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July 23, 2015

Via Federal Express

Motions Clerk of the Superior Court
Superior Court of New Jersey - Law Division
2 Broad Street
Elizabeth, NJ 07207

RE: New Jersey Foundation for Open Government, Inc., et al, v. Summit Housing
Authority, et al.
Docket No. L-1927-15

Dear Sir or Madam:

On behalf of the Plaintiffs, I enclose:

- Notice of Motion for Summary Judgment
- Statement of Material Facts
- Certification of John Paff
- Letter Brief
- Form of Proposed Order

Please charge the filing fee to our Superior Court Account No. 14282.

Please contact us if we may be of any assistance. Thank you.

Respectfully,


Anthony H. Ogozalek, Jr.

cc. William R. Connelly, Esq. w/encls. (Via Federal Express)

Anthony H. Ogozalek, Jr.
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Attorney for Plaintiff

NEW JERSEY FOUNDATION FOR
OPEN GOVERNMENT, INC. and
JOHN PAFF
Plaintiffs,

vs.

SUMMIT HOUSING AUTHORITY
and JOSEPH M. BILLY, JR.
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
UNION COUNTY

DOCKET NO. L-1927-15

**NOTICE OF MOTION FOR
SUMMARY JUDGMENT**

To: William R. Connelly
7 West Main St
Mendham, NJ 07945
Attorney for Defendants

PLEASE TAKE NOTICE that the undersigned will apply to the above-named court, located at the Union County Courthouse, 2 Broad Street, Elizabeth, New Jersey, on **Friday, August 21, 2015 at 9:00 AM**, or as soon thereafter as counsel may be heard, for an Order granting summary judgment in favor of Plaintiffs, New Jersey Foundation for Open Government and John Paff.

Reliance shall be placed upon the enclosed Certification of John Paff, Statement of Material Facts and Letter Brief.

Pursuant to R. 1:6-2(d), the undersigned requests oral argument, unless no opposition is filed.

A proposed form of Order is annexed hereto.

BECKMAN OGOZALEK PEREZ PAGLIONE
ATTORNEYS FOR PLAINTIFFS

By: 
Anthony H. Ogozalek, Jr., Esq.

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Attorney for Plaintiff

NEW JERSEY FOUNDATION FOR
OPEN GOVERNMENT, INC. and
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Plaintiffs,

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STATEMENT OF MATERIAL FACTS
R.4:46-2(a)

Please accept this as Plaintiffs' Statement of Material Facts as required by R.4:46-2(a).

1. Since Defendant Joseph M. Billy, Jr. became Defendant Summit Housing Authority's Executive Director on April 1, 2013, Defendant Authority has not recorded minutes of its nonpublic (i.e. closed or executive) meetings. Paff Cert., ¶ 3, Exhibit 2¹. Paff Cert., ¶ 7, Exhibit 6².

2. Since Defendant Joseph M. Billy, Jr. became Defendant Summit Housing Authority's Executive Director on April 1, 2013, Defendant Authority held nonpublic

¹ See the final line of Billy's April 17, 2015 letter, which states: "Minutes of Executive Sessions are not maintained and are therefore unavailable."

² In Billy's Certification, see specifically, ¶ 5.

meetings on June 25, 2014, September 17, 2014 and March 25, 2015, but no minutes were recorded for those nonpublic meetings. Paff Cert., ¶¶ 6, 7, Exhibit 6³ and 9.

3. Since Defendant Joseph M. Billy, Jr. became Defendant Summit Housing Authority's Executive Director on April 1, 2013, Defendant Authority did not pass free-standing resolutions authorizing its nonpublic meetings. Rather, it "put a resolution on the record when going into executive session." Paff Cert., ¶ 7, Exhibit 6⁴.

4. The method by which Defendant Authority "put a resolution on the record when going into executive session" is shown by the Authority's June 25, 2014, September 17, 2014 and March 25, 2015 public meeting minutes which state in relevant part and respectively:

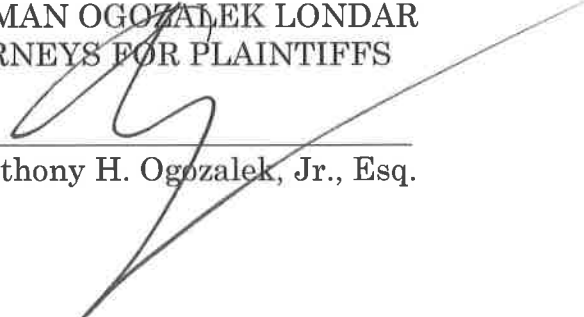
EXECUTIVE SESSION: Commissioner Spurr moved to go into an Executive Session seconded by Commissioner Zimmermann, to discuss Mr. Billy's review with the board members. The motion passed by unanimous vote. (06/25/14)

EXECUTIVE SESSION: Commissioner Poole moved and Commissioner Halverstadt seconded a motion to go into Executive Session to discuss personnel and/or matters of litigation that may or may not be acted upon. Upon roll call, all members voted affirmative. (09/17/14)

EXECUTIVE SESSION: Commissioners Spurr and Zimmermann moved to enter into Executive Session. All members voted in the affirmative. (03/25/15)

Paff Cert., ¶ 6, Exhibit 6; ¶ 9, Exhibits 8 - 9.

BECKMAN OGOZALEK LONDAR
ATTORNEYS FOR PLAINTIFFS

By: 
Anthony H. Ogozalek, Jr., Esq.

³ In Billy's Certification, see specifically, ¶ 6.

⁴ In Billy's Certification, see specifically, ¶ 7.

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Attorney for Plaintiff

NEW JERSEY FOUNDATION FOR
OPEN GOVERNMENT, INC. and
JOHN PAFF
Plaintiffs,

vs.

SUMMIT HOUSING AUTHORITY
and JOSEPH M. BILLY, JR.
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
UNION COUNTY

DOCKET NO. L-1927-15

CERTIFICATION OF JOHN PAFF

John Paff, of full age, certifies that the following statements are true:

1. I am a plaintiff in the within matter and am fully familiar with the facts and proceedings in this case.
2. On or about April 9, 2015, I submitted the records request attached hereto as Exhibit 1 to Defendant Billy.
3. In an April 17, 2015 e-mail, attached hereto as Exhibit 2, Defendant Billy responded to my records request.
4. On May 26, 2010, Defendant Housing Authority passed a resolution, attached hereto as Exhibit 3, that authorized, in accordance with N.J.S.A.10:4-13, a nonpublic meeting held on that date.
5. Attached hereto as Exhibit 4 is a copy of the Defendant Housing Authority's October 27, 2010 nonpublic meeting minutes.

6. Prior to the filing of this suit, I searched Defendant Housing Authority's web site and learned that the Authority held a nonpublic meeting on September 17, 2014. A copy of the first page of the Authority's public meeting minutes from that date is attached hereto as Exhibit 5.

7. In opposition to this lawsuit, the Defendants filed a June 23, 2015 Certification of Joseph M. Billy, a copy of which is attached hereto as Exhibit 6.

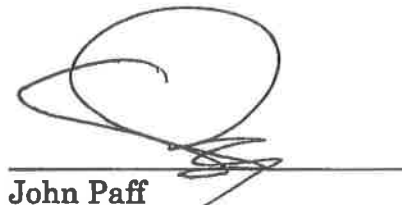
8. A copy of the Verified Complaint, without exhibits, is attached hereto as Exhibit 7. The purpose of this exhibit is to inform the Court of the relief requested in the Third and Fourth Counts of that Verified Complaint. I certify that the facts set forth in the Verified Complaint are true.

9. After reading Defendant's Billy's certification, I searched Defendant Housing Authority's web site and found the minutes of the public meetings held on June 25, 2014 and March 25, 2015. The page from each set of minutes that reference the nonpublic session are attached, respectively, as Exhibits 8 and 9.

10. All exhibits attached to this Certification are exact copies of the originals and have not been altered, except that I have added the meeting dates in the lower right margins of Exhibits 8 and 9.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 23, 2015


John Paff

BECKMAN OGOZALEK LONDAR

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July 23, 2015

Honorable Judge James Hely, J.S.C.
Superior Court of New Jersey - Law Division
2 Broad Street
Elizabeth, New Jersey 07207

**RE: New Jersey Foundation for Open Government, Inc., et al, v. Summit
Housing Authority, et al.
Docket No. UNN- L-1927-15**

Your Honor:

We are submitting this Letter Brief in lieu of a more formal brief in support of Plaintiffs' Motion for Summary Judgment on the Third and Fourth Count of the Verified Complaint, which seek relief under the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6, et seq. The First and Second Counts of the Verified Complaint were resolved by a July 13, 2015 Order entered by the Hon. James Hely, J.S.C.

Legal Argument

SUMMARY JUDGMENT STANDARD

The standard for summary judgment is familiar and will only be briefly addressed. Under R. 4:46-2, summary judgment will be granted if there is "no genuine issue of material fact challenged and the moving party is entitled to a judgment or order as a matter of law." See also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 553 (1995). There are no factual dispute in this matter and all that is required is for the court to apply the law to the established facts.

THIRD COUNT - INSUFFICIENT NONPUBLIC MEETING RESOLUTIONS

Before excluding the public from a meeting (i.e. before going into nonpublic, (executive or closed session), Defendant Authority must publicly pass a resolution stating the "general nature of the subject to be discussed" as well "as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session can be disclosed to the public." N.J.S.A. 10:4-13.

Defendant Authority has not recently passed free-standing resolutions informing the public of the privately discussed topics or when the nonpublic meeting minutes will be released. Rather, it has, since 2014, passed motions that authorize nonpublic sessions and which are recorded in the Authority's public meeting minutes. The motions made for the June 25, 2014, September 17, 2014 and March 25, 2015 nonpublic sessions were, respectively:

Spurr moved to go into an Executive Session seconded by Commissioner Zimmermann, to discuss Mr. Billy's review with the board members. The motion passed by unanimous vote.

Commissioner Poole moved and Commissioner Halverstadt seconded a motion to go into Executive Session to discuss personnel and/or matters of litigation that may or may not be acted upon. Upon roll call, all members voted affirmative.

Commissioners Spurr and Zimmermann moved to enter into Executive Session. All members voted in the affirmative.

Statement of Material Facts, ¶ 4.

None of these three motions even attempts to satisfy the requirements of N.J.S.A. 10:4-13(b), i.e., the requirement that the motion or resolution must state "as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public." Accordingly, the Authority has violated the Meetings Act by disregarding this statutory command¹.

Two of the three motions also fail to apprise the public of the "general nature of the subject to be discussed" during nonpublic session, as required by N.J.S.A. 10:4-13(a). The motion passed on June 25, 2014 states that the purpose of the nonpublic session was "to discuss Mr. Billy's review with the board members," which appears to be a valid nonpublic discussion item. The September 17, 2014 motion states only that "personnel and/or matters of litigation that may or may not

¹ Prior to Mr. Billy's term as executive director, the Authority passed free-standing resolutions authorizing its nonpublic sessions, as exemplified by the Authority's Resolution 10-26-05-3, passed on May 26, 2010. Those resolutions complied with N.J.S.A. 10:4-13(b) because they stated that "the minutes of the closed session shall become available to the public when the confidential nature of the matter is no longer deemed confidential or two years from the date of the meeting." Paff Cert., ¶ 4, Exhibit 3.

be acted upon" would be discussed. The March 25, 2015 motion, the vaguest of the three, provides no information on the matters that the Board members privately discussed.

The motions passed on June 25, 2014 and March 25, 2015 need no further analysis. The former is compliant with N.J.S.A. 10:4-13(a) while the latter is not. The issue that requires this Court's ruling is whether informing the public that "personnel and/or matters of litigation that may or may not be acted upon" are to be privately discussed--as the Authority did in its September 17, 2014 motion--satisfies N.J.S.A. 10:4-13(a)'s requirement that the "general nature of the subject to be discussed" must be publicly disclosed.

This information within the Authority's September 17, 2014 nonpublic session motion fails to satisfy N.J.S.A. 10:4-13(a) because it gives the public no real sense of what is being privately discussed. To paraphrase the highest court of another state, a body which only announces "legal matters" or "personnel negotiations" for going into executive session has said nothing. It might as well have stated to the audience, "Ladies and gentlemen, we are going into executive session, and stopped there." Hinds County Board of Supervisors v. Common Cause of Mississippi, 551 So.2d 107, 114 (MS 1989).

Controlling authority on this subject is the Appellate Division's opinion in McGovern v. Rutgers, 418 N.J. Super. 458 (App. Div. 2011) which was mostly reversed by the Supreme Court at 211 N.J. 94 (2012). In its opinion, the Appellate

Honorable Judge James Hely, J.S.C.

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Division upheld the ruling in Council of New Jersey State College Locals v. Trenton State College Board, 284 N.J. Super. 108, 114 (Law Div.1994) that public bodies must give the public "as much information [regarding the nonpublic meeting topics] as is consistent with full public knowledge without doing any harm to the public interest." For example, "the 'general nature of the subject to be discussed' should not be set forth as 'litigation' but, rather, as 'litigation-A vs. B.'"Id. at 114, quoting 34 New Jersey Practice, Local Government Law § 141, at 174 (Michael A. Pane) (2d ed. 1993).

The Supreme Court, in its subsequent reversal, did not hold that the Appellate Division, the Trenton State College Board trial court and Mr. Pane incorrectly determined that N.J.S.A. 10:4-13(a) requires public bodies to give the public "as much information [regarding the nonpublic meeting topics]as is consistent with full public knowledge without doing any harm to the public interest." Rather, the Supreme Court held that the Appellate Division erred in applying the "as much knowledge as possible" standard to the notice requirements established by N.J.S.A. 10:4-8 instead of the closed session resolution requirements of N.J.S.A. 10:4-13(a). The Supreme Court stated:

The source of [the Appellate panel's] error was plaintiff's failure to distinguish between N.J.S.A. 10:4-8, which includes as part of the statutory definition of adequate notice the requirement that the notice include the agenda of the upcoming meeting "to the extent known," and N.J.S.A. 10:4-13, which describes the content of the resolution a public body must pass before it may go into a closed session. Under the latter statute, the resolution

must state "the general nature of the subject to be discussed" in that closed session. The two statutes deal with distinctly different procedural steps. The first, N.J.S.A. 10:4-8, deals with the notice requirements to be provided in advance of a meeting, and the second, N.J.S.A. 10:4-13, details the content of a resolution the public body must adopt once the meeting has gotten underway before going into closed session. The notice requirements of the first procedure do not govern a situation implicating N.J.S.A. 10:4-13.

* * *

In the matter before us, the appellate panel transferred the concept of a resolution giving the public "as much knowledge as possible" of what was to be discussed in a closed session to giving the public "as much knowledge as possible" of the subjects to be discussed in a closed meeting in the notice advising the public that such a meeting was to take place.

211 N.J. 94, 109-110.

In sum, the Supreme Court did not overrule the "as much knowledge as possible" standard. Rather, the Supreme Court ruled that the Appellate Division "applied the wrong measure" by imposing that standard upon the public meeting notice requirements set forth in N.J.S.A. 10:4-8. 211 N.J. 94, 111.

Further, the N.J.S.A. 10:4-13 resolution² that was passed at the Rutgers Board of Governors' meeting at issue in McGovern informed the public that

² The Rutgers resolution stated: "[b]e it resolved, that the Board meet in immediate closed session on this date, September 10, 2008, to discuss matters involving contract negotiations for sports marketing, naming rights of athletic facilities and stadium construction; employment of personnel and terms and conditions of employment; and pending litigation, investigations, and matters falling within the attorney-client privilege with respect to these subjects, in accordance with Chapter 231, Public Law 1975, Section 7, Items b.(6), b.(7) and b.(8)." 211 N.J. 94, 102.

"contract negotiations for sports marketing, naming rights of athletic facilities and stadium construction" would be privately discussed. This description is much more specific than the "personnel and/or matters of litigation that may or may not be acted upon" language the Summit Housing Authority placed in its September 17, 2014 motion.

FOURTH COUNT - BOARD'S FAILURE TO RECORD MINUTES OF ITS NONPUBLIC MEETINGS

Defendants have conceded that they failed to record minutes of the Authority's June 25, 2014, September 17, 2014 and March 25, 2015 nonpublic meetings. This failure clearly violates N.J.S.A. 10:4-14 which requires a public body to record reasonably comprehensible minutes of all its meetings.³ (Emphasis supplied.) See also S. Jersey Publ'g Co. Inc. v. New Jersey Expressway Auth., 124 N.J. 478, 493, (1991) ("The [Open Public Meetings] Act specifically requires, however, that the public maintain 'reasonably comprehensible minutes' of all meetings including executive sessions to be 'promptly available' to the public unless inconsistent with the provisions of the Act authorizing the public body to meet in executive session."); Payton v. N.J. Tpk. Auth., 148 N.J. 524, 557 (1997) and Atty. Gen. F.O. 1998, No. 1.

REMEDY FOR THESE MEETING ACT VIOLATIONS

³ Defendant Authority, prior to Defendant Billy becoming its executive director, realized that it was under a duty to record executive session minutes. This is evident from the fact that it recorded minutes of its October 27, 2010 executive session. Paff Cert., ¶ 5, Exhibit 4.

N.J.S.A. 10:4-16 provides this Court with broad authority to "issue such orders and provide such remedies as shall be necessary to insure compliance with the provisions of this act." Such relief "can include equitable, declaratory, or other kinds of relief" and "can be prospective in operation." Loigman v. Township Committee of Tp. of Middletown in County of Monmouth, 308 N.J. Super. 500, 503 (App. Div. 1998).

At a minimum, Plaintiffs seek a declaration by this Court that the Authority, by passing inadequate nonpublic meeting motions or resolutions, violated N.J.S.A. 10:4-13 and, by failing to keep minutes of its nonpublic meetings, violated N.J.S.A. 10:4-14. Plaintiffs also notes that the Authority has failed to keep minutes of the three most recent nonpublic meetings and has passed noncompliant motions for two of those three nonpublic meetings. This demonstrates "a pattern of misconduct" warranting the imposition of an injunction. Burnett v. Gloucester Cnty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 246, (App. Div. 2009).

AWARD OF COSTS

¶ 3 of Judge Hely's July 13, 2015 Order awarded Plaintiffs' their costs and attorney fees for prevailing on the First Count. Plaintiffs now seek their costs for prevailing on the Third and Fourth Counts.

R.4:42-8(a) states:

Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party.

The definition of a "prevailing party" was discussed by the Appellate Division in African Council v. Hadge, 255 N.J. Super. 4, 11 (App. Div. 1992). Although the case dealt with a federal civil rights counsel fee claim, the logic set forth by the African Council court should also apply here:

Singer v. State adopted a two-pronged test for determining when one is a prevailing party for purposes of Section 1988 counsel fee awards. Singer requires a party to "demonstrate that his [her] lawsuit was causally related to securing the relief obtained; a fee award is justified if plaintiffs' efforts are a 'necessary and important' factor in obtaining the relief" and "plaintiff must establish that the relief granted had some basis in law." (internal citations omitted)

Plaintiffs submit that this summary judgment motion has a basis in law and is "causally related" the Authority's anticipated future obedience to N.J.S.A. 10:4-13 and 14. If the Court finds that Plaintiffs are the "prevailing party" on this motion, costs ought to be "allowed as of course." R.4:42-8(a).

In Gallo v. Salesian Soc., Inc., 290 N.J. Super. 616, 660 (App. Div. 1996) the Appellate Division stated:

R. 4:42-8(a) provides: "Unless otherwise provided by law, these rules or court order, costs shall be allowed as of course to the prevailing party." The judge here expressly found that plaintiff was a prevailing party. He should have awarded her costs "as of course" under the rule.

Honorable Judge James Hely, J.S.C.

July 23, 2015

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As for the quantum of costs, Plaintiffs seek the \$50 motion filing fee plus \$40 for prevailing on this summary judgment motion, as allowed by N.J.S.A. 22A:2-9⁴ for a total of \$90.

Respectfully,



Anthony H. Ogozalek, Jr., Esq.

cc. William R. Connelly, Esq. w/encls. (Via Federal Express)

⁴ N.J.S.A. 22A:2-9 allows costs "Upon the entry of judgment final, by default, or upon consent, stipulation, or admissions, or upon the pleadings, or by summary judgment or on dismissal, in all actions or proceedings, to the moving party, forty dollars (\$40.00)."

EXHIBIT 1



John Paff <opengovtissues@gmail.com>

Record Request to the Summit Housing Authority

1 message

John Paff <paff@pobox.com>
To: jmbillyjr@summitnjha.org

Thu, Apr 9, 2015 at 5:24 PM

Please accept this e-mail as my request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records to me via e-mail to paff@pobox.com. Thank you.

Requested Records:

1. The minutes of the Summit Housing Authority's three most recent non-public (i.e. executive or closed) sessions for which minutes are available either in full or in a redacted version.
2. The motions or resolutions, as required by N.J.S.A. 10:4-13, that authorized each nonpublic session for which minutes were furnished in response to #1 above.
3. The motions or resolutions, as required by N.J.S.A. 10:4-13, that authorized all nonpublic sessions that were held after the date of most recent of the nonpublic sessions for which minutes were furnished in response to #1 above.

*John Paff
P.O. Box 5424
Somerset, NJ 08875
Voice: 732-873-1251
Fax: 908-325-0129
e-mail: paff@pobox.com*

EXHIBIT 2



John Paff <opengovtissues@gmail.com>

RE: Record Request to the Summit Housing Authority

1 message

Joseph <jmbillyjr@summitnjha.org>
To: John Paff <paff@pobox.com>

Fri, Apr 17, 2015 at 12:04 PM

Mr. Paff,

Attached please find our response to your recent request.

Sincerely,

JOSEPH M. BILLY, JR.

Executive Director

Housing Authority of the City of Summit

512 Springfield Avenue

Summit, N.J. 07901

(908) 273-6413

(908) 273-3618 fax

From: opengovtissues@gmail.com [mailto:opengovtissues@gmail.com] **On Behalf Of** John Paff

Sent: Thursday, April 09, 2015 5:24 PM

To: jmbillyjr@summitnjha.org

Subject: Record Request to the Summit Housing Authority

Please accept this e-mail as my request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records to me via e-mail to paff@pobox.com. Thank you.

April 17, 2015

Dear Mr. Paff,

In response to your recent request for documents under OPRA and the Common Law Right to Access Requests, please be advised that the regular monthly agenda for meetings of the Board of Commissioners of the Summit Housing Authority provides time for an Executive Session. The Board will motion and vote to enter into Executive Session, if needed, to discuss matters of litigation or personnel. Those sessions do not occur at each meeting, only when situations warrant. There are no pre-prepared resolutions authorizing entering into Executive Session.

Minutes of Executive Sessions are not maintained and therefore are unavailable.

I hope this satisfies your request.

With best regards, I remain,

Sincerely yours,

Joseph M. Billy, Jr., Executive Director

Summit Housing Authority

EXHIBIT 3

RESOLUTION

Board Meeting Date

05-26-10

of the
SUMMIT HOUSING AUTHORITY

Date Submitted

RESOLUTION NO. 10-26-05-3

TITLE:

RESOLUTION TO GO INTO CLOSED SESSION TO DISCUSS POTENTIAL LITIGATION

Factual Contents Certified to by:

Budget Authorization Certified

to by: _____

Commissioner Poole Submitted the following Resolution:

WHEREAS, there is a need from time to time for the Housing Authority Board to go into closed session; and

WHEREAS, the Open Public Meetings Act allows a board to go into closed session to discuss potential litigation; and

WHEREAS, minutes of closed session business are taken and maintained separate from the minutes of the regular open public board meeting.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF SUMMIT:

1. That the minutes of the closed session shall become available to the public when the confidential nature of the matter is no longer deemed confidential or two years from the date of the meeting.
2. That this resolution shall be effective immediately.

Commissioner Halverstadt seconded the motion.

X – Indicates Vote				A.B. – Absent		N.V. – Not Voting			
RECORD OF COMMISSIONERS VOTE ON FINAL PASSAGE									
COMMISSIONER	AYE	NAY	N.V.	A.B.	COMMISSIONER	AYE	NAY	N.V.	A.B.
Halverstadt	X				White	X			
Kuhn	X				Zazzera	X			
Poole	X				Zimmermann				X
Shung	X								

I Hereby Certify that the above Resolution was adopted at a Commissioners Meeting of the Housing Authority on

Secretary/ Executive Director

EXHIBIT 4

CLOSED SESSION OCTOBER 27, 2010

CLOSED SESSION: Mr. Riccio reported that as a result of Mr. Dang's appeal to Civil Service regarding his termination, he and Mr. Harrington met with a judge for mediation on Oct. 13, 2010. Mr. Riccio and Mr. Harrington first met with the judge alone, and later together with Mr. Dang and his attorney Mr. Katz. She recommended working together to come to an agreement. A settlement has been proposed by Mr. Katz including:

- Payment of \$50,000 to Mr. Dang
- Attorney fees of approximately \$10,000
- A neutral reference for Mr. Dang
- A reason for termination that will not compromise Mr. Dang's ability to collect unemployment
- Deferred pension
- Dismissal of the civil suit for back rent

Mr. Harrington advised that the Civil Service system is designed to protect the employee. Civil Service requires progressive discipline and termination is the Civil Service equivalent of the death penalty and should be avoided if at all possible. Mr. Harrington believes the judge is very pro-employee and would hold us to a very high standard for upholding Mr. Dang's termination. He also believes there is a sympathy factor when it comes to Mr. Dang's history. Mr. Harrington advised that agreeing to a settlement will be the only way for us to control the outcome and the timeline of the case. He also noted that he believed our odds for winning the case should it go to court would be 50/50.

The Board of Commissioners took a vote to decide if they would agree to a settlement. Commissioners Zimmerman, Poole, Halverstadt, and Kuhn voted in favor of a settlement and Commissioner Zazzera voted against it.

The Board of Commissioners would like Mr. Riccio and Mr. Harrington to try negotiating a settlement for less than \$50,000. Mr. Riccio noted that even if we come to an agreement on a settlement with Mr. Dang, HUD will still have to approve it.

A resolution was created to authorize Mr. Riccio and Mr. Harrington to negotiate a settlement with Mr. Dang.

EXHIBIT 5

MINUTES
SUMMIT HOUSING AUTHORITY
September 17, 2014

Commissioner Steven Spurr served as Acting Chairperson and called the meeting to order at 7:04 pm in the Janet Whitman Room in the Summit City Hall. The following Commissioners were present:

Commissioner Jeffrey Halverstadt, Commissioner Richard Poole, Commissioner Steven Spurr, and Commissioner Mary Zimmermann. Chairman Dennis White, Commissioner Pamela Kuhn, and Commissioner Coalter Pollock were absent. Also present were Joseph M. Billy, Jr., Executive Director, Michelle Salazar, Office Administrator and SHA Legal Counsel William Connelly.

Mr. Billy read the Open Public Meetings Act Notice, "Adequate notice of this of this meeting has been provided by the Secretary of the Housing Authority of the City of Summit by preparing an Annual Notice dated December 11, 2013, setting forth the date, time and place of this meeting. Said notice was filed with the Clerk of the City of Summit, and forwarded to newspapers of local circulation.

Mr. Billy led those in attendance in a salute to the flag.

THE MINUTES OF THE July 23, 2014 REGULAR BOARD MEETING: were tabled since there were not enough commissioners present to approve the minutes.

EXECUTIVE SESSION: Commissioner Poole moved and Commissioner Halverstadt seconded a motion to go into Executive Session to discuss personnel and/or matters of litigation that may or may not be acted upon.

Upon roll call, all members voted affirmative.

RETURN TO PUBLIC SESSION: Commissioner Poole moved and Commissioner Halverstadt seconded a motion to return to Public Session. Upon roll call all members voted in the affirmative.

CHAIRPERSON'S REPORT: None.

REPORT OF THE EXECUTIVE DIRECTOR:

Mr. Billy updated the Board on the following topics:

- The Summer Senior BBQ was held on August 14, 2014. It turned out to be a beautiful day with about 75 attendees.
- The Summit Housing Authority is currently putting together their 5 year plan to be submitted to HUD.
- There have been two recent episodes of bed bugs at 12 Chestnut. Our exterminator was called in and they checked the surrounding units. All units were prepped and treated.

EXHIBIT 6

LAW OFFICES OF WILLIAM R. CONNELLY, LLC
William R. Connelly, Esq. (Id. No. 030151980)
7 West Main Street
Mendham, New Jersey 07945
(973) 543-5301
Attorneys for Defendants

**NEW JERSEY FOUNDATION FOR
OPEN GOVERNMENT, INC., and
JOHN PAFF**

Plaintiffs

v.

**SUMMIT HOUSING AUTHORITY and
JOSEPH M. BILLY, JR.**

Defendants

**SUPERIOR COURT OF NEW JERSEY
UNION COUNTY
LAW DIVISION**

DOCKET NO. UNN-L-1927-15

Civil Action

**CERTIFICATION OF
JOSEPH M. BILLY, JR.
IN OPPOSITION TO THE
ORDER TO SHOW CAUSE**

I, Joseph M. Billy, Jr., hereby certify and say:

1. I am the Executive Director of the Housing Authority of Summit ("Summit Housing Authority"), a position I have held since April 1, 2013.
I make this Certification in opposition to Plaintiffs' Order to Show Cause. I am fully familiar with the facts hereafter stated.
2. I received Plaintiff's request for "minutes of the Summit Housing Authority's three most recent non-public (i.e. executive or closed) sessions for which minutes are available either in full or in a redacted version" and "[t]he motions or resolutions . . . that authorized each nonpublic session for which minutes were furnished" via email on or about April 10, 2015 at 5:24 p.m.
3. On or about April 17, 2015, via email, I responded to Plaintiff's request, stating that there were no such minutes, that executive sessions were not held at every

meeting, and that when needed, the Board will motion and vote to go into executive session to discuss matters of litigation or personnel. Since minutes are not kept of these sessions, I explained that there were no minutes to produce, and thus, no resolutions to produce relating thereto.

4. This litigation followed. I have reviewed the Verified Complaint and attachments, as well as the Order to Show Cause.

5. First, although the Board may have kept minutes of executive sessions in the past, since taking over as Executive Director, we have not kept minutes of executive sessions. I understood the Plaintiffs' request to seek copies of minutes from the last three meetings in which executive sessions occurred since I became Executive Director on April 1, 2013.

6. Second, of those meetings, executive sessions occurred only at the March, 2015 meeting, the September, 2014 meeting and the June, 2014 meeting, and as stated above, no minutes were kept at those executive sessions.

7. Third, while we do put a resolution on the record when going into executive session, there were no documents to produce relating to same.

8. Accordingly, I responded that there were no documents responsive to Plaintiffs' request. My understanding is that only a failure to produce documents responsive to a valid Open Public Records Act request is considered to be a violation of the Open Public Records Act. As Summit Housing Authority did not have any such documents, it is respectfully submitted that Defendants have not violated the Open Public Records Act or common law right of access.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Joseph M. Billy Jr.

Dated: June 23, 2015

FACSIMILE SIGNATURE CERTIFICATION

The undersigned does hereby certify that Joseph M. Billy, Jr. has acknowledged the genuineness of his signature on the attached Certification and a copy of said Certification with an original signature affixed will be filed if requested by the Court or a party.

Law Offices of William R. Connelly, LLC
Attorneys for Defendants


By: William R. Connelly, Esq.

Dated: June 24, 2015

EXHIBIT 7

Anthony H. Ogozalek, Jr.
Attorney ID 037022006
Beckman Ogozalek Londar
7 Foster Ave, Suite 201
Gibbsboro, NJ 08026-1191
Phone: (856) 857-6262
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E-mail: aogozalek@beckmanlawgroup.com
Attorney for Plaintiff



NEW JERSEY FOUNDATION FOR
OPEN GOVERNMENT, INC. and
JOHN PAFF
Plaintiffs,

vs.

SUMMIT HOUSING AUTHORITY
and JOSEPH M. BILLY, JR.
Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
UNION COUNTY

DOCKET NO. UNN-L-1927-15

VERIFIED COMPLAINT

Plaintiffs New Jersey Foundation for Open Government, Inc. ("the Foundation") and John Paff ("Paff"), by way of complaint against the Defendants Summit Housing Authority ("the Authority") and Joseph M. Billy, Jr. ("Billy") state as follows:

Preliminary Statement

1. This is an action under the Open Public Records Act, N.J.S.A. 47:1A-1 et. seq. (OPRA), common law right of access and the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et. seq. (OPMA).

Parties

2. Plaintiff New Jersey Foundation for Open Government, Inc. ("the Foundation") is a non-profit, New Jersey corporation which has as its mission to increase transparency in New Jersey's state, county and local governments.

3. Plaintiff John Paff ("Paff") is an individual who serves as Treasurer of the Foundation and who resides in Franklin Township, Somerset County, New Jersey. Paff is well known as an open government advocate, blogs frequently about open government issues¹ and often appears in the media² regarding his open government advocacy.

4. The Foundation and Paff are "any person" within the meaning of N.J.S.A. 10:4-16.

5. Defendant Summit Housing Authority ("the Authority") is a public body as that term is defined by N.J.S.A. 10:4-8(a) and a public agency as that term is defined by N.J.S.A. 47:1A-1.1.

¹ Among the blogs Paff authors is "New Jersey Open Government Notes" (<http://njopengovt.blogspot.com/>), "New Jersey Civil Settlements" (<http://njcivilsettlements.blogspot.com/>) and "Random Notes on NJ Government" (<http://njrandomgovt.blogspot.com/>)

² Some recent articles that have feature Paff's advocacy include "The 'transparency guru' of New Jersey," Philadelphia Inquirer, May 14, 2015 (http://articles.philly.com/2015-05-04/news/61771681_1_rogue-cops-john-paff-tax-money); "Profile: The Man Who Makes Sure Government Works -- Right Out in the Open," February 26, 2014 (<http://www.njspotlight.com/stories/14/02/26/profile-the-man-who-makes-sure-government-works-right-out-in-the-open/>); "Judge tells prosecutor to release letters about Wildwood Crest officers," Press of Atlantic City, May 11, 2015 (http://www.pressofatlanticcity.com/news/judge-tells-prosecutor-to-release-letters-about-wildwood-crest-officers/article_c7fad092-f82d-11e4-a301-afd1bf120c66.html); "Ex-fire commissioner says he was falsely accused of luring kids online, gets \$240K settlement," Star-Ledger, March 23, 2015 (http://www.nj.com/somerset/index.ssf/2015/03/former_franklin_fire_commissioner_settle_lawsuit_f.html) and "Fired Bound Brook High teacher wants her job back," Courier News, March 20, 2015 (http://www.mycentraljersey.com/story/news/local/somerset-county/2015/03/20/fired-bound-brook-high-teacher-wants-job-back/25099221/?fb_action_ids=10152946873402562&fb_action_types=og.comments).

6. Defendant Joseph M. Billy, Jr. ("Billy") is the Authority's executive director and acted as the Authority's "custodian of a government record" as that term is defined by N.J.S.A. 47:1A-1.1 in relation to the requests made in this matter.

COMMON ALLEGATIONS

7. On or about April 9, 2015, Paff submitted a request (See attached Exhibit 1) under the Open Public Records Act and common law right of access to Billy requesting:

1. *The minutes of the Summit Housing Authority's three most recent non-public (i.e. executive or closed) sessions for which minutes are available either in full or in a redacted version.*

2. *The motions or resolutions, as required by N.J.S.A. 10:4-13, that authorized each nonpublic session for which minutes were furnished in response to #1 above.*

3. *The motions or resolutions, as required by N.J.S.A. 10:4-13, that authorized all nonpublic sessions that were held after the date of most recent of the nonpublic sessions for which minutes were furnished in response to #1 above.*

8. In an April 17, 2015 e-mail and e-mailed letter (Exhibit 2), Billy wrote:

In response to your recent request for documents under OPRA and the Common Law Right to Access Requests, please be advised that the regular monthly agenda for meetings of the Board of Commissioners of the Summit Housing Authority provides time for an Executive Session. The Board will motion and vote to enter into Executive Session, if needed, to discuss matters of litigation or personnel. Those sessions do not occur at each meeting, only when situations warrant. There are no pre-prepared resolutions authorizing entering into Executive Session.

Minutes of Executive Sessions are not maintained and therefore are unavailable.

I hope this satisfies your request.

9. The Authority passed a resolution on May 26, 2010 that, in accordance with N.J.S.A. 10:4-13, authorized a nonpublic meeting on that date. A copy of that resolution is attached as Exhibit 3.

10. The Authority held a nonpublic meeting on October 27, 2010. A copy of the minutes of that nonpublic meeting is attached as Exhibit 4.

11. According to minutes on-line at the Authority's web site (<http://summitnjha.org/>) the Authority held a nonpublic meeting on September 17, 2014. A copy of the first page of those minutes, which show that the Authority "went into Executive Session to discuss personnel and/or matters of litigation" is attached as Exhibit 5.

FIRST COUNT
(Violation of N.J.S.A. 47:1A-5)

12. Given the existence of minutes of the Authority's October 27, 2010 nonpublic meeting, Billy violated the OPRA by informing Paff that no records could be disclosed in response to ¶ 1 of Paff's April 9, 2015 request.

13. Given the existence of a) a resolution authorizing the Authority's May 26, 2010 nonpublic meeting and b) a September 17, 2014 motion to go into a nonpublic meeting, Billy violated the OPRA by informing Paff that no records could be disclosed in response to ¶¶ 2 and 3 of Paff's April 9, 2015 request.

WHEREFORE, Plaintiff Paff demands judgment:

A. Declaring that Billy, by failing to disclose any nonpublic minutes and motions/resolutions in response to Paff's April 9, 2015 request violated N.J.S.A. 47:1A-5(i).

B. Ordering Billy to promptly furnish Paff with the nonpublic minutes and motions/resolutions responsive to his April 9, 2015 request.

C. Awarding Paff a reasonable attorney fee and his costs of suit and

D. Such other relief as the Court deems equitable and just.

SECOND COUNT

(Requiring disclosure under common law)

14. Paff's and the public's interest in disclosure of the nonpublic minutes and motions/resolutions responsive to his April 9, 2015 request exceeds the governmental interest in keeping that information confidential.

WHEREFORE, Plaintiff Paff demands judgment:

E. Declaring that Billy, by failing to disclose any nonpublic minutes and motions/resolutions in response to Paff's April 9, 2015 request violated Paff's rights under the common law right of access.

F. Ordering Billy to promptly furnish Paff with the nonpublic minutes and motions/resolutions responsive to his April 9, 2015 request.

G. Awarding Paff a reasonable attorney fee and his costs of suit and

H. Such other relief as the Court deems equitable and just.

THIRD COUNT

(Insufficient nonpublic meeting motions/resolutions)

15. The motion passed at the Authority's September 17, 2014 meeting that purported to authorize a nonpublic session is not sufficiently specific to meet the

requirements of N.J.S.A. 10:4-13(a) and does not even attempt to meet the requirements of N.J.S.A. 10:4-13(b).

16. On information and belief, any other motions or resolutions that Billy, in accordance with the First and Second Counts of this Verified Complaint, will disclose in response to ¶¶ 2 and 3 of Paff's April 9, 2015 request will be similarly defective and noncompliant with N.J.S.A. 10:4-13.

WHEREFORE, Plaintiffs Foundation and Paff demand judgment:

I. Declaring that the Authority violated N.J.S.A. 10:4-13 by failing to a) pass sufficiently specific resolutions prior to going into its nonpublic meetings and b) comply with the requirements of N.J.S.A. 10:4-13(b).

J. Enjoining the Authority, going forward, from holding nonpublic meetings unless it first passes resolutions describing the topics to be privately discussed in as specifically and in as much detail as possible.

K. Enjoining the Authority, going forward, from holding nonpublic meetings unless it first passes resolutions stating "as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public."

L. Awarding the Foundation and Paff their costs.

M. Such other relief as the Court deems equitable and just.

FOURTH COUNT

(Failure to record and maintain nonpublic meeting minutes.)

17. Billy's admission, in his April 17, 2015 letter, that "[m]inutes of Executive Sessions are not maintained and are therefore unavailable" constitutes the

Authority's violation of N.J.S.A. 10:4-14 which requires that "reasonably comprehensible minutes of **all** its meetings" be maintained. (Emphasis supplied.)

WHEREFORE, Plaintiffs Foundation and Paff demand judgment:

N. Declaring that the Authority violated and is presently violating N.J.S.A. 10:4-14 by failing to record and maintain minutes of its nonpublic meetings.

O. Enjoining the Authority, going forward, from failing to record minutes of its future nonpublic meetings that are at least as comprehensible as the Authority's October 27, 2010 nonpublic meeting minutes.

P. Awarding the Foundation and Paff their costs.

Q. Such other relief as the Court deems equitable and just.

Designation of Trial Counsel

Plaintiffs designate Anthony H. Ogozalek, Jr. as trial counsel

Certification Pursuant to R.1:38-7(b)

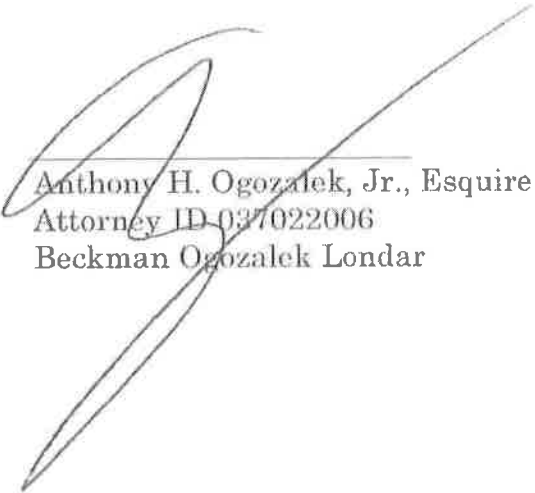
I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future

Certification Of No Other Actions

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve

on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: May 28 2015



Anthony H. Ogozalek, Jr., Esquire
Attorney ID 037022006
Beckman Ogozalek Londar

Verification

John Paff, of full age, certifies as follows:

1. I am the Plaintiff who filed the records requests in this matter with the Summit Housing Authority and Joseph M. Billy, Jr. All of the facts stated in this Verified Complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe them to be true.

2. I further certify that the Exhibits attached to this Verified Complaint are exact copies of the originals and have not been altered.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 26 2015

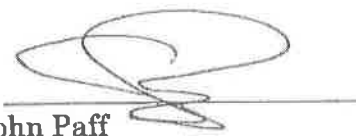

John Paff

EXHIBIT 8

EXECUTIVE SESSION: Commissioner Spurr moved to go into an Executive Session seconded by Commissioner Zimmermann, to discuss Mr. Billy's review with the board members. The motion passed by unanimous vote.

Commissioner Spurr moved to return to the Open Public Session, seconded by Commissioner Pollock. The motion passed by unanimous vote.

There being no further business before the Board, Commissioners Poole and Zimmermann moved and seconded adjournment. The motion passed by unanimous voice vote and the meeting was adjourned at 8:26 p.m.

UPCOMING SUMMIT HOUSING AUTHORITY MEETING DATES & TIMES

Next Meeting

WEDNESDAY, July 23, 2014

COMMUNITY ROOM – VITO A. GALLO BUILDING

SUMMIT, NJ 07901 - 7:00 PM

Respectfully submitted,
Joseph M. Billy, Jr., Executive Director

June 25, 2014

EXHIBIT 9

RESIDENT ASSOCIATION REPORTS: None.

COMMITTEE REPORTS:

Operations: Chairperson Kuhn noted that we are fully occupied at all three sites. The budget to actual reflects the original numbers before the housing authority received the spreadsheet for the salaries. The bills list for March 2015 reflects the salary reimbursements to the City of Summit.

Affordable Housing: Commissioner Poole mentioned that he has been keeping an eye on the Planning Board agenda's but nothing yet scheduled regarding the two affordable units at 31 Russell Place. Mr. Billy has also had the opportunity to meet with Peter Bieber, architect for the project, and confirmed the same. Also Mr. Billy will be meeting with Beth Kinney in regards to the proposal for Rental Rehab funding.

Personnel: None.

Residents Committee: None.

Buildings & Grounds: Commissioner Spurr would like to do a tour of the three sites.

OLD BUSINESS: None.

NEW BUSINESS: None.

CORRESPONDENCE: Mr. Billy handed out updated information about our proposal to the city for Rental Rehabilitation funds.

EXECUTIVE SESSION: Commissioners Spurr and Zimmermann moved to enter into Executive Session. All members voted in the affirmative.

Commissioners Poole and Zimmermann moved and seconded going back into public session. All members voted in the affirmative.

RESOLUTIONS:

Commissioner Poole moved for a Consent Agenda for:

15-25-3-1: Resolution Requesting Approval of the Payment of Invoices for the period
February 26, 2015 to March 25, 2015

March 25, 2015

1. DECLARED that Defendant Summit Housing Authority's motions to enter into nonpublic (closed or executive) session contained within the Board's September 17, 2014 and March 25, 2015 public meeting minutes violate N.J.S.A.

10:4-13(a) because they did not give the public "as much information [regarding the nonpublic meeting topics] as is consistent with full public knowledge without doing any harm to the public interest."

2. DECLARED that Defendant Summit Housing Authority's motions to enter into nonpublic (closed or executive) session contained within the Board's June 25, 2014, September 17, 2014 and March 25, 2015 public meeting minutes violate N.J.S.A. 10:4-13(b) because they do not state "as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public."

3. DECLARED that Defendant Summit Housing Authority violated N.J.S.A. 10:4-14 by not recording or maintaining minutes of its nonpublic sessions held on June 25, 2014, September 17, 2014 and March 25, 2015.

4. ORDERED that Defendant Summit Housing Authority is permanently ENJOINED from going into nonpublic (closed or executive) session unless it first passes a motion or resolution in public that a) gives the public "as much information [regarding the nonpublic meeting topics] as is consistent with full public knowledge without doing any harm to the public interest," and b) states "as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public."

5. ORDERED that Defendant Summit Housing Authority is permanently ENJOINED from going into nonpublic (closed or executive) session

unless reasonably comprehensible minutes of those executive sessions are recorded or maintained.

6. ORDERED that Defendant Summit Housing Authority shall, within 30 days of the entry of this Order, pay \$90 to Plaintiffs' Counsel for the costs of this action.

7. ORDERED that this matter is now finally resolved and that the Clerk shall mark the matter as being closed.

Honorable James Hely J.S.C.

Opposed _____

Unopposed _____