

TRACI SPIEGEL, on behalf of herself and her
minor children, S.L.S. and S.F.S.

15439 Maple Ridge Road
Woodbine, Maryland 21797,

Plaintiffs,

KIMBERLY FORD, on behalf of herself and
her minor children, A.M.F. and E.L.F.

14371 Frederick Road
Cooksville, Maryland 21723,

Plaintiffs,

v.

BOARD OF EDUCATION OF HOWARD
COUNTY

10910 Clarksville Pike
Ellicott City, MD 21042

Serve:

Mark C. Blom, General Counsel
Howard County Public School System
10910 Clarksville Pike
Ellicott City, Maryland 21042
Mark_bloom@hcpss.org

Defendant.

IN THE

CIRCUIT COURT

FOR HOWARD COUNTY,

MARYLAND

C-13-CV-20-000954

Case Number _____

VERIFIED COMPLAINT

The plaintiffs, Traci Spiegel on her own behalf as a registered Howard County voter, parent of a child enrolled in Howard County's public school system, and Howard County property owner and property tax payer who funds the defendant Board of Education of Howard County (the "Board"), and on behalf of her minor children, S.L.S. and S.F.S., the intended beneficiaries of the Board's constitutional and statutory mandates to provide a free and appropriate education for all of Howard County's children, and Kim Ford on her own behalf as a

registered Howard County voter, parent of a child enrolled in Howard County's public school system, and Howard County property owner and property tax payer who funds the Board, and on behalf of her minor children, A.M.F. and E.L.F, the intended beneficiaries of the Board's constitutional and statutory mandates to provide a free and appropriate education for all of Howard County's children, (collectively, the "Plaintiffs"), by their attorney Anthony M. Conti, and the law firm Conti Fenn LLC, hereby bring this lawsuit against the defendant Board of Education of Howard County seeking declaratory and injunctive relief arising out of the unlawful provisions in the *Education* Article of the Maryland Code which establish the position of a Student Member of the Board ("SMOB") and empower the SMOB with binding voting rights in official Board matters. The plaintiffs challenge the constitutionality of the SMOB, which is a position held by a Howard County public school junior or senior high school student and elected by Howard County children aged 11 years and older. The SMOB is not subject to the State's election laws or the normal election process but is nonetheless granted voting power equal to all properly elected board members on substantial issues coming before the Board, including most pressingly the return of Howard County children to school.

I. Introduction

This Verified Complaint seeks an injunction to prevent the SMOB from exercising any binding voting power. The Plaintiffs also seek a declaratory judgment from the Court that determines that the law creating the SMOB position and empowering the position with binding voting rights on any Board matter requiring a vote violates Maryland's Declaration of Rights and the Constitution. As a result of these constitutional violations, the SMOB has and will continue to vote on matters binding the Board on decisions that have caused and will continue to cause

substantial and irreparable harm to the citizens, parents and students of Howard County and its public school system.

II. **Parties**

1. Traci Spiegel and her children are residents of Howard County, Maryland. Her children are in 9th and 11th grades and would be attending Glenelg High School if in person instruction were provided by Howard County's public schools.

2. Kimberly Ford and her children are residents of Howard County, Maryland. Her children are in 6th and 9th grades and would be attending Glenwood Middle School and Glenelg High School if in person instruction were provided by Howard County's public schools.

3. The defendant Board of Education of Howard County is the school board for Howard County, which consists of seven members elected by the adult citizens of Howard County and one student member of the Board elected by the local students in grades 6 through 11. *See* MD. CODE ANN., *Education* §3-701 (2020). The Board of Education of Howard County is considered a state agency, is a body politic and corporate that has perpetual existence and may sue and be sued. *See* MD. CODE ANN., *Education* §3-104 (2020).

III. **Jurisdiction and Venue**

4. This Court may exercise jurisdiction over the Defendant because it is a board and agency carrying out all of its functions pursuant to the laws of the State of Maryland, subject to all constitutional limitations, and its jurisdiction on educational matters is limited to Howard County. All of the acts and omissions described herein occurred within Howard County. The plaintiffs are all residents of Howard County, as are all of the Board members, and this venue is appropriate in Howard County.

IV.
Factual Background

5. While all Americans have shared the suffering caused by the current pandemic, it cannot be questioned that school-aged children have suffered most dramatically from the isolation imposed by current government mandates. School-aged children require the personal interactions that school provides between their teachers and their classmates to thrive. Our civilized society has long recognized the collective obligation to ensure that children have these experiences throughout their developmental stages. It is why the State rightfully establishes laws that punish supervising adults when a child fails to attend school in person. The current state of our educational leadership in Howard County is truant.

6. Children such as those represented by plaintiffs in this case have suffered immeasurably. The irreparable harm caused by their forced isolation is widespread and well documented, as is the anticipated collective harm being inflicted on an entire generation. Although countless examples could serve as the basis for immediate and emergency relief, there are several overall and often repeated harms caused by the current political posture of the return to in person instruction in Howard County.

7. Foremost is the utter inability to sustain special needs learning, namely students dependent on properly administered Individualized Education Plans (IEPs). For example, since in person instruction has ceased in Howard County, special needs children who are non-verbal and use sign language have declined markedly in their communication skills and have regressed in their sign language skills. The delays to a return to in person instruction means that these most vulnerable children are unable to receive proper instruction, losing memory and much needed communication skills. The extensive needs of other children with IEPs are being largely ignored due to the limitations of having non-skilled instruction which falls woefully short of the

required services of a trained special educator. This result is a widespread failure of the entire Howard County public school system to meet its legal obligations owed to students with IEPs. Lillian Reed and Angela Roberts, *'No win': Parents of Maryland special ed students worry about online learning, but also the risks of returning to schools amid pandemic*, Baltimore Sun (Oct. 22, 2020 6:00 AM), <https://www.baltimoresun.com/education/bs-md-special-education-pandemic-maryland-20201008-20201022-nfwf6gd2unft3hvplh4m4gvkfy-story.html> (Howard County mother withdrew four children receiving special education services from public school in favor of homeschooling due to daily breakdowns and difficulties navigating online learning); see generally Kristen Griffith, *Educating Carroll County's special education students a challenge amid coronavirus pandemic*, Baltimore Sun, (Nov. 17, 2020); Hannah Natanson, *Failing grades spike in Virginia's largest school system as online learning gap emerges nationwide*, Washington Post (Nov. 24, 2020) (noting that the percentage of children with disabilities who are failing at least two of their classes more than doubled as compared to the previous school year.).

8. The mental health impact on school children has likely been the most profound and immeasurable consequence of the failure to return the students to in person instruction. Current students have made the Board aware of the extreme isolation they face, their lack of friendships, social experiences or an appropriate environment for learning. Many of these children are not engaged in learning and have readily admitted they do not even turn on their computer screens for instruction. Tragically, Howard County has experienced multiple student suicides since these school closures. Local hospitals are reporting increases in mental health issues and suicide attempts and local counseling centers have been overwhelmed. See Erin Einhorn, *Covid is having a devastating impact on children – and the vaccine won't fix*

everything, NBC News (Dec. 15, 2020 4:29AM), <https://www.nbcnews.com/news/education/covid-having-devastating-impact-children-vaccine-won-t-fix-everything-n1251172>.

9. Many families who run local businesses or who work for employers who cannot accommodate working from home have been forced to choose between gainful employment and supervising, monitoring and assisting their children in the virtual learning. Gainful employment by two members of a household has become impossible in situations where the household has multiple children, all of whom have different and varying virtual learning programs and schedules that require constant parental monitoring and assistance.

10. Aside from the educational programs provided by Howard County's public schools, nearly all in-school and after-school activities have vanished from the educational landscape. School-based activities including clubs, sports, organizations and school programs are largely prohibited because of the cancellation of in person instruction and school closures. These activities serve as a lifeline for many students, forming part of their essential childhood development, and at the same time, they provide a safety net for many at-risk children.

11. The abject failure of the Howard County's virtual education program can be observed through the overall decreased public school enrollment numbers. According to the 2020 Howard County Public School System Enrollment Report, Howard County public schools had a projected growth of 773 students for the 2020/2021 academic school year. *See* Howard County Public School System: Approved FY 2021 Operating Budget (Revised), page 3. Instead of experiencing this projected growth, as of October 2020, enrollment in Howard County's public schools has decreased by 1,575 students, a figure equivalent to losing an entire high school population. *See* Official 2020-21 Enrollment: Howard County Public School System; Official 2019-20 Enrollment: Howard County Public School System. The sharp enrollment

decline has been caused by parents withdrawing their children from Howard County's virtual learning program based on its deficiencies and limitations, opting instead to homeschool their children or enroll them in private schools that are providing in person instruction.

12. The Howard County Public School system, like many throughout this country, has acted as if to be in a constant state of crisis for the past nine months. While its board of education, teachers and superintendent have been provided a year's timeframe to develop a plan to return children to school, they have been paralyzed by an orchestrated gridlock.

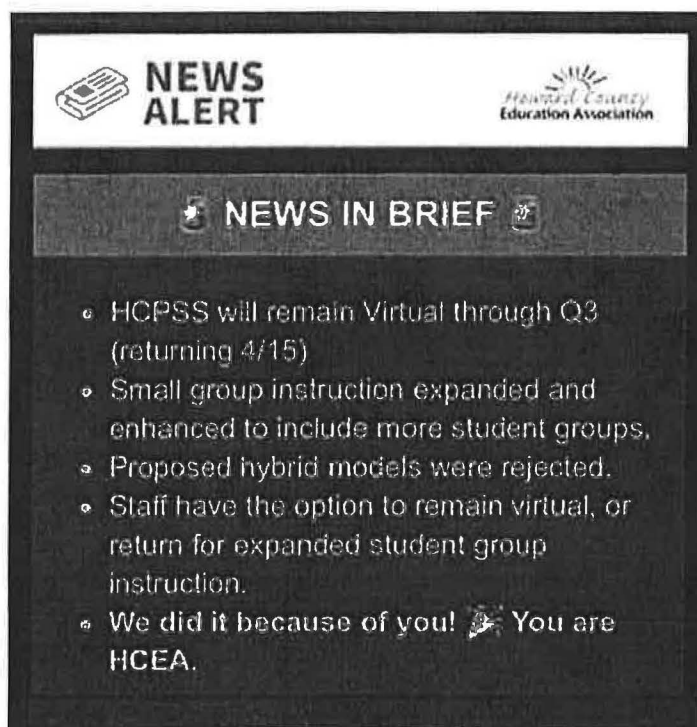
13. On October 22, 2020, the Board adopted metrics that were to be followed to dictate when the children would return to learning. Jacob Calvin Meyer, Howard County school board approves health parameters for future reopening decisions, Baltimore Sun (Oct. 23, 2020 6:00 AM), <https://www.baltimoresun.com/maryland/howard/cng-ho-metrics-for-reopening-20201023-1gllh26g2bg2vag7bqwn74xt5y-story.html>. Rather than follow the metrics and commit to an objective, science-based schedule for a return to instruction, the Board and its stakeholders abandoned their responsibility to lead on this most important issue and never returned Howard County's children to school, even when the metrics dictated a return.

14. On the heels of this abandonment to the commitment by the Board to allow science and metrics determine the appropriate return date was the 2020 election. Board members supporting student interests over those of the teachers in their candidacies were resoundingly approved by the voters of Howard County. This was no more apparent than in the election results for newcomer Yun Lu who unseated a long serving member of the Board Cynthia L. Vaillancourt by a landslide vote of 22,871 to 12,321. See Howard County Public Schools, Maryland, elections (2020), https://ballotpedia.org/Howard_County_Public_Schools,_Maryland,

elections(2020). Unfortunately, before the new Board could even be sworn in, the outgoing board voted to preemptively cancel any chance of in person instruction through April 2021.

15. On November 16, 2020, the Board's decision to abandon the metrics and close the doors of every school in the Howard County through April 2021 was a national outlier and one of the most sweeping preemptive cancellations of education announced. *See Spring Reopening Work Session V Meeting Summary of the Board of Education of Howard County*, Howard County Public School System (Nov. 16, 2020), available at: <https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/Public>.

16. Howard County's teachers have collectively and steadfastly refused a return to their assigned schools absent an order compelling their attendance. Teachers have been staunch obstructionists in any effort to return Howard County's children to appropriate and required in person instruction. Shamefully, when their desires to dash any hopes of in person instruction this school year came to fruition, the teachers collectively celebrated with confetti:



17. According to at least one Board member, Howard County's school Superintendent Dr. Michael J. Martirano is said to have the current and unrestricted power to order teachers back to in person instruction. Curiously, the Board member's public statement about the Superintendent's perceived power came after she voted to keep the schools closed through mid-April. See Jolene Mosley (@JoleneforHoCo), Twitter (Dec. 9, 2020, 8:11 AM), <https://twitter.com/JoleneforHoCo/status/1336659808791957504> ("[The Superintendent] has the flexibility to create student groups without approval from the board ... those student groups could be anyone who wants to return which could be implemented as metrical and operational capacity allow.").

18. Not surprisingly, the Superintendent refuses to take any unilateral action to return the children to school, claiming his hands are tied by the Board of Education. HCPSS Video, *Superintendent PLEADING for flexibility from the Board* (Dec. 8, 2020), https://www.youtube.com/watch?v=5fgAceRYe_o&feature=share&%3Bfbclid=IwAR3nwol0i7ufz3_BVhZw4S1XnySwKLHwUbrPfIdPKv63n5yQv-1DhZkuq2E.

19. The newly sworn Board made immediate efforts to advance the initiative of returning children to in person instruction to carry out the mandate of the 2020 Howard County Election. The new Board's efforts have been met with a carefully orchestrated gridlock. At the center of this gridlock is the SMOB.

V. Legal Background

20. The Howard County Board of Education is comprised of eight members, five elected by adult voters in each of the County districts, and two elected at large by adult voters of the County. See MD. CODE ANN., *Education* § 3-701(a)(2)(i)-(ii) (2020). The eighth member is the SMOB, who must be a "bona fide resident of Howard County and a regularly enrolled junior

or senior year student from a Howard county public high school.” MD. CODE ANN., *Education* §3-701(f)(1) (2020). The SMOB is elected by “any student in grades 6 through 11 enrolled in a Howard County public school.” MD. CODE ANN., *Education* § 3-701(f)(3)(iii) (2020).

21. To be chosen as a SMOB, students must be nominated by their principals and attend the Howard County Association of Student Counsels Convention. *2020-21 SMOB Election To be Held Online June 2-3, 2020*, HCPSS (Apr. 28, 2020), <https://news.hcpss.org/news-posts/2020/04/2020-21-smob-election-to-be-held-online-june-2-3-2020/>. From the delegates attending the convention, two students are chosen to run for the SMOB position. Then, there is an election among all students from grades 6 to 11 who attend a Howard County public school. The winner joins the Howard County Board of Education for one year, starting July 1st following the election.

22. Although other counties in Maryland have some form of student representative who participates in their boards of education proceedings, in most instances the participation is limited and the student member does not have a binding vote on official school board matters. Howard County is one of only a few counties in Maryland and nationwide that permit a student to have binding voting privileges as a board member. In fact, with a few exceptions, in Howard County “the student member has the same rights and privileges as an elected member,” MD. CODE ANN., *Education* §3-701(f)(5) (2020).

23. The law allows a student representative to be elected by minors otherwise unable to vote in a general election to a position with nearly the same power as those elected by the legal adult voters of Howard County.

24. The SMOB is contemplated to be a minor who has not yet reached the age of 18, and the only qualification required to run for the position is that the student candidate must be a junior or senior at a Howard County public school when holding the position.

25. The SMOB is entitled to an equally weighted vote on significant and substantial matters affecting school students, such as the return of students to receiving appropriate and necessary in person instruction.

26. The SMOB is the only elected member of the board who is exempt from the State's election laws. *See* MD. CODE ANN., *Education* §3-114(h) (2020); *see also* MD. CODE ANN., *Election Law* §8-801 (2020).

27. The SMOB is a stakeholder whose mere existence as a member of the Board goes against the statutory prohibition on stakeholders such as teachers, principals and administrators from serving on the Board. *See generally* MD. CODE ANN., *Education* §3-114(g) (2020). These prohibitions exist because of the obvious conflicts of interest and potential for self-dealing that would exist if stakeholders were also permitted to hold Board seats.

28. In the past three votes relating to returning Howard County's children to school, the SMOB has cast the deciding vote that has propelled the Board into gridlock.

29. On November 16, 2020, a Board motion on a decision relating to considering returning students through a hybrid model in the second semester failed by a 4 to 4 stalemate, with the SMOB vote causing the stalemate. *Spring Reopening Work Session V Meeting Summary of the Board of Education of Howard County*, Howard County Public School System (Nov. 16, 2020), available at: <https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/Public>.

30. On November 16, 2020, A Board motion to direct the Superintendent to look at other options for the hybrid model failed by a 4 to 4 stalemate, with the SMOB vote causing the

stalemate. *Spring Reopening Work Session V Meeting Summary of the Board of Education of Howard County*, Howard County Public School System (Nov. 16, 2020), available at: <https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/Public>.

31. On December 7, 2020, a Board motion to direct the superintendent to make a reopening decision based on metrics and operational capacity failed by a 4 to 4 stalemate, with the SMOB vote causing the stalemate. *3:15 p.m. Virtual Meeting of the Board of Education of Howard County – NO EVENING SESSION*, Howard County Public School System (Dec. 7, 2020), available at: <https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/Public>.

32. The SMOB is contemplated to be a minor who is voted into a specially-elected position by middle and high school students aged 11 and older, only a small percentage of whom would be the legal age to vote for an adult candidate in a regular school board election.

33. When a minor is elevated to a position of power to render decisions binding on all citizens of the County, there is obviously a serious and immediate concern that should be raised given the normal functioning of the quasi-legislative administrative process. Fellow Board members are expected to caucus, have direct interactions with one another on policy decisions and issues to be voted on, debate and negotiate with one another in an effort to compromise and advance one another's legislative agendas.

34. A minor who is subjected to this process does not have the ability or capacity to escape undue influence. This is precisely why in every other field, a minor is entitled to a presumption of incapacity. This is why otherwise legally binding acts taken by a minor are cast aside or treated appropriately as juvenile matters. Instead of recognizing this widely acknowledged infirmity, the legislature has empowered a minor to make decisions that should be beyond the minor's reach. The same basic concept is what supports the prohibitions on minors

entering into contracts, consenting to sex, purchasing tobacco, alcohol or other regulated substances, making medical decisions, withdrawing from mandatory education and, of course, voting in elections.

35. The decision to return children to in person instruction is undoubtedly the most significant decision boards of education have had to make since *Brown v. Board of Education*. The major distinction is that the ultimate decision is not being made by the Board in Howard County. Current Board members are using the SMOB as a pawn to force an artificial stalemate to escape accountability. All elected members of our government have shared in the collective effort to avoid making difficult decisions and face political accountability.

36. The plaintiffs are representative parents in Howard County who have demanded political leadership on these issues through the recent election. These plaintiffs are not alone, as interest groups have cropped up throughout Howard County that demonstrate wide support for a return to in person instruction. Reopen HoCo Schools, <https://www.facebook.com/groups/297704551432761/> (listing 843 members); Reopen Howard County, <https://www.facebook.com/Reopen-Howard-County-105610997824499/> (listing 1,147 people who like the page, 1,224 people who follow the page).

37. The use of the SMOB by members of the Board has frustrated the ability of the voters of Howard County to have their will carried out and their interests fairly accounted for on the Board.

38. Maryland's Constitution guarantees that "every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State ... shall be entitled to vote in the ward or election district in which the citizen resides." M.D. Const. art. 1, § 1.

39. Howard County has violated this Constitutional mandate and diluted the democratic power of voters of legal age by allowing for minors to participate in the election of the SMOB. In addition, allowing a minor who is elected by minors to deprive and dilute adult citizens of their voting power and right violates fundamental rights of the citizens of Howard County, as guaranteed to them by the Maryland Declaration of Rights.

40. This lawsuit challenges the constitutionality of the SMOB seat and the voting rights of minors and an unelected member of the Board under Maryland's Declaration of Rights.

Count I
-Request for Declaratory Judgment and Injunctive Relief-

41. Paragraphs 1-40 of this Verified Complaint are fully incorporated herein.

42. Maryland's Constitution mandates that the State establish a "thorough and efficient System of Free Public Schools . . ." Md. Const., art. 8, §1.

43. Maryland's Constitution requires that "[a]ll elections shall be by ballot" and every resident of the State "of the age of 18 years or upwards" is guaranteed the right and "shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State." Md. Const. art 1, § 1.

44. Maryland's Declaration of Rights expressly confirms that the right of the people to participate in elections and vote is the best security of liberty and the foundation of a free government. To preserve these rights, the Constitution guarantees free and frequent elections and the right to vote for "every citizen having the qualification prescribed by the Constitution" Md. Const., Declaration of Rights art 7.

45. Maryland's Constitution expressly provides that the General Assembly is charged with the duty to pass laws "necessary for the preservation of the purity of Elections." Md. Const., art. 1, § 7.

46. Maryland's Constitution expressly prohibits a person from voting "in more than one election district, or precinct" Md. Const. art. 1, § 5.

47. Maryland's Constitution forbids a person from holding any elected office "if the person was not a registered voter in his State on the date of the person's election or appointment." Md. Const. art 1, § 12.

48. The provisions within the Maryland Code that created the SMOB position violate the mandates in the Maryland Constitution and Declaration of Rights. The position was created through a statutory scheme designed to circumvent the Constitutional guarantees that enfranchise adults 18 years and older and permit these adults to hold elected positions in government. The statutory scheme not only permits minors to hold elected positions in government, but has carved out a position that can only be voted on by otherwise ineligible voters.

49. The SMOB is not elected by the voting citizens of Howard County, and yet the position has "the same rights and privileges as an elected member," with very few exceptions Md. Code Ann. § 3-701(f)(6).

50. The SMOB is "elected" by students who are in the 6th through 11th grades. Md. Code Ann. § 3-701(f)(3)(iii). A vast majority of these students are not qualified to vote in the general election of members of the Board, and yet the votes they cast are directly putting into place someone who is able to vote on almost all of the same measures as regularly elected Board members. This statutory scheme has diluted the votes of adult citizens of Howard County who

have reached the age of majority and who have exercised their right to vote in the Board of Education of Howard County election.

51. Students who are eighteen years old and vote for the SMOB can also participate in the general election of a regular school board member, thus violating the provision of the Maryland Constitution that prevents residents for voting in more than one precinct in an election. Md. Const., art. 1, § 5.

52. The student elected to the position of SMOB can and often will be a minor who is voted into the position by minors violating the Maryland Constitution. Md. Const. art 1, § 12.

53. The inclusion of the SMOB has led to substantial impediments to the functioning of the Board that have caused irreparable harm to the families and students enrolled in Howard County public schools. With seven legitimately-elected Board members, there is always a majority vote when all of the members vote. However, because the SMOB is granted the same voting rights on nearly all issues, the result is that the Board has repeatedly reached a stalemate on the most pressing issue before it, the return of students to in person instruction.

54. The General Assembly has a constitutional mandate to safeguard the "purity of Elections," and in passing a law permitting the addition of a SMOB, it violated this mandate.

55. The constitutional violations have caused and will continue to cause substantial and irreparable harm to the students of Howard County's public schools, the parents and families of those students, and the entire public school system.

Conclusion

Virtual education is not appropriate as an indefinite plan of education and it fails to carry out the constitutional mandates of providing a free and appropriate education. A virtual learning environment that owes its existence to separating all of the students from one another is not an

acceptable educational equivalent, nor is it reasonable under all circumstances. Howard County residents have elected seven members to serve as their representatives on their school board. These Board members committed to establishing and following objective, science and health-based metrics to guide their decisions to return students to in person instruction. The residents deserve a decision from these seven representatives on an issue that is so fundamental that it defines the Board's very existence. Unfathomably, the decision is being blocked by a SMOB whose statutory existence violates the Maryland's Constitution.

WHEREFORE, the Plaintiffs request that the Court enter an Order:

1. Declaring that the provisions in Md. Code Ann., *Education* Article § 3-701 regarding the establishment of a student member of the Board of Education for Howard County, specifically provisions (f) and (g)(1), violate the Maryland Constitution and Declaration of Rights, and striking the offensive provisions of the statute;
2. Enjoining the student member of the Board of Education for Howard County from providing a binding vote on any motion or measure before the Board;
3. Awarding the plaintiffs all of their costs and fees in bringing this action;
4. Granting such other and further relief as the Court may deem just and proper.




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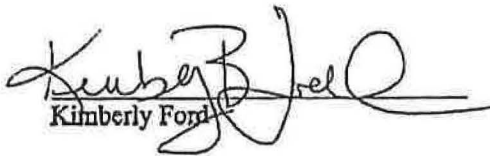
VII.
Verification

I solemnly affirm under the penalties of perjury that the contents of the foregoing Verified Complaint are true and correct to the best of my personal knowledge, information, and belief.


Traci Spiegel

Date: 12/15/20

I solemnly affirm under the penalties of perjury that the contents of the foregoing Verified Complaint are true and correct to the best of my personal knowledge, information, and belief.


Kimberly Ford

Date: 12/15/2020