

## SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into as of June \_\_\_\_, 2006, by and between NXIVM Corporation (formerly known as Executive Success Programs, Inc.), Alex Betancout, Barbara Bouchey, Clare W. Bronfman, Edgar Boone, Ellen Gibson, Sara R. Bronfman, Pamela Cafritz, Suzanne Kemp, Wayne Bates, Luis Montes, and Franca DiCrescenzo (collectively, the "Civil Action Plaintiffs"), and Douglas Rutnik ("Rutnik") (each a "Party" and collectively, the "Parties").

WHEREAS, NXIVM Corporation had retained Rutnik as its attorney and paid Rutnik a \$100,000 retainer fee;

WHEREAS, the Civil Action Plaintiffs commenced an action against Rutnik, Joseph J. O'Hara, and Denise Polit entitled *NXIVM Corporation, et al., v. Joseph J. O'Hara, et al.*, No. 05 CV 1546 (GLS/RFT), in the United States District Court for the Northern District of New York, which action is currently pending (the "Civil Action"); and

WHEREAS, to resolve any and all disputes between the Parties without the burden and expense of further litigation, the Parties hereto have negotiated the settlement set forth below.

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be bound, agree as follows:

1. Payment by Rutnik. Upon the full execution of this Agreement, Rutnik will deliver payment to NXIVM Corporation of one hundred thousand dollars (\$100,000) (the "Payment") in the form of a cashier's check.

2. Release. Upon the full execution of this Agreement and receipt of the Payment, the Parties will exchange executed releases in the form attached hereto as Exhibit A and Exhibit B.

3. Return of Documents. Within ten (10) business days after the execution of this Agreement, Rutnik shall, and shall cause his attorneys to, deliver to counsel for the Civil Action Plaintiffs any and all files relating to Rutnik's representation of any of the Civil Action Plaintiffs, and provide a declaration stating that they have done so.

4. Dismissal of the Civil Action. The Parties instruct their respective attorneys in the Civil Action to file with the appropriate court in the Civil Action the stipulation dismissing the Civil Action with prejudice attached hereto as Exhibit C. Rutnik, on the one hand, and the Civil Action Plaintiffs, on the other, shall pay their respective costs and expenses, including, but not limited to, attorneys' fees and costs, incurred in connection with the Civil Action.

5. Service. To the extent that the Civil Action Plaintiffs seek discovery from Rutnik in connection with the Civil Action, Rutnik designates his attorneys Wilson, Elser, Moskowitz, Edelman & Dicker LLP for service of any such requests.

6. Non-disparagement. The Parties shall refrain from voluntarily making written or oral statements to any other person or entity, that may reasonably be expected to impugn the character, integrity or ethics of the Parties or damage the business, image or reputation of such Parties; provided, however, that nothing in this Section applies to and/or prohibits the furnishing of information by the Parties to their respective counsel or, in the case of the Civil Action Plaintiffs, among the Civil Action Plaintiffs.

7. Confidentiality. The Parties represent and agree to keep strictly confidential and not disclose, directly or indirectly, to any non-party the terms or substance of this

Agreement, including, but not limited to, any and all negotiations and drafts leading thereto.

If any of the information or documentation described in this Section is sought in connection with any proceeding (including, but not limited to, a court proceeding, arbitration, mediation and/or administrative proceeding) the Party from whom the information is sought shall: (a) within ten (10) business days notify all other parties to this Agreement of the request, subpoena or court order seeking the information or documentation; (b) not disclose any information described in this Section unless required to do so by a court order or similar mandate from an adjudicating authority; and (c) if possible, provide each Party with sufficient opportunity to raise any objections that Party might have to the request, subpoena or court order.

**8. Representations and Warranties.**

(a) The recitals set forth above are true and form a part of this Agreement.

(b) The Parties each represent that each has the authority and power to execute this Agreement and to perform fully each and every provision thereof and that this Agreement constitutes the binding obligation of each of them, enforceable against such persons and entities in accordance with its terms.

(c) The Parties each represent that, in entering into this Agreement, each has, to the extent deemed to be necessary or appropriate, made such investigations and consulted, received and relied upon legal and other counsel fully satisfactory to that Party and that each such Party has received all requested information.

**9. Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the Parties hereto with respect to the subject matter of this Agreement and supersedes any prior agreements, understandings, negotiations and discussions, whether written or oral, between the Parties hereto with respect to the subject matter of this Agreement. Each

Party hereto acknowledges that, in entering into this Agreement, that Party is not relying on any statements or representations made by another Party other than as expressly set forth herein.

10. No Amendments. Neither this Agreement nor any provision of this Agreement may be amended, changed, supplemented, modified or terminated except by an agreement in writing executed by the Party to be charged thereby.

11. Governing Law. This Agreement, including the releases, shall be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflicts of law.

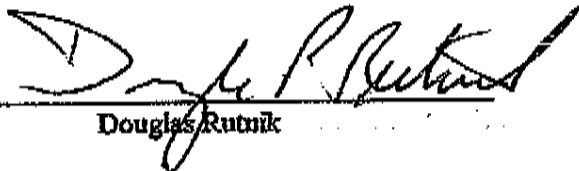
12. Jurisdiction. The Parties each hereby irrevocably submit to the jurisdiction of any New York State or Federal Court of the United States sitting in Albany County in the State of New York in any action or proceeding arising out of, in connection with or in any way related to this Agreement, including, but not limited to, enforcement of this Agreement, and the Parties hereby irrevocably waive, to the fullest extent permitted, any objection or defense of jurisdiction or venue. The Parties agree that a final judgment (including all available appeals) in such action or proceeding shall be conclusive and may be enforced in any jurisdiction in any manner provided by applicable law.

13. Rules of Interpretation. All headings in this Agreement are provided for convenience of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. No provision of this Agreement will be interpreted against or in favor of any of the Parties hereto by reason of the extent to which either such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft or any other agreement.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to constitute one instrument.

IN WITNESS WHEREOF, the Parties, all effective as of the date and year first written above.

Dated: June 30, 2006

  
\_\_\_\_\_  
Douglas Rutnik

NXIVM CORPORATION

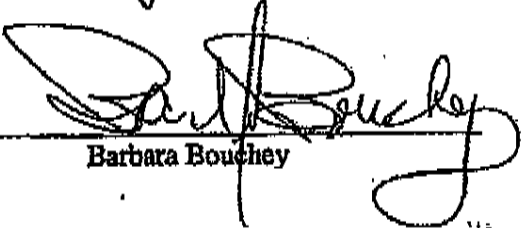
Dated: June 29, 2006

By:   
\_\_\_\_\_  
Nancy Salzman, President


Dated: June 29, 2006

  
\_\_\_\_\_  
Alex Belancout

Dated: June 29, 2006

  
\_\_\_\_\_  
Barbara Bouchey

Dated: June 29, 2006

  
\_\_\_\_\_  
Clare W. Brennan


Dated: June 29, 2006

  
Edgar Boone

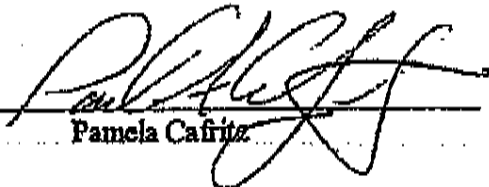
Dated: June 29, 2006

  
Ellen Gibson

Dated: June 29, 2006

  
Sara R. Bronfman

Dated: June 29, 2006

  
Pamela Cafritz

Dated: June 29, 2006

  
Suzanne Kemp

Dated: June 29, 2006

  
Wayne Bates

Dated: June 29, 2006

  
Luis Montes

Dated: June 29, 2006

  
Franca DiCrensenzo

## EXHIBIT A

In consideration good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, NXIVM Corporation (formerly known as Executive Success Programs, Inc.), Alex Betancout, Barbara Bouchev, Clare W. Bronfman, Edgar Boone, Ellen Gibson, Sara R. Bronfman, Pamela Cafritz, Suzanne Kemp, Wayne Bates, Luis Montes, Franca DiCrescenzo, and all of their past and present partners, joint venturers, agents, servants, attorneys, representatives, employees, creditors, pledges, heirs, executors, administrators, predecessors, successors, and assigns, if any, and their respective partners, stockholders, principals, officers, directors, members, managers, employees, agents and attorneys, past and present, in their capacity as such (collectively, the "Releasers"), hereby absolutely, unconditionally and irrevocably release, waive, relinquish, renounce and discharge forever Douglas Rutnik, his heirs, executors, administrators, conservators, predecessors, successors, assigns, agents, those with whom he is in privity, all business entities in which Rutnik is either employed or in which Rutnik has any interest, and any entity or individual that Rutnik represents in any capacity whatsoever and their respective members, managers, partners, shareholders, principals, officers, directors, employees, agents and attorneys, past and present, and their respective heirs, successors and assigns, and each of them, in their capacity as such (collectively, the "Releasees"), from any and all claims, covenants, contracts, agreements, promises, judgments, demands, actions or manner of actions, whether the same be known or unknown, suspected or unsuspected, material or immaterial, absolute or contingent, direct or indirect or nominally or beneficially possessed or claimed by any of the Releasers, which the Releasers or any of them ever had, now has or hereinafter may have against the Releasees or any of them, whether the same be in administrative proceedings, in arbitration, at law, in equity or mixed, arising out of, in connection with or from any matter or thing from the beginning of the world to the date hereof, including, without limitation, any claims which were or could have been brought in the civil action entitled *NXIVM Corporation, et al., v. Joseph J. O'Hara, et al.*, No. 05 CV 1546 (GLS/RFT) (collectively, the "Released Claims"), provided, however, that nothing in this release shall be construed as releasing Joseph J. O'Hara or Denise F. Polit, or their heirs, executors, administrators, conservators, predecessors, successors, assigns, agents, those with whom they are in privity, all business entities in which they are either employed or in which they have any interest, and any entity or individual that they represent in any capacity whatsoever and their respective members, managers, partners, shareholders, principals, officers, directors, employees, agents and attorneys, past and present, and their respective heirs, successors and assigns, and each of them, in their capacity as such, from any claims, covenants, contracts, agreements, promises, judgments, demands, actions or manner of actions whatsoever.

If any of the Releasers brings any claim, suit, action or manner of action against the Releasees (or any of them) in administrative proceedings, in arbitration, at law, in equity or mixed, in any way connected with, relating to or arising out of any right, matter or thing released hereby, then the undersigned shall indemnify the Releasees (or any of them) in the amount or value of any final judgment or settlement (monetary or other) and any related costs (including without limitation reasonable legal fees) entered against, paid or incurred by the Releasees (or any of them).

The undersigned understands and acknowledges (for itself and all the Releasors) that they may discover facts different from, or in addition to, those which they know or believe to be true with respect to the claims released herein, and agree that this Release shall be and remain effective in all respects notwithstanding any subsequent discovery of different and/or additional facts. Should any Releasor discover that any fact relied upon in entering into this Release was untrue, or that any fact was concealed, or that an understanding of the facts or law was incorrect, no Releasors shall be entitled to any relief as a result thereof, and the undersigned surrenders (for itself and all the Releasors) any rights they might have to rescind this Release on any ground. This Release is intended to be and is final and binding regardless of any claim of misrepresentation, promise made with the intention of performing, concealment of fact, mistake of law or fact, or any other circumstances whatsoever.

The undersigned hereby warrants and represents that there has been no assignment, conveyance, encumbrance, hypothecation, pledge or other transfer of any interest or any matter covered by this Release. If, for any reason, any court of competent jurisdiction shall hold by final non-appealable order that any Released Claim purported to be released hereby is not so released, then this Release shall nonetheless be and remain effective with respect to each and every other Released Claim released hereby.

IN WITNESS WHEREOF, the undersigned has caused this Release to be duly executed this 29 day of June, 2006.

NXIVM CORPORATION

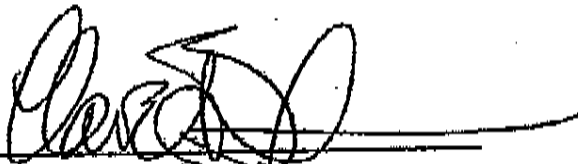
By:

  
Nancy Salzman, President

  
Alex Beiancolt

  
Barbara Bouche





Clare W. Bronfman



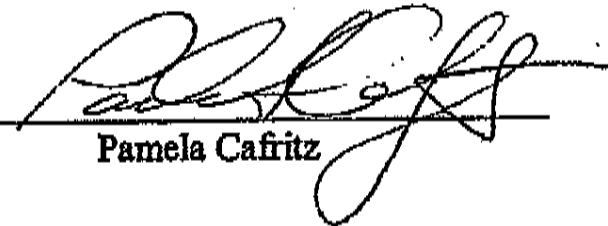
Edgar Boone



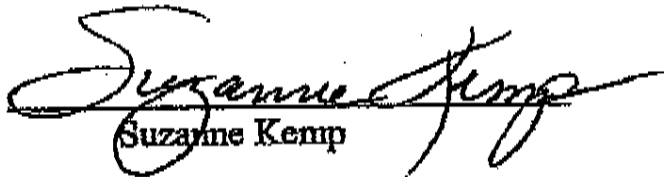
Ellen Gibson



Sara B. Bronfman



Pamela Cafritz



Suzanne Kemp



Wayne Bates



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Luis Montes



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Franca Di Crescenzo

## EXHIBIT B

In consideration for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Douglas Rutnik, on behalf of himself, his heirs, executors, administrators, conservators, predecessors, successors, assigns, agents, those with whom he is in privity, all business entities in which Rutnik is either employed or in which Rutnik has any interest, and any entity or individual that Rutnik represents in any capacity whatsoever and their respective members, managers, partners, shareholders, principals, officers, directors, employees, agents and attorneys, past and present, and their respective heirs, successors and assigns, and each of them, in their capacity as such (collectively, the "Releasers"), hereby absolutely, unconditionally and irrevocably releases, waives, relinquishes, renounces and discharges forever NXIVM Corporation (formerly known as Executive Success Programs, Inc.), Alex Betancout, Barbara Bouchey, Clare W. Bronfinan, Edgar Boone, Ellen Gibson, Sara R. Bronfinan, Pamela Caffritz, Suzanne Kemp, Wayne Bates, Luis Montes, Franca DiCrescenzo, and all of their past and present partners, joint venturers, agents, servants, attorneys, representatives, employees, creditors, pledges, heirs, executors, administrators, predecessors, successors, and assigns, if any, and their respective partners, stockholders, principals, officers, directors, members, managers, employees, agents and attorneys, past and present, in their capacity as such (collectively, the "Releasees"), from any and all claims, covenants, contracts, agreements, promises, judgments, demands, actions or manner of actions, whether the same be known or unknown, suspected or unsuspected, material or immaterial, absolute or contingent, direct or indirect or nominally or beneficially possessed or claimed by any of the Releasers, which the Releasers or any of them ever had, now has or hereinafter may have against the Releasees or any of them, whether the same be in administrative proceedings, in arbitration, at law, in equity or mixed, arising out of, in connection with or from any matter or thing from the beginning of the world to the date hereof, including, without limitation, any claims which were or could have been brought in the civil action entitled *NXIVM Corporation, et al., v. Joseph J. O'Hara, et al.*, No. 05 CV 1546 (GLS/RFT) (collectively, the "Released Claims").

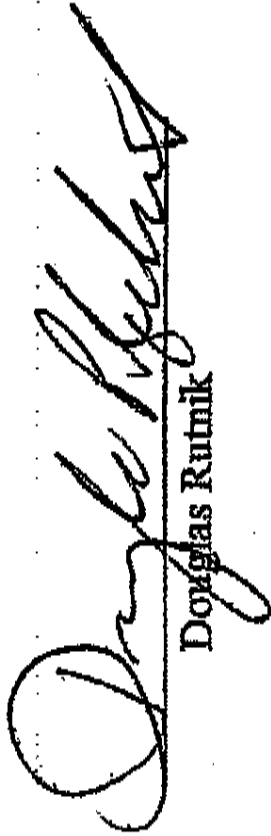
If any of the Releasers brings any claim, suit, action or manner of action against the Releasees (or any of them) in administrative proceedings, in arbitration, at law, in equity or mixed, in any way connected with, relating to or arising out of any right, matter or thing released hereby, then the undersigned shall indemnify the Releasees (or any of them) in the amount or value of any final judgment or settlement (monetary or other) and any related costs (including without limitation reasonable legal fees) entered against, paid or incurred by the Releasees (or any of them).

The undersigned understands and acknowledges (for itself and all the Releasers) that they may discover facts different from, or in addition to, those which they know or believe to be true with respect to the claims released herein, and agree that this Release shall be and remain effective in all respects notwithstanding any subsequent discovery of different and/or additional facts. Should any Releaser discover that any fact relied upon in entering into this Release was untrue, or that any fact was concealed, or that an understanding of the facts or law was incorrect, no Releasers shall be entitled to any relief as a result thereof, and the undersigned surrenders (for itself and all the Releasers) any rights they might have to rescind this Release on any ground.

This Release is intended to be and is final and binding regardless of any claim of misrepresentation, promise made with the intention of performing, concealment of fact, mistake of law or fact, or any other circumstances whatsoever.

The undersigned hereby warrants and represents that there has been no assignment, conveyance, encumbrance, hypothecation, pledge or other transfer of any interest or any matter covered by this Release. If, for any reason, any court of competent jurisdiction shall hold by final non-appealable order that any Released Claim purported to be released hereby is not so released, then this Release shall nonetheless be and remain effective with respect to each and every other Released Claim released hereby.

IN WITNESS WHEREOF, the undersigned has caused this Release to be duly executed this 30<sup>th</sup> day of June, 2006.

  
Douglas Rubnik

**EXHIBIT C**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

NXIVM CORPORATION, EXECUTIVE SUCCESS  
PROGRAMS, INC. , ALEX BETANCOUT,  
BARBARA BOUCHEY, CLARE W. BRONFMAN,  
EDGAR BOONE, ELLEN GIBSON, SARA R.  
BRONFMAN, PAMELA CAFRITZ, SUZANNE  
KEMP, WAYNE BATES, LUIS MONTES, and  
FRANCA DICRENSSENZO

No. 05 CV 01546

Plaintiffs,

-against-

**STIPULATION OF DISMISSAL  
WITH PREJUDICE**

JOSEPH J. O'HARA, DOUGLAS RUTNIK, and  
DENISE F. POLIT,

Defendant.

IT IS HEREBY STIPULATED AND AGREED, being that no party hereto is an infant or incompetent, by and among the undersigned counsel for all parties that, the Plaintiffs' action is dismissed against Defendant Douglas Rutnik, with prejudice and without costs to any party. This Stipulation does not affect the Plaintiffs' continued action against Defendants Joseph J. O'Hara and Denise F. Polit.

Dated: June \_\_, 2006

<p>PROSKAUER ROSE LLP</p> <p>By: <u>Peter J. W. Sherwin</u> / <i>pkc</i> Peter J. W. Sherwin (Bar No. 513614) 1585 Broadway New York, New York 10036 Tel. (212) 969-3183 Fax (212) 969-2900 <i>Attorneys for the Plaintiffs</i></p>	<p>WILSON, ELSER, MOSKOWITZ, EDELMAN &amp; DICKER LLP</p> <p>By: <u>F. Douglas Novotny</u> F. Douglas Novotny (Bar No. 107019) 677 Broadway - 9<sup>th</sup> Floor Albany, New York 12207-2996 Tel. (518) 449-8893 Fax (518) 465-2548 <i>Attorneys for Defendant Douglas Rutnik</i></p>
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**SO ORDERED:**

United States District Judge



Your HomeTown Bank  
P.O. Box 1082 • Schenectady, New York 12301

# Officers Check

No. 813924

50-91  
213

05-01-06

Date

Pay TRUSTCO BANK \$75,000dols 00cts

VOID ~~ON PAYMENT~~ before any Officers Check of this bank will be replaced or refunded in the event it is lost, misplaced or stolen.

To The Order Of

N X I V M Corporation

AUTHORIZED SIGNATURE

⑈813924⑈ ⑆021300912⑆

0010430⑈

THE FACE OF THIS DOCUMENT HAS A BLUE BACKGROUND - NOT A WHITE BACKGROUND. SIMULATED WATERMARK ON BACK. HOLD AT AN ANGLE TO VIEW.



ZURICH AMERICAN INSURANCE COMPANY  
ON BEHALF OF American Guaranteed & Liability

70:2302/719

ZURICH

P.O. BOX 307010  
JAMAICA NY 11430 7010

Claim Number	Date Issued	CHECK NO.
947-0184597-001234	07/07/06 01/04/07	1410144586

Amount: TWENTY-FIVE THOUSAND AND 00/100 DOLLARS

Pay to: NXIVM Corporation

PAY THIS SUM  
**\$25,000.00**

LASALLE BANK NA  
CHICAGO IL 60603

\*\* THE BACKGROUND IS COLORED \*\*

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