SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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Benjamin Foley, Andrew Foley, and Ryan McGetrick, as assignees of Beechdale Capital Management, LLC, and Andrew Foley, Individually, And Brian Hale, Individually

Plaintiffs,

-against-

Richard A. Luthmann, Individually, and The Luthmann Law Firm, PLLC,

Defendants.

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Index No.: 150175/2014

REPLY AFFIRMATION OF RICHARD A. LUTHMANN, ESQ.

RICHARD A. LUTHMANN, ESQ., an attorney duly admitted to practice law in the courts of the State of New York affirms the following:

1. I am personally a Defendant in the above-captioned matter.

2. I am the principal and owner on the Defendant, the Luthmann Law Firm, PLLC, a law office with a physical location at 1811 Victory Boulevard, Staten Island, New York.

3. I make this affirmation in reply to the Plaintiff's Opposition to the instant application, which can – when viewed in a light most favorable to opposing counsel - only be termed as a glorified comic book piled on top of pure and adulterated extortion wrapped in a transparent abuse of legal process.[1]

[1] Luthmann requests **sanctions** as against Mr. Chusid. While Mr. Chusid's clients may be professional thugs, Mr. Chusid should know better and should be held to a higher standard. Mr. Luthmann intends to renew this request at each and every procedural moment in this litigation going forward (if the petition is not summarily dismissed as baseless), including in discovery, pretrial, appeal, judgment and bankruptcy, which Mr. Luthmann intends to pursue before extortionists take a red cent of his hard-earned money. In the words of great American patriot Robert Goodloe Harper: "Millions for

DEFENDANTS' (AND THEIR ATTORNEY-COUNTERCLAIM DEFENDANT TO BE)'S MORONIC SUPPOSITIONS

4. While Opposing Counsel, in Plaintiff's Exhibit "A" seeks to highlight what can only be described as a degree in graphic fiction, the undersigned kindly reminds the Court that – at first impression – this is Defendants' second bite at the apple. They have, by their own admission already taken judgment as against David Parker and Trading Places LLC. Now, since they cannot enforce their judgment, they look to sue Mr. Parker's lawyer. Aside from the clear question – whether opposing counsel was asleep the day in law school when they actually practiced law – Defendants must answer one simple question: if Mr. Luthmann was such an egregious actor, why was he not included in the original lawsuit (the "Parker Lawsuit")? Or put more bluntly, if the Defendants would have succeeded in strong –arming money from Mr. Parker and / or Trading Places LLC using their thug tactics –including those transparently clothed in their attorney's legal papers – would their appetite for extortion have been satiated?

5. As to paragraph 4 to the Plaintiff's Affirmation of Counsel ("Comic Book Affirmation"), Mr. Luthmann represents several international financial clients. In fact, after Mr. Luthmann obtained his Master of Laws from the University of Miami School of Law in Estate Planning in 2004 (at its time, the only program of its' kind in the country – the "Harvard" of estate planning) Mr. Luthmann worked for several international banking and insurance companies including Qatar National Bank through its Ansbacher Wealth Management arm, the Britannia Group and the Cotswold Group of Companies.

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defense, but not one cent for tribute." 804. Charles Cotesworth Pinckney (1746-1825). Respectfully Quoted: A Dictionary of Quotations. 1989

6. Also relevant is the fact that Plaintiff **NEVER SERVED DEFENDANT OR DEFENDANT'S COUNSEL** with process in the Parker Lawsuit until **AFTER** any and all purported and alleged transfers were made by counsel. As a matter of law, the undersigned is presumed to be **COLLECTING ATTORNEYS' FEES.**

7. The existence of unsatisfied judgment is essential element of action alleging fraudulent conveyance pursuant to § 273-a of the Debtor Creditor law. Any such cause of action pursuant to § 273-a is properly dismissed where plaintiff had obtained no judgment against any of defendants. *Frybergh v Weissman*, 145 App.Div.2d 531, 536 NYS2d 465, (2d Dep't 1988).

8. What Plaintiffs fail to include anywhere – in their pleadings, in the Comic Book Affirmation, in their Memorandum of Law (the "Comic Book Memorandum of Law"), in failed graphic arts experiment known as Exhibit "A" to the Comic Book Affirmation – anywhere - and which destroys any fraudulent transfer argument with respect to the Defendants *as a matter of law* are the Affidavits of Service filed by Plaintiffs in the New York matter, attached to the Affirmation of Richard A. Luthmann, Esq., as Exhibit "F". These Affidavits of Service show that no actual knowledge of the New York matter was directly given to the Defendants. And moreover, the earliest that Parker and/or Trading Places, LLC, could have had actual knowledge of the commencement of the New York matter was on or after *May 8, 2013* – the day after the latest of the transfers made as alleged in these pleadings. No actual judgment was actually ever obtained as against the Defendants, and the judgments that were obtained as against Third Parties, were done so months later.

9. To the extent that the Plaintiffs believe they can plead "Badges of Fraud" (Comic Book Affirmation at Footnote 2) and overcome this basic *sine qua non* of debtor-creditor law is without basis in law, fact, reality and imagination.

10. Paragraph 7 of the Comic Book Affirmation reveals that there have been TWO (2) amendments to the pleadings to this point - to the extent the Plaintiffs attempt to gerrymander the facts and the law together in a cognizable theory – and the issue has not yet been joined. The Honorable Learned Hand must be rolling over in his grave at the thought of the FORTY-FOURTH and FORTH-FIFTH AMENDED COMPLAINTS – none of which have any more of a basis in law or fact than the failed ORIGINAL, FIRST and SECOND AMENDED COMPLAINTS – though the Defendants must be commended in their attempts to stretch TWO HUNDRED TEN ($210.00) DOLLARS.

11. Plaintiffs attempt to characterize Mr. Luthmann and Mr. Parker as "old college friends". Many people attend Ivy League Schools, good and bad. These statements are nothing more than a cheap rhetorical trick by Plaintiffs to abuse process and libel Mr. Luthmann in his trade. For example:

a. Meg Whitman ran one of the world's most successful Internet company as chief executive of eBay Inc. and is now the Chairwoman President and CEO of Hewlett-Packard

b. John Alexander Thain is an American businessman, investment banker, and currently chairman and CEO of the CIT Group. Thain was the last chairman and chief executive officer of Merrill Lynch before its merger with Bank of America.

c. Mary Cunningham Agee is an American business executive and author. She served in the top management of two Fortune 100 companies in the 1980s, one of the first women to do so, and was twice voted one of the “25 Most Influential Women in America” by World Almanac 1981 and 1982. Agee is a Managing Partner of the Semper Charitable Foundation and CEO of the family’s boutique wine business, Aurea Estate Wines, Inc.

d. Mr. Ronald L. Sargent, also known as Ron has been the Chairman and Chief Executive Officer of Staples, Inc. since March 2005 and February 2002 respectively. Mr. Sargent served as the Chairman and Chief Executive Officer at Staples Foundation for Learning, Inc. He served as the President of Staples Inc. from November 1998 to January 2006.

12. Each and every one of the above-mentioned American Business Leaders as “OLD FRIENDS” and “UNIVERSITY BUDDYS” to: JEFFREY KEITH "JEFF" SKILLING, the former CEO of the Enron Corporation, headquartered in Houston, Texas. In 2006, he was convicted of federal felony charges relating to Enron's financial collapse and is currently serving 14 years of a 24-year, four-month prison sentence at the Federal Prison Camp (FPC) – Montgomery in Montgomery, Alabama.

13. Perhaps the only bit of truth in the Comic Book Affirmation comes at Paragraph 10. Mr. Luthmann is an “OUTSTANDING” lawyer as the Plaintiffs concede.

14. Plaintiffs’ grasp of the applicable law is far from OUTSTANDING.

15. First and foremost, each and every case that the Plaintiff claims is an antecedent to Defendants’ liability has a factual circumstance clearly distinguishable from this case. In every one of the Plaintiff’s cited cases, the common factual thread is

an attenuated pattern of fraud over a period of time with several (more than 2) discernable instances of the attorney taking part in a fraud and receiving money in violation of a FIDUCIARY DUTY.

16. Like a parrot, Plaintiff counsel enjoys chirping "the Billy Joel Case" a/k/a *Joel v. Weber et als.*, 602 N.Y.S.2d 383 (1st Dep't 1993). There the First Department said:

> Plaintiffs have set forth, in each cause of action, ***factual allegations, with sufficient particularity***, indicating that MYB knowingly and recklessly encouraged, induced and assisted Weber and Frank Management, Inc. ("FMI") in diverting Mr. Joel's partnership distributions and concealing that conversion from Mr. Joel, ***in breach of their fiduciary obligations to Mr. Joel***. 197 A.D.2d at 396. ***[emphasis added]***

17. In the instant case, there is hardly the "factual allegations [plead] with sufficient particularity" that show Mr. Luthmann did anything wrong other than act as counsel.

18. Moreover, neither Luthmann nor his law firm owed **ANY FIDUCIARY DUTY WHATSOEVER** to any of the Plaintiffs, and absent such duty, Luthmann and his law firm owed Plaintiffs nothing more than is expected in the "morals of the marketplace". *Meinhard v. Salmon*, 164 N.E. 545 (N.Y. 1928).

19. Plaintiffs attempt to "slip in" a fiduciary duty of care standard that does not exist under the law and never has in this state or under the common law with respect to what is alleged to be a "fraudulent conveyance" (but cannot be because a necessary element is not plead).

20. As with civil conspiracy liability, due to an absence of damages there is substantial authority to the effect that a general creditor cannot recover against a person

based upon an alleged aiding and abetting of a fraudulent conveyance. *Adler v. Fenton*, 65 U.S. 407 (1860) ("A general creditor cannot bring an action on the case against his debtor, or against those combining and colluding with him to make dispositions of his property, although the object of those dispositions be to hinder, delay, and defraud creditors.")

21. Defendants additionally direct the Court to the rule in the *Billy Joel* and related case law as stated in Defendant's Memorandum of Law (to which the Plaintiffs baselessly object in their Comic Book Memorandum of Law): Under New York law, an attorney may be liable to third parties for actions taken in furtherance of his role as counsel upon proof of the existence of "fraud, collusion, malice or bad faith." *Joel v. Weber*, 602 N.Y.S.2d 383, 396-397 (App. Div. 1st Dept. 1993). To properly plead a cause of action to recover damages for aiding and abetting fraud, a complaint must allege the existence of an underlying fraud, knowledge of the fraud on the part of the aider and abettor, and substantial assistance by the aider and abettor in achievement of the fraud. *Winkler v Battery Trading*, 89 A.D.3d 1016, 1017, 934 NYS2d 199 (2d Dep't 2011); *Stanfield Offshore Leveraged Assets v. Metropolitan Life Ins. Co.*, 64 A.D.3d 472, 476, 883 N.Y.S.2d 486 (1st Dep't), lv denied 13 N.Y.3d 709, 890 N.Y.S.2d 447, 918 N.E.2d 962 (2009). Substantial assistance exists where a defendant affirmatively assists, helps conceal, or, by virtue of failing to act when required to do so, enables the fraud to proceed. *Id*.

22. Additionally, actual application of these applicable rules may aid Plaintiffs and their wayward counsel in the application of the applicable law in New York. In

Warburg Realty Partnership, Ltd. v Battery Place Realty, LLC, 2014 NY Slip Op 30691 (Sup. Ct., N.Y. County 2014), Justice Coin reasoned:

> On this motion [Plaintiff] contends…that an attorney may be liable to third parties for actions taken in furtherance of his role as counsel upon proof of the existence of fraud, collusion, malice, bad faith or special circumstances. *Joel v. Weber*, 197 A.D.2d 396, 397, 602 N.Y.S.2d 383 (1st Dept 1993). It relies on its allegation that one or more of the Baron defendants received $150,000 from the proceeds of the sale at closing.
>
> [Defendant attorney's] receipt of a considerable sum at the closing is in itself insufficient basis from which it could be inferred that the [Defendant attorney] acted in self-interest. *Kline v Schaum*, 174 Misc2d 988, 990, 673 N.Y.S.2d 992 [App Term, 2d Dept 1997]). A mere receipt of legal fees at a real estate closing transaction does not place the attorney's conduct outside the scope of his legal representation. (*Id*.).
>
> However, an affidavit of defendant Gavin Choi, the buyer's ***attorney***, raises an inference that the disbursements made to Baron's firm went beyond the compensation for the work on the subject real estate transaction. Choi alleges that prior to the closing, Edward Willner, the seller, "mentioned to [him] that he owed money to his attorney in connection with other matters that had nothing to do with the closing" (Affidavit of Gavin Choi, dated May 15, 2013, ¶6). Shortly before the closing, [Defendant Attorney] asked Choi to issue his firm two separate checks at the closing, one for $127,400.00 and another for $47,600.00 (*Id*.). Accordingly, Choi's affidavit supports an inference that a portion of the money that [Defendant Attorney] received at the closing funds was in excess of his legal fees and was intended to cover certain outstanding account receivables. Viewed in the light most favorable to plaintiff, Choi's affidavit points to existence of evidentiary support to Warburg's claim that, at least partially, the [Defendant Attorney] acted in self-interest and should not be shielded from liability by reason of their apparent advocacy role.

23. Even Plaintiffs' can possibly glean that the application of the rule in the *Billy Joel* case requires a specific and particularized affidavit as to how the Defendant attorney's action clearly relates to an inference of fraud.

24. Here, there are no allegations in any of the Plaintiffs' Affidavits from attorneys. In fact, the only allegation by an attorney (Mr. Chusid) was amended away and – and as the Plaintiffs' now argue is a legal nullity.

25. Moreover, there is no "smoking gun" here like the over $150,000 in fees for a single real estate transaction. In fact, the Exhibit "A" art project goes to great lengths to show that the course of Luthmann's engagement extended from November 2012 until May 2013 – nearly SIX (6) MONTHS. The fee retained by Mr. Luthmann - $52,500.00 – is patently reasonable for an extended engagement with a financial services-related client.

DEFENDANT DEMANDS TRIAL BY COMBAT

26. Defendant invokes the common law writ of right and demands his common law right to Trial By Combat as against Plaintiffs and their counsel, whom plaintiff wishes to implead into the Trial By Combat by writ of right.

THE HISTORY OF TRIAL BY COMBAT

27. Wager of battle, as the trial by combat was called in English, appears to have been introduced into the common law of the Kingdom of England following the Norman Conquest and remained in use for the duration of the High and Late Middle Ages. Quennell, Marjorie; Quennell, C. H. B. (1969) [1918], *A History of Everyday Things in England* (4 ed.), B. T. Batsford at p. 64.

28. The last certain trial by battle in England occurred in 1446: a servant accused his master of treason, and the master drank too much wine before the battle and was slain by the servant. Megarry, Sir Robert (2005), *A New Miscellany-at-Law: Yet Another Diversion for Lawyers and Others*, ISBN 9781841135540 at p. 65. In Scotland and Ireland, the practice was continued into the sixteenth century.

29. The earliest case in which wager of battle is recorded was *Wulfstan v. Walter* (1077), eleven years after the Norman Conquest. Significantly, the names of the parties suggest that it was a dispute between a Saxon and a Norman. The Tractatus of Glanvill, from around 1187, appears to have considered it the chief mode of trial, at least among aristocrats entitled to bear arms.

30. In circa 1219 trial by jury replaced trial by ordeal, which had been the mode of proof for crown pleas since the Assize of Clarendon in 1166. With the emergence of the legal profession in the thirteenth century, lawyers, guarding the safety of the lives and limbs of their clients, steered people away from the wager of battle. A number of legal fictions were devised to enable litigants to avail themselves of the jury even in the sort of actions that were traditionally tried by wager of battle. The practice of averting trial by combat led to the modern concept of attorneys representing litigants.

31. Civil disputes were handled differently from criminal cases. In civil cases, women, the elderly, the infirm of body, minors, and—after 1176—the clergy could choose a jury trial or could have champions named to fight in their stead. Hired champions were technically illegal but are obvious in the record. A 1276 document among Bishop Swinefield's household records makes the promise to pay Thomas of

Brydges an annual retainer fee for acting as champion, with additional stipend and expenses paid for each fight. Neilson, George (1890). "Trial by Combat". *Trial by Combat*. pp. 46–51. In criminal cases, an "approver" was often chosen from the accomplices of the accused or from a prison to do the fighting for the crown. Approvers sometimes were given their freedom after winning five trials but sometimes were hanged anyway. *Id.*

32. In practice, a person facing trial by combat was assisted by a second, often referred to as a squire. The role of the squire was to attend the battle and to arrange the particulars of the ceremony with the opposing squire. Over time, squires would meet and resolve the disputes during negotiations over combat. Ample time was made for this by creating a process for checking the saddle and bridle of horses for prayer scrolls and enchantments and requiring litigants to exchange gloves (the origin of "throwing down the gauntlet") and sometimes to go to separate churches and give five pence (for the five wounds of Christ) to the church.

33. Early trials by combat allowed a variety of weapons, particularly for knights. Later, commoners were given war hammers, cudgels, or quarterstaves with sharp iron tips. The duelling ground was typically sixty feet square. Commoners were allowed a rectangular leather shield and could be armed with a suit of leather armor, bare to the knees and elbows and covered by a red surcoat of a light type of silk called sendal. *Id.* The litigants appeared in person. The combat was to begin before noon and be concluded before sunset.

34. Either combatant could end the fight and lose his case by crying out the word "Craven", from the Old French for "broken", which acknowledged "(I am)

vanquished." Quennell, Marjorie; Quennell, C. H. B. (1969) [1918], *A History of Everyday Things in England* (4 ed.), B. T. Batsford at p. 64. The party who did so, however, whether litigant or champion, was punished with outlawry. Fighting continued until one party was dead or disabled. The last man standing won his case.

35. By 1300, the wager of combat had all but died out in favor of trial by jury. One of the last mass trials by combat in Scotland, the Battle of the Clans, took place in Perth in 1396. This event took the form of a pitched battle between teams of around thirty men each, representing Clan Macpherson and Clan Davidson on the North Inch in front of the King, Robert III. The battle was intended to resolve a dispute over which clan was to hold the right flank in an upcoming battle of both clans (and several others) against Clan Cameron. The Clan Macpherson is thought to have won, but only twelve men survived from the original sixty. Gunn, Robert M. (1998). "Clan Battle of 1396". *Scottish Event & Historical Timeline*.

36. The last trial by combat under the authority of an English monarch is thought to have taken place during the reign of Elizabeth I in the inner courtyard of Dublin Castle in Ireland on 7 September 1583. The dispute was between members of the O'Connor clan (i.e., sept) in King's county (modern County Offaly), who were persuaded by two judges (referred to in the account below) to bring the matter before the Irish privy council for resolution.

37. The dispute probably concerned dynastic power within the territory of the O'Connors, and the parties, Teig and Conor, had accused each other of treason; the privy council granted their wish for trial by combat to take place on the following day, and for another such trial between two other members of the same sept to take place on

the Wednesday following. The first combat took place as appointed, with the combatants "in their shirts with swords, targetts and skulles". An account of the proceedings as observed by one of the Privy Councillors is given in the State papers Ireland 63/104/69 (spelling adapted):

38. The first combat was performed at the time and place accordingly with observation of all due ceremonies as so short a time would suffer, wherein both parties showed great courage by a desperate fight: In which Conor was slain and Teig hurt but not mortally, the more was the pity: Upon this Wednesday following Mortogh Cogge [O'Connor] appeared in the same place brought by the captains to the listes, and there stayed 2 hours making proclamation against his enemy by drum and trumpet, but he appeared not ... The only thing we commend in this action was the diligent travail of Sir Lucas Dillon and the Master of the Rolls, who equally and openly seemed to countenance the champions, but secretly with very good concurrence, both with us and between themselves, with such regard of her Majesty's service, as giveth us cause to commend them to your Lordships.

39. The Annals of the Four Masters also refers to the trial and censures the parties for having allowed the English to entice them into the proceedings. It is also referred to in Holinshed's chronicles. This was a trial not at common law but under consiliar jurisdiction. It is uncertain when the last actual trial by battle in Britain took place. While some references speak of such a trial being held in 1631, records indicate that King Charles I intervened to prevent the battle. Neilson, George; Sereni, Angelo Piero (2009), *Trial by Combat* (reprint ed.), The Lawbook Exchange, Ltd., p. 326.

40. A 1638 case is less clear: it involved a legal dispute between Ralf Claxton and Richard Lilburne (the latter the father of the pugnacious John Lilburne). The king again stepped in, and judges acted to delay proceedings. Gardiner, Samuel Rawson (2000), *History of England from the Accession of James I to the Outbreak of the Civil War: 1603-1642*, Adegi Graphics LLC at 249; Neilson, George; Sereni, Angelo Piero (2009), *Trial by Combat* (reprint ed.), The Lawbook Exchange, Ltd., p. 326.

41. No record survives of the outcome of the case, but no contemporary account speaks of the trial by battle actually taking place. Mackenzie, Eneas; Ross, Marvin (1834), *An historical, topographical, and descriptive view of the county palatine of Durham: comprehending the various subjects of natural, civil, and ecclesiastical geography, agriculture, mines, manufactures, navigation, trade, commerce, buildings, antiquities, curiosities, public ...* **2**, Mackenzie and Den at p. 300; Megarry, Sir Robert (2005), *A New Miscellany-at-Law: Yet Another Diversion for Lawyers and Others* at p. 63-64.

42. The last certain judicial battle in Britain was in Scotland in 1597, when Adam Bruntfield accused James Carmichael of murder and killed him in battle. *Id.* at 66. Proposals to abolish trial by battle were made in the 17th century and twice in the 18th but were unsuccessful. *Id.* at 62.

43. In 1774, as part of the legislative response to the Boston Tea Party, Parliament considered a bill which would have abolished appeals of murder and trials by battle in the American colonies. It was successfully opposed by Member of Parliament John Dunning, who called the appeal of murder "that great pillar of the Constitution". Shoenfeld, Mark (1997), "Waging battle: *Ashford v*

Thornton, *Ivanhoe* and legal violence", in Simmons, Clare, *Medievalism and the Quest for the "Real" Middle Ages*, Routledge, at p. 61.

44. The writ of right was the most direct way at common law of challenging someone's right to a piece of real property. The criminal appeal was a private criminal prosecution instituted by the accuser directly against the accused. It was not, unlike the contemporary appeal, a proceeding in a court of superior jurisdiction reviewing the proceedings of a lower court.

45. Such a private prosecution was last conducted in the case of Ashford v. Thornton in 1818, as recorded in The Newgate Calendar. "Abraham Thornton". *The Newgate Calendar*. The Ex-Classics Web Site. Pronouncing judgement in favor of the accused's plea claiming the wager of battle, Justice Bayley of the King's Bench said that:

One of the inconveniences of this procedure is, that the party who institutes it must be willing, if required, to stake his life in support of his accusation.

46. The accusation was quickly withdrawn after this judgment. Parliament abolished wager of battle the following year, in 1819, and at the same time they also abolished the writ of right and criminal appeals.

TRIAL BY COMBAT IN THE UNITED STATES

47. At the times of the ratification of the Bill of Rights in 1791, trial by combat was not outlawed in any of the Thirteen Original United States (including the State of New York), all of whom inherited British common law upon independence in 1776.

48. Since then, no American court in post-independence United States to the undersigned's knowledge has addressed the issue, and thus trial by combat remains a right reserved to the people and a valid alternative to civil action.

49. New York Law recognizes Trial By Combat as a more frequent method to settle disputes in earlier years:

> In ages past, controversies were not determined by marshaling an array of rational probative proof…trial by combat and trial by ordeal constituted proof of God's will. *Pando v. Fernandez*, 127 Misc.2d 224, 230-231 (Sup Ct., NY County 1984).

50. The Ninth Amendment to the United States Constitution states:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

51. The Ninth Amendment is applicable to the states through the Fourteenth Amendment. Justice Arthur Goldberg (joined by Chief Justice Earl Warren and Justice William Brennan) expressed this view in a concurring opinion in the case of *Griswold v. Connecticut,* 381 U.S. 479 (1965):

> [T]he Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments. 381 U.S. at 488.

52. The *Griswold* Court saw the Framers' view of the Ninth Amendment Constitution as interpreted expansively – so as not to preclude rights – specifically those rights reserved to the people at the time of the Ninth Amendment's ratification in 1791:

> While [the Supreme] Court has had little occasion to interpret the Ninth Amendment, "it cannot be presumed that any clause in the constitution is intended to be without effect." *Marbury* v. *Madison*, 1 Cranch 137, 174. In interpreting the Constitution, "real effect should be given to all the words it uses." *Myers* v.*United States*, 272 U.S. 52, 151. The Ninth Amendment to the Constitution may be regarded by some as a recent discovery and may be forgotten by others, but since 1791 it has been a basic part of the Constitution which we are sworn to uphold. 381 US at 490-492.

53. The Appellate Division, Second Department has recognized that the private prosecution of a criminal complaint has its origin in the trial by combat that was a fixture of early English common law. *Matter of Sedore v Epstein*, 56 A.D.3d 60, 64 (2nd Dept 2008) (citing *State v Storm*, 141 N.J. 245, 250, 661 A.2d 790, 793 (1995).

54. The allegations made by Plaintiffs, aided and abetted by their counsel, border upon the criminal. As such, the undersigned respectfully requests that the Court permit the Undersigned to dispatch Plaintiffs and their counsel to the Divine Providence of the Maker for Him to exact His Divine Judgment once the Undersigned has released the souls of the Plaintiffs and their counsel from their corporeal bodies, personally and/or by way of a Champion.

CONCLUSION

55. Accordingly, the Plaintiffs' Complaint should be dismissed – in its entirety – with prejudice, or in the alternative, Defendants should be granted leave to invoke our laws and the common law writ of right to compel the Plaintiffs and their counsel to Trial By Combat.

Dated: July 21, 2015

Respectfully submitted,

THE LUTHMANN LAW FIRM, PLLC

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