

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 02 C 7992
	)	
GLOBAL DISTRIBUTORS, INC., and	)	Hon. Blanche M. Manning
JOHN ASOOFI	)	
	)	
Defendants/Third Party Plaintiffs,	)	
	)	
vs.	)	
	)	
NASER ALI, ALI ALADIMI, and	)	
TWIN WHOLESALE, INC.,	)	
	)	
Third-Party Defendants.	)	

**DEFENDANTS JOHN ASOOFI AND GLOBAL DISTRIBUTORS, INC.’S  
MOTION FOR STATUS HEARING, FOR LEAVE TO SUBSTITUTE COUNSEL,  
AND FOR RELIEF FROM JUDGMENT**

Defendants JOHN ASOOFI and GLOBAL DISTRIBUTORS, INC., by their attorneys, COTSIRILOS, TIGHE & STREICKER, LTD., respectfully moves this Honorable Court to set a status hearing in this case, and to allow undersigned counsel to file their appearance on behalf of Defendants. In support of this motion, Defendants state as follows:

**I. BACKGROUND**

1. The government brought a civil action against Defendants Global Distributors, Inc. and John Asoofi alleging, in essence, that Asoofi and his business, Global Distributors Inc., sold “threshold quantities” of pseudoephedrine on at least eight occasions and failed to obtain appropriate identification of the recipient, as required by 21 U.S.C. §830(a)(3). *See* Complaint.

2. On October 28, 2003, Defendants Global Distributors and Asoofi filed an Amended Third Party Complaint against third-party defendants Naser Ali, Ali Aladimi, and Twin Wholesale, Inc. [Docket No. 30]. Attorney Robert Aronson filed an appearance on behalf of third-party defendant Naser Ali. [Docket No. 23]. It is unclear whether the other two third-party defendants were properly served nor what, if any, efforts were made to do so.

3. On August 18, 2005, the Court entered summary judgment against Defendants and in favor of Plaintiffs [Dist. Ct. Docket No. 48], and on October 17, 2005, the Court denied Defendants' motion to reconsider that ruling [Dist. Ct. Docket No. 56]. On November 16, 2005, the Court entered an order assessing civil penalties against Global Distributors, Inc. and John Asoofi, jointly and severally, in the amount of \$200,000.00, the maximum amount allowable. [Dist. Ct. Docket No. 63]. Finally, on December 12, 2005, "the Court, *sua sponte*, revisit[ed]its prior interlocutory orders denying Ali's motion to dismiss the third party complaint against him" and dismissed the third-party complaint as against Naser Ali. [Docket No. 71]. That Order did not address the third-party complaint as against the other two third-party defendants, Ali Aladimi and Twin Wholesale, Inc., neither of whom appeared in the district court in response to the third-party complaint.

4. Defendants filed a notice of appeal, but that appeal was recently dismissed by the Seventh Circuit as premature, and the case remanded to this Court.

## **II. REQUEST FOR STATUS HEARING AND LEAVE FOR NEW COUNSEL TO APPEAR AND PRESENT DEFENDANTS' CASE ON THE MERITS**

5. Defendants were previously represented by attorney Kenneth Ditkowsky before this Court. Defendants have now retained the law firm of Cotsirilos, Tighe & Streicker to represent them

in this case, and Mr. Ditkowsky no longer represents the Defendants.

6. Defendants' new counsel believes that there are several issues of material fact that were not explored by prior counsel and/or not properly presented to the Court, and further that Defendants have a meritorious defense to raise as to the claims here. Very little discovery was conducted; indeed, only a single deposition was taken. Compounding the situation, the Court found that Defendants' counsel had not timely filed his response to the government's Rule 56.1 Statement of Facts during the summary judgment process, and that he had failed to submit a proper Rule 56.1 Statement of Facts in support of Defendants' motion for summary judgment. Thus, the Court held that the government's averments of fact were deemed admitted. [*See* Order dated August 18, 2005, Docket No. 48] ("In this case, the court has no choice but to find that the defendants have failed to comply with Rule 56.1 across the board. The defendants did not file a response to the government's statement of facts, and Asoofi's statement of facts is not supported by specific citations to the record or attached evidence (other than [the agent's] deposition). *The government's facts are thus deemed admitted and Asoofi's facts are immaterial for the purposes of the present summary judgment motions*, to the extent that they are not supported by [the agent's] deposition.") (emphasis added). Under the circumstances (*i.e.* the Court finding defense counsel made no valid Rule 56.1 summary judgment filings), this was akin to a default judgment being entered against Defendants.

7. Defendants' prior counsel adamantly claimed that he had filed a response to the government's Rule 56.1 Statement [*see* Docket No. 51 and Exhibit 1 attached thereto], but it does not independently appear in the docket sheet at the time the summary judgment papers were filed. While this might appear odd at first blush, ***notably, it appears that the government's summary judgment filings, likewise, never were entered on the District Court's docket sheet, and thus the government***

*just recently filed those documents, on March 24, 2006. [See Docket Entries 82-87].*<sup>1</sup> To the extent there was a mistake with respect to the filing or docketing of Defendants' Response to the government's Rule 56.1 Statement of Facts, Federal Rule of Civil Procedure 60 (discussed below) suggests that relief from the judgment is properly available.

8. The Court has great discretion to take into account all relevant circumstances in relieving a party from a judgment "upon such terms as are just," and for reasons including "mistake, inadvertence, surprise or excusable neglect," and "any other reason justifying relief from the operation of the judgment." Fed.R.Civ.Pr. 60(b). A motion under Rule 60(b) is timely if filed within "a reasonable time." *Id.* Here, Defendants seek relief from a judgment that was entered quite recently, in December 2005 and which is now before the Court prior to the entry of a final judgment in the case. Under all of the circumstances recited herein, Defendants' new counsel submits that equity counsels strongly in favor of allowing the Defendants to present their case and have it decided on the full merits, after adequate discovery and an adversarial process.<sup>2</sup>

9. Moreover, the damages imposed by the Court are the maximum amount of civil monetary penalties available under the statute – \$200,000.00 – despite the fact that "Global received [only] \$11,000 for its eight sales of pseudoephedrine products" [Docket No. 63] and that there was no history of any similar conduct by Defendants. Undersigned counsel is further informed and believes that certain information about Defendant Asoofi which was presented to the Court at the

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<sup>1</sup> These recent filings by the government include the government's Rule 56.1 Statement of Facts, and the government's responses to Defendants' Rule 56.1 Statements of Facts.

<sup>2</sup> Defendants have requested that the Court set a status hearing so that they may have time to present to the Court their position as to the legal and factual issues in this case, including with respect to the third-party defendants.

damages stage (*e.g.*, purported multiple Social Security numbers) was not properly investigated, explained, or defended.<sup>3</sup> Likewise, information in mitigation was not presented which may have impacted the Court's determination of the amount of civil penalty to impose. Defendants, through their new counsel, respectfully beseech the Court to allow them to present their defenses, both to the merits of the allegations and/or in mitigation as to the claim for a penalty in the maximum amount allowed by the statute.

WHEREFORE, for all the reasons discussed above, we respectfully request that the Court vacate the current judgment, grant undersigned counsel leave to file their appearance on behalf of Defendants, and set a status date for this case.

Respectfully submitted,

/s/ Terence H. Campbell  
An Attorney for Defendants John Asoofi and  
Global Distributors, Inc.

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<sup>3</sup> A copy of the damages memorandum filed by Defendants' prior counsel is attached as Exhibit A.

## CERTIFICATE OF SERVICE

Terence H. Campbell, an attorney, hereby certifies that in accordance with Fed.R.Civ. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF), the following documents:

1. Notice of Motion
2. Defendants John Asoofi and Global Distributors, Inc.'s Motion For Status Hearing, For Leave to Substitute Counsel, and For Relief From Judgment

were served pursuant to the District Court's ECF system as to ECF filers, including the United States Attorney's Office.

Terence H. Campbell further certifies that a hard copy was also served by U.S. mail to attorney Robert Aronson, who represents third-party defendant Naser Ali, first-class postage pre-paid, by depositing it into a mailbox at 33 N. Dearborn, Chicago, Illinois, on this 28th day of March, 2006.

/s/ Terence H. Campbell  
Terence H. Campbell

# **EXHIBIT A**

1  
2 **IN THE UNITED STATES DISTRICT COURT**

3 For the Northern District of Illinois  
4 Eastern Division

4	United States of America,	)	<u>Case No.: 02 C 7992</u>
5	Plaintiff,	)	Hon. B. Manning
6	vs.	)	
7	Global Distributors,	)	
8	Defendant.	)	

9  
10 **RESPONSE TO THE PLAINTIFF'S DAMAGE MEMORANDUM**

11  
12 Defendants' response to the plaintiff's damage memorandum was delayed due  
13 to the fact that it was not received until October 10, 2005. Defendant respectfully  
14 requests that this Court grant the defendant the opportunity to respond.

15 **Introduction**

16 The assessment of culpability of any kind as to the defendants is a  
17 disappointment. The defendant is a small business that was inducdd into the  
18 business of stocking and warehousing 'cold medicine.' The details of the defendant's  
19 involvement are disclosed in the 3<sup>rd</sup> party complaint that has not been denied by the  
20 defendant Nasar Ali.

21 Of a greater significance once again the plaintiff relies upon affidavits of  
22 Investigator Galvin, whose deposition reveals that his lack of personal knowledge is  
23 very significant. For instance, in Mr. Galvin's affidavit in paragraph 3 he draws a  
24 conclusion. As to John Asoofi, Mr. Galvin's deposition testimony on page 14 and 15,  
25 to wit:

- 24 **14. Q. And that John Asoofi, did he do**
- 25 **15. anything personally?**
- 16. A. Mr. Asoofi is the owner of the**
- 17. company who is registered with the Drug Enforcement**
- 18. Administration. And during a pre-registrant**

- 1 **19. investigation, Mr. Asoofi told one of our other**  
 2 **20. investigators that he would be responsible for all**  
 3 **21. record keeping for the firm.**  
 4 **22. Q. But you don't know anything specific**  
 5 **23. about John Asoofi being involved in any of the**  
 6 **24. transactions? His personally being involved?**

page 15

- 1 **1. A. Other than him stating that he would**  
 2 **2. be responsible for the records, no.**

6 Based upon a total lack of an ability to articulate a single act – wrongful or not the  
 7 plaintiff on page 3 states:

8 “Asoofi’s bad faith and culpability are evidence from the fact that he has not  
 9 told this Court the truth. Asoofi provide one explanation of events to the DEA  
 10 officials in his 1999 interviews and a different explanation to this Court in his  
 11 2004 affidavit.” (page 3)

12 It is respectfully submitted that the plaintiff statement quoted supra is patently unfair.  
 13 Further, the revelation of defendant talking to DEA agents in 1999 about these  
 14 transactions is a new development. Certainly it was not disclosed by Mr. Galvin and  
 15 in fact there do not appear to be any DEA agents who have been disclosed to this point  
 16 that spoke to Asoofi, and obtained different information that contradicts Mr. Asoofi’s  
 17 affidavits. As the plaintiff relies exclusively upon the ‘Declaration’ of Mr. Galvin the  
 18 deposition of Mr. Galvin becomes critical in testing the memorandum of the plaintiff.

16 **Discussion of the involvement of defendants.**

18 While this Court did grant the plaintiff Summary Judgment, however, it is  
 19 respectfully submitted that the articulation of any willful wrongful action on the part  
 20 of the defendants is totally lacking. The defendants maintain that there is not a  
 21 scintilla of admissible evidence that supports even the suggestion that the defendants  
 22 violated the act. **The Galvin deposition is replete with admissions of his lack of**  
 23 **personal knowledge;** however, his hearsay testimony garnered from undisclosed  
 24 sources is depicted as ‘gospel,’ while the affidavits based upon the personal knowledge  
 25 of the John Asoofi are disparaged. The admission of Ali, ascertained by his -denial of  
 the amended 3<sup>rd</sup> party complaint are similarly ignored in favor of the suppositions of a

1 witness whose testimony is replete with inadmissible hearsay statements as illustrated  
2 infra, to wit:

3 Page 22: 1. Q. Do you know if someone ordered it  
4 2. from Last Call Liquor or Last Call?  
5 3. A. I believe it is in the report. I can  
6 4. refer -

7 Page 23: Mr. Fatayer<sup>1</sup>, who was accompanied  
8 3. by two bodyguards, stated that Tony Kascin and Lisa  
9 4. Lawson, had indeed purchased several cases of the  
10 5. 60 milligram Release ephedrine hydrochloric bottles  
11 6. for him, Fatayer.

12 7. Q. Let's stop here. Do you know who  
13 8. this Tony Kascin and Lisa Lawson are?  
14 9. A. I do not. \*\*\*\*

15 15. Q. The information you're reading is  
16 16. just information that's in the report. You don't  
17 17. have any personal knowledge of it?

18 18. A. Corrcct. I have no personal  
19 19. knowledge.

20 20. Q. All right. Do you know if any  
21 21. further investigation was done of Mr. Fatayer to  
22 22. determine, if indeed, he was the manager of the  
23 23. store?

24 24. A. The only information I have was in  
25 page 24  
1. the report in your possession and in my possession.

2. Q. You don't know anything beyond the  
3. report?

4. A. No, I don't.

18 Page 25/25: And do you know if Mr. Fatayer had any  
19 21. Relationship with this?

20 22. A. If I -- only in information that's  
21 23. contained in the report of investigation.

22 24. Q. **You haven't looked further into the**  
23 page 26

24 1. **transaction to see if he was involved?**

25 2. A. **I personally did not.**

22 Page 25: RE: **Last Call Market**

24 <sup>1</sup> Mr. Faayer is a Convenience Store clerk. His being accompanied by two  
25 bodyguards is disclosed in Mr. Galvin's deposition as not prompting such  
concern as to promulgate just why a Convenience Store clerk who is involved  
in regulated (and possibly other drugs) should require two bodyguards to meet  
with DEA agents.

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- Q. Do you know who the salesman was?  
 4. A. I do not.  
 5. Q. Do you know if they acquired it  
 6. through a source like an independent contractor?  
 7. A. I do not know.  
 8. Q. So you really don't know if the sale  
 9. actually occurred or the transfer actually occurred  
 10. by virtue of an independent contractor selling to  
 11. either of those firms -- either of the three firms  
 12. referred to, Last Call, Last Call Liquor or Texaco  
 13. Mart?  
 14. A. That's correct.  
 15. Q. And do you know if last call and Last  
 16. Call Liquor are two companies or one?  
 17. A. I don't know if they're two companies  
 18. or one.

Indeed, the defendant has presented uncontroverted evidence based upon Mr. Asoofi's personal knowledge. The plaintiff can point to no contrary evidence that is in the record and in fact there is none.

It is respectfully submitted that defendants did everything possible to comply with the statutory requirements. It is also uncontroverted in the record that defendant in fact sold 'cold tablets' to Nasar Ali. Mr. Galvin's testimony as to the investigation of Mr. Ali is enlightening, to wit: (Galvin deposition TR 30, 31, 32)

6. Q. I see. Can you tell me of your  
 7. investigation of Mr. Ali ~~after reading the report?~~  
 8. A. This report reflects an interview of  
 9. Mr. Ali taken on April 12, 2001 with myself and  
 10. Investigator Gaddini.  
 11. We interviewed Mr. Ali at his  
 12. residence in Orland Park and asked him about his  
 13. association with Global Distributors. Mr. Ali said  
 14. that he had done business with Global, but with  
 15. regards to pseudoephedrine products, Mr. Ali said  
 16. ~~that he has never delivered or distributed~~  
 17. ~~pseudoephedrine products.~~  
 18. Q. Did he tell you that he bought  
 19. pseudoephedrine products from Global?  
 20. A. He said he did not.  
 21. Q. Did Mr. Ali also tell you he had  
 22. nver been an employee or sales representative for  
 23. Global Distributors?

1 24. A. That's correct.

page 31

2 1. Q. You had only one meeting with him?

3 2. A. I think that was just the one  
3 meeting.

4 4. Q. Did you follow through in connection  
5 with that meeting to ascertain if he had ever  
6 purchased from anybody, pseudo-amphetamines, or was  
7 involved further?

8 8. A. Well, we continued the investigation  
9 to see if he was involved.

10 10. Q. What were your determinations?

11 11. A. Well, we obtained information from  
12 one store owner, and the store owner alleged that  
13 Mr. Ali was involved.

14 14. Q. And did you contact Mr. Ali to find  
15 out what his involvement is or why he didn't tell  
16 you the truth?

17 17. A. I believe, at that point, Mr. Ali was  
18 not willing to talk to us. I'd have to review it,  
19 but I believe he wasn't going to talk to us or we  
20 were going to continue the investigation at --  
21 again, for investigation purposes we were probably  
22 going to wait.

23 23. Again, if I recall, I think it  
24 was more of a case that we were going to wait to

32

1. see what developed before contacting Mr. Ali as an  
2. investigative tool.

3. Q. Did someone tell you -- I seem to  
4. remember one of your reports saying he was  
5. interested in buying pseudo-amphetamines at any  
6. price?

7. A. I'd have to review the reports to be  
8. that specific.

19 On page 61 and page 62 Mr. Glavin testifies:

20 16. A. According to the document, it was  
21 17. obtained by me on March 15, 2001 from Mike Hamden  
22 18. at Top Discount, 5401 South Wentworth, Chicago,  
23 19. Illinois.

20 20. Q. And do you know where Mr. Hamden  
21 21. obtained his one bottle of Release?

22 22. A. I'd have to refer to the report, but  
23 23. I recall he claims that he got it from Mr. Ali.

24 24. Q. And that would be Mr. Naser Ali?

62

25 1. A. Yes.

1 It therefore appears affirmatively from Mr. Galvin's deposition that no one investigated  
 2 the relationship between defendants and Ali, and the assertion that Mr. Asoofi is not  
 3 telling the truth is improvident. Thus the statement found on page 4 of the  
 4 Government's memorandum is patently unfair and improvident, to wit:

4 "Many of Asoofi's statement(sic) to this court are patently untruthful because  
 5 they could have been readily verified if true.\*\*\*"

6 In a similar manner the Memorandum is unfair. The burden of proof in this  
 7 enforcement of a penal statute is not upon the defendant, but on the plaintiff. this  
 8 protection is guaranteed even in a civil enforcement proceeding by the **First, Fifth,  
 and Fourteenth Amendments to the United States Constitution.**

9 The record herein is unequivocal. There is no evidence in this record that John  
 10 Asoofi had any personal involvement in the transaction that is the subject matter of  
 11 this lawsuit. (Any involvement that he had was an employee of Global.) The testimony  
 12 of Mr. Galvin recited supra clearly contradicts his affidavits, and his sworn deposition  
 13 testimony 'trumps' his affidavits. Thus, no fine should be assessed against John  
 14 Asoofi individually.

14 As to the Global, the record herein is replete with the plaintiff's lack of  
 15 information. This Court has pending as part of these proceedings the Amended 3<sup>rd</sup>  
 16 party complaint filed by defendant against Ali. Ali has not denied the allegations of  
 17 the 3<sup>rd</sup> Amended Complaint. Thus, these admissions of the defendant Ali stand 'stark'  
 18 as evidence of the innocent involvement of Global in this transaction,<sup>2</sup> to wit: [the  
 19 amended 3<sup>rd</sup> party complaint is incorporated by reference and made part hereof as if  
 20 set forth in detail]

19 11. "That the plaintiff did in fact rely upon the representation of the defendants and  
 20 placed the corporate signature on documents referred to as an application to  
 21 obtain a license, received and accepted a license from the United States of  
 22 America, received product from Aladimi and his corporation Twin Distributors<sup>3</sup>

22 <sup>2</sup> In his deposition Mr. Galvin suggested that Mr. Naser should have obtained  
 23 registration:

23 2. Q. So in this if Global sold to  
 24 Mr. Naser, Mr. Naser was buying it for resale,  
 25 Mr. Naser has to be registered?  
 A. Correct.

<sup>3</sup> It is believed and therefore alleged upon reliable information and belief  
 that Twin Distributors is no longer in business. The third party plaintiff's

1 and when Ali made sales of product to his (Ali's) customers shipped the said  
product and billed the product.<sup>4</sup>

2 12. That the material representations of the defendants Ali and Aladimi were  
3 deceptive as they intended and did use the plaintiff as a 'cover' for illegal  
4 activities, i.e. the distribution and transfer of quantities of regulated substances  
to it is believed and therefore alleged operatives who ostensibly held  
themselves out to be convenience retailers, but in fact were suppliers to persons  
who used the product for illegal purposes.

5 13. That the plaintiff was then and there duped and at all times relevant believed  
6 that he was selling "release" to Ali as an independent contractor product that  
7 was intended to be resold by convenience store operators to the public to treat  
minor cold, flu and allergic problems. In fact, it is believed and therefore  
alleged from reliable information and belief that the representations made by  
the defendants were deceptive in that:

- 8 a. The defendants desired to 'move' quantities of regulated substances to their  
9 ultimate source without detection by the United States of America.  
10 b. That defendants desired to confuse and confound the United States of  
America by making the United States of America believe that that the third  
party plaintiff was the seller of said products.  
11 c. The defendants did not alert or disclose to the third party plaintiff that they  
12 intended to use its facilities as a 'cover' to attempt to deceive the United  
States of America."

13 The Memorandum filed by the plaintiff is interesting as on page 4 it states:

14 "Asoofi could not point to any business record \*\*\* to verify his latest  
15 statement that Ali was an independent contractor engaged in a business  
16 relationship with Global. He could not point to any business records to verify  
17 his latest statements that Ali resold the \*\*products to the Florida customers on  
his own behalf, rather than as an agent or employee of Global, nor that Ali  
negotiated the terms of sale for the Florida customers, nor that Ali received the  
profits from eh sales. Asoofi has no explanation for this absence of verifying  
documentation. \*\*\*\*"

18 The United States Constitution as well as the long history of the American Judicial  
19 system places the burden of proof on the plaintiff, and in the enforcement of a penal  
20 statute the criterion of clear and convincing evidence. The above quoted statement of

21 best information is that the United States of America has attempted to  
prosecute Aladimi and others for alleged criminal activities.

22 <sup>4</sup> Plaintiff did do a due diligence as to some of Ali's customers, when it was  
23 commercially required in its best judgment. The due diligence included but  
24 was not necessarily limited to requiring on Illinois sales retailer  
occupation tax numbers and in the case of interstate sales checked the  
internet listings. On these sales, Ali was responsible for the payment if  
25 his customer did not pay the invoice; however, plaintiff was always concerned  
that Ali might be or become over-extended and the due diligence was to limit  
the credit that was being extended to Ali. Ali at all times relevant was an  
independent contractor and not under the control of the third party  
plaintiff.

1 plaintiff assumes that the 'hearsay' affidavits and admissions of lack of knowledge by  
 2 the author of the plaintiff's affidavits have some omnipotence created by the title DEA.  
 3 Indeed, there is not a scintilla of evidence in the record that a single word that was  
 4 tendered by John Asoofi is not the absolute truth.

5 Investigator Galvin upon whose testimony the plaintiff relies admits at page 106  
 6 of his deposition:

7 **As you sit there now, you have no information or documentation that Naser Ali was  
 8 ever an employee of John Asoofi or Global do you?**

9 **A. No.**

10 **Q. To the best of your knowledge and belief, he, from all you've gathered, he was an  
 11 independent contractor who bought product from**

12 **Asoofi?**

13 **A. That wasn't determined.**

14 Thus, it appears it is disingenuous for the government to disparage the affidavit  
 15 of John Asoofi as to the independence of Ali. Mr. Galvin had every opportunity during  
 16 his deposition to testify that he had some 'iron clad hearsay' that Ali was an employee,  
 17 but instead Mr. Galvin pointed out that indeed he and the DEA had no information  
 18 that would provide a factual basis for the statement made by the plaintiff in the  
 19 memorandum.

20 Deprived of **Respondent Superior** the plaintiff to establish any intentional or  
 21 wrongful act on the part of global the plaintiff must do more than make broad  
 22 sweeping conclusions. The record herein reveals the 'Airborne Express' receipts that  
 23 Global produced. The information contained in the receipts is the very information  
 24 that the plaintiff claims to seek. These are business records that dispute the plaintiff's  
 25 claims; and with its vast resources the DEA does not dispute the authenticity of the  
 documents generated by the common carrier. Defendant however did generate the  
 order to Airborne, and did indeed furnish Airborne with the name of the entity to  
 receive the merchandise, the contact person, the delivery address, and the amount to  
 be collected on the COD purchase. It therefore has to be admitted that Global did  
 have an innocent involvement in the transaction; however, **it is definitely not  
 admitted** that any wrongdoing occurred.<sup>5</sup>

<sup>5</sup> Of significance is Mr. Aronson's examination of Mr. Galvin as to the relationship between Ali and Global. It is respectfully submitted that basic inquiries were ignored, to wit:

Issue as to Fines

As Mr. Galvin in his deposition (contrary to his affidavits) disparages any claim that John Asoofi has any degree of independent culpability. Thus, no fine should be assessed against Asoofi. Global is an Illinois Corporation in good standing and therefore it stands before this Court independent of its employees and shareholders.

Global similarly should not be fined. The record is clear that Global did everything that is reasonable for a business to do. Whether the action was done as a matter of 'rote', or in compliance with a statute is irrelevant if the mandate of the statute is observed. (Reference page 3 of the plaintiff's memorandum.)

The record is clear that the following occurred (see John Asoofi's Affidavit and ~~the~~ ~~one~~ Amended 3<sup>rd</sup> Party Complaint):

1. Nasar Ali, a long time customer of defendant Global placed an order for merchandise
2. The merchandise ordered by Ali was for resale, and Ali directed the product to be 'drop shipped' to certain customers.
3. That Global verified the information that was provided by Ali on the Internet Yellow pages, and provided the verified information to Airborne Express.
4. That Airborne Express delivered the merchandise to the Ali's customer and its contact person at the address and the business that Ali directed the product. When at the site of the business, Airborne collected the purchase price of the merchandise from the entity (and person named by Ali) obtained a signature

13. Q. Did you ask Mr. Asoofi if he ever

14. paid a salary to Mr. Ali?

15. A. I don't recall.

16. Q. Or withheld any wages?

17. A. I don't recall if that was asked.

18. Q. Or gave Mr. Ali a 1099?

19. A. I don't recall that, but we did

20. receive the one check as payment.

21. Q. As payment for something?

22. A. For something.

23. Q. For something?

24. A. Correct.

110

1. Q. But not -- it doesn't say wages, does

2. it?

3. A. It doesn't.

1 (COD purchase) and remitted the same to Global. Global after deducting its  
2 costs remitted the balance to Ali.

3 A search of the deposition of Galvin does not reveal that there is a scintilla of  
4 evidence developed by either Galvin or the DEA that the above is contrary to the  
5 procedure outlined in John Asoofi's affidavit based upon Asoofi's personal knowledge.

6 There is no question that Ali was a long standing customer of Global. Mr.  
7 Galvin testified at page 107:

- 8 1. Q. You did determine that he had dealt
- 9 2. with -- that Naser had dealt with Global and Asoofi
- 10 3. in the past, right?
- 11 4. A. That's correct.

12 At page 108, Mr. Galvin points out that the purpose of the statute in issue  
13 was:

14 ~~42. ... Correct. Take measures to establish~~  
15 ~~13. ... that it is a legitimate business.~~

16 That said, the COD delivery by Airborne meets or exceeds the criterion of the  
17 statute; however, the regulations provide for the regulated party to determine the  
18 identity by the hard copy yellow pages. The issue therefore is whether or not the  
19 electronic yellow pages and/or the physical determination is sufficient. It is  
20 respectfully submitted that unless the most procrustean standard is applied Global  
21 certainly did in fact sufficiently identify the Florida customers of Ali to meet and  
22 exceed the statutory requirements and therefore <sup>there</sup> should be no fine.

23 It is common knowledge that the convenience store is the 'mom and pop' store  
24 trade. It is the business of Global to supply these marginal stores. It is also well  
25 documented that the profit margins are 'slight' for both the 'mom and pop' stores and  
their suppliers. Even the competition (Jewel, Safeway et al) operate on margins that  
are pennies. The net effect is that a dollar in sales might yield a net of a penny even at  
the large supermarkets and even less at the 'mom and pop' store. The suppliers'  
margins are similarly meager, as if they charge too much their customers do not  
survive. This as connoted in the Amended 3<sup>rd</sup> party complaint (and unchallenged) is  
the reason that Global was so vulnerable to the 'fraud' of the 3<sup>rd</sup> party defendants.

Global and its shareholders and employees are victims! The undenied Amended  
3<sup>rd</sup> party complaint attests to this fact. Punishing the victim is not an act in the 'finest  
traditions' of American Justice! Everyone is a potential victim, and herein there is not  
a scintilla of evidence of even immoral conduct on the part of defendants. Even

1 though the Memorandum disputes the fact that Global sold product to a person it had  
2 a long relationship with, and that person sold to established customers of 'Twin' (the  
3 manufacturer) it is apparent except for physically looking up the names provided by  
4 Ali in the 'hard copy' Yellow pages, defendants obtained all the information to  
5 establish that the entities that Ali sold to were indeed legitimate businesses.

6 Under American Law a corporation has a separate identity from its  
7 shareholders and employees. John Asoofi is entitled to the protections of the First,  
8 Fifth and Fourteenth Amendments to the United States Constitution. Amongst those  
9 protections are the right to be subjected to quasi criminal statutes (i.e. those seeking  
10 fines - such as humongous fine sought herein) based upon 'Equal protection of the  
11 Law.' The fact that a corporation has shareholders with savings should not result in  
12 either the shareholders or the corporation being fined enormous sums for what is  
13 clearly at best a technical violation of a statute that has been complied with in  
14 substance - i.e. ascertaining that the entity that product is delivered to is a legitimate  
15 business.

16 The 'public good' will not be served by a fine in the instant case, as a fine will  
17 engender a 'disrespect' for the concept of 'fair play.' The miscreant party herein is  
18 Nasar Ali. His lack of even a denial of the Amended 3<sup>rd</sup> party complaint clearly speaks  
19 volumes. Ali is reported by the deposition of Galvin to have sought to purchase  
20 pseudoephedrine 'at any price.' (Whether Mr. Galvin's statements are accurate in  
21 this regard does not matter as the fact is the miscreant conduct of Ali is established by  
22 his failure to deny the allegations of the Amended 3<sup>rd</sup> party complaint.) The record  
23 herein is that Mr. Galvin has no personal knowledge and there was scant investigation  
24 of the fact upon which the alleged violation is alleged to have occurred. There is a  
25 Constitutional infirmity and a 'fair play' infirmity engendered by a fine assessed upon  
either Asoofi or Global who are not exhibited by a scintilla of evidence to have acted  
intentionally to violate the act. Whether or not defendants knew of the requirements  
of the statute they conducted their business in an ethical and prudent manner.<sup>6</sup>

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<sup>6</sup> Applying a little logic to these facts the question must be asked: How did Global know where the direct Airborne to deliver the product and collect the COD, if it did not properly identify the business that ordered the product from Ali. Airborne Express (now DHL) has published procedures for delivery and collection of COD's. This is not the case of a delivery to a curbside transient. The person and/or entity that was delivered product had to sign for it and issue a check. This procedure exceeds the requirements of the

1 CONCLUSION

2  
3 Defendant apologizes for readdressing issues that were part of its motion for  
4 Summary Judgment that the Court denied; however, the Galvin deposition is a  
5 'treasure trove' for the defense. The Amended 3<sup>rd</sup> party complaint not being denied is  
6 unequivocal evidence of the defendants lack of culpability, and/or at the very least  
7 creates disputed fact issues that should abrogate the Summary Judgment. The  
8 Amended 3<sup>rd</sup> party complaint is also unequivocal evidence of the defendants' complete  
9 and positive good faith, and their victimization. As Mr. Galvin's affidavit was the basis  
10 of plaintiff's assertions, the deposition of Galvin stands a beacon refuting the  
11 assertions of the plaintiff. Galvin's lacking of personal knowledge cannot testify as to  
12 hearsay or his personal speculations.

13  
14 It is respectfully submitted that any fine entered against either defendant would  
15 be unfair and violative of protections guaranteed to all citizens by the First, Fifth and  
16 Fourteenth Amendments to the United States Constitution. It is therefore respectfully  
17 submitted that no fine be assessed against either Global or Asoofi.

18  
19 Respectfully Submitted,

20  
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22  
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26  
27 regulations and certainly establishes a legitimate business. The fact that  
28 plaintiff suggests that the hearsay upon hearsay interpretation of an a  
29 reporter writer that one of the owners of the entity that product was  
30 delivered to does not recall the name Global is consistent with the fact that  
31 Nasar Ali was the seller and the party who dealt with the customer.