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November 19, 2008

VIA FACSIMILE (518) 447-7181

AND FEDERAL EXPRESS

Hon. Michael C. Lynch
Justice of the Supreme Court
Albany County Supreme Court
Albany County Courthouse
Eagle Street
Albany, New York 12207

RE: *Bordeleau, et al. v. State of New York, et al.*
Index No. 6582-08

Dear Justice Lynch:

Please accept the enclosed Affirmation of Attorney Kevin J. Cross in Further Support of Defendant West Genesee Hotel Associates' Motion to Dismiss.

I am sending this via Federal Express for delivery tomorrow morning. I respectfully request that you consider this timely despite my failure to file it with the Court by today. I am presently faxing it to you and sending it via email to all counsel today, and consequently do not believe anyone will be prejudiced by the delay.

Respectfully submitted,

LIPPES MATHIAS WEXLER FRIEDMAN LLP

By: 

Lisa D. Primerano

LDP/ras

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

LEE BORDELEAU, et al.,

Plaintiffs,

vs.

THE STATE OF NEW YORK, et al.,

Defendants.

**ATTORNEY AFFIRMATION
IN FURTHER SUPPORT OF
DEFENDANT WEST GENESEE HOTEL
ASSOCIATES' MOTION TO DISMISS**

Index No.: 6582-08
Hon. Michael C. Lynch, J.S.C.

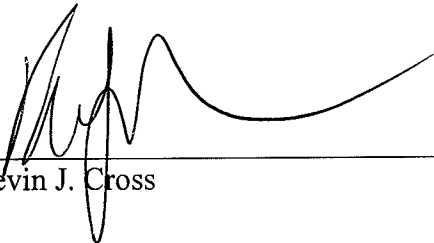
KEVIN J. CROSS, hereby affirms the following under penalty of perjury:

1. I am an attorney duly admitted to practice in the State of New York and a partner in the law firm of Lippes Mathias Wexler Friedman LLP, attorneys for defendant West Genesee Hotel Associates ("West Genesee"). As such, I am familiar with the facts and circumstances set forth in this Affirmation.
2. I make this Affirmation in reply to Plaintiffs' opposition to, and in further support of, Defendant West Genesee's Motion to Dismiss Plaintiffs' Verified Complaint. Specifically, I make this Affirmation to address the Affidavit of William L. Anderson, Ph.D. submitted by Plaintiffs in their opposition to all of the motions to dismiss.
3. As of the making of this Affirmation, I have received reply papers submitted on behalf of the State Defendants, American Axle & Manufacturing, Inc., and International Business Machines, Inc.
4. I do not want to burden this Court with having to read the same arguments as have already been presented to the Court. In order to avoid repetition and for the sake of brevity and

judicial economy, suffice to say that West Genesee shares the legal positions contained in its co-defendants' reply papers.

5. Plaintiffs' opposition to West Genesee's Motion to Dismiss falls short of refuting West Genesee's positions that (i) a complete defense is founded on documentary evidence, under CPLR Rule 3211(a)(1); and/or (ii) Plaintiffs have failed to state a cause of action, under Rule 3211(a)(7). For all of the reasons contained in the defendants' moving and reply papers, West Genesee requests that this Court dismiss the Complaint as against West Genesee.

DATED: Buffalo, New York
November 19, 2008



Kevin J. Cross