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** Pro hac vice application forthcoming

Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JOSEPH PAOLELLA,

CASE NO. _____

Plaintiff,

Hon. _____

v.

BOROUGH OF POINT PLEASANT BEACH,
NEW JERSEY, a municipal entity of the
State of New Jersey,

Defendant.

_____/

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND NOMINAL DAMAGES**

Plaintiff Joseph Paoella, by and through counsel, brings this complaint against Defendant Borough of Point Pleasant Beach, New Jersey, its officers, agents, servants, employees, attorneys, and successors in office, and in support thereof alleges the following:

ADDRESSES OF THE PARTIES

1. Plaintiff Joseph Paoella (hereafter referred to as “Plaintiff”), a resident of the State of New Jersey, may be contacted through his counsel, whose addresses are noted in this complaint, so that his privacy is maintained. Defendant Borough of Point Pleasant Beach, New Jersey (hereafter referred to as “Defendant”) is a public entity with its primary place of business located at 416 New Jersey Avenue, Point Pleasant Beach, New Jersey 08742.

INTRODUCTION

2. This is a civil rights action, brought pursuant to 42 U.S.C. § 1983, challenging the constitutionality of Defendant’s policies, practices, and customs governing religious speech and expression on the public areas of the Boardwalk of the Borough of Point Pleasant Beach (hereafter referred to as the “Boardwalk”), which is a traditional public forum.

3. Plaintiff, as an exercise of his Christian beliefs, intends to go to the public areas of the Boardwalk, hold a sign expressing a religious message, and speak about God and hand out religious literature to those who wish to receive his message.

4. Defendant’s policies, practices, and customs, as set forth in this complaint, unconstitutionally restrict and infringe Plaintiff’s constitutional rights (as well as those of similarly situated persons not before this Court) by requiring him to submit the following four documents thirty-days in advance for Defendant to consider whether to allow Plaintiff to engage in religious speech and expression by himself on the Boardwalk: (1) a “Hold Harmless Agreement,” (2) a “Religious Activities Application and Facility Use Form,” (3) a “Memorandum of Understanding,” and (4) “proof of insurance satisfactory to the Municipal Clerk.”

5. Defendant's policies, practices, and customs governing religious speech and expression on the Boardwalk impermissibly single out religious speech for disfavored treatment, are not narrowly tailored to serve any significant or compelling governmental interest in regulating speech in a traditional public forum and do not leave open ample alternative channels of communication.

6. Plaintiff asks this Court to declare Defendant's policies, practices, and customs governing religious speech and expression on the public areas of the Boardwalk unconstitutional on their face and as applied to Plaintiff and other similarly situated persons not before this Court.

7. Plaintiff also seeks a permanent injunction against the enforcement of Defendant's policies, practices, and customs as well as nominal damages and an award of costs and attorneys' fees associated with this action.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as it arises under the Constitution and laws of the United States and presents a federal question, and pursuant to 28 U.S.C. § 1343(a)(3)-(4), in that it seeks to redress the deprivation, under color of law, of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights of citizens and in that it seeks to recover damages and to secure equitable and other relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

9. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202, by Federal Rules of Civil Procedure 57 and 65, and by the general legal and equitable powers of this Court, which empower this Court to grant the requested relief.

10. This Court has the authority to award Plaintiff nominal damages pursuant to 42 U.S.C. § 1983 and applicable laws, and this Court has the authority to award Plaintiff his costs and attorneys' fees associated with this action pursuant to 42 U.S.C. § 1988 and other applicable laws.

11. Venue is proper within this judicial district, pursuant to 28 U.S.C. § 1391(b), because Defendant is located within this judicial district.

PARTIES

12. Plaintiff Joseph Paolella is an adult resident of Ewing, Mercer County, New Jersey.

13. Defendant Point Pleasant Beach is a public entity formed under the laws of the State of New Jersey and is located in Ocean County, New Jersey. Defendant, through its officers, agents, servants, employees, and attorneys, promulgates and enforces under the color of law the policies, practices, and customs governing the public use of the Boardwalk of Point Pleasant Beach. According to New Jersey law, Defendant is a public entity that may sue and be sued.

ALLEGATIONS OF FACT

14. Plaintiff is an adherent to the Christian faith and holds sincere religious beliefs concerning the need to exercise and express his Christian faith.

15. Plaintiff has the sincere religious belief that he is to share his Christian faith with those who want to voluntarily hear it.

16. Plaintiff travels to public areas in New Jersey and elsewhere and exercises his Christian faith by communicating his religious beliefs to others by holding signs expressing a religious message, speaking with those interested in hearing about God and the Bible, and handing out, without charge, religious tracts and literature to those who want to receive them.

Plaintiff sometimes engages in these activities by himself or with a few other like-minded individuals.

17. According to Chapter 3-32.2 of Defendant's Code of Ordinances, the Boardwalk is defined as a public right-of-way.

18. The Boardwalk is open to the public, much like a public park, street, or sidewalk, for people to traverse, assemble, and communicate.

19. The Boardwalk is a traditional public forum.

20. Plaintiff seeks to express his religious message and distribute religious literature on the Boardwalk in a peaceful, respectful, and lawful manner and has no intent to cause disruption or a breach of the peace.

21. On or about July 17, 2014, Plaintiff contacted Defendant through its Municipal Clerk and explained that he would like to come to the Boardwalk, hold a sign while standing on the side of the public Boardwalk, and talk about God with those who walked over to him voluntarily.

22. On or about July 22, 2014, the Municipal Clerk instructed Plaintiff that before he could engage in his proposed activities he first needed to complete and submit the following: (1) a "Hold Harmless Agreement," (2) a "Religious Activities Application and Facility Use Form," and (3) a "Memorandum of Understanding," along with providing "proof of insurance satisfactory to the Municipal Clerk."

23. Defendant's "Hold Harmless Agreement" requires Plaintiff, even though he requested to engage in religious speech and expression by himself on the Boardwalk, to provide his name and address, to give the dates on which he planned to be on the Boardwalk, to explain his purpose for being on the Boardwalk, and to agree to "indemnify, and hold the Borough of

Point Pleasant Beach and its officers, agents and employees harmless from any and all liability, claims, costs and attorney's fees arising out of the use of the property," including those that arise from the negligence of Defendant or Defendant's employees or from "the acts or omissions from any guest, participant, visitor or other person."

24. A true and correct copy of the "Hold Harmless Agreement" that Defendant has required Plaintiff to sign as a precondition to speaking at the Boardwalk is reproduced in full in this paragraph on the following page:



HOLD HARMLESS AGREEMENT

Between the Borough of Point Pleasant Beach
and

Organization Sponsoring Event: _____

Organization Street Address: _____

Town, State, Zip: _____

Organizational Contact for the Event: _____

Organization Type(Individual, Partnership, Non-Profit Organization, Corporation, Public Entity): _____

In consideration of the use of: _____

On the following date(s): _____

For the purpose of: _____

the undersigned agrees to indemnify, and hold the Borough of Point Pleasant Beach and its officers, agents and employees harmless from any and all liability, claims, costs and attorney's fees arising out of the use of the property referred to above, including, but not limited to, claims of any kind arising from the negligence of the Borough of Point Pleasant Beach and/or the Borough of Point Pleasant Beach employees.

I understand that this Hold Harmless Agreement also requires that the Borough of Point Pleasant Beach is indemnified from any losses or damages resulting from the acts or omissions from any guest, participant, visitor or other person attending the event herein referred to. In order to induce the Borough of Point Pleasant Beach to accept this Hold Harmless Agreement, the following information concerning the intended use of the premises is furnished:

- 1: Alcoholic Beverages (_____) will (_____) will not be served.
- 2: Total number of persons anticipated is _____.
- 3: Live entertainment (_____) will (_____) will not be provided.

Authorized Signature: _____ Date: _____

25. Defendant's "Religious Activities Application" requires Plaintiff, even though he requested to engage in religious speech and expression by himself on the Boardwalk, to provide his name, address, and telephone number, along with the dates, times, and locations at which he wants to engage in religious speech and expression on the Boardwalk. The application also requires Plaintiff to provide contact information for anyone else who would be involved in his religious activity. Defendant requires Plaintiff to submit the "Religious Activities Application" at least thirty days before Plaintiff would like to engage in religious speech and expression on the Boardwalk. Defendant also requires Plaintiff to provide "proof of insurance satisfactory to the Municipal Clerk" and to execute and submit in triplicate a "Memorandum of Understanding" before Defendant will permit him to engage in religious speech and expression on the Boardwalk.

26. Defendant's "Religious Activities Application" provides no time limit within which a permit application must be granted or denied, no criteria governing the granting or denial of the application, and no criteria governing what is considered satisfactory proof of insurance.

27. A true and correct copy of Defendant's "Religious Activities Application" is reproduced in full in this paragraph on the following page:



BOROUGH OF POINT PLEASANT BEACH
Religious Activities Application and Facility Use Form
(PLEASE PRINT)

Organization Sponsoring Event: _____

Organization Street Address: _____

Town, State, Zip: _____

Organization Phone Number: _____ Fax Number: _____

Organizational Contact for the Event: _____

Contact's Phone Number: _____

Event Name: _____

Type of Event: _____

Date(s) of Event: _____

Time(s): _____

Location Requested: _____

Contact information of individuals involved in proposed activities:

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
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_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Please attach a brief narrative of the planned event and any special needs that you may have.

This application must be completed in full and submitted at least 30 days prior to your event. Upon approval, applicant is to provide proof of insurance satisfactory to the Municipal Clerk.

The attached Memorandum of Understanding must be filled out in triplicate, executed and returned to:

Municipal Clerk
Borough of Point Pleasant Beach
P O Box 1048
Point Pleasant Beach, N. J. 08742

28. In addition to submitting the “Hold Harmless Agreement,” the “Religious Activities Application,” and the “satisfactory proof of insurance,” Defendant requires Plaintiff to complete and submit in triplicate a “Memorandum of Understanding” stating that he would peacefully engage in First Amendment activities and not obstruct the flow of traffic on the Boardwalk in exchange for Defendant not interfering with or infringing upon Plaintiff’s rights. Plaintiff has never engaged in First Amendment activities on the Boardwalk in a manner that was not peaceful or that obstructed the flow of traffic on the Boardwalk.

29. A true and correct copy of Defendant’s “Memorandum of Understanding” is reproduced in full in this paragraph on the following page:

MEMORANDUM OF UNDERSTANDING BETWEEN THE BOROUGH OF POINT PLEASANT
BEACH AND _____

1. **Parties.** This Memorandum of Understanding ("MOU") is made and entered into by and between _____ and the Borough of Point Pleasant Beach, Ocean County, New Jersey ("Borough"), whose municipal offices are located at 416 New Jersey Avenue, Point Pleasant Beach, New Jersey 08742.

2. **Purpose.** The purpose of this MOU is to ensure that _____ is able to exercise speech and expressive rights protected by the First Amendment to the United States Constitution on that area known as the Point Pleasant Beach Boardwalk ("Boardwalk") without governmental interference or infringement.

3. **Terms.**

A. **General Responsibility of the Borough.** The Borough shall permit _____ to engage in speech and expressive activity, as protected by the First Amendment to the United States Constitution, on the Boardwalk without governmental interference or infringement.

B. **General Responsibility of Applicant.** While exercising First Amendment rights, _____ and others affiliated with him/her shall conduct themselves in a peaceful manner and shall not obstruct the flow of traffic along the Boardwalk.

C. **Specific Activities Permitted.** _____ shall be free to preach and distribute religious literature and Bibles on the Boardwalk and shall be able to display portable signs, so long as such activity does not obstruct the flow of traffic along the Boardwalk. He/She shall be free to include others in his/her religious speech and expressive activities, under the same terms that apply to him/her, provided that such activities do not obstruct the traffic flow along the Boardwalk or exceed permissible noise levels as provided in applicable Borough Ordinance.

4. **Signatures.** In witness whereof, the parties to this MOU, through their duly authorized representatives, have executed this MOU on the dates set out below and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein. The effective date of this MOU is the date of the signature last affixed to this page.

By: _____ (Sign) Date _____

Print Name: _____

BOROUGH OF POINT PLEASANT BEACH

By: _____ Date _____
(MAYOR)

30. Based on information and belief, in contrast to Plaintiff who seeks to engage in religious speech on the Boardwalk, Defendant does not generally require people who seek to engage in non-religious, non-commercial speech on the Boardwalk, whether individually or in small groups, to submit an application, a hold harmless agreement, a memorandum of understanding, and proof of insurance before Defendant allows them to engage in First Amendment activities on the Boardwalk.

31. Plaintiff wishes to engage in free speech and expression, as mandated by his faith, on the Boardwalk without unconstitutional interference from Defendant.

32. Plaintiff wishes to engage in free speech and expression, as mandated by his faith, on the Boardwalk but has been prevented from doing so by himself as a result of Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk, along with the fear of punishment for failing to comply with those requirements.

33. Based on information and belief, the requirements imposed by Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk, along with the fear of punishment for failing to comply with those requirements, cause a realistic danger of discouraging, and has discouraged, others not before this Court, from exercising their constitutional rights in a traditional public forum.

ALLEGATIONS OF LAW

34. Plaintiff's peaceful, non-disruptive religious expression is fully protected by the First Amendment to the United States Constitution and by Article I of the New Jersey Constitution.

35. Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk unlawfully discriminate against Plaintiff, and others not before this Court, based on the content and/or viewpoint of their speech and on speaker identity.

36. Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk are an unlawful prior restraint on the protected speech of Plaintiff, and others not before this Court, in a traditional public forum.

37. Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk prevent Plaintiff, and others not before this Court, whether individually or in a small group, from exercising their constitutional rights in a traditional public forum spontaneously, anonymously, without cost, and without government approval based on the content and/or viewpoint of speech and speaker identity, which is not a narrowly tailored restriction that furthers any significant or compelling government interest and does not leave open ample alternative channels of communication.

38. Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk lack narrow, objective, and definite standards to guide official discretion and thereby vest unbridled discretion in government officials, which authorizes or encourages arbitrary, discriminatory, and capricious enforcement of the law, in particular, with regard to whether an application is granted or denied and whether proof of insurance is deemed satisfactory to allow religious expression on the Boardwalk.

39. Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk violate the rights of Plaintiff, and others not before this Court, by requiring the submission of a Hold Harmless Agreement before a traditional public forum may be used for religious speech, which is not a narrowly tailored restriction that furthers

any significant or compelling government interest and does not leave open ample alternative channels of communication.

40. Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk violate the rights of Plaintiff, and others not before this Court, by requiring the submission, thirty-days ahead of time, of a "Religious Activities Application" and proof of insurance before a traditional public forum may be used for religious speech, which are not narrowly tailored restrictions that further any significant or compelling government interest and do not leave open ample alternative channels of communication.

41. Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk violate the rights of Plaintiff, and others not before this Court, by requiring the submission of a "Memorandum of Understanding" before a traditional public forum may be used for religious speech, which is not a narrowly tailored restriction that furthers any significant or compelling government interest and does not leave open ample alternative channels of communication.

42. Defendant's policies, practices, and customs of regulating religious speech and expression on the Boardwalk, impose on Plaintiff, and others not before this Court, a substantial burden on religious exercise, further no significant or compelling governmental interest, are not narrowly tailored to furthering any significant or compelling governmental interest, are not the least restrictive means of furthering any significant or compelling governmental interest, do not leave open ample alternative channels of communication, are neither neutral nor generally applicable, and are vague and overbroad.

43. Plaintiff has no plain, adequate, or complete remedy to redress the wrongs described in this complaint, which are a direct and proximate result of Defendant's policies,

practices, and customs regulating religious speech and expression on the Boardwalk under the color of law, other than by filing this action.

COUNT ONE
Violation of the First Amendment—Freedom of Speech

44. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

45. Defendant's policies, practices, and customs of regulating religious speech and expression on the Boardwalk violate, on their face and/or as applied to Plaintiff, the right of freedom of speech guaranteed by the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

46. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

COUNT TWO
Violation of the First Amendment—Free Exercise of Religion

47. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

48. Defendant's policies, practices, and customs of regulating religious speech and expression on the Boardwalk violate, on their face and/or as applied to Plaintiff, the right of the free exercise of religion guaranteed by the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

49. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

COUNT THREE
Violation of the First Amendment—Freedom of Assembly

50. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

51. Defendant's policies, practices, and customs of regulating religious speech and expression on the Boardwalk violate, on their face and/or as applied to Plaintiff, the right of freedom of assembly guaranteed by the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

52. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

COUNT FOUR
Violation of the Fourteen Amendment—Equal Protection

53. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

54. Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk violate, on their face and/or as applied to Plaintiff, the right of equal protection guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

55. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

COUNT FIVE
Violation of the Fourteen Amendment—Due Process

56. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

57. Defendant's policies, practices, or customs regarding the regulation of religious speech and expression on the Boardwalk violate, on their face and/or as applied to Plaintiff, the right to due process guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

58. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

COUNT SIX

Violation of the New Jersey Constitution—Freedom of Speech

59. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

60. Defendant's policies, practices, or customs regarding the regulation of religious speech and expression on the Boardwalk violate, on their face and/or as applied to Plaintiff, the right to freedom of speech guaranteed by Article I, Paragraph 6, of the New Jersey Constitution.

61. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

COUNT SEVEN

Violation of the New Jersey Constitution—Freedom of Worship

62. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

63. Defendant's policies, practices, or customs regarding the regulation of religious speech and expression on the Boardwalk violate, on their face and/or as applied to Plaintiff, the right of the free exercise of religion guaranteed by Article I, Paragraph 3, of the New Jersey Constitution.

64. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

COUNT EIGHT

Violation of the New Jersey Constitution—Freedom of Assembly

65. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 above and incorporates those allegations herein by reference.

66. Defendant's policies, practices, or customs regarding the regulation of religious speech and expression on the Boardwalk violate, on their face and/or as applied to Plaintiff, the right of the freedom of assembly guaranteed by Article I, Paragraph 18, of the New Jersey Constitution.

67. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

PRAYER FOR RELIEF

68. Plaintiff repeats and re-alleges all allegations made above and incorporates those allegations herein by reference, and Plaintiff respectfully asks that this Court grant him the following relief and enter final judgment against Defendant Borough of Point Pleasant Beach:

A. Declare that Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk violate, on their face and as applied to Plaintiff, the rights guaranteed and protected by the First Amendment to the United States Constitution and 42 U.S.C. § 1983;

B. Declare that Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk violate, on their face and as applied to Plaintiff, the rights guaranteed and protected by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983;

C. Declare that Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk violate, on their face and as applied to Plaintiff, the rights guaranteed and protected by Article I of the New Jersey Constitution;

D. Permanently enjoin Defendant, its officers, agents, employees, successors in office, police, attorneys, and those acting in concert with them from enforcing Defendant's policies, practices, and customs regarding the regulation of religious speech and expression on the Boardwalk against Plaintiff and others not before this Court including through, but not limited to, arrest, charge, citation, fine, or prosecution, while they are exercising their protected constitutional rights on the Boardwalk;

E. Award Plaintiff nominal damages in an amount not to exceed \$19.00;

F. Award Plaintiff his reasonable attorneys' fees and costs associated with this action; and

G. Award Plaintiff any other and further relief as this Court deems equitable and just.

Respectfully submitted on this 24th day of October, 2014,

Edward L. White III**
Erik M. Zimmerman**
American Center for Law & Justice

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/s/ Francis J. Manion
Francis J. Manion*
Geoffrey R. Surtees**
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* Admitted to D.N.J. Bar

** Pro hac vice application forthcoming

Counsel for Plaintiff

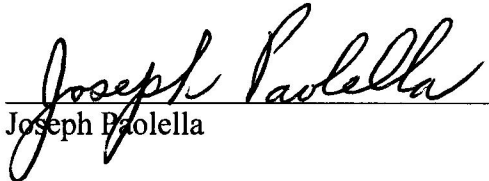
VERIFICATION AND INITIAL CERTIFICATION

I, Joseph Paoella, an adult resident of the State of New Jersey and the Plaintiff in the foregoing complaint, make the following statements to the best of my personal knowledge in accordance with L.Civ.R. 11.2 and pursuant to 28 U.S.C. § 1746,:

1. The factual statements contained in paragraphs 3, 6-7, 12, 14-16, 18, 20-29, and 31-32 in the foregoing complaint are true and correct.

2. As far as I know, the matter in controversy in the foregoing complaint is not the subject of a pending action in another court, arbitration, or administrative proceeding.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge. Executed on September 22, 2014.

^{1/}
Joseph Paoella

^{1/} The declaration electronically filed with the Court bears the scanned original signature of Joseph Paoella. The original declaration, bearing the original signature, is being retained by his counsel in this action and is available for review on request by the Court and counsel for Defendant.