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 NEW JERSEY APPLESEED
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HOMES FOR ALL NEWARK, HELLANE	:	SUPERIOR COURT OF NEW JERSEY
FREEMAN, VICTOR MONTERROSA, Jr.,	:	LAW DIVISION: ESSEX COUNTY
AVI-ANN RICHARDSON, DANIEL J. WILEY	:	
and JOHN GOLDSTEIN (“COMMITTEE OF	:	
PETITIONERS”),	:	Docket No. L-
Plaintiffs,	:	
	:	
-vs.-	:	Action in Lieu of Prerogative Writ
	:	
KENNETH LOUIS, in his capacity as Newark	:	COMPLAINT (and
Municipal Clerk, and the CITY OF NEWARK,	:	<u>R. 4:69-4</u> Certification)
its Mayor, RAS BARAKA, and the MUNICIPAL	:	
COUNCIL,	:	
Defendants.	:	
	X	

The Plaintiffs, HOMES FOR ALL NEWARK, HELLANE FREEMAN, VICTOR MONTERROSA, JR., AVI-ANN RICHARDSON, DANIEL J. WILEY, and JOHN GOLDSTEIN (the “Committee of Petitioners”) by way of their Complaint against the Newark Municipal Clerk and the City of Newark, its Mayor and Municipal Council, state as follows:

NATURE OF THE ACTION

1. This action in lieu of prerogative writ involves the City of Newark’s attempt to deny its citizens the right to have a role in the legislative process through their statutory right of initiative and referendum. It challenges as *ultra vires* Ordinance No. 6PSF-G(S) entitled “An Ordinance to Amend 6PSF-a(s) Adopted on September 5, 1017, Title XIX, Rent Control of the

Revised General Ordinance of the City Newark, New Jersey, 2000, as amended and supplemented, to Eliminate Appeals to the Municipal Council,” which was adopted by the Municipal Council on August 20, 2019, and signed by the Mayor and returned and certified by the Municipal Clerk on August 22, 2019, because the City of Newark has no authority to enact such Ordinance without first submitting such amendment to the voters for a referendum vote. Pursuant to N.J.S.A. 40:69A-196, no ordinance initiated under N.J.S.A. 40:69A-184, such as Ordinance No. 6PSF-a(s) that the Committee of Petitioners in this matter initiated by petition in 2017, “shall be amended or repealed within 3 years immediately following the date of its adoption” except by a vote of the people. Defendants have ignored this statutory mandate, and have thus deprived Plaintiffs and all Newark voters of their statutory right of initiative, which includes the right to have a referendum vote within three years of the adoption of their initiated ordinance if the City seeks to repeal or amend such ordinance.

2. Specifically, Plaintiffs seek (a) a declaration that the Municipal Council’s refusal to submit “a proposition for the amendment of” Ordinance No. 6PSF-a(s), which had been initiated by the Committee of Petitioners by petition in 2017, to the voters at any succeeding general election or regular municipal election following adoption of such amendment by the Municipal Council violates N.J.S.A. 40:69A-196(a) thus rendering Ordinance No. 6PSF-G(S) null and void; (b) a prohibition on the City of Newark, specifically, its Mayor, from implementing Ordinance No. 6PSF-G(S) until such ordinance is approved “by a majority of the votes cast [at the next general or regular municipal election],” N.J.S.A. 40:69A-196(a); (c) an order in lieu of prerogative writ (mandamus) or otherwise directing the Municipal Clerk to (i) submit, on behalf of the Municipal Council, the question of whether to amend Ordinance No. 6PSF-a(s) to Eliminate Appeals to the Municipal Council to the County Clerk to appear on the

ballot at the next general or regular municipal election pursuant to N.J.S.A. 40:69A-192(c) and (ii) cause that question to be published in two newspapers in accordance with N.J.S.A. 40:69A-194; and (d) a declaration that Defendants' actions violate N.J.S.A. 10:6-2(c) authorizing "[a]ny person who has been deprived of . . . any substantive rights . . . secured by the . . . laws of this State . . . [to] bring a civil action for damages and for injunctive or other appropriate relief, " including an order directing the Municipal Council and Municipal Clerk to submit Ordinance No. 6PSF-G(S) to the voters for a referendum vote and directing Defendants to pay Plaintiffs' legal fees.

PARTIES

3. Plaintiff HOMES FOR ALL NEWARK is an unincorporated coalition of Newark based community organizations and individuals who support housing policies that allow development without displacement. It conducts its activity by increasing Newark resident participation in the enactment of housing policies, and supporting strategies that improve housing, ensure access and affordability and promote greater transparency of the process. Its members include the individual Plaintiffs constituting the "Committee of Petitioners" in this case, and it provided organizational support to the Committee with respect to their efforts to submit the 2017 Initiative Petition at issue in this matter.

4. Plaintiff HELLANE FREEMAN resides at 603 4th Street, Newark, New Jersey 07107, and is interested in ensuring the citizens of Newark have the opportunity to approve or disapprove of the amendments to Newark's rent control ordinance, as enacted by the Municipal Council and approved by the Mayor in late August 2019, within the 3-year period following the adoption of the very rent control ordinance she initiated. She is a member of the Committee of Petitioners that initiated Ordinance No. 6PSF-a(s) and a signer of the Initiative Petition that

triggers Defendants' obligation to submit their amendment to Newark's rent control ordinance to a referendum vote.

5. Plaintiff VICTOR MONTERROSA, JR. resides at 18 Goble Street, Apt. 2, Newark, New Jersey 07114, and is interested in ensuring the citizens of Newark have the opportunity to approve or disapprove of the amendments to Newark's rent control ordinance, as enacted by the Municipal Council and approved by the Mayor in late August 2019, within the 3-year period following the adoption of the very rent control ordinance he initiated. He is a member of the Committee of Petitioners that initiated Ordinance No. 6PSF-a(s) and a signer of the Initiative Petition that triggers Defendants' obligation to submit their amendment to Newark's rent control ordinance to a referendum vote.

6. Plaintiff AVI-ANN RICHARDSON resides at 381 Broad Street, Apt. 1017, Newark, New Jersey, 07104. and is interested in ensuring the citizens of Newark have the opportunity to approve or disapprove of the amendments to Newark's rent control ordinance, as enacted by the Municipal Council and approved by the Mayor in late August 2019, within the 3-year period following the adoption of the very rent control ordinance she initiated. She is a member of the Committee of Petitioners that initiated Ordinance No. 6PSF-a(s) and a signer of the Initiative Petition that triggers Defendants' obligation to submit their amendment to Newark's rent control ordinance to a referendum vote.

7. Plaintiff DANIEL J. WILEY resides at 42 William Street, Apt. 3G, Newark, New Jersey, 07102, and is interested in ensuring the citizens of Newark have the opportunity to approve or disapprove of the amendments to Newark's rent control ordinance, as enacted by the Municipal Council and approved by the Mayor in late August 2019, within the 3-year period following the adoption of the very rent control ordinance he initiated. He is a member of the

Committee of Petitioners that initiated Ordinance No. 6PSF-a(s) and a signer of the Initiative Petition that triggers Defendants' obligation to submit their amendment to Newark's rent control ordinance to a referendum vote.

8. Plaintiff JOHN GOLDSTEIN resides at 171 Van Buren Street, Apt. 11, Newark, New Jersey, 07105, and is interested in ensuring the citizens of Newark have the opportunity to approve or disapprove of the amendments to Newark's rent control ordinance, as enacted by the Municipal Council and approved by the Mayor in late August 2019, within the 3-year period following the adoption of the very rent control ordinance he initiated. He is a member of the Committee of Petitioners that initiated Ordinance No. 6PSF-a(s) and a signer of the Initiative Petition that triggers Defendants' obligation to submit their amendment to Newark's rent control ordinance to a referendum vote.

9. The rights of plaintiffs Home for All Newark, Freeman, Monterrosa, Richardson, Wiley and Goldstein to a referendum vote on Newark's 2019 amendments to the rent control ordinance they initiated by petition in 2017, as guaranteed under the Faulkner Act, have been unlawfully thwarted by defendant Municipal Council's and Kenneth Louis' refusal to submit Ordinance No. 6PSF-G(S) to the voters for approval prior to implementation in violation of N.J.S.A. 40:69A-196(a). and -192(c)

10. Defendant KENNETH LOUIS has been for many years, and at all times relevant to this complaint, the Clerk of the City of Newark with his principal place of business at Newark City Hall, 920 Broad Street, Newark, New Jersey 07102. In his capacity as Municipal Clerk, Mr. Louis has the duty to perform such functions as may be required by law, N.J.S.A. 40:69A-38, including but not limited to his duties with respect to initiative and referendum petitions pursuant to N.J.S.A. 40:69A-187 to 196. Defendant Louis' responsibilities with respect to accepting and

filing petitions, communicating his decisions on the sufficiency or insufficiency of petitions and submitting questions related to initiated ordinances, repeal of an ordinance through referendum petitions filed under N.J.S.A. 40:69A-185, or ordinances requiring referendum votes by law (as is the case herein) to the County Clerk for submission to the voters for approval or disapproval are ministerial in nature.

11. Defendant CITY OF NEWARK (“Newark”) is, and was at all relevant times, the body corporate representing the inhabitants residing within its borders pursuant to N.J.S.A. 40:43-1 et seq. Organized pursuant to the Optional Municipal Charter Law (“Faulkner Act”), Newark has the obligation to implement its citizens’ right to initiative and referendum in accordance with N.J.S.A. 40:69A-184 et seq. In accordance with the Mayor-City Council form of government, Defendant NEWARK MUNICIPAL COUNCIL is the legislative body of Newark and is authorized to enact ordinances and resolutions, and hold Municipal Council meetings in accordance with N.J.S.A. 40:49-1 et seq., and its Mayor, Defendant RAS BARAKA, is the executive arm of Newark and is authorized to approve or veto ordinances and, most importantly, to implement ordinances as enacted.

CLAIMS FOR RELIEF

COUNT I

(Challenge to Validity of Ordinance No. 6PSF-G(S) and Prohibition on Implementation by City of Newark, its Municipal Council and Mayor)

12. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-11 as if set forth verbatim and at length herein.

13. In and during the summer months of 2017, the Committee of Petitioners, with the assistance of Homes for All Newark, circulated an Initiative Petition proposing to readopt in full, with amendments, Chapter 2 of the City of Newark Municipal Code concerning Rent Control

(the “2017 Initiated Ordinance”). The amendments specified in the Initiated Ordinance included, but were not limited to, a provision permitting an aggrieved landlord or tenant to appeal an adverse decision of the Rent Control Board to the Municipal Council rather than only having the right to appeal such decision to the Superior Court of New Jersey, Law Division, which was then the status quo. Such petition, a copy of which is attached hereto as Exhibit A, was filed with the Newark Municipal Clerk pursuant to N.J.S.A. 40:69A-184.

14. In a letter dated August 9, 2017, the Municipal Clerk addressed each of the Committee of Petitioners and informed them that he had deemed Plaintiffs’ Initiative Petition sufficient, and intended, pursuant to N.J.S.A. 40:69A-190, to present the Initiated Ordinance to the Municipal Council at its next scheduled meeting.

15. On September 5, 2017, the Municipal Clerk presented to the Municipal Council, Ordinance No. 6PSF-a(s) entitled, “Ordinance to Amend and Replace Title 19 Rent Control, Chapter 2: Rent Control Regulations; Rent Control Board by Public Initiative Ordinance.” On the face of the Ordinance, the Committee of Petitioners was noted as presenting the Ordinance and it was further indicated that the Initiated Ordinance was deemed to have had its first reading pursuant to N.J.S.A. 40:69A-190. A copy of such Initiated Ordinance is attached hereto as Exhibit B.

16. In a vote of 7 ayes and 2 absences on September 5, 2017, the Municipal Council passed Plaintiffs’ Initiated Ordinance “in substantially the form requested” by the voters signing the petition pursuant to N.J.S.A. 40:69A-191. It was returned from the Mayor’s office and certified by the Municipal Clerk on September 6, 2017. See Exhibit B.

17. In and during the summer of 2019, Plaintiffs and other members of Homes for All Newark became aware of the Municipal Council’s desire to make significant changes to their

Initiated Ordinance. They were informed by several employees of the City of Newark that the Municipal Council was interested neither in waiting until the 3-year “no repeal or amendment without a vote by the people” period had expired nor in submitting any of their desired changes to the voters (which they assumed would not approve of the proposed changes).

18. In a letter dated August 15, 2019, Plaintiff John Goldstein, on behalf of himself and Homes for All Newark, wrote the Municipal Council urging them not to move forward with any amendments to their Initiated Ordinance. He set forth his understanding of N.J.S.A. 40:69A-196, and, specifically, argued against repealing the right of an aggrieved party to appeal an adverse decision by the Rent Control Board to the Municipal Council. He wrote: “Prior to the changes we submitted in 2017, the RCO [Rent Control Ordinance] required all appeals of the decisions of the Rent Control Board be submitted to the Law Division of the Superior Court. This resulted in a significant imbalance of power in favor of landlords. *Tenants do not have the resources to argue an appeal in Superior Court.*” A copy of this letter is attached hereto as Exhibit C.

19. In a letter also dated August 15, 2019, an attorney for the Committee of Petitioners wrote the Municipal Clerk urging him to submit, on behalf of the Municipal Council, any amendments to the Initiated Ordinance, which were then being considered and seemingly were to be adopted by the Municipal Council, to the voters at the next general election in November of this year. A copy of such letter from Renée Steinhagen to Kenneth Louis is attached hereto as Exhibit D.

20. Notwithstanding Plaintiffs’ advocacy, the Municipal Council adopted Ordinance No. GPSF-G(S) specifically repealing previously initiated provisions permitting appeals of Rent Control Board decisions to the Municipal Council. The Municipal Council, with 6 ayes, 1

nonvote and 2 absences, adopted such amendment to Plaintiffs' Initiated Ordinance on August 20, 2019. The Clerk sent the ordinance to the Mayor the following day; it was signed and returned and certified by the Municipal Clerk on August 22, 2019. A copy of such amendment is attached hereto as Exhibit E.

21. Pursuant to N.J.S.A. 40:69A-196(a), "If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the municipality and be published as in the case of other ordinances. No such ordinance shall be amended or repealed within 3 years immediately following the date of its adoption by the voters, except by a vote of the people. The council may, within 3 years immediately following the date of adoption of the ordinance, submit a proposition for the repeal or amendment of that ordinance to the voters at any succeeding general election or regular municipal election."

22. Although the language of N.J.S.A. 40:69A-196(a) restricts legislative actions of the governing body for a period of three years "following the date of adoption by the voters [of the proposed ordinance]," the stated legislative purpose of the 1982 Amendments to both this provision in the Faulkner Act and the comparable provision in the Walsh Act was "To establish a uniform 3 year time limit within which a governing body may solely by submission to the voters, amend or repeal an ordinance adopted by initiative and referendum." Bill Sponsor's Statement to S.763 (L.1982, c.145).

23. Prior to the 1982 Amendments, the Walsh Act, N.J.S.A. 40:74-18, provided that "[a]n ordinance proposed by petition, or which shall be adopted by a vote of the people, shall not be repealed or amended except by a vote of the people" (emphasis added). In 1982, that provision was amended to add, "within three years of the date of adoption by the voters."

24. In accord with N.J.S.A. 40:69A-191, an ordinance initiated pursuant to N.J.S.A. 40:69A-184, will not be submitted to the voters if adopted by the Municipal Council “in substantially the form requested.” If adopted by the Municipal Council, it is still considered an initiated ordinance, and thus has the same status as an initiated ordinance that is approved by the voters.

25. The Municipal Council has a ministerial, non-discretionary duty to process amendments to Plaintiffs’ Initiated Ordinance within three years of its adoption, either by the Municipal Council or the voters, in strict accordance with N.J.S.A. 40:69A-196, and –192(c).

26. By ignoring the clear mandate, language and intent of the Legislature to divest for a limited three year period a succeeding governing body’s authority to amend or repeal an ordinance enacted by initiative in accordance with N.J.S.A. 40:69A-184, the Municipal Council has abused its authority and has failed to perform its mandatory duty to process Plaintiffs’ Initiated Ordinance and any repeal thereof in accord with the statute. Specifically, the Municipal Council has acted illegally by refusing to submit Ordinance No. 6PSF-G(S) to the voters, depriving them of their opportunity to determine whether they approve of changes to the Ordinance they initiated.

27. The City of Newark, through the Municipal Council and the Mayor, maintain that Ordinance No. 6PSF-G(S) is in effect and can therefore be enforced and implemented. Plaintiffs, in contrast, maintain that such Ordinance is invalid or must be suspended until it is approved by a majority of the votes cast at the next general or regular municipal election in accord with N.J.S.A. 40:69A-196; thus giving rise to an actual interpretive controversy that may be resolved by the Court by granting declaratory relief under N.J.S.A. 2A:16-59 and other relief, including injunctive relief under N.J.S.A. 2A:16-50.

WHEREFORE, Plaintiffs demand judgment against the City of Newark, its Municipal Council and Mayor as follows:

(a) adjudging and declaring that the Municipal Council's failure to submit Ordinance No. 6PSF-G(S) to the voters for a referendum vote within the three-year period immediately following the adoption of Plaintiffs' Initiated Ordinance No. 6PSF-a(s) has violated its duties under the Faulkner Act, N.J.S.A. 40:69A-196;

(b) invalidating Ordinance No 6PSF-G(S) *ab initio* for failure to submit such amendment to an initiated ordinance to the voters for approval;

(c) directing the Municipal Council to submit Ordinance No. 6PSF-G(S) to the voters at the next general or regular municipal election pursuant to N.J.S.A. 40:69A-196;

(d) prohibiting the Mayor of Newark from taking any actions to enforce or implement Ordinance No. 6PSF-G(S) until such Ordinance is submitted to the voters for approval, the referendum vote that is required by N.J.S.A. 40:69A-196 is held pursuant to N.J.S.A. 40:69A-192(c), and the amendment is approved by a majority of the votes cast in the referendum election; and

(e) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper, including enjoining the City of Newark, its Municipal Council and Mayor, from adopting and implementing additional amendments to their Initiated Ordinance without first submitting it to the people for a referendum vote.

COUNT TWO

(Mandamus to compel Municipal Clerk to Submit Amendment to Voters and Publish Same)

28. Plaintiffs repeat and restate each and every allegation contained in Paragraphs 1-27 as set forth herein.

29. Defendant Louis also has a ministerial, non-discretionary duty to process Plaintiffs' Initiative Petition and Ordinance in strict accordance with N.J.S.A. 40:69A-184 to -196, including acting on behalf of the Municipal Council when appropriate and communicating with the County Clerk with respect to questions to be submitted to the voters .

30. Pursuant to N.J.S.A. 40:69A-191, “[i]f within 20 days of the submission of a certified petition by the municipal clerk the council shall fail to pass an ordinance requested by an initiative petition in substantially the form requested or to repeal an ordinance as requested by a referendum petition, the *municipal clerk shall submit the ordinance* to the voters unless” it is withdrawn by the relevant committee of petitioners (emphasis added).

31. N.J.S.A. 40:69A-194 states that “[w]henver an ordinance is to be submitted to the voters of the municipality at any election in accordance with this article, *the clerk shall cause the ordinance to be published in at least two of the newspapers published or circulated in the municipality*” (emphasis added).

32. Although the Municipal Council has the duty to submit a proposed amendment to an initiated ordinance with a three-year time period after the adoption of such ordinance under N.J.S.A. 40:69A-196(a), on information and belief, the Municipal Clerk is tasked with conducting the actual transmission of the question related to the proposed amendment to the County Clerk for publication on the ballot.

33. By ignoring the clear mandate, language and intent of the Legislature to task the Municipal Clerk with the proper and expeditious processing of Plaintiffs' Initiative Petition and Ordinance, including its right to an automatic referendum vote in the event the Municipal Council seeks to amend an initiated ordinance within three years after the adoption of such ordinance, as expressed in N.J.S.A. 40:69A-191, 194 and 196, Defendant Louis has abused his

authority and has failed to perform his mandatory duty to process Plaintiffs' Initiative Petition and Ordinance , including any ordinance seeking to repeal such Initiated Ordinance, in accord with statute. Specifically, he failed to take any action to submit Ordinance No. 6PSF-G(S), on behalf of Municipal Council, to the voters via the County Clerk for a referendum vote, including publishing notice thereof in two newspapers prior to the referendum vote.

WHEREFORE, Plaintiffs demand judgment against the Municipal Clerk as follows:

(a) adjudging and declaring that the Municipal Clerk's failure to submit, on behalf of the Municipal Council, Ordinance No. 6PSF-G(S) to the voters for a referendum vote within the three-year period immediately following the adoption of Plaintiffs' Initiated Ordinance No. 6PSF-a(s) has violated his duties under the Faulkner Act, N.J.S.A. 40:69A-196;

(b) directing the Municipal Clerk to submit, on behalf of the Municipal Council, Ordinance No. 6PSF-G(S) to the voters at the next general or regular municipal election pursuant to N.J.S.A. 40:69A-196;

(c) directing the Municipal Clerk to publish notice of Ordinance No. 6PSF-G(S) in two newspapers circulated and distributed in the City of Newark during the time period specified in N.J.S.A. 40:69A-194; and

(d) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper.

COUNT THREE

(New Jersey Civil Rights Act, N.J.S.A. 10:6-2 Against All Defendants)

34. Plaintiffs repeat and restate each and every allegation contained in Paragraphs 1-33 as set forth herein.

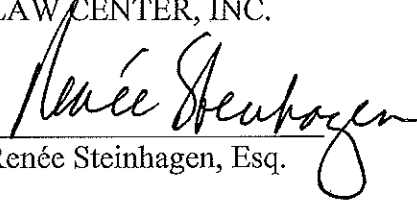
35. Pursuant to N.J.S.A. 40:69A-184, the voters have the power of initiative which is the power of “[t]he voters of any municipality [to] propose any ordinance and . . . adopt or reject the same at the polls.” In accord with N.J.S.A. 40:69A-196(a), “ No [initiated] ordinance shall be amended or repealed within 3 years immediately following the date of its adoption by the voters, except by a vote of the people.”

36. By denying Plaintiffs their statutory right of initiative, which includes the statutory right to a referendum vote on any amendment to or repeal of their Initiated Ordinance, within three years immediately following the adoption of such Initiated Ordinance, Defendants have violated N.J.S.A. 10:6-2(c) authorizing “[a]ny person who has been deprived of . . . any substantive rights . . . secured by the . . . laws of this State . . . [to] bring a civil action for damages and for injunctive or other appropriate relief.”

WHEREFORE Plaintiffs demand relief against Defendants Louis and the City of Newark, its Municipal Council and Mayor (1) ordering them to submit the Council’s amendment to their Initiated Ordinance to the voters in accord with N.J.S.A. 40:69A-196(a) (2) prohibiting Ordinance No. 6PSF-G(S) from taking effect until such ordinance is approved “by a majority of the votes cast [at the next general or regular municipal election],” N.J.S.A. 40:69A-196(a); (3) granting attorney’s fees pursuant to N.J.S.A. 10:6-2(f); and (4) granting Plaintiffs such other and further legal and equitable relief as this Court may find just and proper, including enjoining the City of Newark, its Municipal Council and Mayor, from adopting and implementing additional amendments to their Initiated Ordinance without first submitting such amendments to the people for a referendum vote.

Respectfully submitted,

NEW JERSEY APPLESEED PUBLIC INTEREST
LAW CENTER, INC.

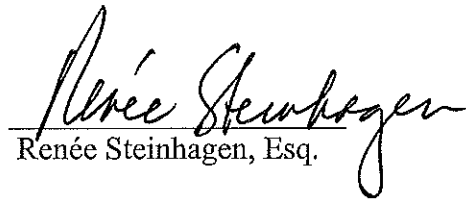


By: Renée Steinhagen, Esq.

Date: October 4, 2019

DESIGNATION OF TRIAL COUNSEL

Renée Steinhagen, Esq. is hereby designated as trial counsel for Plaintiffs.



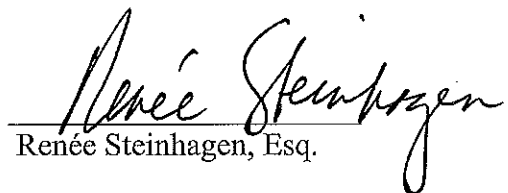
Renée Steinhagen, Esq.

Date: October 4, 2014

CERTIFICATION PURSUANT TO RULE 4:5-1

I, RENÉE STEINHAGEN, hereby certify that:

1. The matter in controversy is not the subject of any other pending Court or arbitration proceeding.
2. I am not aware of any other contemplated Court or arbitration proceeding and;
3. I am not aware at the present time of any other party that should be joined to this litigation.



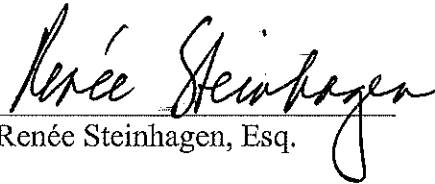
Renée Steinhagen, Esq.

Date: October 4, 2019

CERTIFICATION PRUSUANT TO RULE 4:69-4

I hereby certify that there were no local agency proceedings relevant to the subject of this Complaint that were or could have been transcribed and that the relevant governmental records consist entirely of documents. Accordingly, no transcripts have been ordered.

Date: October 4, 2019


Renée Steinhagen, Esq.