on this Motion to vacate dismissal is as follows:

The motion is granted and the matter shall be re-
stored to the trial calendar.

APPENDIX C

State of New York, Index Number
County of Queens **CV-092419-11/ QU**
Civil Court of the City of
New York Civil Part

VEERAMUTHU P.	SUBPOENA FOR
GOUNDER	RECORDS
Plaintiff(s)	Requested by:
VEERAMUTHU P.	VEERAMUTHU P.
GOUNDER	GOUNDER
-against-	94-11 SPRINGFIELD
COMMUNICAR, INC.	BLVD
AND THE BOARD OF	Queens Village, NY
DIRECTORS	11428
Defendant(s)	

THE PEOPLE OF THE STATE OF NEW YORK

To: ARKIN SOLBAKKEN LLP 590 MADISON AVE
35 FLOOR NEW YORK, NY 10022

We command that you or someone on your behalf provide and produce the following item(s), along with a copy of this subpoena:

\$OT {Optional-Description of what needs to be subpoenaed} Attached: Itemized list of documents, duly notarized, pertaining to case bearing index number-CV-092419-11/QU, which were submitted to court in original by the plaintiff, and which, were later given to the defense lawyer, (who had not filed a notice of appearance,) by the Honorable Judge Jodi Orlow, (and who took the papers with him out of the court) on January 15, 2014 at the bench trial in the civil court of the City of New York County of Queens. Total pages

(single sided) including subpoena for records – quantity 6.

To the Clerk of the Civil Court of the City of New York County of Queens located at **89-17 Sutphin Boulevard, Jamaica, NY 11435** on or before **September 18, 2014** in Part 11 – Self Represented Non-Jury 101 at 9:30 AM

to the Records Section of this Court located in Room QUEENS CIVIL COURT ROOM 147 89-17 SUTPHIN BLVD JAMAICA NY 11435

to the Hon _____ in Part, _____
Room _____.

NOTE: A copy of any subpoena for records served in a pending action shall also be served on each party who has appeared in the action, according to CPLR Rule 2103, so that it is received by such parties promptly after service on the witness and before the production of books, papers or other things. You need not pay a witness fee to anyone other than the witness, but you must fill out an affidavit of service for each party served, as well as for the witness.

Failure to comply with a subpoena may be punishable as contempt of court and/or make you liable for a penalty not exceeding **ONE HUNDRED FIFTY DOLLARS (150.00)** and damages sustained by the person on whose behalf the subpoena was issued (CPLR 2308).

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Date: August 19, 2014

[SEAL]

Carol Alt
CHIEF CLERK

Carol Alt
Chief Clerk

If required, So Ordered:

Judge of the Civil Court of the City
of New York

**State of New York,
County of Queens
Civil Court of the City of
New York Civil Part**

**Index Number
CV-027168/12/QU**

**VEERAMUTHU P.
GOUNDER**

Plaintiff(s)

-against-

**COMMUNICAR, INC.
AND THE BOARD OF
DIRECTORS**

Defendant(s)

**SUBPOENA FOR
RECORDS**

Requested by:

**VEERAMUTHU P.
GOUNDER**

**94-11 SPRINGFIELD
BLVD
Queens Village, NY
11428**

THE PEOPLE OF THE STATE OF NEW YORK

**To: ARKIN SOLBAKKEN LLP 590 MADISON AVE
35 FLOOR NEW YORK, NY 10022**

We command that you or someone on your behalf provide and produce the following item(s), along with a copy of this subpoena:

\$OT {Optional-Description of what needs to be subpoenaed} Attached: – Itemized list of documents, duly notarized, pertaining to case bearing index number-CV-027168-12/QU, which were submitted to court in original by the plaintiff, and which were later given to the defense lawyer, (who had not filed a notice of appearance,) by the Honorable Judge Jodi Orlow, (and who took the papers with him out of the court) on January 15, 2014 at the bench trial in the civil court of the City of New York County of Queens. Total pages

(single sided) including subpoena for records – quantity 04.

To the Clerk of the Civil Court of the City of New York County of Queens located at 89-17 Sutphin Boulevard, Jamaica, NY 11435 on or before September 18, 2014 in Part 11 – Self Represented Non-Jury 101 at 9:30 AM

to the Records Section of this Court located in Room QUEENS CIVIL COURT ROOM 147 89-17 SUTPHIN BLVD JAMAICA NY 11435

to the Hon _____ in Part, _____
Room _____.

NOTE: A copy of any subpoena for records served in a pending action shall also be served on each party who has appeared in the action, according to CPLR Rule 2103, so that it is received by such parties promptly after service on the witness and before the production of books, papers or other things. You need not pay a witness fee to anyone other than the witness, but you must fill out an affidavit of service for each party served, as well as for the witness.

Failure to comply with a subpoena may be punishable as contempt of court and/or make you liable for a penalty not exceeding **ONE HUNDRED FIFTY DOLLARS (150.00)** and damages sustained by the person on whose behalf the subpoena was issued (CPLR 2308).

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Date: August 19, 2014

[SEAL]

Carol Alt
CHIEF CLERK

Carol Alt
Chief Clerk

If required, So Ordered:

Judge of the Civil Court of the City
of New York

**State of New York,
County of Queens
Civil Court of the City of
New York Civil Part**

Index Number
CV-032361-12/QU

**VEERAMUTHU P.
GOUNDER**

Plaintiff(s)

-against-
**COMMUNICAR, INC.
AND THE BOARD OF
DIRECTORS**

Defendant(s)

**SUBPOENA FOR
RECORDS**

Requested by:
**VEERAMUTHU P.
GOUNDER
94-11 SPRINGFIELD
BLVD
Queens Village, NY
11428**

THE PEOPLE OF THE STATE OF NEW YORK

**To: ARKIN SOLBAKKEN LLP 590 MADISON AVE
35 FLOOR NEW YORK, NY 10022**

We command that you or someone on your behalf provide and produce the following item(s), along with a copy of this subpoena:

\$OT {Optional-Description of what needs to be subpoenaed} Attached: – Itemized list of documents, duly notarized, pertaining to case bearing index number-CV-032361-12/QU, which were submitted to court in original by the plaintiff, and which were later given to the defense lawyer, (who had not filed a notice of appearance,) by the Honorable Judge Jodi Orlow, (and who took the papers with him out of the court) on January 15, 2014 at the bench trial in the civil court of the City of New York County of Queens. Total pages

(single sided) including subpoena for records – quantity 3.

To the Clerk of the Civil Court of the City of New York County of Queens located at 89-17 Sutphin Boulevard, Jamaica, NY 11435 on or before September 18, 2014 in Part 11 – Self Represented Non-Jury 101 at 9:30 AM

to the Records Section of this Court located in Room QUEENS CIVIL COURT ROOM 147 89-17 SUTPHIN BLVD JAMAICA NY 11435

to the Hon _____ in Part, _____
Room _____.

NOTE: A copy of any subpoena for records served in a pending action shall also be served on each party who has appeared in the action, according to CPLR Rule 2103, so that it is received by such parties promptly after service on the witness and before the production of books, papers or other things. You need not pay a witness fee to anyone other than the witness, but you must fill out an affidavit of service for each party served, as well as for the witness.

Failure to comply with a subpoena may be punishable as contempt of court and/or make you liable for a penalty not exceeding **ONE HUNDRED FIFTY DOLLARS (150.00)** and damages sustained by the person on whose behalf the subpoena was issued (CPLR 2308).

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Date: August 19, 2014

[SEAL]

Carol Alt
CHIEF CLERK

Carol Alt
Chief Clerk

If required, So Ordered:

Judge of the Civil Court of the City
of New York

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

----- x

VEERAMUTHU P. GOUNDER,

Plaintiff,

Index No.CV-092419-11/QU

-against-

COMMUNICAR INC. and THE BOARD OF DIRECTORS,

Defendants,

----- x

EXAMINATION BEFORE TRIAL of the Plaintiff,

VEERAMUTHU P. GOUNDER, taken by the Defendant, pursuant to Order, held at the offices of BARRISTER REPORTING SERVICE, 88-36 Sutphin Boulevard, Jamaica, New York, on September 27, 2013, at 10:00 a.m. before a Notary Public of the State of New York.

BARRISTER REPORTING SERVICE, INC.

120 Broadway

New York, N.Y. 10271

212-732-8066

* * *

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[43] Gounder

that it will continue on another day but at this point I
am going to make an appropriate motion with regard
to your conduct here today and we will go on from
there. Thank you. End the record.

(Time noted: 11:00 a.m.)

/s/ Veeramuthu P. Gounder

VEERAMUTHU P. GOUNDER

Subscribed and Sworn to before me
this 28th day of Jun. 2014

/s/ Mahesh M. Patel
Notary Public

