

PRELIMINARY STATEMENT

Plaintiffs concede in their opposition to defendant's motion that the alleged conspiracy between the Township of Mahwah ("Township") and the Ramapo Hunt & Polo Club Association, Inc. ("Association") has been known to them before any of the state court actions were filed. Plaintiffs then counter those admissions with the argument that their claims are not barred by the Entire Controversy Doctrine or *res judicata* because 'factual developments may show that constitutional harm, which seemed to remote or speculative to afford relief at the time of an earlier suit, was in fact indisputable . . . (and) such changed circumstances will give rise to a new constitutional claim' and 'res judicata does not bar claims that are predicated on events that postdate the filing of the initial complaint even if the claims relate to . . . (the) earlier-filed lawsuit.' (See Plaintiffs' Brief, ECF No. 124, page 31 of 49).

Because plaintiffs seem to be alleging that the civil conspiracy claims were premature or speculative prior to the filing of this action, the defendant is supplementing its Statement of Facts with further evidence that plaintiffs were clearly accusing the Township and Association of engaging in a civil conspiracy prior to and during the pendency of the state court actions and therefore, such claims were required to have been brought previously.

The defendant will then brief its reliance on the Entire Controversy Doctrine and/or res judicata, and address plaintiff's procedural claims. The defendant will not readdress Points II, III and IV of its brief and will rely upon its previous arguments.

SUPPLEMENTAL STATEMENT OF UNDISPUTED FACTS

1. On December 5, 2016, a story about the Township of Mahwah citing the Ramapough Indians with zoning violations was presented on Action News. A reporter from Action News interviewed Floyd Hicks, who was identified as one of Ramapough's leaders, and Chief Dwayne Perry. The following is the story:

BILL SPADEA: Ashley, you're chasing the story, the Ramapough Indians. Not so happy.

FIRST FEMALE REPORTER : Yes, Bill, they are not happy, but I got to start all over national news protestors have been fighting a pipeline construction project going through the Standing Rock Reservation belonging to the Sioux Native American Tribe in North Dakota. Meanwhile in our backyard --

FLOYD HICKS: First of all, we have what's called a big meeting house and this is where all the big ceremonies that were performed during the year were conducted during -- in this place here.

FIRST FEMALE REPORTER: The Ramapough Tribe in Mahwah, New Jersey is clinging on for dear life for what they say is the last piece of sacred land. It's called the Split Rock Sweetwater Camp and on it is what they have a big house. You will see a circular formation of logs with engraved spiritual

masks on the wood and for them this is their dignity, it's their history and it's their place of worship.

FLOYD HICKS: We call this osimo. This is tobacco, a very powerful herb. And when I hold it in my hand it represents the physical aspect of nature, of our world.

FIRST FEMALE REPORTER: Floyd Hicks, who is one of the leaders in the community showed me what they do when they have a traditional tobacco ceremony.

FLOYD HICKS: We're thanking Mother Earth that is the ground to have a sacred fire.

FIRST FEMALE REPORTER: But Chief Dwaine Perry showed me this letter that he received from the Township of Mahwah which he says is a threat to their worship and it says that on the land because of zoning regulations they are not allowed to have public assembly and he is outraged.

CHIEF DWAIN PERRY: In addition, the site is being or has been used is not zonally approved for public assembly. What does that mean? We are not in America anymore?

FIRST FEMALE REPORTER: Chief Perry also tells me that the Ramapoughs have been facing a lot of hostility lately in the community from both the town and also those who live around the camp. And it's interesting because right on the site where you see tee-pees and you see the big house you see like multimillion dollar homes across the street. And then Chief Perry shared with

me a picture of how someone vandalized their property around Veteran's Day engraving the word hate in one of their sacred stones.

CHIEF DWAIN PERRY: We need help. We are afraid and now it looks like the rest of us are potentially in danger from the people that we're paying to protect us.

FIRST FEMALE REPORTER: I did reach out to the town of Mahwah in regards to the letter and they say it speaks for itself. They would not go into any more detail.

BILL SPADEA: So, Ashley, did he address this letter, though, specifically? I mean it's convenient for the Chief to talk about the right of assembly, but the letter talks about people using this campground as a permanent residence.

FIRST FEMALE REPORTER: Bill, that's a good point. And when I was out there, I saw people. He said they are not permanently stationed there, but the big thing for them is that this is a place where people get married, this is a place where they bring in, have ceremonies for kids in the community. So, it's really their faith that they say is at stake by that letter.

SECOND FEMALE REPORTER: So, if they received this federal acknowledgement of their tribe, what does that do for their land?

FIRST FEMALE REPORTER: They say if they get federal recognition that resolves a lot of the problems that they've had.

BILL SPADEA: Is there any talk, does he have any fear that there's some developer that might be interested?

FIRST FEMALE REPORTER: He did not say that. That's a good one, though. I don't, I don't know.

BILL SPADEA: Interesting. All right, keep us posted.

FIRST FEMALE REPORTER: Maybe it's you, Bill.

BILL SPADEA: Good luck Chief. (**Exhibit S**)

2. In or about April of 2017, Chief Dwayne Perry was interviewed by The New York Times for an article that appeared on April 14, 2017 and was titled: The Ramapoughs vs. the World. In addition to providing a history of the Ramapough, the article focused on the then proposed Pilgrim Pipeline that would pass through Ramapough territory and the tribe's concerns about President Trump. As concerns this matter, Chief Perry offered information to the paper that resulted in the following:

But before they can take on Mr. Trump, the Ramapough must contend with their neighbors. Ever since the tribe began demonstrations on its campground, residents and local officials from Mahwah have been at loggerheads with the Ramapough. In late November, a neighbor copped the police to report the tribe for constructing teepees on the land, in apparent violation of the town's zoning regulations,. A week later, neighbors again called, now claiming excessive noise, The complaints continued for weeks, with the neighbors objecting to a range of issues, like parking enforcement and the tribe's setting mulch on its property.

Around the same time, Ramapoughs reported to the police that they found their property had been defaced with bigoted message, including a swastika, The graffiti allegations followed episodes earlier that year, in which

the tribe reported several of its religious items had been stolen or vandalized.

The town penalized the tribe with a series of violations, though those have been adjourned as officials review the tribe's newly submitted site plans. Tribal leaders are hoping for an amicable resolution but say they are concern by what they see as "selective enforcement" by the town. They say that similar sanctions are not imposed upon nonindigenous residents who ,for example, camp in their yards ort erect canopies for parties. (**Exhibit T**).

3. On May 17, 2017, Chief Dwayne Perry appeared before the Bergen County Board of Chosen Freeholders and made the following statement:

Mr. Perry: I am Chief of the Ramapo Lenape people.

For north of 30 years, we've had a ceremonial land at 95 Halifax Road in Mahwah.

On that land, we have hosted spiritual leaders from all over North and South America, from Africa, from Asia, from the Netherlands, Canada, and recently we just hosted Jun-San, who is a Japanese nun who has walked 48,000 miles around the earth for fresh water.

We've never had a problem on the land with anybody. We look after our neighbors and the land.

Recently, through what appears to be extreme manipulation of zoning rules, we now find out that we can build a mansion but we cannot have a tent because it's in violation. We can have hunting and fishing structures, but we can't have a yurt. We

have found our just recently, I think now we're getting one pointed violation a day from the town of Mahwah or whatever it is, but what I find most astonishing and I find extremely concerning, not just for the county for the state, nationally, is that through the manipulation of zoning regulations, the one thing you cannot do on the land is to assemble for spiritual reasons. So our Constitutional rights are being abridged through the manipulation of zoning rules in Mahwah that I would have to say it appears that since we put the teepee up in October, we've had non-stop issues.

I'm assuming, assuming, one of the reason might be, while people are claiming they're anti-pipeline, the new leadership of the Polo housing group works for the Association of Petroleum Geologists; the mayor owns a Sunoco; and now we're not allowed to assemble or parade.

So I would like each and every one of you to take a moment and ask yourself what type of precedent is that going to set nationally? Because, I assure you, if need be, it will be a national issues,

I would just like to thank you for your time and ask for your consideration. (**Exhibit U**, T45:2-46:19)

4. In the matter of New Jersey v. Ramapough Mountain Indians, Docket No.: 0233-SC-08491, Judge Roy McGeedy took testimony over several days and did an onsite visit. (See

November 17, 2017 Court Decision attached as Exhibit A to Certification of John F. Gaffney, T5:5 - 25).

5. On November 3, 2017, Hamadi "Crazy Wolf" Martin, a member of the Ramapough Lenape Nation, posted a Facebook video titled: "Judge's Visit to Ramapough Ceremonial Grounds."

Relevant sections of the video are as follows:

HAMADI CRAZY WOLF MARTIN: So, I just wanted to start this live video right quick. I'm down here at 95 Halifax Road, otherwise known as Ramapough Lenape Land, ceremonial sacred land, okay.

My name is Crazy Wolf, also know as Hamadi Martin and I am part of the Ramapough Lenape Nation.

What has just happened is the judge is here to actually see what we do on the land. Also, the people who do not want us on our own land are here as well. You see some of the elders are here. What's up Cat?

Some of our elders are here, pulling up right now. More people pulling in right now.

This is actually a very, very interesting situation because the judge who's actually pulled up to take a look at what's going on the land and I'm going to show you right now that there's a lot of people that are out here that don't want us here. And the funny part is that this is our land. They're

complaining about the tee-pees, they're complaining about the tents. They're complaining about the way it makes their community look. Got a news flash for y'all, this ain't their community. **(Exhibit V, T3:1-4:40)**

HAMADI CRAZY WOLF MARTIN: Of course. Absolutely, absolutely. Absolutely. So, we are going to walk around, show everybody how it is. Everything that has to go through. So, just so you guys see in the back, that's Chief Iron Bear and that's Medicine Man Doc explaining to the judge what has to take place before you can enter the sacred, the ceremonial circle. As you see, lot of faces here that don't want us here. Just so you know. Stay woke, y'all. We'll go back over here and see some of the beautiful land, you know, that we actually do utilize. Some of the tents back in the woods. Lot of beautiful land, sacremonial land, you know. It's really beautiful land. It's really sad, it's really sad that people don't want to learn more about the people that they've conquered and to live with them in unity. You know, they would much rather move us off our land, which is pretty sad. Says a lot about those people. **(Exhibit V, T5:8-6:5)**

HAMADI CRAZY WOLF MARTIN: They don't want to see anything. There's nothing to see. They just being nosy and they're

uncomfortable that their \$2 million homes are getting invaded and they're uncomfortable, that's all. It is what it is.

Let's not beat, let's not beat around the bush. Let's call it what it is and accept it.

DEBBIE EMORY: I know, but it would be nice if the judge really looked around.

HAMADI CRAZY WOLF MARTIN: Well, I'm hoping the Chief and them are over there doing what they have to do. Let me get back to you. I'll be right back. I just want to make sure that I keep my Facebook going.

All right, so we are going to go back over here. That was a great conversation I had with Debbie. They got students from Bergen College over here learning a little bit more about the land. I am hoping that the judge hasn't left yet, now that I'm coming back over here to give you guys insight on what this is about. Mahwah, the town of Mahwah has been fining us for structures that they feel, basically, let's call it what it is, are eyesores. Doesn't kind of go with their, you know, million dollar homes even though this is our land. **(Exhibit V, T10:7-11:10)**

HAMADI CRAZY WOLF MARTIN: You know I got to say what's up Turtle. Medicine Man.

MUD TURTLE: Mud Turtle.

HAMADI CRAZY WOLF MARTIN: Mud Turtle, Baby, you know what it is, all right.

MUD TURTLE: Did you see them people just walk in here?

HAMADI CRAZY WOLF MARTIN: Without being smudged? Without even being --

MUD TURTLE: I said, did you want to be smudged, I'll smudge you. The lady said no. I said, then you have to leave our circle. I don't come in your Church and disrespect you.

HAMADI CRAZY WOLF MARTIN: Exactly. Why would she even --

MUD TURTLE: But she just got mad and walked out.

HAMADI CRAZY WOLF MARTIN: That's what I'm talking about. You see what Mud Turtle said, they don't even want to -- what, Mud Turtle, what did she do?

MUD TURTLE: Well, they came into our sacred circle and the Mayor from Mahwah, whoever is against us, the district attorney, right, he's for Polo people. Well, the head Polo lady and whoever came here into the sacred circle, I asked them if they wanted to be smudged. They said no. I said then you can't be in this sacred circle, right, and they went like, well, we don't understand. I said, well I don't come to your church and disrespect you. Why would you come here and disrespect us. It doesn't make sense. We are not here to hurt anybody, we're here to share what we have with everybody. (**Exhibit V**, T11:21-13:6)

6. On January 29, 2018, Chief Dwayne Perry, Steven "Owl"

Smith and Two Clouds posted a video on YouTube titled:

"Mahwah's Latest Threat to the Ramapough." Relevant sections of the video are as follows:

STEVEN SMITH OWL: We have a letter here from the Town of Mahwah dated January 2017, I mean January 17, 2018 in which they are claiming that we are committing these dastardly violations. What they are saying is, is our use and activities: Our site observations on various days, including yesterday, indicate that the property and structures on the site are being used for religious uses, houses of worship and prayer groups, public assembly uses and as a camp ground. So, the town of Mahwah, even though the judge said that what we were doing was okay, they are saying that us just gathering on land for prayer is illegal. They are telling us that we are not allowed to do that. They're saying that simply on the grounds prayer is illegal.

Also, they go onto say that certain structures as they term them and mind you, they say structures being practically everything, on the land is illegal. They say based on the Township Code, a structure is defined as, "a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above or below the surface of a parcel of land. So, basically, if you had a bird house, they would say that's illegal and needs a permit.

CHIEF DWAIN PERRY: Tell them they are taking the law --

STEVEN SMITH OWL: They are taking the law into their own hands. I mean they are saying that we, they are demanding that we take down a storage shed, canvas cabin, a prayer circle consisting of logs stuck in the ground. Totem poles. Portable toilet. Even there in the Municipal Court, I think it was Mike Kelly, the town engineer said, oh, well, although it's a structure, strictly speaking it's a structure, we're not going to fine them. I guess they changed their mind. Now they are saying that portable toilet is a structure that needs a permit. The yurt, which is basically a type of chant, a Mongolian type of chant, that's illegal. Pop-up shed, a structure made of lumber with a roof known as a kitchen shed. Sweat lodge. Mind you, a sweat lodge is basically sticks with twine in them. They are only covered during ceremony, which the Meshiga[sic] may perform a couple times a year. But they're saying that sticks with twine on them is a structure that has to have a permit. But even saying that the stone altar on our lands that people have layed prepares on and with, they are saying that that needs to be removed. And all this has to be seen in the context of their threats to the judge. I mean credibly, the town engine -- rather the town attorney, Brian Chewcaskie told Judge Powers that, you know, you better rule in our favor and if you don't, we are going to engage in some sort of self-help or self-remedy. Judge

Powers denied their motion and now this is the next step, they are engaging in what they call self-remedy and they're saying that we have to have, we have to have all structures and materials associated with the non-permitted uses removed from the site by the end of business day, 4 p.m. on Friday, February 2, 2018.

So, this is a very serious letter. I mean January 27, 2018, the town has basically told, even the courts, that they have the authority to remove everything from the land. As the Chief says, they are acting as vigilantes. They are taking the law into their own hands, self-help remedy. And I mean they really have no respect for us, our sovereignty, our history in the land.

CHIEF DWAIN PERRY: Or the law.

STEVEN SMITH OWL: Or the law. I mean they're taking their direction from the Polo Club. I mean there was one person who said, admitted that us having tents on the land was not illegal and she actually said if it's not illegal, then we are going to have to right some new laws. So, this is what we are dealing with here. We definitely need the help from everyone who is interested in justice, religious freedom and liberty. (**Exhibit W, 3:1 - 6:16**)

LEGAL ARGUMENT

POINT I

**PLAINTIFF'S COMPLAINT IS BARRED BY THE ENTIRE CONTROVERSY
DOCTRINE AND/OR RES JUDICATA**

Statements from the plaintiffs' Chief and members confirm that since December 2016, the plaintiffs were accusing the Township and Association of conspiring to prevent the plaintiffs from using their land for religious purposes and of other nefarious conduct. These are the same allegations in the First Amended Complaint. These accusations were prior to any Municipal or state court actions and continued during the pendency of the Municipal or state court actions.

In December 2016, Chief Perry told Action News that the Ramapoughs have been 'facing a lot of hostility lately in the community *from both the town and also those who live around the camp*' and accused his neighbors who live in million dollar homes of vandalizing their property. In or about April of 2017, Chief Perry told the New York Times that the Ramapough must *contend with their neighbors and residents and local officials from Mahwah* have been at loggerheads with the Ramapough. Chief Perry accused a member of the Association of filing police reports for alleged zoning violations, excessive noise, parking enforcement and the tribe's setting mulch on its property. At the same time, the Ramapoughs reported to the police that they found their property

had been defaced with bigoted message, including a swastika, and religious items had been stolen or vandalized.

In May 2017, Chief Perry told the Bergen County Board of Chosen Freeholders that the Ramapough's Constitutional rights were being abridged. On November 3, 2017, while the Municipal Court Judge inspected the Ramapough property, a member of the Ramapough Lenape Nation posted a Facebook video where he accused the Association members of complaining about the tee-pees and tents and wanting to force the Ramapough off their land, and complaining about the Township issuing fines for structures that don't match up with their neighbors and their million dollar homes. The Tribe's Medicine Man referred to the district attorney as 'for the Polo people.'

On January 29, 2018, Chief Dwayne Perry, Steven "Owl" Smith and Two Clouds posted a video on YouTube titled: "Mahwah's Latest Threat to the Ramapough." In the video, Steven Smith discussed the Township's fining the Ramapough for practicing religion on their property and stated the Township was "taking their direction from the Polo Club."

In Mateen v. American President Lines, Civ No. 12-6849(CCC), 2013 U.S. Dist. Lex 107549 (D.N.J. July 31, 2013), the plaintiff asserted in his complaint that he was a religious Muslim and as part of his religious observance . . . wears a taj and has a beard.

The plaintiff alleged that in November of 2011 he attempted to enter the premises of American President Lines ("APL") but a certain employee of APL prevented such entry because he was wearing a taj and had a beard. The plaintiff alleged that the APL's election to bar his entry caused him specific and serious mental anguish and emotional injury and mental anguish, humiliation and embarrassment and violated his first and fourteenth amendment rights. Id. at page 1.

Among the reasons for dismissing plaintiff's complaint was because it was barred by the doctrines of res adjudicata and collateral estoppel. The Court noted that when determining the preclusive effect a state Court ruling might have on a federal pleading, the Federal Courts turn to the state's law of preclusion. Migra v. Warren City School District Board of Education, 465 U.S. 75, 81 (1984). The Court noted that in New Jersey, a claim is barred when (1) the Judgment in the prior action is valid, final and on the merits; (2) the parties in the later action are identical to or in privity with those in the prior action; (3) the claim in the latter action grows out of the same transaction, relation or set of occurrences as the claim adjudicated in the earlier action. Watkins v. Resorts Intl Hotel and Casino, Inc., 124 N.J. 398, 412 (1991) The Court further noted that "claim preclusion applies not only to matters actually determined in an earlier action, but to *all relevant matters that could have been*

so determined." Id. (citing Angel v. Bollington, 330 U.S. 183, 192-93 (1947)).

The Court stated that plaintiff's complaints about defendant's alleged religious discrimination took place in November of 2011. A state court decision entered on June 29, 2012, or prior to the filing of the Federal action, dismissed another of plaintiff's claim against this defendant alleging that the defendant discriminated against him on religious grounds during the pre-December 21, 2011 period. The Court held that since plaintiff's challenges were either already raised or, at the very least, had to be raised before the other Judge, the prior dismissal of plaintiff's claims preclude plaintiff's current challenges and make clear that granting plaintiff leave to amend his complaint would be futile. For plaintiff to present amended claims, those too would be precluded by the prior Judge's adjudication on the *res judicata* and *entire controversy* doctrines. Id. at page 4.

In the present action, the plaintiffs were alleging that the Township and Association had conspired against them. The plaintiffs were obligated to make those claims in one or both of the actions filed by the Association and Township because the Judgment in the prior actions were valid, final and on the merits; the parties in all the actions are identical; and the claim in

this pending action grows out of the same transaction, relation or set of occurrences as the claim adjudicated in the earlier action.

The Third District of the United States Court of Appeals has held:

Claim preclusion, formerly referred to as *res judicata*, gives dispositive effect to a prior judgment if a particular issue, although not litigated, could have been raised in the earlier proceeding. Claim preclusion requires: (1) a final judgment on the merits and a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action. Board of Trustees of Trucking Employees of North Jersey Welfare Fund, Inc.-Pension Fund v. Centra, et. als., 983 F.2d 495, 504 (3d Cir. 1992) (citing United States v. Athlone Indus., Inc., 746 F.2d 977, 983 (3d Cir. 1984)).

In analyzing whether these three elements have been met, the Third Circuit does "not apply this conceptual test mechanically, but focus on the central purpose of the doctrine, to require a plaintiff to present all claims arising out of the same occurrence in a single suit. In so doing, we avoid piecemeal litigation and conserve judicial resources." Sheridan v. NGK Metals Corp., 609 F.3d 239, 261 (3d Cir. 2010). The Third Circuit further takes a "broad view" of what constitutes the same cause of action and that "res judicata is generally thought to turn on the *essential similarity* of the underlying events giving rise to the various legal claims." In analyzing essential similarity, the Court considers several factors: (1) whether the acts complained of and demand for relief are the same... (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at

trial are the same; and (4) whether the material facts alleged are the same. It is not dispositive that a plaintiff asserts a different theory of recovery or seeks different relief in the two actions. Id. at 261.

Thus, res judicata bars a claim litigated between the same parties or their privies in earlier litigation where the claim arises from the same set of facts as a claim adjudicated on the merits in the earlier litigation. Blunt v. Lower Merion School District, 767 F.3d 247, 277 (3d Cir. 2014). Moreover, res judicata bars not only claims that were brought in the previous action, but also claims that could have been brought. Davis v. U.S. Steel Supply, 688 F.2d 166, 171 (1982).

In Davis, the Court noted that the term "cause of action" has been given varied treatment depending upon the facts in each case and the inquiry is often fraught with conceptual difficulties:

More difficult is the question of identity of the causes of action. A single cause of action may comprise claims under a number of different statutory and common law grounds. . . . Rather than resting on the specific legal theory involved, res judicata is generally thought to turn on the essential similarity of the underlying events giving rise to the various legal claims, although a clear definition of that requisite similarity has proven elusive. Id. at 171.

As repeatedly held in the Third Circuit, there is a predisposition towards taking a broad view of what constitutes identity of causes of action - "an essential similarity of the underlying events giving rise to the various legal claims." Davis

v. Wells Fargo, 824 F.3d 333, 342 (2016). This bars claims that were brought in a previous action and those claims that could have been brought. In re Mullarkey, 536 F.3d 215, 225 (3d Cir. 2008).

POINT II

DEFENDANT'S FAILURE TO PRESENT ITS INITIAL STATEMENT OF FACTS AS A SEPARATE DOCUMENT AND IN SEPARATELY NUMBERED PARAGRAPHS IS A HARMLESS ERROR BECAUSE THE CITATIONS TO THE RECORD ARE CLEAR AND CONCISE

Defendant's initial Statement of Facts is clear and concise with specific citations to the motion record. Thus, it is respectfully submitted that the failure to present same as a separate document and in separately numbered paragraphs is a harmless error and denial of the motion on that basis is a severe remedy.

The present matter is unlike Masci v. Six Flags Theme Park, Inc., No. CIV.A.12-6585, 2014 WL 7409952 at *7 (D.N.J. 12/31/2014), where the Court noted that while plaintiffs have provided a document entitled "Statement of Material Facts in Support of its Cross Motion for Summary Judgment," the vast majority of statements were not supported by any sort of citations or documentation to which the Court could verify its accuracy.

It is also unlike Ajmeri v. Bank of America Health and Welfare Plan, Civ. No. 12-02394 (JAP), 2013 WL 4597047, where although the Court noted that the plaintiff failed to include a Statement of Facts in their Memorandum of Law and separately numbered paragraphs, it appears they were more concerned with the failure of including any proofs. The Court stated, "more importantly, plaintiff fails to attach the administrative record or any of the

documents contained in the records to her motion, despite repeated citations to such documents in her brief. Nor does she include any affidavits by witnesses with personal knowledge of the facts. In fact, her motion consists solely of the Memorandum of Law submitted by counsel in a single exhibit. This is insufficient both procedurally and substantively and falls far short of what is necessary to prove plaintiff's case as a matter of law." Id. at page 4.

Thus, it is respectfully submitted that denying defendant's motion for this reason only is a severe remedy and it is requested that the court accept the initial Statement of Facts in its current format or permit the defendant to correct the record as plaintiffs will have suffered no prejudice.

CONCLUSION

The facts support defendant's argument that the plaintiffs had the knowledge, opportunity and obligation to raise its civil conspiracy claims in the state court actions and therefore, plaintiff's Amended Complaint is barred under the Entire Controversy Doctrine and/or res judicate. In the alternative, plaintiffs Amended Complaint should be dismissed because the plaintiffs have failed to make out a claim against the Association and the complained of conduct is protected by the Free Speech and Petition Clause of the First Amendment.

Respectfully submitted,

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