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++CERTIFIED BY THE SUPREME  
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TRIAL ATTORNEY

OF COUNSEL  
ANTHONY C. FAMULARI (RETIRED)

October 31, 2018

VIA – Lawyers Service

Morris County Superior Court  
Chancery Division  
Court Street  
Morristown, NJ 07960

**Re: Paul Kardos -vs- Fox Hills at Rockaway Condominium Association, Inc.**  
**Docket No.: MRS-C-000102-18**  
**Our File No.: 20016-02739 JMP**

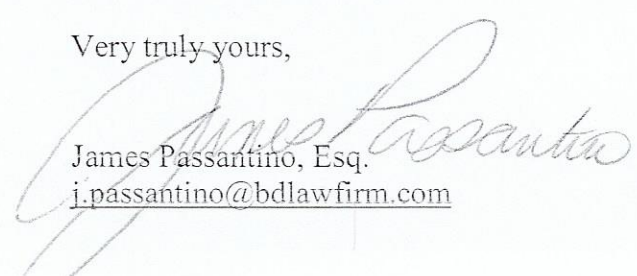
Dear Sir/Madam:

Enclosed herewith please find an original and two copies of Notice of Motion to Dismiss Plaintiff's Complaint, Legal Brief, Certification of Counsel, along with an original and two (2) copies of a proposed Order for filing.

With respect to same, kindly file the Motion and return a filed copy of the Order to the undersigned in the enclosed self-addressed stamped envelope. **Please charge the fee for the filing of the Motion to our Account No. 140458.**

Thank you for your courtesy and cooperation with respect to this matter.

Very truly yours,

  
James Passantino, Esq.  
[j.passantino@bdlawfirm.com](mailto:j.passantino@bdlawfirm.com)

JMP/cml

cc: Paul Kardos, Pro Se – VIA Certified Mail, RRR & Regular Mail

James Passantino, Esq./I.D.#031961991  
BIANCAMANO & DI STEFANO, P.C.  
Executive Plaza, Suite 300  
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Tel: 732-549-0220  
Fax: 732-549-0068  
Attorneys for Defendant, *Fox Hills at  
Rockaway Condominium Association, Inc.*

Our File No. 20016-02739

_____	:	SUPERIOR COURT OF NEW JERSEY
PAUL KARDOS	:	CHANCERY DIVISION MORRIS COUNTY
	:	GENERAL EQUITY
Plaintiff,	:	DOCKET NO.: MRS-C-000102-18
	:	
-vs-	:	Civil Action
	:	
	:	
FOX HILLS AT ROCKAWAY	:	NOTICE OF MOTION TO DISMISS
CONDOMINIUM ASSOCIATION, INC.	:	PLAINTIFF'S COMPLAINT IN LIEU
	:	OF ANSWER PURSUANT TO RULE
	:	4:6-2(e)
Defendants.	:	

SIR:

PLEASE TAKE NOTICE that on November 30, 2018, or as soon thereafter as counsel may be heard, the undersigned attorneys for defendant, *Fox Hills at Rockaway Condominium Association, Inc.*, will apply to the Court at the Morris County Superior Court, 56 Washington St, Morristown, NJ 07960, for issuance of an Order dismissing the Plaintiff's Complaint.

PLEASE TAKE FURTHER NOTICE that the defendant, *Fox Hills at Rockaway Condominium Association, Inc.*, shall rely upon the annexed Brief and Exhibits, and Certification of Counsel, in support of the Court's granting and signing the said proposed Order submitted together with this Notice of Motion.

are required to file with the Clerk of the County and make service upon all counsel no later than 10 days prior to the hearing date of this Motion any moving papers in opposition to this Motion.

**BIANCAMANO & DI STEFANO, P.C.**  
**Attorneys for Defendant, Fox Hills at Rockaway**  
**Condominium Association, Inc.**

Date: October 31, 2018

By: 

JAMES PASSANTINO, ESQ.



James Passantino, Esq./I.D.#031961991  
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Attorneys for Defendant, *Fox Hills at  
Rockaway Condominium Association, Inc.*

Our File No. 20016-02739

<u>PAUL KARDOS</u>	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION MORRIS COUNTY
	:	GENERAL EQUITY
Plaintiff,	:	DOCKET NO.: MRS-C-000102-18
	:	
-vs-	:	Civil Action
	:	
	:	
FOX HILLS AT ROCKAWAY	:	
CONDOMINIUM ASSOCIATION, INC.	:	CERTIFICATION OF COUNSEL IN
	:	SUPPORT OF DEFENDANT'S
	:	MOTION TO DISMISS IN LIEU OF
<u>Defendants.</u>	:	ANSWER

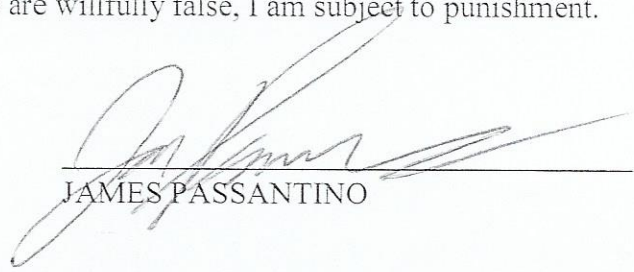
I, James Passantino, Esq., of full age, upon my oath, certify and say:

1. I am an Attorney-At-Law of the State of New Jersey and Partner with the law firm of Biancamano & DiStefano, P.C., attorneys for the Defendant, Fox Hills at Rockaway Condominium Association, Inc. ("Defendant") in the within matter. I have been assigned the handling of this matter, and am familiar with all fact surrounding this file.

2. I make this certification in support of the above referenced Defendant's Motion to Dismiss Plaintiff's Complaint with prejudice.

3. A true and accurate copy of the Amended and Restated By-Laws for Fox Hills at Rockaway Condominium Association, Inc., is attached hereto as Exhibit "A".

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.



A handwritten signature in dark ink, appearing to read 'James Passantino', is written over a horizontal line.

JAMES PASSANTINO

Dated: October 31, 2018

James Passantino, Esq./I.D.#031961991  
BIANCAMANO & DI STEFANO, P.C.  
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Tel: 732-549-0220  
Fax: 732-549-0068  
Attorneys for Defendant, *Fox Hills at  
Rockaway Condominium Association, Inc.*

Our File No. 20016-02739

_____	:	SUPERIOR COURT OF NEW JERSEY
PAUL KARDOS	:	CHANCERY DIVISION MORRIS COUNTY
	:	GENERAL EQUITY
	:	DOCKET NO.: MRS-C-000102-18
Plaintiff,	:	
	:	
-vs-	:	Civil Action
	:	
	:	
FOX HILLS AT ROCKAWAY	:	
CONDOMINIUM ASSOCIATION, INC.	:	
	:	
	:	
Defendants.	:	
_____	:	

---

DEFENDANT, FOX HILLS AT ROCKAWAY CONDOMINIUM ASSOCIATION,  
INC.'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS IN LIEU OF ANSWER

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*Of Counsel and on the Brief:* James Passantino, Esq.



## TABLE OF CONTENTS

Table of Authorities.....	iii
Preliminary Statement.....	1
Statement of Facts.....	2
Legal Argument.....	2
I.    BECAUSE THE ACTION OF THE ASSOCIATION’S AGENT AND THE ASSOCIATION’S RULES AND REGULATIONS DID NOT UNREASONABLY RESTRICT PLAINTIFF’S RIGHT OF FREE SPEECH, PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED.....	3
II.   BECAUSE THE BOARD’S DECISION TO CHANGE THE SPEED LIMIT WAS AUTHORIZED BY THE CONDOMINIUM DOCUMENTS AND DID NOT VIOLATE ANY LAWS, PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED.....	4
Conclusion.....	6

## TABLE OF AUTHORITIES

<i>Di Cristofaro v. Laurel Grove Memorial Park</i> , 43 N.J. Super. 244 (App. Div. 1957).....	3
<i>Glass v. Suburban Restoration Co.</i> , 317 N.J. Super. 574 (App. Div. 1998).....	2
<i>Kotok Bldg. v. Charvine Co.</i> , 183 N.J. Super. 101 (Law Div. 1981).....	2
<i>Nostrame v. Santiago</i> , 420 N.J. Super. 427 (App. Div. 2011).....	2
<i>Printing Mart-Morristown v. Sharp Electronics Corp.</i> , 116 N.J. 739 (1989).....	2
<i>Rieder v. Department of Transp.</i> , 221 N.J. Super. 547 (App. Div. 1987).....	2
<i>State v. Schmid</i> , 84 N.J. 535 (1980).....	3,4



### PRELIMINARY STATEMENT

Plaintiff brings this action alleging a violation of his State Constitutional right of freedom of speech and a violation of statutory law under what is commonly known as the Condominium Act. Plaintiff's claims wholly lack merit.

First, while this State has recognized instances of infringement of the Constitutional right to freedom of speech absent state action, the facts do not support plaintiff's assertion that the defendant violated his constitutional right of freedom of speech here. Plaintiff knowingly and willingly entered into a contract with the Condominium Association, subjecting him to the provisions of the Master Deed, Bylaws, and Rules and Regulations. The property here is an age-restricted, gated community that does not allow public access. Further, the Association's restriction prohibiting the distribution of flyers door-to-door which contain attacks against persons or groups is not unreasonable.

Second, plaintiff either misunderstands the Condominium Act's language or deliberately modifies the words in an attempt to bring his claim. Plaintiff relies on the Condominium Act's language which provides that all meetings of the board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all unit owners, and adequate notice of any such meeting shall be given to all unit owners in such manner as the bylaws shall prescribe. Plaintiff then goes on to advance an argument that the Condominium Act prohibits the Board from making any binding decisions. Plaintiff does not consider that only specific enumerated decisions are open to vote and that the Board is vested with certain powers and duties and may make decisions without opening them to all unit owners. The decision here to raise the speed limit does not violate the Condominium Act because the Board was vested with the power to do such under the Association's Bylaws.

For the reasons stated more fully below, defendant respectfully requests the plaintiff's complaint is dismissed with prejudice in its entirety.

### **STATEMENT OF FACTS**

As this is a Motion to Dismiss and the decision will be based upon the Pleadings, Defendant relies on plaintiff's statement of facts while not admitting to any factual allegation therein and denying each and every contention of law.

### **LEGAL ARGUMENT**

Pursuant to R. 4:6-2(e), a Complaint is subject to dismissal where a plaintiff fails to state a claim upon which relief can be granted. "New Jersey is a 'fact' rather than a 'notice' pleading jurisdiction, which means that a plaintiff must allege facts to support his or her claim rather than merely reciting the elements of a cause of action." Nostrame v. Santiago, 420 N.J. Super. 427, 436 (App. Div. 2011), aff'd as modified, 213 N.J. 109 (2013) (citing Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 768 (1989); Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div. 1998); Kotok Bldg. v. Charvine Co., 183 N.J. Super. 101, 104-05 (Law Div. 1981)). "A plaintiff cannot simply assert that 'any essential facts that the court may find lacking can be dredged up in discovery.'" Nostrame, supra, 420 N.J. Super. at 436 (quoting Printing Mart, supra, 116 N.J. at 768.).

Motions to dismiss for failure to state a claim upon which relief can be granted based on the inadequacy of the pleadings "are judged by determining 'whether a cause of action is 'suggested' by the facts.'" Nostrame, supra, 420 N.J. Super. at 436, quoting Printing Mart, supra, 116 N.J. at 746. The "inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart, supra, 116 N.J. at 746 (citing Rieder v. Department of



Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)). A reviewing court must “search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.” Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957).

**I. BECAUSE THE ACTION OF THE ASSOCIATION’S AGENT AND THE ASSOCIATION’S RULES AND REGULATIONS DID NOT UNREASONABLY RESTRICT PLAINTIFF’S RIGHT OF FREE SPEECH, PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED.**

“[T]he test to be applied to ascertain the parameters of the rights of speech and assembly upon privately-owned property and the extent to which such property reasonably can be restricted to accommodate these rights involves several elements. State v. Schmid, 84 N.J. 535, 563 (1980). “This standard must take into account (1) the nature, purposes, and primary use of such private property, generally, its ‘normal’ use, (2) the extent and nature of the public’s invitation to use that property, and (3) the purpose of the expressional activity undertaken upon such property in relation to both the private and public use of the property.” Ibid. “This is a multi-faceted test which must be applied to ascertain whether in a given case owners of private property may be required to permit, subject to suitable restrictions, the reasonable exercise by individuals of the constitutional freedoms of speech and assembly.” Ibid.

Even when an owner of private property is constitutionally obligated under such a standard to honor speech and assembly rights of others, private property rights themselves must nonetheless be protected. Ibid. The owner of such private property, therefore, is entitled to fashion reasonable rules to control the mode, opportunity and site for the individual exercise of expressional rights upon his property. Ibid. It is at this level of analysis-assessing the reasonableness of such restrictions-that weight may be given to whether there exist convenient



and feasible alternative means to individuals to engage in substantially the same expressional activity. Ibid. While the presence of such alternatives will not eliminate the constitutional duty, it may lighten the obligations upon the private property owner to accommodate the expressional rights of others and may also serve to condition the content of any regulations governing the time, place, and manner for the exercise of such expressional rights. Ibid.

First, the “normal use” of the subject property is residential. Second, the property is a gated, age-restricted community, which does not allow the public to enter the roadways within the property. Third, the restriction of the Association prohibiting the distribution of flyers which contain an “attack” on persons or groups is not unreasonable. Members have alternatives within the community to post literature. For example, there is no prohibition to post literature in the clubhouse. Furthermore, the relationship between the Association and its residents is a statutory and contractual one, with the residents agreeing to be bound by such restrictions in the Master Deed, Bylaws, and Rules and Regulations.

**II. BECAUSE THE BOARD’S DECISION TO CHANGE THE SPEED LIMIT WAS AUTHORIZED BY THE CONDOMINIUM DOCUMENTS AND DID NOT VIOLATE ANY LAWS, PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED.**

Plaintiff alleges that the Board’s decision to raise the speed limit violated N.J.S.A. 46:8B-13. Plaintiff misapplies the statute and conflates two different requirements. Plaintiff accurately cites to N.J.S.A. 46:8B-13, which provides in pertinent part:

“ . . . all meetings of that governing board, except conference or working sessions at which no binding *votes* are to be taken, shall be open to attendance by all unit owners, and adequate notice of any such meeting shall be given to all unit owners in such manner as the bylaws shall prescribe . . . ” (emphasis added).

N.J.S.A. 46:8B-13.

Plaintiff then goes on to assert that “Plaintiff brings this action because of the Boards [sic] failure to follow the Condominium Act requiring binding *decisions* to be made at meetings

open to homeowners.” Compl. at ¶ 19 (emphasis added). Plaintiff appears to be of the belief that every decision the Board makes would be subject to an open meeting at which the homeowners vote. To the contrary, the Board is vested with certain powers through the Association’s Bylaws in order to properly administer the functioning of the Association. Specifically, Article IV, Section 2 of the Association’s Bylaws, which are referenced in plaintiff’s complaint, provides:

The Board of Directors shall have the powers and duties necessary or appropriate for the administration of the affairs of the Association and may do all such acts and things except such powers and duties as by law, by the Master Deed, or by these By-Laws may not be delegated to the Board of Directors by the Unit Owners. Such powers and duties of the Board of Directors shall include but shall not be limited to the following:  
(a) Operation, care, upkeep, maintenance, repair and replacement of the Property and the Common Elements, services and personal property of the Association, if any, together with the right to use all funds collected by the Association to effectuate the foregoing.

Attached hereto as Exhibit “A”.

Nothing in the Master Deed, Bylaws, or Rules and Regulations prohibits the Board from making the decision, or effectuating the decision, to raise the speed limit within the subject property. Further, despite plaintiff’s contention, nothing in the Condominium Act prohibits the aforementioned. If the Board were forced by law to bring every menial decision to a vote, it is sure that the Board would be stripped of all power, leading to inefficient operation and possibly no one being willing to become a member of the board. Indeed, the Condominium Act considers such in providing that working sessions need not be open to attendance by all unit owners. It is only plaintiff misunderstanding of the law which led to this complaint, and for the reasons mentioned above, plaintiff’s complaint must be dismissed.



**CONCLUSION**

For the reasons mentioned above, plaintiff's complaint should be dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 4:6-2(e).

**BIANCAMANO & Di STEFANO, P.C.**

Attorneys for Defendant, *Fox Hills at  
Rockaway Condominium Association, Inc.*



A handwritten signature in dark ink, appearing to read 'James Passantino', is written over a horizontal line.

JAMES PASSANTINO, ESQ.

Dated: October 31, 2018



# EXHIBIT A

**AMENDED AND RESTATED BY-LAWS  
FOR  
FOX HILLS AT ROCKAWAY CONDOMINIUM  
ASSOCIATION, INC.  
ROCKAWAY, NEW JERSEY**

RECEIVED

7/16/10 29 10 10 10

Filed by: Fox Hills at Rockaway Condominium Association, Inc.  
1 J.F.K. Circle  
Rockaway, New Jersey 07866

For  
**FOX HILLS AT ROCKAWAY CONDOMINIUM  
ASSOCIATION, INC.**

**Located in the Township of Rockaway, Morris County, New  
Jersey**

Section 10. Order of Business. The general order of business at meetings of the Unit Owners shall be as follows:

- (a) Roll Call
- (b) Approval of Minutes of Preceding Meeting
- (c) Reports of Officers
- (d) Reports of Board of Directors
- (e) Reports of Committees
- (f) Appointment of Inspectors of Election at Annual Meeting
- (g) Election of Members of the Board of Directors at Annual Meeting
- (h) Unfinished Business
- (i) New Business
- (j) Open to Unit Owners
- (k) Adjournment

#### **ARTICLE IV Board of Directors**

Section 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors consisting of seven (7) members, all of whom shall be owners, spouses of owners or domestic partners of owners of Condominium Units or as otherwise in accordance with the Condominium Act. Each Director must physically reside at these premises nine (9) months of each calendar year. Each Director shall be physically present at no less than three (3) quarterly Board meetings in any 365 day period. For the purposes of these By-Laws, a Director who fails to meet the criteria set out in the foregoing two (2) sentences is referred to as an "absent Director." An absent Director must resign immediately should these requirements not be met provided, however, that the Board may use its discretion in determining the extenuating circumstances offered by an absent Director and may, by majority vote, adjust this requirement. Any such majority vote must be documented in writing and filed in the resolutions book for the Association.

In the event there is no resolution as described in the foregoing two sentences and any such absent Director fails to submit a written resignation, the Secretary shall submit a resignation on behalf of such absent Director and, in the event the Secretary fails to do so, any remaining Director may submit the resignation which shall be effective immediately.

No Director may authorize checks, sign contracts or agreements or represent the Association with any third party while physically away from the premises unless such action is authorized by the Board of Directors.

Section 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary or appropriate for the administration of the affairs of the Association and may do all such acts and things, except such powers and duties as by law, by the Master Deed, or by these By-Laws may not be delegated to the Board by the Unit Owners. Such powers and duties of the Board shall include but shall not be limited to the following:

- (a) Operation, care, upkeep, maintenance, repair and replacement of the Property and the Common Elements, services and personal property of the Association, if any,



together with the right to use all funds collected by the Association to effectuate the foregoing;

- (b) Determine the Common Expenses required for the affairs and duties of the Association, including, without limitation, the operation and maintenance of the Property, and the establishment of reasonable reserves if required, for replacement and depreciation of assets, retirement of debt and renewals;
- (c) Collection of the Common Expenses and assessments from the Unit Owners, together with any costs and expenses of collection thereof;
- (d) Employment and dismissal of the personnel necessary for the maintenance and operation of the Property and the Common Elements;
- (e) Adoption and amendment to the rules and regulations covering the operation and use of the Property and Common Elements. Residents shall have the right to petition for a change as stated in Article VI, Section 14, Rules of Conduct;
- (f) Opening of bank accounts in the name of the Association and designation of signatories required therefor;
- (g) Purchasing, leasing or otherwise arranging for such services, machinery, tools, supplies and the like as in the opinion of the Board of Directors may from time to time be necessary for the proper operation and maintenance of the Property and Common Elements and the facilities and general business of the Association;
- (h) Employing or contracting for services of legal counsel, engineers, and accountants (and setting their compensation) whenever such services may be deemed necessary by the Board of Directors;
- (i) Maintaining detailed books of account of the receipts and expenditures of the Association. The books of account shall be audited when requested by the Board of Directors, but not less than annually by a certified public accountant and a statement reflecting the financial condition and transactions of the Association shall be furnished to each Unit Owner on an annual basis upon the request of such Unit Owner. In the event a Unit is rented, such document shall be sent via regular mail to the Unit Owner at the address provided by such Unit Owner. The books of account and any supporting vouchers shall be made available for examination upon request of a Unit Owner at convenient hours on working days that shall be established by the Board of Directors. Any such request shall be honored within thirty (30) days;
- (j) Maintaining adequate fidelity bonds for all directors, officers, agents and employees handling or responsible for Association funds and records, for such terms and in such amounts as the Board of Directors may deem necessary. The premiums on such bonds shall be paid by the Association and shall constitute a Common Expense;

James Passantino, Esq./I.D.#031961991  
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Tel: 732-549-0220  
Fax: 732-549-0068  
Attorneys for Defendant, *Fox Hills at  
Rockaway Condominium Association, Inc.*

Our File No. 20016-02739

_____	:	SUPERIOR COURT OF NEW JERSEY
PAUL KARDOS	:	CHANCERY DIVISION MORRIS COUNTY
	:	GENERAL EQUITY
Plaintiff,	:	DOCKET NO.: MRS-C-000102-18
	:	
-vs-	:	Civil Action
	:	
	:	
FOX HILLS AT ROCKAWAY	:	
CONDOMINIUM ASSOCIATION, INC. :	:	
	:	ORDER DISMISSING PLAINTIFF'S
	:	COMPLAINT PURSUANT TO RULE
Defendants.	:	4:6-2(e)

THIS MATTER having come before the Court on application of Biancamano & Di Stefano, P.C., attorneys for the defendant, *Fox Hills at Rockaway Condominium Association, Inc.*, and the Court having reviewed the moving papers and good cause having been shown;

IT IS on this \_\_\_\_\_ day of November, 2018

**ORDERED** that the Complaint filed by the plaintiff, Paul Kardos, be and is hereby dismissed with prejudice and with costs to the defendant; and

**IT IS FURTHER ORDERED** that a copy of this Order shall be served on all counsel of record within seven (7) days' of its receipt by defense counsel.

\_\_\_\_\_  
J.S.C.



### CERTIFICATION OF MAILING

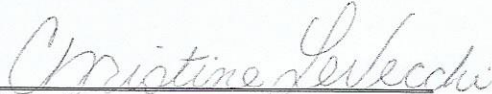
I, Christine Levecchi, do hereby certify that:

1. I am employed by the law firm of Biancamano & DiStefano, P.C., 10 Parsonage Road, Suite 300, Executive Plaza, Edison, New Jersey as a legal assistant.

2. On October 31, 2018, the original of the within Notice of Motion was forwarded for filing with the Motion's Clerk of Morris County via New Jersey Lawyers Service, together with an original and two copies of a proposed form of Order with return envelope, and a copy of all moving papers were served upon the following counsel via Regular Mail:

3. On October 31, 2018 a copy of all moving papers were served via Certified Mail, Return Receipt Requested and regular mail upon the following Pro Se Plaintiff

Paul Kardos, Pro Se  
204 Cleveland Lane  
Monroe Building  
Rockaway, NJ 07866

  
Christine Levecchi

Dated: October 31, 2018