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SEP. 14 2015

HON CHRISTINE A. SPROAT

At an IAS Part of the Supreme Court of the State of New York, held in and for the County of Dutchess, at Poughkeepsie, New York, on the 14 day of September, 2015

HON. CHRISTINE A. SPROAT,

PRESENT: _____ J.S.C.

FILING FEES PAID

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In the Matter of the Application of

R# 104364 DATE 9/14/2015

KARI RIESER,, a candidate Member of the County Legislature 9th District Dutchess County, State of New York, and

Petitioners,

2015 - 3373

-against-

ORDER TO SHOW CAUSE

THE DUTCHESS COUNTY BOARD OF ELECTIONS, Erik Haight and Marco Caviglia COMMISSIONERS CONSTITUTING THE BOARD, and

GWEN JOHNSON, a candidate Member of the County Legislature 9th District Dutchess County, State of New York, and

Respondents.

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2015 SEP 14 P 4:09
DUTCHESS COUNTY BOARD OF ELECTIONS

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Upon the annexed petition verified on the 14^d day of September, 2015, and upon all of the papers and proceedings heretofore had herein, it is hereby

ORDERED, that respondents herein show cause before an I.A.S. Part of this court held in and for the County of Dutchess, at the Courthouse thereof, 10 Market Street, Poughkeepsie, New York, on the 15 day of September, 2015, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order of this court should not be made and entered pursuant to the provisions of §16-112 of the Election Law of the State of New York, requiring:

**Appearances Are Required
On The Return Date**

1. All election day ballots, paper ballots, absentee ballots, military ballots, emergency ballots and affidavit ballots, ballot scanning machines, ballot marking devices, and the memory cards / sticks / flash drives for same, ad any and all materials used to canvass or recanvass the results of the Primary Election on September 10, 2015, for the public office of Member of the County Legislature 9th District and Mayor of the City of Poughkeepsie, to be impounded and kept at the offices / facilities of the Dutchess County Board of Elections and the Putnam County Board of Elections, respectively, so that Board of Elections personnel and the Respondents and Petitioners may do whatever work is necessary to prepare for and conduct the audit/canvass/recanvass of such ballots until September 22nd, 2015; and

2. Such work shall be done on a bipartisan basis by the commissioners, deputy commissioners, and employees of the boards; and

3. That in each of the counties within the Member of the County Legislature 9th District and Mayor of the City of Poughkeepsie, the appropriate law enforcement officer(s), as determined by the Dutchess Board of Elections, shall, pursuant to the provisions of the Election Law, assist the Boards of Elections and ensure that the ballots, machines, memory sticks and all election related materials, are secured, in a manner consistent with the past policies and practices of the County of Dutchess; and

4. That said respondent Board of Elections shall preserve a record of all objections entered against the canvassing of any ballot or the bursting of any ballot envelope, together with a record of the vote upon the objection thereon (sustained, overruled or split vote), and shall

further preserve any ballot and supporting documentation upon a split vote of said Inspectors so that this Court may review same, however, in no instance shall said Boards of Inspectors compromise the secrecy of any voter's ballot by way of preserving an objection thereto in violation of Election Law 17-126 (1), (2) or (3); Article 2, Section 7 of the New York State Constitution and relevant provisions of Article 8 and Article 9 of the Election Law; and

5. That the respondent Board of Elections shall, in accordance with the provisions of the Election Law, not open any ballot envelope which is the subject of a challenge made on behalf of either candidate which results in a split decision of the Commissioners of the Dutchess County Board of Elections, for the later of three business days or further order of this Court, absent stipulation by the parties or a further Order of this Court; and

6. That the Respondent Boards of Elections shall, pursuant to Election Law Sec. 16-112, preserve the any ballot or ballot envelope objected to by the petitioner, or another party hereto, in such fashion so that this Court may, in a prospective contest, have the opportunity to review the determination of the Board of Elections, and it is further

ORDERED, that Respondent Boards of Elections preserve inviolate and separate the affidavit, emergency, absentee, special, and military ballots, official tally sheets, and removable memory cards, sticks or devices used by or as part of any ballot scanner or ballot marking device used for the recording of votes and voting activity on any such ballot scanner or ballot marking device, and returns of canvass sheets and / or printouts used in the Primary Election on September 10, 2015 for the public offices of Member of the County Legislature 9th Districte,

New York, from all others, and same shall be impounded at the Dutchess Board of Elections, respectively, for the portions of the Member of the County Legislature 9th District ~~and Mayor of the City of Poughkeepsie,~~ and it is further,

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ORDERED, that the Respondent Boards of Elections, as has been the past practice, shall produce for the petitioner or his attorney, or respondent or his attorney, upon their request, all documents (or copies thereof) including but not limited to, voter registration records, poll books, canvass sheets, machine breakdown reports, mechanic's or custodians' logs, affidavits, election day court orders and other election related documents without the need for a subpoena; and it is further

ORDERED, that pending further Order of this Court or stipulation of the parties herein, that the Respondent Board of Elections is restrained from opening any paper ballot which is the subject of a challenge by either party which results in a split determination of the Commissioners of the Dutchess County Board of Elections; and it is further *in the 9th District*
1

ORDERED, that, notwithstanding the provisions of this Order, the respondent Board of Elections shall be free to conduct the canvass or recanvass of the votes in all other political subdivisions in the Dutchess County; and it is further

ORDERED, that any attorney or his employee representing petitioner candidate be to the place of canvass or recanvass of the votes in this election and be allowed full participation in the

administrative proceedings of the Boards of Elections held in relation thereto, without the need for production and filing of a poll watcher's certificate, and it is further,

ORDERED, that said respondent Board of Elections shall preserve a record of all objections entered against the canvassing of any ballot, together with a record of the vote upon the objection thereon (sustained, overruled or split vote), and shall further preserve any ballot and supporting documentation upon a split vote of said Inspectors so that this Court may review same, however, in no instance shall said Boards of Inspectors compromise the secrecy of any voter's ballot by way of preserving an objection thereto in violation of Election Law 17-126 (1), (2) or (3); Article 2, Section 7 of the New York State Constitution and relevant provisions of Article 8 and Article 9 of the Election Law, and it is further

ORDERED, that in the interests of justice, the efficient administration of the law, and judicial economy, the objection(s) of the petitioner hereto to any ballot, ballot envelope, affidavit, application or documents relating to the aforesaid challenged ballots with respect to the 2015 Primary Election for the subject public offices ^{for the 9th District, Dist. Co. Legislature} are hereby ordered to be preserved until further Order of this Court, regardless of whether three days have elapsed, and all such ballots and documents shall be preserved for the review of this court pursuant to the power conferred upon this Court by Election Law Section 16-112, and it is further

~~ORDERED, that the Respondent Boards of Elections shall coordinate the said preservation and security of any voting machines to be tested or identified as having malfunctioned or having been repaired or replaced during the primary election held on~~

~~September 10, 2015 and utilized in the said election for the public office of Member of the County Legislature 9th District, New York, with the appropriate law enforcement official as determined by the respective Board of Elections, to ensure the integrity of the machines and the ballots cast thereon, in accord with the past practices adopted by Dutchess County Board of Elections therefor, and it is further,~~

ORDERED, that the said law enforcement official, whose support and assistance is requested by the respective Boards of Elections, shall assure that all paper ballots which were the subject of challenges, records, memory cards, ~~and keys for the aforesaid voting machines~~ are secured and placed *in a secure closet with each Commissioner having each key* ~~under 24 hour per day guard~~, or alternatively, at the appropriate law enforcement official's option, said law enforcement officials shall assure that all such items are secured in a safe or storage facility of the Boards of Elections for which there are two separate locks required for access, with each commissioner of elections having a key or combination for only one of the two locks, or alternatively that all such items are placed in a safe or another secure facility by the said law enforcement official (or his designee), who shall maintain exclusive control of the means of access; and that the Board of Elections shall maintain a record of all persons accorded access to the ballots and related materials, and shall assure that the handling of ballots is done on a bipartisan basis, and it is further

Sufficient reason appearing therefore, leave is hereby granted to the petitioners to submit on the date set for the hearing or the trial of this matter additional witnesses, exhibits, proofs and other evidence as may be necessary, and,

ORDERED, that the Respondent Boards of Elections report to the Court on any potential scheduling conflicts in canvassing, so that same can be resolved, and

Sufficient reason appearing therefor, leave is hereby granted to the petitioner to amend his/her pleadings as may be necessary, as the facts and circumstances of this matter may come to be considered, and, it is hereby

ORDERED, ADJUDGED AND DECREED, that venue is properly placed in Dutchess County for this proceeding and it is further

ORDERED, that any related proceedings commenced by the parties hereto are to be and are hereby consolidated herewith for hearing and trial, and
AND IT IS HEREBY ORDERED ADJUDGED AND DECREED

Sufficient reason appearing therefor, it is further

ORDERED, that petitioner shall cause a copy of this order together with all of the ancillary papers thereto, upon which this order was granted upon respondent Boards of Elections, by personally delivering same to the office thereof, or by personally delivering same to any of the Commissioners, or Deputy Commissioners, Director or Deputy Director or Counsel thereof, or by electronically transmitting same to the e-mail address or fax number designated for such purpose, or (upon the County Boards of Elections) delivery or electronic transmission to the County Attorney, on or before September 14, 2015, and upon Respondent Candidates, by personally delivering same or electronically transmitting, to him / her or any attorney designated by him / her, or appearing for him / her, on or before September 14, 2015, or at the option of the

petitioner by mailing same to any of the candidate respondents at the address specified for them on any document on file with the Respondent Boards of Elections, and affixing a true copy thereof to the front door or entranceway on or before September 14, 2015, ~~or at the option of the petitioner by mailing same to any of the candidate respondents at the address specified for them on any document on file with the Respondent Board of Elections and leaving a true copy thereof with a person of suitable age and discretion at the business or residence of said respondent on or before September 14, 2015, or alternatively, at the option of the petitioner, service may be made by enclosing same in a securely sealed and post paid wrapper addressed to any or all the respondents via Express Mail and depositing same with an office or depository of the United States Postal Service, on or before September 14, 2015, or by electronic (e-mail or facsimile) transmission to any of the above named parties on or before September 14, 2015, or any other means of service allowed by the CPLR on or before September 14, 2015, and that such service shall be deemed good and sufficient service thereof.~~

DATED: September 14, 2015

ENTER:



HON. CHRISTINE A. SPROAT
JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
In the Matter of the Application of

KARI RIESER,, a candidate Member of the County Legislature 9th District
Dutchess County, State of New York, and

Petitioners,

-against-

VERIFIED PETITION

THE DUTCHESS COUNTY BOARD OF
ELECTIONS, Erik Haight and Marco Caviglia
COMMISSIONERS CONSTITUTING THE BOARD, and

GWEN JOHNSON, a candidate Member of the County Legislature 9th District
Dutchess County, State of New York, and

Respondents.

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DUTCHESS COUNTY
BOARD OF ELECTIONS
DR

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF DUTCHESS:

The petitioners respectfully show:

1. Petitioner Kari Rieser is a candidate for the public office of Member of the County Legislature, 9th District, and has standing to bring the within proceedings.

2. Respondent Gwen Johnson is a rival candidate for the public office of Member of the County Legislature, 9th District, candidate for the public office of Member of the County Legislature, 9th District.
3. The subject public offices were voted upon at the Primary Election held therefor on the 10th day of September, 2015.
4. Petitioners have standing under Election Law Section 16-106 to bring this proceeding.
5. Petitioners hereby invokes all applicable provisions of Articles Sixteen, Five, Seven, Eight, Nine, Ten, One, and Eleven of the Election Law as well as the State Constitution and the Civil Rights Law of the State of New York.
6. Respondent Gwen Johnson is a candidate for the public office of Member of the County Legislature, 9th District. Petitioner and said respondent were the only candidates whose names appeared on the ballot for such public office.
7. The subject election is close, within 25 votes, according to the last pre election poll released by Siena College Institute. according to unofficial results issued by the Respondent Board.
8. Also, there are over 30 affidavit and absentee ballots so far returned to the respondent County Boards of Elections, and remain uncounted..

9. Because the contest is particularly close, the final outcome will likely hinge upon the judicial review of the subject machines, as well as challenged paper ballots including emergency ballots, affidavit ballots, absentee ballots, special ballots and military ballots.
10. Respondent County Boards of Elections is / are responsible for canvassing the ballots and returns of the elections from the 9th Legislative District, Dutchess County, New York, and certifying the returns of elections for the subject public office, acting in their capacity as the County Boards of Canvassers, including the contest for the subject public office herein.
11. Commissioners Erik Haight and Marco Caviglia are the commissioners who constitute the Respondent Dutchess County Board of Elections.
12. Based upon the aforesaid, an order securing the aforesaid machines, ballot marking devices, and materials utilized in the canvass of the vote, and preserving challenged absentee/affidavit/military and other ballots which are objected to at the County Board of Elections in anticipation of a challenge before this Court is requested herein.
13. The above captioned County of Dutchess, by their law enforcement authorities, are charged with maintaining order during elections within the County and preserving the integrity of the machines, canvass sheets and ballots cast at elections, and is further required to act upon request of the Board of Elections and upon an order of this Court to

assign officers of the appropriate law enforcement agencies/officials to such task pursuant to the provisions of Article 9 of the Election Law.

14. This proceeding is commenced pursuant to the provisions of Articles Five, Seven, Eight, Nine, Ten and Sixteen of the Election Law, which confers authority upon this Court to determine and resolve any disputes arising out of or relating to the canvass of ballots and returns for public office, and to preserve the ballots and machines employed in a general election for a contest relating thereto. In addition this proceeding is brought pursuant to the provisions of the State Constitution and the New York Civil Rights Law as they relate to the right to vote.
15. Moreover the provisions of Section 16 – 112 Election Law allow for this Court to preserve ballots for its review in a prospective contest.
16. It is possible that the Board of Elections may allow improper votes to be cast with respect to the aforesaid challenged ballots, and that, as a result of the aforesaid failure of the proper tabulation made by the subject voting machines to correctly tabulate votes cast for the candidates herein appearing thereon, it is respectfully submitted that this Court should now secure the machines and elections materials so that this Court, in a prospective challenge, may have the necessary evidence to allow it to review the situation and act under the applicable law to remedy the situation.

17. This petition is brought to continue to preserve the ballots, preserve the said voting machines and respective memory cards used therein, to protect the rights of the respective candidates as is provided for in the Election Law with respect to the subject challenged ballots, to protect the rights of the voters to vote for the subject candidates in accordance with the provisions of the Constitution of the State of New York, or prevent any procedural defect which might be asserted to defeat this Court's determinations.

18. This petition is brought before the petitioner has had a full opportunity to investigate and review the impact of the any potential defects or irregularities, interview witness-voters, and fully review relevant facts.

19. This challenge is designed to preserve the petitioners' rights under the Election Law within the short statute of limitations provided.

20. Accordingly, Petitioners' case will be made by the objections entered to ballots at the Board of Elections, and any future pleadings, actions and/or affidavits which may be filed.

21. Upon information and belief, the canvass or recanvass of the votes cast by ballot scanning machine or ballot marking device and any challenged ballots for the subject public office may be incomplete and or inaccurate and require correction.

22. Such an occurrence requires the Court to order the preservation of the aforesaid challenged affidavit/absentee/military ballots and preserving the subject voting machines, computerized memory media, and the subsequent adjustment of the canvass to correct the error in vote totals in any subsequent action which may be brought by either of the candidates.
23. Continued impoundment and protection of voting machines and ballots is essential, because any lapse in security or breach of protective measures for the machines and ballots relating to this election would irreparably harm the petitioner, voters in the subject election district, and, indeed, undermine public confidence in the electoral process.
24. Only a review of the final voting machine canvass numbers from the Board of Elections and a physical inspection of the subject voting machines and related documents on file with the Board of Elections will reveal any irregularity or fraud.
25. Petitioner requests leave to and reserves the right to submit further proofs by way of witnesses, affidavits and evidence on the date set by this court for the trial and hearing of this matter, to request subpoenas from the Court to obtain relevant evidence, to request any necessary discovery, and to amend and / or supplement these pleadings to reflect the facts of the conduct of the subject election and/or facts adduced by the way of further investigation and/or a canvass of the ballots for the election for the subject public office by the Boards of Elections.

26. In the course of the canvass of the subject challenged ballots there may be erroneous determinations made by the Board of Elections.
27. Without Court intervention at this juncture ordering preservation of the ballots an ballot envelopes such ballot envelopes would be burst, the ballot removed therefrom and depriving the petitioner of the ability to have the administrative determination of the Boards of Elections reviewed by the Court.
28. Since there may be a split vote with respect to such challenged ballots and the count at the Boards of Elections, or the return date set by the Court is more than three days from the entry of an objection, absent a protective order of this Court, the ballot envelopes would be burst, the ballot removed therefrom, depriving the petitioner of the ability to have the administrative determination of the Boards of Elections reviewed by the Court.
29. Protection of the franchise and prevention of dilution of the right to vote requires preservation and protection of the subject voting machines, the aforesaid challenged ballots, and related elections documents. It is the history of the Courts to allow for a thorough review of such ballots and related information and to preserve the ballots in envelopes inviolate pending Court review.
30. Failure to preserve objections and the subject voting machines would irreparably harm both your petitioner and voters who were deprived an opportunity to vote for a candidate for the subject public office.

31. Petitioner may request various information and documents from the Board of Elections. Such information is necessary for petitioner to have a meaningful participatory role in the canvass of paper ballots. These materials are routinely provided prior to canvass of ballots upon an order of this Court.
32. Moreover, without the information requested, this Court and your Petitioner will be unable to see that the mandates of the New York State Constitution, Article II, Section 7, which requires that identification of voters be made by their signatures “in all cases” are followed.
33. Improper votes unaccompanied by a signature identification from the voter, under the applicable case law, must be excluded from the canvass.
34. Accordingly, where the Boards of Elections do not release documents with signatures on them, Petitioner requests that signatures be provided, subject to the limitation that they may only be used in connection with administrative and judicial proceedings related to this election.
35. This information will allow for the full implementation of Sections 8-302, 8-304, 9-104 (1) (d), 9-209 (2) (a) (1) of the Election Law and those other sections of the law which codify the Constitution’s mandate of signature verification to establish the identity of all

voters, and of the Help America Vote Act which requires that certain voters produce identification before being allowed to vote.

36. The information requested by your petitioner is needed for the petitioner to have the ability to participate in the final canvass, Election Law Section 9-209 (2)(d), to object to the qualifications of any voter, and to have any determination reviewed by the Supreme court, pursuant to the provisions of Election Law, Section 16-106.
37. Pursuant to the applicable statute and case law, in a proper proceeding, this Court has the power to review such ballots and upon a determination that they were not properly cast, or that the voter was not entitled to cast the ballot, this Court may adjust the canvass to remedy any defects.
38. The failure to enforce the applicable statutes, and the inability to adduce the underlying facts would irreparably harm your petitioner and voters for the subject public office, and prevent a review on the merits of challenges made on the basis of qualification to vote in the instant election.
39. Upon information and belief, the facts alleged in the paragraphs hereinabove, point to the fact that the final result of this election hinges upon the canvass of the various types of paper ballots mentioned hereinabove, as well as a review of the canvass of the machine cast ballots on the subject voting machines. Accordingly this request for a preservation order is made.

40. No prior application for the relief requested herein has been made by petitioner Reiser to this Court or any other Court of competent jurisdiction.
41. Petitioner hereby designates Dutchess County as venue for the within action on the basis that the subject political subdivision is in Dutchess County.
42. Petitioner has no other remedy at law other than that applied for herein.
43. Leave is respectfully requested and the petitioner respectfully reserves the right to amend these pleadings as needed.
44. Leave is respectfully requested and petitioner respectfully reserves the right to produce evidence in support of this petition by way of testimony, affidavits, and other evidence at the trial or hearing of this matter.
45. Leave is respectfully requested and the petitioner respectfully reserves the right to make further applications to the Court for discovery and / or interim relief as may be needed.
46. Based upon the foregoing, the petitioner is apt to be without any protection or Court supervision of the post election processes without the relief prayed for in the order to show cause. Notice of this application has been given to the Offices of the Dutchess and Putnam County Attorneys, the Dutchess and Putnam County Boards of Elections, This was done in accordance with 22 NYCRR 207(f) and the directives of the Chief Administrative Judge.

47 The proposed Order to Show Cause only restrains the Dutchess County Board from opening the Affidavit Absentee and Emergency Ballots in the 9th Legislative district for one week so Petitioner and Respondent can prepare for their canvassing. Nothing else in this Order prevents the Respondent Boards of Elections from performing their statutory duty in any other Primary contest.

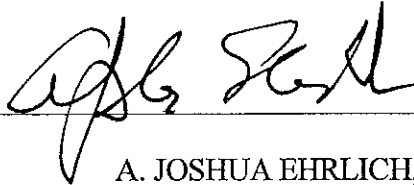
WHEREFORE, Petitioner respectfully requests a judgment of this Court as follows:

- i. Signing the Order to Show Cause and granting the relief requested therein; and
- ii. Ordering all election day ballots, paper ballots, absentee ballots, military ballots, emergency ballots and affidavit ballots, ballot scanning machines, ballot marking devices, and the memory cards / sticks / flash drives for same, and any and all materials used to canvass or recanvass the results of the General Election on November 4, 2014, for the public office of Member of the State Senate, 41st State Senate District, to be impounded and kept at facilities of the Putnam and Dutchess County Boards of Elections so that Board of Elections personnel may do whatever work is necessary for the audit/canvass/recanvass of such ballots; and
- iii. Such work shall be done on a bipartisan basis by the commissioners, deputy commissioners, and employees of the board, in accordance with law; and
- iv. the appropriate county law enforcement officer, as determined by the respective County Board of Elections, shall ensure that the ballots are secured, in a manner consistent with the past policies and practices of the respective County; and

- v. That said respondent Boards of Elections shall preserve a record of all objections entered against the canvassing of any ballot, together with a record of the vote upon the objection thereon (sustained, overruled or split vote), and shall further preserve inviolate any ballot, ballot envelope, and supporting documentation upon objection thereto so that this Court may review same, however, in no instance shall said Boards of Inspectors compromise the secrecy of any voter's ballot by way of preserving an objection thereto in violation of Election Law 17-126 (1), (2) or (3); Article 2, Section 7 of the New York State Constitution and relevant provisions of Article 8 and Article 9 of the Election Law; and
- vi. That the respondent Board of Elections shall preserve for Court review and shall not open any ballot which is the subject of a challenge made on behalf of either candidate, absent stipulation by the parties or further Order of this Court.
- vii. Allow for a prospective contest relating to the ballots of this election.

viii. Award such other, further, and different relief that this Court may deem to be just and proper.

DATED: Albany, New York
September 14, 2015

A handwritten signature in black ink, appearing to read "A. Ehrlich", is written over a horizontal line.

A. JOSHUA EHRLICH, ESQ
ATTORNEY FOR PETITIONER
71 GROVE AVENUE
ALBANY, NY 12208
518-334-1502

ATTORNEY CERTIFICATION

Attorney's certification pursuant to
NYCRR Part 130:

A. JOSHUA EHRLICH, ESQ
ATTORNEY FOR PETITIONER
71 GROVE AVENUE
ALBANY, NY 12208
518-334-1502

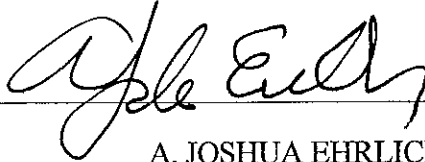
ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF SUFFOLK) s.ss:

- A. JOSHUA EHRLICH, an attorney duly admitted to the practice of law before the Courts of the State of New York does hereby affirm pursuant to the provisions of the CPLR as follows:
1. He is the attorney for the petitioner in this proceeding.
 2. He has personally reviewed reports on absentee ballots, preparations made for the general election, and ancillary documents on file with the Boards of Elections, contacted the respondent boards, and upon the conclusion of the said review, believes the within allegations to be true, to his personal knowledge.
 3. He has reviewed the contents of the within petition with his client(s) and/or his / her / their workers and at the conclusion of said review believes the contents thereof to be true.
 4. All allegations made upon information and belief he believes to be true, based upon a review of the subject petition and an investigation of the attendant facts and circumstances.

5. This verification is used pursuant to the provisions of the CPLR, that counsel has offices in the County of Albany, and the 9th Legislative District of the Dutchess County Legislature is contained within Dutchess County New York.

DATED: Albany, NY
September 14, 2015



A. JOSHUA EHRLICH, ESQ
ATTORNEY FOR PETITIONER
71 GROVE AVENUE
ALBANY, NY 12208
518-334-1502