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**HEARING DATE AND TIME:  
OCTOBER 20, 2010 AT 10:00 AM**

ANNE PENACHIO

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
BOWLING GREEN DIVISION

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|--|---|--------------------------|
| In re                                      | : | CHAPTER 11               |
| QUEBECOR WORLD (USA) INC., <u>et al.</u> , | : | Jointly Administered     |
|  | : | CASE NO.: 08-10152 (JMP) |
| Debtor.                                    | : |                          |
|  | : |                          |

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**OPPOSITION OF COMPENDIUM SYSTEMS CORPORATION TO  
THE DEBTOR’S MOTION TO EXPUNGE ITS CLAIM NUMBERED  
1670 AND REQUEST FOR RELATED RELIEF**

COMPENDIUM SYSTEMS CORPORATION (“Compendium”), by and through its counsel, PENACHIO MALARA LLP, in opposition to the motion of QUEBECOR WORLD (USA) INC. et al. (collectively, the “Debtor”), to expunge the its claim numbered 1670, hereby sets forth as follows:

**BACKGROUND**

1. Compendium is a Delaware corporation established in or about 1978. It maintains a business office at 364 North Main Street, Port Chester, New York 10573.<sup>1</sup>
2. Compendium is engaged primarily in the publishing circulars, advertising

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<sup>1</sup> The facts are more fully set forth in the affidavit of John McAuliffe dated June 15, 2010, which was submitted in connection with litigation between the parties pending in state court. A copy is annexed to this opposition as Exhibit A.

inserts, catalogs, flyers and direct mail for large chain drug stores under the trade name “Beauty Handbook.”

3. Compendium typically engaged outside printers to publish the materials which, in turn, would be directly shipped to the customer or others on the customers behalf.

4. During the period from or about 2003 to 2008, Compendium engaged Quebecor, the Debtor’s predecessor, to perform certain printing jobs.

5. Initially, Quebecor properly performed services for which it was engaged. Indeed, Compendium paid Quebecor substantial sums in 2003 (\$231,615.00), 2004 (\$664,328.00), 2005 (\$950,339.00) and 2006 (\$1,080,458.00).

6. In 2007 and 2008, Quebecor performed sub-standard services for Compendium. It completely botched up several print and delivery jobs.

7. Upon information and belief, during the period from 2006 to 2009, Quebecor was experiencing severe financial reverses. It engaged in efforts to down-size its operations and re-structure its obligations. Quebecor closed print facilities where Compendium’s work was processed including plants in Kingsport, Tennessee, Red Bank, Ohio, and Brookfield, Wisconsin. It laid off or terminated virtually all of the staff members familiar with Compendium’s account, including Tom Tzoucalis, Account Manager; Nancy Oestreich, Account Manager; Brenda Reed, Ad Service Coordinator; Michael J. Riley, Vice President, Sales; David H. Blair, Vice President; Kerry Joyce, Account Representative; Mark “Duke” Mulvoy, Jr., Sales Executive; Jeremy Trescott, Customer Service Assistant; Rick Neal, Plant Manager; Brian O’Keefe, Customer Service Representative; Stacie Higa, Account Manager; and Chuck Landrum.

8. Upon information and belief, in or about 2007, Quebecor’s operations were

disrupted by the re-tooling of its presses.

9. In sum, during the period from 2007 through 2008, Quebecor's operations were in shambles vis a vis Compendium.

10. Quebecor filed for bankruptcy protection with this Court on January 21, 2008.

11. On or about July 22, 2008, Compendium, through its principal, filed a proof of claim in the amount of \$250,000.00 (the "Claim"). See Exhibit B. The Claim indicates that it is based upon improper print jobs.

12. The faulty print jobs relate, inter alia, to materials published for Walgreens, Longs Drugs, Rite Aid, and CVS. The errors included supplying the wrong materials to the customer, mixing up orders, and printing the incorrect prices. Upon information and belief, the errors occurred both pre-petition and post-petition. Some correspondence from Compendium to the Debtor which addresses the claim is annexed hereto as Exhibit C.

13. Upon information and belief, other than filing the Claim, Compendium did not actively participate in the Chapter 11 case.

### **THE STATE COURT ACTION**

14. On or December 18, 2009, an action was commenced in New York State Court by World Color (USA) Corp. fka Quebecor World ("World Color") against Compendium and its principal, John McAuliffe ("McAuliffe") and a former employee Michael DeSisto ("DeSisto") (the "State Court Action"). The State Court Action was assigned index number 29936/09. A copy of the complaint is annexed hereto as Exhibit D.

15. In the Complaint, Plaintiff seeks recovery of \$242,609.00 plus interest of

\$96,162.75 based upon the Defendants' alleged breach of contract. More specifically, Plaintiff alleges that Defendants failed to pay for printing services it allegedly rendered in December 2007 (pre-petition) and February and March 2008 (post-petition).

16. The Complaint consists of three causes of action. The first cause of action is for "Breach of Contract/Account Stated." The second cause of action is for "Quantum Merit." The Third Cause of Action is for "Unjust Enrichment."

17. The Complaint was not verified by an officer or director of the Plaintiff or by an individual with personal knowledge of the facts. Rather, it is verified by only Plaintiff's counsel, Vanessa Elliot of Beatie Padovano.

18. I filed an answer on behalf of Compendium, McAuliffe and DeSisto (collectively, the "Defendants"), a copy of which is annexed hereto as Exhibit E.

19. In the Answer, the Defendants set forth general denials (See Answer 1-52).

20. The Defendants also assert numerous affirmative defenses. (See Answer at 53-74). The affirmative defenses include the following:

Eighth Affirmative Defense - Reduction or offset due to injuries suffered by Defendants due to the culpable conduct of Plaintiff (Answer at 67-68)

Ninth Affirmative Defense - Plaintiff lacks standing (Answer at 69-70)

Tenth Affirmative Defense -Reduction or offset based on Plaintiff's culpable conduct Answer at 71-72)

Eleventh Affirmative Defense - lack of subject matter jurisdiction by virtue of the automatic stay implicated by 11 U.S.C. 362(b) due to

Plaintiff's Chapter 11 bankruptcy filing. Answer at 73-74)

21. The Answer is verified by John McAuliffe, who has personal knowledge of the facts and circumstances set forth therein and also by my partner, Francis Malara.

22. The defenses raised by the Defendants in the Answer are based upon the same facts as the proof of Claim, namely "improper print jobs" by the Debtor and/or its predecessor.

23. World Color moved for summary judgment in the State Court Action.

24. The Defendants opposed the motion and requested "reverse summary judgment" dismissing the Complaint.

25. The parties resolved the motion by stipulation, a copy of which is annexed hereto as Exhibit E. Basically, the Complaint was dismissed as to the individual defendants McAuliffe and DeSisto. World Color withdrew its motion for summary judgment as to Compendium and Compendium withdrew its request for "reverse" summary judgment. The parties agreed to proceed with discovery in the State Court Action.

26. The State Court scheduled a preliminary conference on October 1, 2010. A copy of the notice is annexed hereto as Exhibit G. Pursuant to the Notice and State Court procedure, discovery will proceed pursuant to a schedule "so ordered" by the Court.

27. At some point, I asked counsel for World Color to stipulate to vacate the automatic stay, to the extent applicable, to permit me to move forward with the affirmative defense of "set off" and consolidate all issues in the State Court. I am awaiting a response.

28. Shortly thereafter, my client received notice of the Debtor's motion to expunge the Claim, a copy of which is annexed hereto as Exhibit H. Although I contacted

counsel for the Debtor, I was unable to resolve the motion prior hereto.<sup>2</sup>

**THE MOTION TO EXPUNGE THE CLAIM SHOULD BE DENIED  
OR HELD IN ABEYANCE PENDING THE OUTCOME OF THE  
STATE COURT ACTION AND THE STAY SHOULD BE LIFTED,  
TO THE EXTENT APPLICABLE TO PERMIT COMPENDIUM TO  
ASSERT A SET OFF**

29. The Debtor seeks to expunge Compendium's claim because it lacks substantiation. While this may be correct, the sum and substance of the claim was addressed in the State Court Litigation. The parties are awaiting the entry of a discovery schedule regarding the case.

30. The validity of the claim is a component of the State Court Action. The motion to expunge Compendium's claim should be denied or held in abeyance pending the outcome of the State Court Action. Rather than proceed with an estimation hearing here and litigate in the State Court, it makes sense for the Claim to be determined by the State Court where a discovery schedule will soon be entered. Clearly, there is a nexus between the issues before this Court and the matter before the State Court. Discovery, which will cover the history of the relationship between the parties, will overlap.

31. The Debtor chose to proceed against Compendium in New York State Court. The Debtor, through counsel, actively participated in the State Court proceeding and even moved for summary judgment. It should not now be able to seek related relief in this Court.

32. It would be unfair for Compendium, a relatively small company, to be forced to litigate on two fronts manifestly causing it to endure undue hardship.

33. Allowing all related matters to proceed in State Court would preserve judicial economy and preserve judicial integrity by avoiding inconsistent results.

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<sup>2</sup> World Color's bankruptcy counsel appeared to be unaware of the pendency of the State Court Action.

34. Should the Court decline to grant the foregoing request, it is respectfully requested that the Court permit the parties to take discovery and hold an estimation hearing on the merits of the Claim.<sup>3</sup>

**COMPENDIUM SHOULD BE PERMITTED TO ASSERT ITS RIGHT TO SET OFF IN THE STATE COURT ACTION AND THE AUTOMATIC STAY, TO THE EXTENT THAT IT APPLIES SHOULD BE VACATED**

35. Section 553(a) of the Bankruptcy Code states, in relevant part, as follows:

Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case.

11.U.S.C. § 553.

36. Under New York Debtor & Creditor law, Compendium has the right to assert a setoff. (NY Debtor & Creditor Law § 151).

37. This Court recently examined set offs in the context of Chapter 11 in *Lehman Brothers Holdings*, 433 B.R. 101 (Bankr. S.D.N.Y. 2010). As set forth in *Lehman*, the Bankruptcy Code does not establish an independent right of setoff, but section 553 does preserve any right of setoff that may exist under applicable non-bankruptcy law. *Official Comm. of Unsecured Creditors v. Manufacturers & Traders Trust Co. (In re Bennett Funding Group)*, 146 F.3d 136, 138-39 (2d Cir.1998).

38. The following prerequisites must be satisfied to be eligible for setoff under section 553 of the Bankruptcy Code: “(1) the amount owed by the debtor must be a prepetition debt; (2) the debtor's claim against the creditor must also be prepetition; and (3) the debtor's claim against the creditor and the debt owed the creditor must be mutual.” *In re Lehman Bros. Holdings, Inc.*, 404 B.R. 752, 757 (Bankr.S.D.N.Y.2009) (quoting *In re BOUSA Inc.*, 2006 WL

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<sup>3</sup> I remain hopeful that, following discovery, the parties will be able to resolve their disputes.

2864964, \*3 (Bankr.S.D.N.Y. Sept. 29, 2006)).

39. In the instant case, the criteria for a setoff are met with respect to the pre-petition claim asserted by the Debtor against Compendium - of approximately \$6,420.00. First, the amount allegedly owed by the Debtor to Compendium is a pre-petition debt arising in 2007.

40. Second, the a component of the Debtor's claim against Compendium is pre-petition.<sup>4</sup>

41. Third, the debts are mutual. Mutuality, exists when "the debts and credits are in the same right and are between the same parties, standing in the same capacity." *Scherling v. Hellman Elec. Corp. (In re Westchester Structures )*, 181 B.R. 730, 739 (Bankr.S.D.N.Y.1995).

42. Based upon the foregoing, it is respectfully requested that the Court allow Compendium to proceed with its pre-petition setoff claim in State Court. Given the nominal amount involved - \$6,420.00 - it is submitted that the requirement of a formal motion should be dispensed with.

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<sup>4</sup> It should be noted that the Debtor has asserted defenses against the Debtor for services allegedly rendered post-petition by the Debtor. Such defenses are not subject to Section 553 because they arose "post-petition."

**WHEREFORE**, Compendium respectfully requests that this Court:

1. Deny the Debtor's motion to expunge its Claim;
2. Hold the motion in abeyance pending discovery and litigation in the State

Court Action;

3. Permit Compendium to exercise its right to setoff with respect to pre-petition claims; and
4. Grant such other and further relief as may be just and proper.

Dated: White Plains, New York  
September 20, 2010

**Respectfully submitted,**

**PENACHIO MALARA, LLP**

By: /s/ Anne Penachio  
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