

RECEIVED & FILED
SUPERIOR COURT

2009 SEP 18 AM 11:17

CIVIL DIVISION

CUYLER BURK, P.C.

Parsippany Corporate Center
Four Century Drive
Parsippany, NJ 07054-4663
(973) 734-3200
Attorneys for Plaintiffs

SCOTT OLSON, MARION HARRIS, PAUL
ASMAR, PATRICIA LEE KEOUGH, LAURA
OLTMAN, CHRISTOPHER DAGGETT,
KENNETH KAPLAN, and NEW JERSEY
LIBERTARIAN PARTY,

Plaintiffs,

v.

JON CORZINE, GOVERNOR OF THE
STATE OF NEW JERSEY (in his official
capacity) and ANNE MILGRAM, ATTORNEY
GENERAL OF THE STATE OF NEW
JERSEY (in her official capacity),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY

Docket No. L-3022-09

Civil Action

**VERIFIED COMPLAINT
IN LIEU OF PREROGATIVE WRITS**

The Plaintiffs bring this action seeking a declaration that *N.J.S.A. § 19:14-12* is *per se* violative of the New Jersey State Constitution and *per se* violative of the Constitution of the United States of America, or, in the alternative, for a declaration that *N.J.S.A. § 19:14-12*, as currently applied in this State, is violative of the New Jersey State Constitution and violative of the Constitution of the United States of America. Plaintiffs further seek appropriate injunctive relief against the Defendants named herein to prevent further enforcement of *N.J.S.A. § 19:14-12*.

THE PARTIES

1. The Plaintiff, Scott Olson, is a registered voter in the State of New Jersey, and he resides at 194 Glenside Trail, in the Town of Byram, County of Sussex, and State of New Jersey.

2. The Plaintiff, Marion Harris, is a registered voter in the State of New Jersey, and she resides at 14 Oak Street in the City of Morristown, County of Morris, and State of New Jersey.

3. The Plaintiff, Paul Asmar, is a registered voter in the State of New Jersey, and he resides at Seven Juniper Way, in the Town of Basking Ridge, County of Somerset, and State of New Jersey.

4. The Plaintiff, Patricia Lee Keough, is a registered voter in the State of New Jersey, and she resides at 1641 Forest Hill Road, in the City of Plainfield, County of Union, and State of New Jersey.

5. The Plaintiff, Laura Oltman, is a registered voter in the State of New Jersey, and she resides at 319 River Road, in the Town of Phillipsburg, County of Warren, and State of New Jersey.

6. The Plaintiff, Christopher Daggett, is a registered voter in the State of New Jersey, and he is an independent candidate for Governor of the State of New Jersey in the general election to be held in November of 2009. He resides at 96 Deer Ridge Road, in the Township of Bernards, County of Somerset, and State of New Jersey. Christopher Daggett will vote for himself in the upcoming gubernatorial election and one recent poll has him winning 13% of the vote for Governor. See, <http://www.politickernj.com/editor/33133/new-poll-has-christie-ahead-44-35>.

7. The Plaintiff, the New Jersey Libertarian Party (the “NJLP”), is political party incorporated under Title 15A of the laws of the State of New Jersey.

8. The Plaintiff, Kenneth Kaplan, is a registered voter in the State of New Jersey, and he is the NJLP candidate for Governor of the State of New Jersey in the general election to be held in November of 2009. He resides at 1480 Route 46, Apt. 231-B, in the Town of Parsippany, County of Morris, and State of New Jersey. Kenneth Kaplan will vote for himself in the upcoming gubernatorial election.

9. The Defendant, Anne Milgram, is the Attorney General of the State of New Jersey. The Attorney General is the Chief State Election Official for New Jersey under the National Voter Registration Act of 1993. *N.J.S.A.* § 19:31-6(a). As the Attorney General, Anne Milgram is sued in her official capacity.

10. The Defendant, Jon Corzine, is the Governor of the State of New Jersey. As the Chief Executive Officer of the State of New Jersey, the Governor is responsible for the protection of the fundamental and lawful rights of New Jersey voters. Oath of the Governor, *N.J.S.A.* § 52:15-2. As Governor, Jon Corzine is sued in his official capacity.

JURISDICTION AND VENUE

11. This Court has jurisdiction to decide Plaintiffs’ claims pursuant to its power as a court of general jurisdiction to hear both state and federal law claims. Venue is properly laid in the County of Morris inasmuch as the Plaintiffs, Marion Harris and Kenneth Kaplan, reside in said county.

GENERAL STATEMENT OF THE FACTS AND ISSUES

12. *N.J.S.A.* § 19:14-12 directs the county clerks to

. . . draw lots to determine which columns the political parties which made nominations at the next preceding presidential primary

election in each presidential year and at the primary election for the general election every year shall occupy on the ballot in the county. The name of the party first drawn shall occupy the first column at the left of the ballot, and the name of the party next drawn shall occupy the second column, and so forth.

The position which the names of candidates, and bracketed groups of names of candidates nominated by petitions for all offices, shall have upon the general election ballot, shall be determined by the county clerks in their respective counties.

“In short, only political parties - at present and historically the Republican and Democratic Parties - are entitled to be in the lottery for the first or second columns. All other candidates nominated by petition, at the discretion of the clerks, are placed in the columns following the second column.” *New Jersey Conservative Party, Inc. v. Farmer*, 332 N.J. Super. 278, 283 n. 3 (Ch. Div. 1999).

13. The “Primacy Effect” refers to the established fact that people tend to choose the first thing offered to them or the first thing in a list.

14. “Pollsters, for instance, want to constantly rotate the question stem when asking about a topic to alleviate the problem of the primacy effect. For example, you do not want to ask every person in your sample the question, ‘Do you support or oppose universal healthcare?’ Instead, you want to make ‘support’ the first option for half of the sample and ‘oppose’ the first option for the other half to combat the primacy effect.” Streb, M. *Rethinking American Electoral Democracy*, Routledge (2008), p. 75.

15. Up until 1975, the existence of the Primacy Effect in elections was only supported by anecdotal evidence and common sense. For example, in 1910 Woodrow Wilson asserted, “In nine out of ten cases, [a voter] will simply mark the first name under each office [on a ballot], and the candidates whose names come highest in order will be elected.” Wilson, Woodrow. 1910, as quoted in Jon A. Krosnick, Joanne M. Miller, and Michael P. Tichy, “An Unrecognized

Need for Ballot Reform,” in Ann N. Crigler, Marion R. Just, and Edward J. McCaffery (eds.), *Rethinking the Vote: The Politics and Prospects of American Election Reform* (New York: Oxford University Press, 2004), p. 52

16. In 1934, Joseph Harris asserted, “Much more important than the order of offices on an election ballot is the order in which the names of the candidates appear in office group ballots.” Harris, Joseph P. 1934, as quoted in “An Unrecognized Need for Ballot Reform,” *supra*, p. 52.

17. However in the 1990s, Professors Joanne Miller and Jon Krosnick conducted the first scientific evaluation of an election outcome. Specifically, they focused their investigation on the 1992 state legislative elections in Ohio.¹ In performing their evaluation, they found evidence of the Primacy Effect in 48% of the 118 races they studied. In those races, the candidate listed first on the ballot received on average 2.5% more of the vote than those listed later as a result of the Primacy Effect. Joanne Miller, Jon A. Krosnick, “The impact of Candidate Name Order on Election Outcomes,” *Public Opinion Quarterly*, Vol. 62 No. 3, 1998, pp. 291-330, as referenced in University of Vermont, *Report of Vermont Legislative Research Shop*, “Ballot Order Effect,” compiled at the request of the Vermont Secretary of State, Deborah Markowitz and prepared by Derek Stewart, Ben Khan, and Kensington Moore under the supervision of Professor Anthony Gierzynski, May 11, 2007 as updated by Derek Stewart, Daniel Woodward and Kensington Moore, April 2, 2008, p. 1.

18. In a subsequent paper, Joanne Miller, Jon A. Krosnick and Michael P. Tichy reviewed and evaluated the election results from the 1992 Ohio legislative elections, and the 2000 Ohio, North Dakota, and California statewide elections, including the votes for President of

¹ As the authors explain in their paper, Ohio was chosen in large part because it was (and is) one of only 12 states that rotate ballot name order from voting precinct to voting precinct, a condition necessary to perform a valid statistical analysis of the Primacy Effect.

the United States. The authors found substantial evidence supporting the existence of the Primacy Effect. For example, the authors found that in California, George W. Bush received a statistically significant increase in votes of 9.45% due to the Primacy Effect. “An Unrecognized Need for Ballot Reform,” *supra*, pp. 52, 53, 63.

19. Most recently, Professor Krosnick has opined on the Primacy Effect in the context of the 2008 New Hampshire Democratic Primary. The New Hampshire primary election results for President are always headline news. But the 2008 Democratic primary was especially so because of the great disparity between the results of polls conduct immediately before the primary and the primary election results themselves. Professor Krosnick did a news spot for ABC television on the subject:

Without a doubt, a big source of the discrepancy between the pre-election surveys and the election outcome in New Hampshire is the order of candidates’ names on the ballot and in the surveys.

Our analysis of all recent primaries in New Hampshire showed that there was always a big primacy effect — big-name, big-vote-getting candidates got 3 percent or more votes more when listed first on the ballot than when listed last. Until this year, New Hampshire rotated candidate name order from precinct to precinct, which allowed us to do that analysis.

This year, the secretary of state changed the procedure so the names were alphabetical starting with a randomly selected letter, in all precincts. The randomly selected letter this year was Z. As a result, Joe Biden was first on every ballot, Hillary Clinton was near the top of the list (and the first serious contender listed) and Barack Obama was close to last of the 21 candidates listed.

Krosnick, Jon, “Ballot Changes Cited in Vote’s Discrepancy With Polls,” January 8, 2008, ABC News.com, <http://abcnews.com/PollingUnit/Decision2008/story?id=4107883&page=1>.

Professor Krosnick continued to explain that the pre-election polls rotated name order to eliminate the Primacy Effect from their results. He estimated that the Primacy Effect gave Hilary Clinton a 3% increase in votes over those in the field listed after her, even though she was

second on the ballot. Professor Krosnick notes that this was more than enough to give the New Hampshire primary to Ms. Clinton, whereas polls had predicted now President Barack Obama to be the winner.

20. The 2000 election for President of the United States is considered by some to be a very unusual election. Ultimately, the contest between George W. Bush and Al Gore boiled down to who would win Florida's electoral votes. After recounts and litigation that led to the Supreme Court of the United States, George W. Bush won the election, and the White House, by a margin of just 367 votes.

21. Despite what many believe of the 2000 Presidential election, it is not unusual for its closeness.

Very Close Elections Happen—Often

Some might wonder if the extraordinary closeness of the 2000 vote in Florida was just a unique anomaly in American politics. But elections where the margin of error is as little as one percent or less are common. In presidential elections since 1948, nearly half of all the states have had at least one occasion when the winner of their electoral votes was decided by less than one percent of the vote. In 1948 Truman carried California and Illinois each by margins of less than 1%; had he lost both states the election would have gone to the House of Representatives for decision. In 1960 the winner in six states was decided by this tiny margin, more than enough to have changed the outcome. In 2000 the winners in four other states, in addition to Florida, was decided by less than 1% of the vote. In a given election, past experience indicates a 90% chance that at least one state will have a presidential election decided within such a 1% technological margin of error. *Very close elections are also common in elections for other federal offices or for governor. Since 1948 half of the states have had at least one senatorial race decided by less than 1% of the vote; some have had as many as three such narrowly decided senatorial races.*

Final Report of the National Commission on Electoral Reform, August 2001, p. 51 (emphasis added).

22. In their 2004 paper, Krosnick *et al* surveyed testimony and evidence from disputes in court involving ballot challenges that arose out of the Primacy Effect. They note that experts in those cases have testified that being first on the ballot gives an advantage of anywhere from 2.5% to 25% of the vote. “An Unrecognized Need for Ballot Reform,” *supra* at 58.

23. Additional studies of other election results by other authorities in the fields of statistics and political science support the existence of the Primacy Effect. See *Gould v. Grubb*, 14 Cal.3d 661, 667, 536 P.2d 1337, 1341, 122 Cal.Rptr. 377, 381, n. 7 (1975) and *Report of Vermont Legislative Research Shop*, “Ballot Order Effect,” and the learned papers and studies cited therein.

24. More particularly, Krosnick *et al* have specifically rejected the notion, as stated by the court in *New Jersey Conservative Party v. Farmer*, *supra* that the “windfall [or “donkey”] vote does not exist.” “An Unrecognized Need for Ballot Reform,” *supra* at 59.

25. Indeed, all the aforementioned studies show that the conclusion reached in *New Jersey Conservative Party v. Farmer*, *supra*, and some other federal and state court decisions that “windfall vote,” if it exists, is a “donkey vote,” and therefore, the vote of uninformed voters, is incorrect. Rather, the Primacy Effect is particularly noticeable where voters are “ambivalent.” The term “ambivalent voters” include those, who although well informed, remain largely undecided as to how to cast their vote until they are actually in the voting booth. Krosnick, Miller, and Tichy, “An Unrecognized Need for Ballot Reform,” *supra* at 62.

FIRST COUNT

26. Under the Constitution and laws of the State of New Jersey, and the federal Constitution and the laws of the United States of American, a qualified citizen has the right to vote for the candidate of his or her choice, and this right necessarily includes the corollary right

to have that vote counted at full value without dilution or discount. New Jersey Constitution, Art. 2 § 1 ¶3; Constitution of the United States of America, Amendment XIV.

27. *N.J.S.A.* § 19:14-12, on its face, creates two classes of candidates for Governor of New Jersey. One class (hereinafter the “First Class Candidates”) consists of those candidates of political parties which have garnered more than 10% of the vote in the State’s last general election. The second class created by the statute (hereinafter the “Second Class Candidates”) consist of all other candidates running independent of a political party, such as Plaintiff, Christopher Daggett, and candidates who are members of political parties that have not garnered more than 10% of the vote in the State’s last general election, such as Plaintiff, Kenneth Kaplan. Historically in this State, First Class Candidates have been limited to candidates of the Republican and/or Democratic Parties.

28. The classification system created by *N.J.S.A.* § 19:14-12 serves no legitimate legislative purpose.

29. Conversely, any legitimate legislative purpose behind *N.J.S.A.* § 19:14-12 can be equally well or better served by a statutory scheme that is far less intrusive on constitutionally protected rights.

30. The classification system created by *N.J.S.A.* § 19:14-12 does not pass federal Constitutional muster.

31. *N.J.S.A.* § 19:14-12 is unconstitutional under the State and federal Constitutions in that denies voters for Second Class Candidates the right to have their vote counted at full value without dilution or discount.

SECOND COUNT

32. Under the federal Constitution, freedom of association is a fundamental freedom, which is made incumbent upon the states by virtue of the Fourteenth Amendment to the Constitution of the United States of America.

33. State laws which impact a fundamental right secured to citizens under the federal Constitution, such as the right to freely associate, are subject to close scrutiny.

34. *N.J.S.A. § 19:14-12*, restricts votes influenced by the Primacy Effect to First Class Candidates and negatively impacts the right of freedom of association of members of political parties supporting Second Class Candidates, such as the Plaintiff, Libertarian Party.

35. The classification system created by *N.J.S.A. § 19:14-12* does not survive close scrutiny under the federal Constitution, and it should be declared unconstitutional.

THIRD COUNT

36. Under the Constitution and laws of the State of New Jersey, a qualified citizen has the right to vote for the candidate of his or her choice, and this right necessarily includes the corollary right to have that vote counted at full value without dilution or discount. New Jersey Constitution, Art. 2 § 1 ¶3; Constitution of the United States of America, Amendment XIV.

37. Under the Constitution and laws of the State of New Jersey, any person not less than 30 years of age, who has been a citizen of the United States for at least 20 years and who has been a resident of New Jersey for seven years has a right to run for election as governor of the State. New Jersey Constitution, Article 5, § 1, ¶1.

38. Plaintiffs, Christopher Daggett and Kenneth Kaplan are each qualified to run for Governor of the State of New Jersey and are currently running for that position in the upcoming general election of 2009.

39. Any law which discriminates against candidates running for elective office by steering votes subject to the Primacy Effect to First Class Candidates, must, as a necessary correlative, dilute and discount the weight of the vote of voters who vote for Second Class Candidates.

40. The classification system created by *N.J.S.A. § 19:14-12* serves no legitimate legislative purpose.

41. Conversely, any legitimate legislative purpose behind *N.J.S.A. § 19:14-12* can be equally well or better served by a statutory scheme that is far less intrusive on constitutionally protected rights.

FOURTH COUNT

42. *N.J.S.A. § 19:14-12* provides in pertinent part:

[N]o political party which fails to poll at any primary election for a general election at least ten per centum (10%) of the votes cast in the State for members of the General Assembly at the next preceding general election, held for the election of all of the members of the General Assembly, shall be entitled to have a party column on the official ballot at the general election for which the primary election has been held.

43. In *New Jersey Conservative Party, Inc. v. Farmer*, 324 N.J. Super. 451 (App. Div. 1999), the Superior Court of New Jersey, Appellate Division, agreeing with the Defendant-Appellants, held that in applying the above quoted section of *N.J.S.A. § 19:14-12*, election officials must include the votes cast in all elections, including all primary, general, municipal, school and special elections. *Id.* at 459. The Superior Court, Appellate Division further held that a political party must meet the test it prescribed for eligibility under *N.J.S.A. § 19:14-12* each year, rather than every other year, as had been the longstanding custom in New Jersey. *Id.* at 460. The Plaintiff-Respondents had contended that in applying the test, only votes from the next

preceding election for all of the members of the General Assembly should be counted in determining whether a political party had met the 10% requirement, which in turn means that the test for eligibility must be performed every other year, as had been the longstanding custom in New Jersey. *Id.* at 458.

44. The interpretation given to *N.J.S.A. § 19:14-12* in *New Jersey Conservative Party, Inc. v. Farmer*, and the subsequent implementation of that interpretation by the Attorney General of the State of New Jersey, renders *N.J.S.A. § 19:14-12* totally arbitrary and capricious.

45. *N.J.S.A. § 19:14-12* as currently applied is arbitrary and capricious, and it therefore violates the New Jersey State Constitution and the Fourteenth Amendment to the federal Constitution.

WHEREFORE, the Plaintiffs respectfully pray that this Court enter:

- a. judgment declaring that *N.J.S.A. § 19:14-12* is *per se* violative of the Constitution of the State of New Jersey and the Constitution of the United States of America, or, in the alternative, the Plaintiffs respectfully pray that this Court enter judgment declaring that *N.J.S.A. § 19:14-12* is violative of the Constitution of the State of New Jersey and the Constitution of the United States of America as that statute is currently being applied;
- b. an Order enjoining and restraining the Defendants, and anyone acting under them in the administration of the election laws of the State of New Jersey, from undertaking any act in preparing, disseminating, or utilizing in any election a ballot in which candidate name order has been determined pursuant to *N.J.S.A. § 19:14-12* in any election;
- c. an Order directing that the Defendants, and anyone acting under them in the administration of the election laws of the State of New Jersey, determine the ballot name order of candidates for any given statewide office in a random way, which order is then rotated from voting precinct to precinct such as to eliminate the Primacy Effect, until such time as the State Legislature and Governor may act to change the provisions of *N.J.S.A. § 19:14-12* in a way consistent with this Court's declaration herein, the Constitution of the State of New Jersey and the Constitution of the United States of America; and

- d. an Order awarding reasonable counsel fees and costs pursuant to *N.J.S.A.* § 10:6-2, and for such other relief as may be reasonable and just.

VERIFICATION OF PLAINTIFF, NEW JERSEY LIBERTARIAN PARTY

I, _____, am the _____ of Plaintiff, New Jersey Libertarian Party, and am authorized to make this verification for and on its behalf. I have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 through 6 inclusive, I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: _____, 2009

By: _____
NAME and TITLE

VERIFICATION OF PLAINTIFF, SCOTT OLSON

I, Scott Olson, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 2 through 8 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: 17 October, 2009



Scott Olson

VERIFICATION OF PLAINTIFF, MARION HARRIS

I, Marion Harris, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 and 3 through 8 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: September 18, 2009

Marion Harris
Marion Harris

VERIFICATION OF PLAINTIFF, PAUL ASMAR

I, Paul Asmar, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1, 2 and 4 through 8 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: _____, 2009

Paul Asmar

VERIFICATION OF PLAINTIFF, MARION HARRIS

I, Marion Harris, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 and 3 through 8 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: _____, 2009

Marion Harris

VERIFICATION OF PLAINTIFF, PAUL ASMAR

I, Paul Asmar, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1, 2 and 4 through 8 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: 9/17, 2009

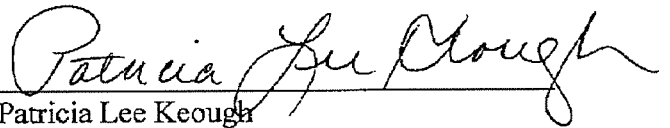
Paul Asmar
Paul Asmar

VERIFICATION OF PLAINTIFF, PATRICIA LEE KEOUGH

I, Patricia Lee Keough, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1, 2, 3 and 5 through 8 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: 9/17, 2009


Patricia Lee Keough

VERIFICATION OF PLAINTIFF, LAURA OLTMAN

I, Laura Oltman, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 through 4 inclusive and 6, 7, 8 and 9, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: _____, 2009

Laura Oltman

VERIFICATION OF PLAINTIFF, PATRICIA LEE KEOUGH

I, Patricia Lee Keough, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1, 2, 3 and 5 through 8 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: _____, 2009

Patricia Lee Keough

VERIFICATION OF PLAINTIFF, LAURA OLTMAN

I, Laura Oltman, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 through 4 inclusive and 6, 7, 8 and 9, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: Sept. 16, 2009



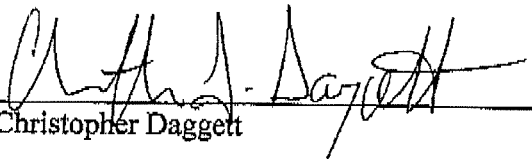
Laura Oltman

VERIFICATION OF PLAINTIFF, CHRISTOPHER DAGGETT

I, Christopher Daggett, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 through 5 inclusive and 7, 8, and 9, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: September 18, 2009


Christopher Daggett

VERIFICATION OF PLAINTIFF, KENNETH KAPLAN

I, Kenneth Kaplan, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 through 6 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: _____, 2009

Kenneth Kaplan

VERIFICATION OF PLAINTIFF, CHRISTOPHER DAGGETT

I, Christopher Daggett, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 through 5 inclusive and 7, 8, and 9, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: _____, 2009


Christopher Daggett

VERIFICATION OF PLAINTIFF, KENNETH KAPLAN

I, Kenneth Kaplan, have read the foregoing Verified Complaint and am familiar with its contents. With the exception of the facts alleged in paragraphs 1 through 6 inclusive, I have personal knowledge that the facts alleged are true, or I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Dated: 9/17/, 2009



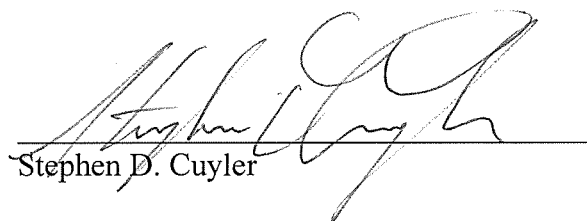
Kenneth Kaplan

VERIFICATION OF COUNSEL, STEPHEN D. CUYLER

I, Stephen D. Cuyler, am an attorney-at-law of the State of New Jersey. I prepared the foregoing Verified Complaint and am responsible for its content. I have personally reviewed each of the learned treatises cited in the forgoing Verified Complaint, and I state that the quotations from the articles are true and accurate and that the summaries of the articles are true and accurate to the best of my abilities.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

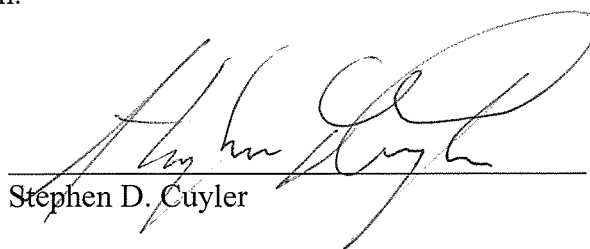
Dated: 9/17, 2009


Stephen D. Cuyler

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify pursuant to R. 4:5-1 that to the best of my knowledge, information and belief the instant matter is not the subject of any other pending action or arbitration proceeding nor is any other action or proceeding contemplated. I further certify that I am presently unaware of any other party that should be joined in this action.

Dated: 9/17, 2009


Stephen D. Cuyler