

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ROBERT MOLTZEN; and,
MARY SAMUEL,

Plaintiffs,

Vs.

J.W.R., INC.; JR'S BAR; AARON
AUBER; and, JONATHAN VINCENT
BELL,

Defendants.

CIVIL DIVISION

NO.: GD-

COMPLAINT IN CIVIL ACTION

FILED ON BEHALF OF:

Plaintiffs,

Robert Moltzen and Mary Samuel

Counsel of Record for These Parties:

SMT LEGAL

Jonathan M. Stewart, Esq.

P.A. ID# 87557

jstewart@smt.legal

Patrick W. Murray, Esq.

P.A. ID# 90996

pmurray@smt.legal

114 Smithfield Street
Pittsburgh, PA 1522
(412) 765-3345

JURY TRIAL DEMANDED

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NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY, OR BY AN ATTORNEY, AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**Allegheny County Bar Association
414 Grant Street, 9th Floor, Room 920
Pittsburgh, PA 15219
(412) 261-5555**

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CIVIL DIVISION

ROBERT MOLTZEN; and,
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COMPLAINT IN CIVIL ACTION

AND NOW, come the Plaintiffs, ROBERT MOLTZEN, and MARY SAMUEL, by and through their attorneys, SMT LEGAL, JONATHAN M. STEWART, ESQUIRE, and PATRICK W. MURRAY, ESQUIRE, and hereby file the within Complaint in Civil Action and set forth the following:

I. PARTIES

1. Plaintiff, Robert Moltzen, is an adult individual and resident of the Commonwealth of Pennsylvania, who at all times relevant resided within Beaver County, at 172 Maple Drive, Beaver, Pennsylvania 15009.

2. Plaintiff, Mary Samuel, is an adult individual and resident of the Commonwealth of Pennsylvania, who at all times relevant resided within Allegheny County, at 404 Sharon Road, Moon, Pennsylvania 15108.

3. Defendant, J.W.R., Inc., is a Pennsylvania close corporation which owns and/or operates Defendant, JR.'s Bar. Defendant J.W.R., Inc. is located within Allegheny County, at 400 E. Ohio Street, Pittsburgh, Pennsylvania 15212.

4. Defendant, Jr.'s Bar, is an establishment created for the purpose of providing food, alcohol, and other amenities to customers, in exchange for payment. Defendant Jr.'s Bar is located within Allegheny County, at 520 E. Ohio Street, Pittsburgh, Pennsylvania 15212.

5. Defendant, Aaron Auber, is designated as the president, secretary, treasurer and vice-president of Defendant J.W.R., Inc., and is the owner of Defendant Jr.'s Bar. Upon information and belief, Defendant Aaron Auber has a business address located within Allegheny County, at 520 E. Ohio Street, Pittsburgh, Pennsylvania 15212.

6. Defendant, Jonathan Vincent Bell (hereinafter "Defendant Bell"), is an adult individual and resident of Pennsylvania who, at all times relevant, resided within Allegheny County at 1427 Johnson Street, New Castle, Pennsylvania 16101.

II. JURISDICTIONAL STATEMENT

7. This action arises under the laws of the Commonwealth of Pennsylvania and is within the subject matter of this Court.

III. FACTUAL ALLEGATIONS

8. Defendant J.W.R., Inc., and/or Defendant JR's Bar lists and advertises its physical location at 520 E. Ohio Street, Pittsburgh, Pennsylvania 15212 and promotes—among other things—its alcoholic beverage sales and service, including, but not limited to, maintaining a website for such purposes, and with such information and advertisements contained therein.

9. Upon information and belief, Defendant Aaron Auber, as president, treasurer, secretary, and vice-president of Defendant J.W.R., Inc., and/or owner of JR's Bar, was, in whole or in part, responsible for advertising and promoting JR's alcoholic beverage sales and service, as described *supra*.

10. Upon information and belief, additional/other of Defendants' employees/agents/servants were also responsible for advertising and promoting JR's alcoholic beverage sales and service, in the manner described *supra*.

11. On or about June 6, 2021, Defendant Bell was present at Defendant JR's Bar for some time, and, upon information and belief, was consuming copious amounts of alcohol as served to him by employees and bartenders of Defendant JR's Bar.

12. While at Defendant JR's Bar, Defendant Bell consumed excessive amounts of alcohol which were served to him by staff and/or employees of Defendant JR's Bar while he was visibly intoxicated.

13. At that time, upon information and belief, Defendant Bell was known by employees of Defendant JR's Bar to be a habitual drinker and/or unable to control his consumption of alcohol.

14. Moreover, Defendant Bell had also consumed marijuana and fentanyl on the aforesaid date, contributing to his overall appearance and presentation as being obviously and unmistakably intoxicated and unable to safely drive a motor vehicle, such that additional alcohol should not have been served to him.

15. Indeed, Defendant Bell's blood alcohol content was later determined to be .222 at the time of the incident which is the subject of this lawsuit (an amount which is by far in excess of the level at which an automobile can be safely and legally conducted in the Commonwealth of Pennsylvania).

16. Upon information and belief, Defendant Bell would have been exhibiting the following visible symptoms which were or should have been readily apparent to Defendants' employees: noticeable changes in behavior, confusion, disorientation, impaired balance, slurred speech, and stumbling.

17. Nonetheless, Defendants' employees negligently and recklessly continued to serve alcohol to Defendant Bell.

18. After consuming excessive amounts of alcohol, along with consuming other substances, and while visibly intoxicated, Defendant Bell exited Defendant JR's Bar, entered into his automobile and proceeded to drive his vehicle to State Highway 28.

19. Impaired by the alcohol, Defendant Bell then recklessly proceeded to enter the one-way roadway (State Highway 28 South) in the wrong direction, dangerously going against the Highway's two (2) lane flow of traffic.

20. Simultaneously, Plaintiff Robert Moltzen was properly, prudently and carefully traveling southbound on State Highway 28, in the correct direction and opposite to Defendant Bell's direction. Plaintiff Mary Samuel was a front-seat passenger in Plaintiff Robert Moltzen's vehicle.

21. Suddenly, and without warning, Defendant Bell rammed into Plaintiffs' vehicle in a head-on fashion, causing a violent collision.

22. Following the collision, Defendant Bell was charged with multiple crimes, as described in detail, *infra*, and including, but not limited to, aggravated assault by vehicle while driving under the influence.

23. As a result of the collision, Plaintiff Robert Moltzen suffered the following serious, severe injuries:

- a. Internal bleeding;
- b. Acute blood loss anemia;
- c. Avulsion fracture of ankle, right closed;
- d. Closed displaced fracture of left acetabulum, unspecified portion of acetabulum;
- e. Closed traumatic minimally displaced fracture of medial malleolus of left tibia with routine healing;
- f. Multiple closed pelvic fractures with disruption of pelvic circle;
- g. Closed displaced fracture of 5th metatarsal bone of left foot with delayed healing;
- h. Acute traumatic pain;
- i. Left hip hematoma;
- j. Closed fracture of transverse process of lumbar vertebra;
- k. Closed fracture of rib;
- l. Pulmonary embolism;
- m. Concussion with loss of consciousness of less than thirty (30) minutes; and,
- n. Other potential serious and/or permanent damage.

24. As a result of the aforesaid collision and resultant injuries, Plaintiff Robert Moltzen, suffered the following damages:

- a. He has incurred in the past, and will incur in the future, extensive medical expenses;
- b. He has sustained in the past, and may sustain in the future, loss of earnings and/or earning capacity;
- c. He has suffered in the past, and will suffer in the future, substantial pain, suffering, inconvenience and the loss of the ordinary pleasures of life; and

- d. He has sustained in the past, and may sustain in the future other emotional, economic, and physical harm.

25. As a result of the collision, Plaintiff Mary Samuel suffered the following serious and severe injuries:

- a. Cerebral concussion with loss of consciousness of less than thirty (30) minutes;
 - i. Photophobia;
 - ii. Headache;
 - iii. Difficulty concentrating;
 - iv. Memory problems/reduced memory;
 - v. Balance difficulties;
 - vi. Dizziness;
 - vii. Nausea;
 - viii. Retrograde temporary amnesia;
- b. Significant bruising throughout abdomen, chest, and left breast area;
- c. Neck pain;
- d. Spondylolisthesis of cervical region;
- e. Sprain of ligaments of cervical spine;
- f. Shoulder pain;
- g. Left hand pain and left wrist swelling;
- h. Left hand contusion—middle finger area;
- i. Left-sided rib pain;
- j. Fatigue;
- k. Insomnia;

- l. Aggravation of anxiety;
- m. Mood disturbances; and,
- n. Other potential serious and/or permanent damage.

26. As a result of the aforesaid collision and resultant injuries, Plaintiff Mary Samuel has suffered the following damages:

- a. She has incurred in the past, and may incur in the future, medical expenses;
- b. She has suffered in the past, and will suffer in the future, substantial pain, suffering, inconvenience and the loss of the ordinary pleasures of life; and
- c. She has sustained in the past, and may sustain in the future other emotional, economic, and physical harm.

IV. CAUSES OF ACTION
COUNT I—NEGLIGENCE

ROBERT MOLTZEN and MARY SAMUEL v. JONATHAN VINCENT BELL

27. Plaintiffs incorporate the above paragraphs as though the same were fully set forth at length here.

28. Defendant, Jonathan Vincent Bell, had a duty to other drivers on the road, to operate his vehicle in a safe and responsible manner.

29. The aforementioned collision was caused by the negligence and recklessness of the Defendant, Jonathan Vincent Bell, in the following particulars:

- a. In disregarding safe operating procedures in operating his vehicle;
- b. In driving at an excessive speed;
- c. In entering a one-way roadway in the wrong/incorrect direction;
- d. In driving while intoxicated by alcohol;
- e. In driving with a dangerous blood alcohol content of .222;

- f. In driving while utilizing illegal drugs and/or controlled substances;
- g. In operating a motor vehicle when he knew or should have know that he could not safely do so, due to his intoxication;
- h. In operating the vehicle in a manner which violated Pennsylvania Vehicle Code §3735(1)(a), Aggravated Assault by Vehicle while Driving under the Influence;
- i. In causing the kind of harm to the Plaintiff which the statute, Pennsylvania Vehicle §3735(1)(a), Aggravated Assault by Vehicle while Driving under the Influence, intended to avoid;
- j. In causing harm to the Plaintiff, who was within the class of persons the statute, Pennsylvania Vehicle Code §3735(1)(a), Aggravated Assault by Vehicle while Driving under the Influence, aimed to protect;
- k. In operating the vehicle in a manner which violated Pennsylvania Vehicle Code §3802 (a)(1), Driving Under the Influence of Alcohol or Controlled Substance;
- l. In causing the kind of harm to the Plaintiff which the statute, Pennsylvania Vehicle §3802(1)(a), Driving Under the Influence of Alcohol or Controlled Substance, intended to avoid;
- m. In causing harm to the Plaintiff, who was within the class of persons the statute, Pennsylvania Vehicle Code §3802(1)(a), Driving Under the Influence of Alcohol or Controlled Substance, aimed to protect;
- n. In operating the vehicle in a manner which violated Pennsylvania Vehicle Code §3802(c), Driving Under the Influence of Alcohol or Controlled Substance;
- o. In causing the kind of harm to the Plaintiff which the statute, Pennsylvania Vehicle §3802(c), Driving Under the Influence of Alcohol or Controlled Substance, intended to avoid;
- p. In causing harm to the Plaintiff, who was within the class of persons the statute, Pennsylvania Vehicle Code §3802(c), Driving Under the Influence of Alcohol or Controlled Substance, aimed to protect;
- q. In operating the vehicle in a manner which violated Pennsylvania Vehicle Code §3802(d)(2), Driving Under the Influence of Alcohol or Controlled Substance;
- r. In causing the kind of harm to the Plaintiff which the statute, Pennsylvania Vehicle §3802(d)(2), Driving Under the Influence of Alcohol or Controlled Substance, intended to avoid;

- s. In causing harm to the Plaintiff, who was within the class of persons the statute, Pennsylvania Vehicle Code §3802(d)(2), Driving Under the Influence of Alcohol or Controlled Substance, aimed to protect;
- t. In operating the vehicle in a manner which violated Pennsylvania Vehicle Code §3308(b), One Way Roadway and Rotary Traffic Islands—Driving on One-Way Roadways;
- u. In causing the kind of harm to the Plaintiff which the statute, Pennsylvania Vehicle §3308(b), One Way Roadway and Rotary Traffic Islands—Driving on One-Way Roadways, intended to avoid;
- v. In causing harm to the Plaintiff, who was within the class of persons the statute, Pennsylvania Vehicle Code §3308(b), One Way Roadway and Rotary Traffic Islands—Driving on One-Way Roadways, aimed to protect;
- w. In operating the vehicle in a manner which violated Pennsylvania Vehicle Code §3736(a), Reckless Driving;
- x. In causing the kind of harm to the Plaintiff which the statute, Pennsylvania Vehicle §3736(a), Reckless Driving, intended to avoid;
- y. In causing harm to the Plaintiff, who was within the class of persons the statute, Pennsylvania Vehicle Code §3736(a), Reckless Driving, aimed to protect; and,
- z. In striking Plaintiffs' vehicle and causing a head-on collision.

30. As a result of Defendant Bell's conduct, as described in the preceding paragraph of Plaintiffs' Complaint, Plaintiffs suffered the aforementioned injuries and damages, as set forth in detail and described, *supra*.

31. Defendant Bell's conduct, particularly in entering a clearly marked one-way highway in the wrong direction, and in driving while clearly and obviously intoxicated with multiple substances, was the epitome of recklessness and demonstrates a conscious disregard for human life, including the lives of Plaintiffs, herein.

32. Defendant Bell knew or should have known that his conduct was extremely likely to lead to death or serious bodily injury to persons such as Plaintiffs, but pursued said course of conduct nonetheless.

33. An award of punitive damages against Defendant Bell is therefore appropriate under the circumstances described herein, both to punish Defendant Bell, and to dissuade other drivers from engaging in such conduct on Pennsylvania roadways.

WHEREFORE, Plaintiffs, Robert Moltzen and Mary Samuel, respectfully request judgment in their favor, and against Defendant Jonathan Vincent Bell, inclusive of punitive damages, in an amount in excess of and not within, the arbitration limits of Allegheny County, exclusive of costs and interest.

COUNT II – NEGLIGENCE / RESPONDEAT SUPERIOR
ROBERT MOLTZEN and MARY SAMUEL v. J.W.R., INC., JR's BAR, and AARON AUBER

34. Plaintiffs incorporate the above paragraphs as though the same were fully set forth at length here.

35. At all times relevant hereto, the Defendants, collectively, were required to provide an environment in which patrons of Defendant JR's Bar were responsibly and safely served alcoholic beverages, so as to protect the general public, and specifically, other motorists and persons traveling on roadways within the Commonwealth.

36. Defendants, by and through their servants, agents and/or employees as described herein, were collectively negligent, careless, and reckless in the following particulars:

- a. In providing, supplying, furnishing, serving and/or selling alcoholic beverages to persons incompetent to handle alcohol;
- b. In permitting others to provide, supply, furnish, serve and/or sell alcoholic beverages to persons incompetent to handle alcohol;

- c. In providing, supplying, furnishing, serving and/or selling alcoholic beverages to Defendant Bell while he was clearly and visibly intoxicated;
- d. In providing, supplying, furnishing, serving and/or selling alcoholic beverages to Defendant Bell, who is a known habitual drunkard and/or unable to control his consumption of alcohol;
- e. In permitting others to provide, supply, furnish, serve, and/or sell alcoholic beverages to persons while visibly intoxicated and/or known habitual drunkards, and/or persons who were unable to control their consumption of alcohol, such as Defendant Bell;
- f. In violating the Pennsylvania Crimes Code, including, but not limited to, provisions regarding the sale, supply and/or furnishing of alcoholic beverages to intoxicated persons;
- g. In failing to maintain and provide necessary security and monitoring of the said premises, so as to protect the public from the foreseeable and likely consequences of serving alcohol to visibly intoxicated persons;
- h. In being vicariously liable for acts and omissions of their employees, agents, servants, shareholders, partners, and/or property owners;
- i. In failing to maintain and perform adequate security and monitoring to prevent alcohol being served to persons visibly intoxicated and to ensure that necessary and proper security and monitoring measures were being followed at the premises;
- j. In failing to prevent Defendant Bell from exiting the bar while visibly intoxicated;

- k. In failing to take any steps whatsoever to protect Plaintiffs and similarly situated persons from the criminal acts of Defendant Bell, which were foreseeable given his clear and visible intoxication;
- l. In failing to properly train employees, agents and/or servants with respect to applicable laws and/or regulations pertinent to service of alcoholic beverages;
- m. In fostering an atmosphere, climate, and/or environment conducive to drinking in excess, thereby creating the foreseeable risk of severe injury, or death, caused by Defendant Bell driving while intoxicated; and,
- n. In placing their profits and financial gain above and ahead of the lives and safety of the public, and of motorists traveling on the roadways of the Commonwealth, including Plaintiffs.

37. Additionally, Defendant Aaron Auber, in being vicariously liable for the conduct described *supra*, knew that Defendants' agents, servants, and/or employees were recklessly serving alcoholic beverages to obviously intoxicated patrons, and approved of their conduct, placing his profits and the profits of Defendants, collectively, above the safety of the general public, including motorists on the roadways of the Commonwealth, such as Plaintiffs.

38. Defendant Aaron Auber's conduct and/or his approval of said employees' conduct, undertaken with full knowledge of the dangers to society and to persons such as Plaintiffs, constitutes and demonstrates recklessness and conscious disregard for the life and well-being of others.

39. Punitive damages are appropriate in this case, both so as to punish Defendants and to deter other establishments and their owners from engaging in like conduct

40. As a result of Defendants' negligence and recklessness, Plaintiffs sustained the serious injuries and damages as described *supra*.

WHEREFORE, Plaintiffs, Robert Moltzen and Mary Samuel, respectfully request judgment in their favor, and against Defendants J.W.R., Inc., JR's Bar, and Aaron Auber, inclusive of punitive damages, in an amount in excess of and not within, the arbitration limits of Allegheny County, inclusive of costs and interest.

COUNT III – CORPORATE NEGLIGENCE
ROBERT MOLTZEN and MARY SAMUEL v. J.W.R., INC., and JR's BAR

41. Plaintiffs incorporate the above paragraphs as though the same were fully set forth at length here.

42. At all times relevant hereto, Defendants J.W.R., Inc., and JR's Bar, collectively, were required to provide an environment in which patrons of Defendant JR's Bar were responsibly and safely served alcoholic beverages, so as to protect the general public, and specifically, other motorists and persons traveling on roadways within the Commonwealth.

43. Defendants, J.W.R., Inc., and JR's Bar, by and through their servants, agents and/or employees as described herein, were collectively negligent, careless, and reckless in the following particulars:

- a. At all times relevant hereto, the Defendants' employees, servants, and/or agents—including their servers, waitstaff, bartenders/security—were not adequately trained by anyone or any entity in the Responsible Alcohol Management Program (hereinafter referred to as "RAMP") or any other similar type of training program;
- b. In failing to comply with RAMP and/or programs similar to RAMP, as to any or all aspects/portions of the program, as required, including: (1) Owner/Manager

Training; (2) Server/Seller Training; (3) New Employee Orientation; (4) Signage; and (5) Certification and Compliance Visit;

- c. In failing to hire and employ/retain competent, appropriately trained individuals capable of responsibly serving alcohol in the environment of Defendant JR's Bar;
- d. In failing to appropriately train the staff that was hired and/or retained as Defendants' employees, as to the safe, responsible service of alcoholic beverages;
- e. In failing to establish policies and procedures related to the safe, responsible service of alcoholic beverages within Defendant JR's Bar; and,
- f. In the alternative, in failing to enforce and/or ensure compliance with established policies and procedures related to the safe, responsible service of alcoholic beverages to patrons of Defendant JR's Bar.

44. As a result of Defendants' negligence and recklessness, Plaintiffs sustained the serious injuries and damages as described *supra*.

WHEREFORE, Plaintiffs, Robert Moltzen and Mary Samuel, respectfully request judgment in their favor, and against Defendants J.W.R., Inc., JR's Bar, and Aaron Auber, inclusive of punitive damages, in an amount in excess of and not within, the arbitration limits of Allegheny County, inclusive of costs and interest.

COUNT IV—DRAM SHOP ACT

ROBERT MOLTZEN and MARY SAMUEL v. J.W.R., INC., JR's BAR

45. Plaintiffs incorporate the above paragraphs as though the same were fully set forth at length here.

46. Defendants, collectively, are licensed alcohol servers and/or licensees, and are subject to all of the provisions of the Pennsylvania Dram Shop Act, 47 P.S. §4-493, *et seq*.

47. Defendants, by and through their servants, agents, and/or employees, violated the Pennsylvania Dram Shop Act, 47 P.S. §4-493, *et seq.*, in the following particulars:

- a. Negligence *per se* and/or strict liability for violations of Pennsylvania Crimes Code, Pennsylvania Liquor Code, including any and all provisions thereof relating to sale, supply and/or furnishing of alcoholic beverages to persons visibly intoxicated by the liquor licensee and their servants, agents, and/or employees;
- b. Negligence *per se* and/or strict liability for violations of Pennsylvania Crimes Code, Pennsylvania Liquor Code, including any and all provisions thereof relating to sale, supply and/or furnishing of alcoholic beverages to persons and/or known to be habitual drunkards, by the liquor licensee and their servants, agents, and/or employees;

48. Defendants' violation of the Pennsylvania Dram Shop Act, 47 P.S. §4-493, *et seq.*, was undertaken for the purpose of placing their own profits above and ahead of the safety of the general public, including motorists on the roadways of the Commonwealth, such as Plaintiffs.

49. Defendants' conduct, and/or their approval of their employees' conduct, undertaken with full knowledge of the dangers to society and to persons such as Plaintiffs, constitutes and demonstrates recklessness and conscious disregard for the life and well-being of others.

50. Punitive damages are appropriate in this case, both so as to punish Defendants and to deter other, similarly situated establishments from engaging in like conduct

51. As a result of Defendants' violation of the Pennsylvania Dram Shop Act, 47 P.S. §4-493, *et seq.*, Plaintiffs sustained the serious injuries and damages as described *supra*.

WHEREFORE, Plaintiffs, Robert Moltzen and Mary Samuel, respectfully request judgment in their favor, and against Defendants J.W.R., Inc., and JR's Bar inclusive of punitive damages, in an amount in excess of and not within, the arbitration limits of Allegheny County, inclusive of costs and interest.

Respectfully submitted,

SMT LEGAL

A handwritten signature in blue ink, appearing to read 'Jonathan M. Stewart', is written over a horizontal line.

Jonathan M. Stewart, Esq.
Patrick W. Murray, Esq.
Attorneys for Plaintiffs

JURY TRIAL DEMANDED

VERIFICATION

I, Mary Samuel, verify that the factual statements made are true and correct to the best of my knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

DocuSigned by:

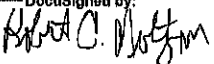
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Mary Samuel

VERIFICATION

I, Robert Moltzen, verify that the factual statements made are true and correct to the best of my knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

DocuSigned by:

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Robert Moltzen