

STATE OF NEW YORK : COUNTY OF ERIE
SUPREME COURT

GEORGE KURTZ,

Plaintiff,

-vs-

BEST BLUEBERRIES, LLC,
MICHAEL LORIGO, JACK WILLERT and
DAVID KAUDERER

Defendants.

**NOTICE OF SETTLEMENT
OF ORDER AND JUDGMENT**

Index No. 812553/2015

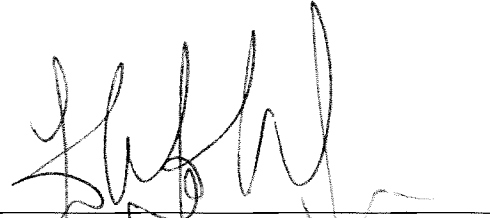
PLEASE TAKE NOTICE that, pursuant to New York Court Rules § 202.48, the annexed Order And Judgment will be presented to the Honorable Henry J. Nowak at an ex parte term of the Supreme Court to be held at the courthouse located at 50 Delaware Avenue, Part 28, in the City of Buffalo, County of Erie and State of New York on the 14th day of February, 2018, **WITHOUT WRITTEN OR ORAL ARGUMENT**, for settlement and signature.

PLEASE TAKE FURTHER NOTICE that the annexed Order And Judgment is being submitted in accordance with (A) the Decision And Order granted by the Honorable Henry J. Nowak on October 4, 2017, (B) the Supplement To Decision And Order Dated October 4, 2017 granted by the Honorable Henry J. Nowak on November 15, 2017, and (C) the jury verdict rendered on January 23, 2018.

PLEASE TAKE FURTHER NOTICE that, pursuant to New York Court Rules § 202.48(c)(2), proposed Counter-Orders And Judgments, if any (A) shall be submitted with a copy clearly marked to delineate each proposed change to the Order And Judgment, (B) shall be made returnable on the same date and time, and at the same place set forth above, and (C) shall be served on all parties pursuant to the schedule established by the Court.

Notice Of Settlement Of Order
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DATED: February 8, 2018
West Seneca, NY



LAW OFFICE OF RALPH C. LORIGO
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WHEREAS, on April 13, 2017, the Defendant, Jack Willert, interposed a cross-motion seeking, amongst other relief, summary judgment against the Plaintiff, George Kurtz, in the principal sum of \$300,000 concerning a guarantee of a debt owed by the Defendant, Best Blueberries, LLC (hereinafter “BB”) (hereinafter the “Willert Motion”); and

WHEREAS, on April 13, 2017, the Defendant, Michael Lorigo, interposed a cross-motion seeking, amongst other relief, summary judgment against the Plaintiff in the principal sum of \$75,000 concerning two guarantees of debts owed by BB (hereinafter the “Lorigo Motion”); and

WHEREAS, on May 3, 2017, the Plaintiff interposed a motion seeking, amongst other relief, summary judgment against the Defendants, Mr. Lorigo, Mr. Willert and David Kauderer, in the principal sum of \$100,000 concerning a guarantee of a debt owed by BB (hereinafter the “Kurtz Motion”); and

WHEREAS, on October 4, 2017, the Honorable Henry J. Nowak granted a Decision And Order, which, amongst other things (A) denied the Willert Motion upon a determination that

there was a singular question of fact as to whether the Plaintiff had signed the Mr. Willert's guarantee, (B) granted the Lorigo Motion, and (C) granted the Kurtz Motion; and

WHEREAS, on November 15, 2017, the Honorable Henry J. Nowak granted a Supplement To Decision And Order Dated October 4, 2017, which, amongst other things (A) clarified that the amount of Mr. Lorigo's judgment against the Plaintiff was \$104,459.92 as of October 4, 2017 (hereinafter the "Lorigo Judgment"), plus reasonable attorney's fees to be determined at a later date, (B) clarified that the amount of the Plaintiff's judgment against Mr. Lorigo, Mr. Willert and Mr. Kauderer was \$126,891.16 as of October 4, 2017 (hereinafter the "Kurtz Judgment"), plus reasonable attorney's fees to be determined at a later date, (C) offset the Lorigo Judgment against the Kurtz Judgment, thereby reducing the Kurtz Judgment to the net sum of \$22,431.24 as of October 4, 2017 (hereinafter the "Net Kurtz Judgment"), and (D) stayed the entry and execution of the Net Kurtz Judgment conditioned upon Mr. Lorigo, Mr. Willert and Mr. Kauderer depositing the sum of \$24,450.06 with the Erie County Comptroller; and

WHEREAS, on January 2, 2018, Mr. Lorigo, Mr. Willert and Mr. Kauderer deposited the sum of \$24,450.06 with the Erie County Comptroller; and

WHEREAS, on January 4, 2018, the Plaintiff, Mr. Lorigo, Mr. Willert and Mr. Kauderer stipulated in open court that, if it were determined that the Plaintiff had signed Mr. Willert's Guarantee, then the principal amount of the resulting judgment would be \$300,000; and

WHEREAS, following a jury trial conducted on January 22, 2018 and January 23, 2018, the jury rendered a verdict determining that the Plaintiff signed Mr. Willert's Guarantee.

NOW THEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED that, Mr. Willert is hereby granted a money judgment against the Plaintiff in the amount of \$407,943.32, which includes principal, interest

and late charges calculated up to and including January 23, 2018 (hereinafter the “Willert Judgment”), and Mr. Willert is entitled to an award of reasonable attorney’s fees for the time period after October 4, 2017, which shall be determined on a later date; and it is further

ORDERED, ADJUDGED AND DECREED that, the balance due upon the Net Kurtz Judgment as of January 23, 2018 (\$23,045.07) is hereby offset against the Willert Judgment, and accordingly Mr. Willert is entitled to a judgment against the Plaintiff in the net amount of \$384,898.25, plus statutory interest from January 23, 2018, plus an award of the costs, disbursements and expenses of this action; and it is further

ORDERED, ADJUDGED AND DECREED that, any attorney’s fees that Mr. Kurtz may be entitled to in this action are hereby offset in full by the attorney’s fees that Mr. Lorigo and/or Mr. Willert may be entitled to in this action up to October 4, 2017; and it is further

ORDERED, ADJUDGED AND DECREED that, the amount of any attorney’s fees that Mr. Willert is entitled to shall be limited to the time period subsequent to October 4, 2017, which amount shall be determined on a later date, and shall be the subject of a separate judgment; and it is further

ORDERED that the \$24,450.06 deposited with the Erie County Comptroller shall be immediately paid out to Mr. Lorigo, Mr. Willert and Mr. Kauderer, through a check made payable to “Ralph Lorigo, as attorney”, less any fees, commissions, etc. due to the Erie County Comptroller; and it is further

ORDERED that this Order And Judgment be immediately filed and served.

DATED:

HON. HENRY J. NOWAK