

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

SHAWN C. CARTER, S. CARTER  
ENTERPRISES, MARCY MEDIA  
HOLDINGS, LLC and MARCY MEDIA,  
LLC,

*Petitioners,*

-against-

ICONIX BRAND GROUP, INC. and ICON  
DE HOLDINGS, LLC,

*Respondents.*

Index No.: 655894/2018

Commercial Division Part 61

Motion Seq. No. 005

**AFFIRMATION  
OF ALEX SPIRO**

**ALEX SPIRO**, an attorney duly licensed to practice law in the State of New York,  
affirms the following under penalty of perjury:

1. I am a partner at Quinn Emanuel Urquhart & Sullivan, LLP, counsel of record for  
Petitioners Shawn C. Carter (“Mr. Carter”), S. Carter Enterprises (“SCE”), Marcy Media  
Holdings, LLC (“Marcy Holdings”), and Marcy Media, LLC (“Marcy Media” and together with  
Mr. Carter, SCE, and Marcy Holdings, the “Petitioners”). I have personal knowledge of the facts  
set forth herein.

2. I respectfully submit this affirmation in support of Petitioners’ order to show  
cause to discontinue this action pursuant to CPLR § 3217(b).

3. As set forth below, Petitioners no longer seek relief from this Court. As a result,  
Petitioners move to withdraw their Petition as moot. Petitioners move by order to show cause to  
discontinue this action because Respondents have filed an extensive motion for summary  
judgment, with a return date of February 13, 2019, and which Petitioners would ordinarily be  
required to respond to by February 6, 2019. However, given the circumstances, Petitioners

respectfully submit this motion requires no response. Indeed, at this stage, any decision on the merits of the summary judgment motion would constitute an advisory opinion. Petitioners seek this relief out of efficiency, to (i) avoid burdening the Court with unnecessary briefing; and (ii) in a good faith effort to avoid incurring additional legal expenses, which either party may seek to collect from the other at the conclusion of the arbitration.

4. On October 1, 2018, Respondents filed a Demand for Arbitration against Petitioners with the American Arbitration Association (the “AAA”), alleging breaches of obligations under a Master Settlement Agreement, dated July 6, 2015 (the “MSA”) and a Membership Interest Purchase Agreement, dated July 15, 2013 (the “MIPA”). *See* MSA, annexed hereto as **Exhibit 1**; *see also* MIPA, annexed hereto as **Exhibit 2**. These contracts contain parallel arbitration provisions, which provide that “[a]ny controversy or claim among the Parties arising out of or relating to this Agreement . . . shall be settled by arbitration[.]”

5. On January 25, 2019, Petitioners filed a counterclaim against Respondents in the same arbitration, alleging that over the course of five years, Iconix has breached its contractual obligation to make \$200,000 in payments to a charity that Mr. Carter (the entertainer and entrepreneur better known as JAY-Z) founded with his mother.

6. Prior to filing his counterclaim, Petitioners objected to the lack of diversity on the AAA’s arbitrator roster. As detailed in the Affirmation of Alex Spiro dated November 28, 2018 [CM/ECF No. 3], initially the AAA was not responsive to Petitioners’ concerns. Rather, the AAA presented Petitioners with an ultimatum: either they make arbitrator selections, or the AAA would make selections for Petitioners. *See* Email from Lisa Romeo, dated November 15, 2018, annexed hereto as **Exhibit 3**. The AAA imposed a deadline of November 30, 2018 for the parties to select arbitrators, warning that “[i]f the list of arbitrators is not returned by the date

specified,” they would proceed to appoint an arbitrator. *See* Letter from L. Romeo, dated Nov. 16, 2018, annexed hereto as **Exhibit 4**. In light of that deadline, Petitioners filed a Petition seeking to stay the arbitration and an order to show cause for a temporary restraining order and preliminary injunction [CM/ECF Nos. 1, 2].

7. That same day, Justice Saliann Scarpulla granted Petitioners’ request for a temporary restraining order [CM/ECF No. 26]. Justice Scarpulla asked counsel for Respondents how they could oppose Petitioners’ efforts to make the AAA more diverse, and expressed her view that it’s “a given” that “the AAA should be diverse[.]” *See* Hearing Transcript, dated Nov. 28, 2018, annexed hereto as **Exhibit 5**.

8. As a direct result of the temporary restraining order, the AAA agreed to provide previously-undisclosed information to Petitioners, including the fact that only “one arbitrator on the New York Large Complex Case Roster has self-identified as African-American.” The AAA also agreed to consider African-American arbitrator candidates proposed by Petitioners to improve diversity prospectively. *See* Letter from A. Spiro to Hon. Barry Ostrager, dated Dec. 9, 2018, annexed hereto as **Exhibit 6**.

9. On December 9, 2018, Petitioners filed a notice of withdrawal of Motion Sequence 001 [CM/ECF No. 48]. Petitioners requested that the stay of arbitration be lifted in light of positive developments between the Petitioners and the AAA. Petitioners explained that: (i) the AAA’s actions may moot Petitioners’ need for further relief; (ii) as a result, Petitioners sought to withdraw Motion Sequence 001 to allow for negotiations to continue; and (iii) dismissal of the underlying Petition was premature. *See* **Exhibit 6**. Petitioners also requested that the Court schedule a status conference in 90 days regarding the status of the relief requested

in the underlying Petition. *Id.* The Court granted Petitioners' request on December 10, 2018, scheduling a court conference for March 12, 2019 [CM/ECF No. 51].

10. On December 10, 2018, Respondents wrote a letter to this Court requesting that the hearing go forward, even though Petitioners already requested the Court lift the stay of arbitration the day before [CM/ECF No. 50]. At Respondents' request, the Court scheduled a status conference for December 12, 2018 [CM/ECF No. 53].

11. At the December 12, 2018 status conference, the Court granted Respondents permission to "make any application [they] wish," and also explained that "if for whatever reason the [P]etitioner elects to withdraw [the] petition, that will be the end of the matter." *See* Hearing Transcript, dated Dec. 12, 2018, annexed hereto as **Exhibit 7**.

12. After the Court lifted the stay, the AAA took steps to resume the arbitration. On December 11, 2018, the AAA held an administrative conference to discuss reengaging in arbitrator selection. The AAA and the parties agreed to submit three-page letters outlining their positions by December 18, 2018. *See* Email Chain dated Dec. 12, 2018, annexed hereto as **Exhibit 8**. On December 18, 2018, the parties submitted their letters. Petitioners explained their view that they had the contractual right to three arbitrators because no single arbitrator had been agreed-upon. Respondents argued that the parties had already agreed on a single arbitrator.

13. On December 20, 2018—prior to reaching a decision on the dispute—the AAA offered the parties the option of working with AAA Senior Vice President Harold Coleman, who is African-American, in a mediation of their disagreement. *See* Email from J. Zaino, dated Dec. 20, 2018, annexed hereto as **Exhibit 9**. Petitioners were willing to engage in mediation, but Respondents were not. *See* Email from A. Spiro dated Dec. 21, 2018, annexed hereto as **Exhibit 10**; Email from S. Levy, dated Dec. 25, 2018, annexed hereto as **Exhibit 11**.

14. On January 3, 2019, the AAA decided in favor of Petitioners, concluding that the arbitration clause provided Petitioners with the right to three arbitrators. *See* Email from J. Zaino, dated Jan. 3, 2019, annexed hereto as **Exhibit 12**. On January 10, 2019, the AAA provided a list of fifteen potential arbitrator candidates—five of whom are African-American. *See* Email from J. Zaino, dated Jan. 10, 2019, annexed hereto as **Exhibit 13**. Thus, the day after the AAA took the final step that rendered Petitioners' request for relief moot, Respondents filed a motion for summary judgment, Motion Sequence 004.

15. On January 22, 2019, Petitioners sent the AAA eleven prospective African-American candidates for consideration on its national roster and large complex case roster. The AAA replied confirming that it was considering the candidates proposed by Petitioners.

16. On these bases, Petitioners were content to proceed with the arbitration, and did not intend to seek further relief from this Court. As such, on January 24, 2019, the Petitioners and Respondents submitted their strike list to the AAA. Petitioners would have followed through with their stated intention to withdraw their Petition shortly thereafter, without additional motion practice before this Court. However, Petitioners could not do so because Respondents filed their motion for summary judgment after they saw that the AAA provided relief that would render the present action moot. As a result, Petitioners must now move for voluntary discontinuance under CPLR § 3217(b).

17. In an effort to avoid wasteful briefing, Petitioners request by Order to Show Cause that the Court adjourn the submission date of Motion Sequence 004, Respondents' Motion for Summary Judgment, until after the Court has rendered a decision on this Order to Show Cause. If the Court grants the request to discontinue this action, then the action will be discontinued and no response will be required.

18. No party will be prejudiced by discontinuing this action. The proposed Order that Petitioners request be entered by the Court states that it is “without prejudice to the rights of all parties to this action to make any and all arguments with respect to the shifting of fees and costs, including fees and costs incurred in connection with the injunctive relief sought by Petitioners in this action, in arbitration.”

19. There has been no prior application to this Court for the relief sought herein.

DATED: New York, New York  
January 30, 2019

/s/ Alex Spiro  
ALEX SPIRO

**Certification of Word Count**

The undersigned hereby certifies that the foregoing AFFIRMATION OF ALEX SPIRO contains 1,502 words according to the word count of the word-processing software used to prepare the response, excluding caption, table of contents, table of authorities, and signature block.

/s/ Alex Spiro

Alex Spiro

*Attorney for Petitioners*