

**IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY  
MASTROIANNI, individually and  
jointly,

CASE NO. 2012-8149

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a  
Nevada limited liability company,  
WASHINGTON TROTTHING  
ASSOCIATION, INC., a Delaware  
corporation, WTA ACQUISITION CORP., a  
Delaware corporation, CANNERY CASINO  
RESORTS, LLC, CANNERY CASINO  
RESORTS and WASHINGTON TROTTHING  
ASSOCIATION, INC., t/d/b/a THE  
MEADOWS RACETRACK & CASINO, an  
unincorporated association, CANNERY  
CASINO RESORTS, an unincorporated  
association consisting of one or more yet  
unidentified natural and/or legal persons,  
individually and jointly,

Defendants.

**DEFENDANTS' BRIEF IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR  
SANCTIONS**

Filed on behalf of Defendants,  
Cannery Casino Resorts, LLC, Washington  
Trotting Association, Inc., and WTA  
Acquisition Corp.

Counsel of Record for these Parties:

Patrick L. Abramowich, Esquire  
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individually and jointly,<sup>1</sup>

Defendants.

**DEFENDANTS' BRIEF IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR SANCTIONS**

Defendants, Cannery Casino Resorts, LLC (“Cannery”), Washington Trotting Association, Inc. (“WTA”), and WTA Acquisition Corp. (“WTA Acquisition”) (collectively “Defendants”), by their counsel, Fox Rothschild LLP, file this Brief in Opposition to Plaintiffs’

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<sup>1</sup> Defendants, Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. (collectively, “Defendants”) deny that Cannery Casino Resorts exists as a business organization apart from Cannery Casino Resorts, LLC. Defendants further deny that Cannery Casino Resorts, LLC and/or Washington Trotting Association, Inc. participate in unincorporated associations, and further deny that an unincorporated association can sue as a party. Accordingly, Defendants object to the caption to the extent that it purports to state claims against any entity other than Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. individually.

Motion for Sanctions (“Motion”) filed by Plaintiffs Janine Litman (“Litman”) and Timothy Mastroianni (“Mastroianni”) (collectively, “Plaintiffs”), stating as follows:

## **I. INTRODUCTION**

Defendants filed their Preliminary Objections to Plaintiffs’ Reply to New Matter, attached hereto as Exhibit 1, for a proper purpose – obtaining the facts supporting Plaintiffs’ denial of every paragraph of Defendants’ New Matter. Rather than address the merits of Defendants’ New Matter and specifically deny Defendants’ averments as required by the Pennsylvania Rules of Civil Procedure (the “Rules”), Plaintiffs offered bare denials and/or incorporated by reference the entirety of their Complaint. Defendants are entitled to have Plaintiffs allege the factual basis for their denials in accordance with the Rules.

After Plaintiffs served notice of this Motion, Defendants immediately agreed to withdraw the Preliminary Objections as to all paragraphs of the New Matter (i) that constitute legal conclusions or (ii) that pertain to issues on which the Court previously ruled, and which were included to preserve Defendants’ positions on those issues. Defendants wrote a letter confirming that agreement, attached hereto as Exhibit 2, which complied with Rule 1023.1. Although the paragraphs of the New Matter remaining at issue are purely factual, Plaintiffs persist in presenting their Motion.

Plaintiffs’ Motion for Sanctions is a tactic to deflect attention from their blatant noncompliance with the Rules and should be summarily denied.

## **II. BACKGROUND**

This case has been slow to develop due to Plaintiffs’ repeated inability to identify the nature of their claims and the facts supporting those claims. Defendants were forced to file three (3) sets of Preliminary Objections to Plaintiffs’ Complaint due to the overreaching nature of

Plaintiffs' claims and the lack of factual support for the counts asserted in the Complaint. After Plaintiffs failed three (3) times to properly amend their Complaint, this Court ultimately dismissed nine (9) of Plaintiffs' fifteen (15) counts. *See* the Order dated December 17, 2013, attached hereto as Exhibit 3.<sup>2</sup>

Plaintiffs voluntarily agreed to stay discovery while the Preliminary Objections were pending, given the uncertain scope of Plaintiffs' claims. *See* September 27, 2013 correspondence from Defendants' counsel to Plaintiffs' counsel, attached hereto as Exhibit 4. Once the Preliminary Objections were decided, Defendants (i) timely answered the Third Amended Complaint and (ii) timely served responses to Plaintiffs' requests for admissions, interrogatories, and requests for production of documents on February 24, 2014, in accordance with the parties' agreement. While Defendants' production of documents initially was delayed due to Plaintiffs' refusal to negotiate a standard confidentiality stipulation, Defendants have produced over 500 pages of documents in hard copy and a hard drive containing **thousands** of pages of documents in electronic format. Accordingly, Plaintiffs' claim that Defendants have only recently responded to discovery requests served on June 10, 2013 is grossly misleading.

Moreover, notwithstanding Plaintiffs' claims of obstruction, Plaintiffs served objections and responses to Defendants' interrogatories and document requests on March 20, 2014, taking positions directly contrary to those advocated by Plaintiffs in their Motion to Compel against Defendants. Specifically:

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<sup>2</sup> As a result of the Court's ruling, the Plaintiffs are pursuing claims for (i) Breach of Contract Implied in Fact, (ii) Unjust Enrichment, (iii) Fraud, (iv) Conversion, (v) Civil Conspiracy, and (vi) Accounting. While the basis of these claims is less than clear, Plaintiffs fundamentally allege that (i) The Meadows Racetrack & Casino ("The Meadows") collected a "vigorish," or commission, on certain craps bets without authorization, and (ii) The Meadows fraudulently held itself out as owned and operated by its corporate parent, Defendant Cannery Casino Resorts, LLC.

- Although Plaintiffs drafted the confidentiality order that the Court entered on February 27, 2014, Plaintiffs only produced 26 pages of new documents<sup>3</sup> and withheld any other responsive documents on the basis of confidentiality.
- Plaintiffs did not include a privilege log with their document production, even though they argued in their motion to compel that a privilege log was required of Defendants.
- Although Plaintiffs argued that it was improper for Defendants to respond to discovery requests “subject to” stated objections, the large majority of Plaintiffs’ discovery responses were provided “subject to” seven (7) different categories of objections.

Plaintiffs also refused to provide any information or documents regarding their purported damages, arguing that all damages interrogatories are subject to expert testimony. Accordingly, Plaintiffs provided no information regarding (i) the number and dates of their visits to The Meadows, (ii) the amounts that they spent at The Meadows, (iii) the amount of craps vigorish that they allegedly paid to The Meadows, or (iv) the amount of craps vigorish that Plaintiffs contend was collected without authorization.

In their Reply to New Matter, Plaintiffs continue the tactics displayed in the various versions of their Complaints and their discovery responses. As set forth in Defendants’ Preliminary Objections to Plaintiffs’ Reply to New Matter, Plaintiffs denied each and every paragraph of Defendants’ New Matter without alleging any facts to support the denial, other than a general incorporation of their entire Complaint. As such, Plaintiffs continue to obscure the basis of their alleged claims and damages.

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<sup>3</sup> The remaining documents “produced” by Plaintiffs previously were attached as exhibits to their Third Amended Complaint.

### **III. ARGUMENT**

Defendants served Preliminary Objections to Plaintiffs' Reply to New Matter (hereinafter referred to as the "Preliminary Objections") on February 10, 2014. Defendants were forced to file Preliminary Objections because Plaintiffs' Reply to New Matter flaunted the Pennsylvania Rules of Civil Procedure, which require an answering party to specifically deny each allegation of a pleading and affirmatively aver what actually occurred in place of the facts Plaintiffs deny. Pa.R.Civ.P. 1029(b); 5 STANDARD PENNSYLVANIA PRACTICE 2D § 26:41 (*quoting Lewis v. Spittler*, 69 Pa. D & C.2d 259, 560 (Lebanon Cty. 1975)); (*See* Exhibit 1 at 2, ¶¶ 3-4). Nine (9) of Plaintiffs' responses to Defendants' New Matter are bare denials. (*See* Exhibit 1 at 3, ¶6(a)). Plaintiffs' other responses simply incorporate by reference the entirety of their Complaint. (*See* Plaintiffs' Brief at 2); (*see also* Exhibit 1 at 3, ¶6(b)).

The allegations at issue in the Preliminary Objections are substantive and concern key issues in the case. If Plaintiffs are going to deny each and every paragraph of the New Matter, Defendants are entitled to have Plaintiffs state the facts upon which they base those denials in order to prepare their defense. Defendants should not be forced to guess at facts that are absent from the Complaint and accept Plaintiffs' baseless claims at face value.

The cornerstone of Plaintiffs' argument for sanctions is that Defendants averred issues in their New Matter already ruled on by this Court, and therefore Plaintiffs should not have to answer those paragraphs. (Plaintiffs' Brief at 2). Such allegations were included in the New Matter to preserve Defendants' positions on those issues, and Defendants readily agreed to remove them from the scope of the Preliminary Objections a mere three (3) days after Plaintiffs raised the issue. On February 13, 2014, Defendants' counsel wrote a letter to Plaintiffs' counsel stating that "Defendants will exclude from their Preliminary Objections Plaintiffs' answers to

Paragraphs 1, 14, 15, 16, 18, 23, 25, and 26, which state primarily legal defenses.” (See Exhibit 2). Contrary to Plaintiffs’ assertion that this agreement needed to be formalized in a pleading, such “informal” notice complies with Rule 1023.1. (See Plaintiffs’ Brief at 3); Pa.R.Civ.P 1023.1, Explanatory Comment at Part II (“If, during [the 28 day period], the alleged violation is corrected, as by withdrawing (**whether formally or informally**), some allegation or contention, the motion may not be filed with the court.”) (emphasis added).

Plaintiffs make no attempt to justify their brazen disregard of basic rules of pleading and Pennsylvania practice, but simply attack Defendants for seeking to enforce their right to discover the basis of Plaintiffs’ denials. Such tactics are expressly disfavored in the Explanatory Comment to Rule 1023.1, which states at Part II that a motion for sanctions should not be used “to intimidate an adversary into withdrawing contentions that are fairly debatable.” Defendants’ Preliminary Objections to Plaintiffs’ Reply to New Matter are not only “fairly debatable,” but a perfectly proper means of contesting Plaintiffs’ noncompliance with Pennsylvania pleading convention.

Accordingly, any allegation of improper conduct is meritless. Defendants have narrowly limited their Preliminary Objections to substantive allegations, rather than legal conclusions, and properly objected to the rest of Plaintiffs’ Reply to New Matter for failing to specifically deny any averments. Such is their clear right.

**IV. CONCLUSION**

In light of the foregoing, Defendants respectfully request that this Honorable Court deny Plaintiffs' Motion for Sanctions.

Respectfully submitted,

FOX ROTHSCHILD LLP

Dated: April 1, 2014

By:



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Cannery Casino Resorts, LLC,  
Washington Trotting Association, Inc.,  
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association consisting of one or more yet  
unidentified natural and/or legal persons,  
individually and jointly,

Defendants.

**[PROPOSED] ORDER**

AND NOW, this \_\_\_\_\_ day of April, 2014, upon consideration of Plaintiffs' Motion for Sanctions ("Motion for Sanctions") and Brief in Support of Motion for Sanctions, Defendants' Brief in Opposition to Plaintiffs' Motion for Sanctions, and the parties' arguments, it is hereby ORDERED, ADJUDGED and DECREED that the Motion for Sanctions is DENIED.

BY THE COURT:

\_\_\_\_\_  
J.

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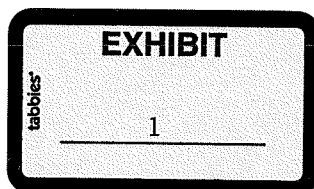
**DEFENDANTS' PRELIMINARY  
OBJECTIONS TO PLAINTIFFS'  
REPLY TO NEW MATTER**

Filed on behalf of Defendants,  
Cannery Casino Resorts, LLC, Washington  
Trotting Association, Inc., and WTA  
Acquisition Corp.

Counsel of Record for these Parties:

Patrick L. Abramowich, Esquire  
PA ID No. 74494  
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PA ID No. 312683

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Defendants.

**DEFENDANTS' PRELIMINARY OBJECTIONS  
TO PLAINTIFFS' REPLY TO NEW MATTER**

Defendants, Cannery Casino Resorts, LLC ("Cannery"), Washington Trotting  
Association, Inc. ("WTA"), and WTA Acquisition Corp. ("WTA Acquisition") (collectively,

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<sup>1</sup> Defendants, Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. (collectively, "Defendants") deny that Cannery Casino Resorts exists as a business organization apart from Cannery Casino Resorts, LLC. Defendants further deny that Cannery Casino Resorts, LLC and/or Washington Trotting Association, Inc. participate in unincorporated associations, and further deny that an unincorporated association can sue as a party. Accordingly, Defendants object to the caption to the extent that it purports to state claims against any entity other than Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. individually.

“Defendants”), by their attorneys, FOX ROTHSCHILD LLP, file the following Defendants’ Preliminary Objections to Plaintiffs’ Reply to New Matter:

1. On January 16, 2014, Defendants filed Defendants’ Answer and New Matter to Plaintiffs’ Third Amended Complaint, a true and correct copy of which is attached hereto as Exhibit 1.

2. In response to Defendants’ New Matter, Plaintiffs Janine Litman and Timothy Mastroianni (collectively, “Plaintiffs”) filed a Reply to New Matter, a true and correct copy of which is attached hereto as Exhibit 2.

3. Plaintiffs’ Reply to New Matter violates Pennsylvania Rule of Civil Procedure 1029, which requires an answering party to specifically deny each allegation of a pleading. Pa.R.Civ.P. 1029(b).

4. “[G]enerally, for a denial to be specific, it must deny what is averred and then must affirmatively aver what did occur in place of the facts that are denied.” 5 STANDARD PENNSYLVANIA PRACTICE 2D § 26:41, *quoting Lewis v. Spitler*, 69 Pa. D & C.2d 259, 560 (Lebanon Cty. 1975); *Sincavage v. Howells*, 8 Pa. D.&C.2d 515, 517 (Luzerne Cty. 1957) (same).

5. Simply stating that an allegation is “denied” violates Rule 1029(b). *Swift v. Milner*, 538 A.2d 28, 31 (Pa. Super. Ct. 1988); *Ritchie Bldg. & Loan Ass’n No. 2 v. Armstrong*, 157 A. 371, 372 (Pa. Super. Ct. 1931) (“In the affidavit there is no answer whatever to the averments of the statement, except the word ‘denied,’ which, of course, is inadequate.”).

5. Likewise, “[a] denial is not a specific denial...which states that ‘it is denied that’ and then repeats word for word the averments of the opposing pleading.” *Sincavage*, 8 Pa. D.&C.2d at 517.

6. Plaintiffs denied all 26 paragraphs of Defendants' New Matter without pleading any facts to dispute Defendants' allegations:

- a. Plaintiffs' responses to paragraphs 2, 18, 20, 21, 22, 23, 24, 25, and 26 of Defendants' New Matter are bare denials;
- b. Plaintiffs deny paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 17 of Defendants' New Matter by generally incorporating the averments of Plaintiffs' Third Amended Complaint without reference to any particular facts or paragraphs;
- c. Plaintiffs deny paragraphs 1, 14, 15, and 16 of Defendants' New Matter by generally referencing the Court's prior orders; and
- d. In response to paragraph 19 of Defendants' New Matter, Plaintiffs vaguely admit "the averments in the Complaint as made," but nonetheless deny the averments as stated.

7. In no instance did Plaintiffs plead affirmative facts disputing the allegations in Defendants' New Matter.

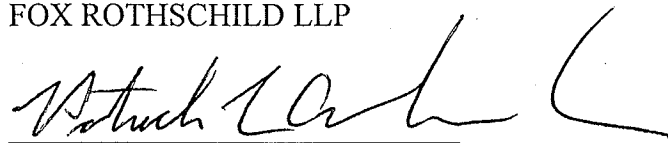
8. Plaintiffs' Reply consists solely of general denials and, pursuant to Pennsylvania Rule of Civil Procedure 1029(c), should be deemed an admission of the allegations set forth in Defendants' New Matter.

### CONCLUSION

WHEREFORE, Defendants request that this Court sustain their Preliminary Objections to Plaintiffs' Reply to New Matter, deem the matters averred in Defendants' New Matter admitted, and grant any and all such other relief this Court deems just.

FOX ROTHSCHILD LLP

By:



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*Counsel for Defendants,  
Cannery Casino Resorts, LLC,  
Washington Trotting Association, Inc.,  
and WTA Acquisition Corp.*

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Defendants.

**[PROPOSED] ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, upon consideration of  
Defendants' Preliminary Objections to Plaintiffs' Reply to New Matter, and any response  
thereto, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Preliminary  
Objections are SUSTAINED. It is FURTHER ORDERED that the matters averred in  
Defendants' New Matter are deemed admitted pursuant to Pennsylvania Rule of Civil Procedure  
1029(b).

BY THE COURT:

\_\_\_\_\_  
J.

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individually and jointly,

Defendants.

**NOTICE TO PLEAD:**

To the within named Plaintiffs:  
You are hereby notified to file a written  
response to the enclosed Answer and  
New Matter to Plaintiff's Third  
Amended Complaint In Civil Action  
within twenty (20) days from service  
hereof or a judgment may be entered  
against you.



Patrick L. Abramowich, Esquire

**DEFENDANTS' ANSWER AND NEW  
MATTER TO PLAINTIFFS' THIRD  
AMENDED COMPLAINT**

Filed on behalf of Defendants,  
Cannery Casino Resorts, LLC, Washington  
Trotting Association, Inc., and WTA  
Acquisition Corp.

Counsel of Record for these Parties:

Patrick L. Abramowich, Esquire  
PA ID No. 74494  
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**FILED**  
JAN 16 2014  
P.R. MATHENY  
PROTHONOTARY

EXHIBIT

1



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individually and jointly,<sup>1</sup>

Defendants.

**DEFENDANTS' ANSWER AND NEW MATTER  
TO PLAINTIFF'S THIRD AMENDED COMPLAINT**

AND NOW come Defendants, Cannery Casino Resorts, LLC ("Cannery"), Washington  
Trotting Association, Inc. ("WTA"), and WTA Acquisition Corp. ("WTA Acquisition")  
(collectively, "Defendants"), by their attorneys, FOX ROTHSCHILD LLP, and file this Answer

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<sup>1</sup> Defendants, Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. (collectively, "Defendants") deny that Cannery Casino Resorts exists as a business organization apart from Cannery Casino Resorts, LLC. Defendants further deny that Cannery Casino Resorts, LLC and/or Washington Trotting Association, Inc. participate in unincorporated associations, and further deny that an unincorporated association can sue as a party. Accordingly, Defendants object to the caption to the extent that it purports to state claims against any entity other than Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. individually.

and New Matter to the Third Amended Complaint in Civil Action (“Complaint”) filed by Plaintiffs Janine Litman and Timothy Mastroianni (collectively, “Plaintiffs”), averring as follows:

ANSWER

1. In response to the averments of Paragraph 1, Defendants admit only that Janine Litman (“Litman”) is an adult individual and a plaintiff in this action. After reasonable investigation, Defendants lack knowledge sufficient to form a belief regarding the truth or falsity of Litman’s current address and accordingly deny the same.

2. In response to the averments of Paragraph 2, Defendants admit only that Timothy Mastroianni (“Mastroianni”) is an adult individual and a plaintiff in this action. After reasonable investigation, Defendants lack knowledge sufficient to form a belief regarding the truth or falsity of Mastroianni’s current address and accordingly deny the same.

3. The averments of Paragraph 3 are admitted in part and denied as stated in part. Defendants admit only that Cannery Casino Resorts, LLC is a Nevada limited liability company. Defendants deny that Cannery’s principal place of business is 2121 E. Craig Road, North Las Vegas, NV 89030. To the contrary, Cannery’s principal place of business is 9107 W. Russell Road, Las Vegas, NV 89148. Defendants deny as vague and ambiguous the allegation that Cannery’s principal place of business is “among other locations.” Defendants further deny that “Cannery Casino LLC” and “Cannery Casino” are business entities separate from Cannery Casino Resorts, LLC.

4. The averments of Paragraph 4 are admitted in part and denied as stated in part. Defendants admit that Washington Trotting Association, Inc. is a Delaware corporation, that WTA’s registered agent is The Corporation Trust Company, Corporation Trust Center, 1209

Orange Street, Wilmington, DE 19801, and that WTA maintains an office and place of business at 210 Racetrack Road, Washington, PA 15301. Defendants deny as vague and ambiguous the allegation that the referenced addresses are “among other locations.”

5. The allegations of Paragraph 5 are admitted in part and denied in part.

Defendants admit only that WTA Acquisition Corp. is a Delaware corporation, and that its registered agent is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. Defendants deny that WTA Acquisition has an office and place of business at 210 Racetrack Road, Washington, PA 15301. To the contrary, WTA Acquisition has been merged into WTA. Defendants further deny as vague and ambiguous the allegation that the referenced addresses are “among other locations.”

6. The averments of Paragraph 6 are denied as stated. WTA trades and does business as The Meadows Racetrack & Casino (“The Meadows”) and has an office and place of business at 210 Racetrack Road, Washington, PA 15301. Defendants deny that Cannery directly trades or does business as The Meadows or has an office and place of business at 210 Racetrack Road, Washington, PA 15301. Defendants further deny that “Cannery Casino Resorts” exists as a business entity separate and apart from Cannery.

7. The averments of Paragraph 7 are denied. Defendants deny that “Cannery Casino Resorts” exists as a business entity separate and apart from Cannery. Moreover, Defendants deny that Cannery directly trades or does business as The Meadows or has an office and place of business at 210 Racetrack Road, Washington, PA 15301.

8. The averments of Paragraph 8 are denied as stated. The Meadows is owned and operated by WTA.

9. The allegations of Paragraph 9 are denied as stated. While The Meadows engages in general solicitation of patrons, Defendants deny that The Meadows specifically targets any of the groups of persons identified in Paragraph 9. Defendants specifically deny that The Meadows solicits patrons under 21 years of age for gaming.

10. The allegations of Paragraph 10 purport to characterize a document, which speaks for itself. Accordingly, no response is required. To the extent that a response is deemed necessary, Defendants deny that Cannery advertises itself as directly owning or operating The Meadows.

11. The reference to Cannery's advertising in the introductory paragraph of Paragraph 11 purports to describe documents and/or statements that speak for themselves. Accordingly, no response is required. To the extent that a response is deemed necessary, Defendants deny that Cannery claims to directly own The Meadows. The remaining allegations of the introductory paragraph of Paragraph 11 state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

(a) The reference to Cannery's advertising in Paragraph 11(a) purports to describe documents and/or statements that speak for themselves. Accordingly, no response is required. The remaining allegations of Paragraph 11(a) state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

(b) After reasonable investigation, Defendants lack knowledge sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 11(b) and accordingly deny the same.

(c) The allegations of Paragraph 11(c) state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

(d) The allegations of Paragraph 11(d) are denied as stated. To the contrary, Cannery possesses documents demonstrating its indirect ownership of WTA, which owns and operates The Meadows.

(e) The allegations of Paragraph 11(e) state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

12. The reference to Cannery's advertising in the introductory paragraph of Paragraph 12 purports to describe documents and/or statements that speak for themselves. Accordingly, no response is required. To the extent that a response is deemed necessary, Plaintiff's characterization of Cannery's advertising is denied. Cannery indirectly owns WTA, which owns and operates The Meadows. The remaining allegations of the introductory paragraph of Paragraph 12 state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

(a) The reference to Cannery's advertising in Paragraph 12(a) purports to describe documents and/or statements that speak for themselves. Accordingly, no response is required. To the extent that a response is deemed necessary, Plaintiff's characterization of Cannery's advertising is denied. Cannery indirectly owns WTA, which owns and operates The Meadows. The remaining allegations of Paragraph 12(a) state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

(b) The allegations of Paragraph 12(b) are admitted. By way of further answer, Cannery does not operate The Meadows.

(c) The allegations of Paragraph 12(c) state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

(d) After reasonable investigation, Defendants lack knowledge sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 12(d) and accordingly deny the same.

(e) The allegations of Paragraph 12(e) state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

(f) The allegations of Paragraph 12(f) are denied as stated. To the contrary, Cannery possesses documents demonstrating its indirect ownership of WTA, which owns and operates The Meadows.

(g) The allegations of Paragraph 12(g) state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

13. The allegations of Paragraph 13 purport to describe documents and/or statements that speak for themselves. Accordingly, no response is required. To the extent that a response is deemed necessary, Defendants deny that Cannery advertises itself as directly owning or operating The Meadows. Cannery indirectly owns WTA, which owns and operates The Meadows.

14. Defendants admit that Cannery is the registered owner of the trademark for The Meadows Racetrack & Casino, as reflected in Exhibit 3 to the Complaint. By way of further answer, Cannery's trademark registration for The Meadows Racetrack & Casino is based upon WTA's licensed use of that mark. The allegation that Cannery owns "various trademarks bearing 'The Meadows' insignia" is vague and ambiguous and, accordingly, denied.

15. The allegations of Paragraph 15 are denied. Defendants deny that Cannery is an unincorporated association and accordingly deny that Cannery owns any copyrights "as an unincorporated association and not as a limited liability company." The allegations of Paragraph 15 referring to Exhibit 4 of the Complaint purport to characterize a document, which speaks for itself.

16. In response to the first sentence of Paragraph 16, Defendants admit only that WTA, doing business as The Meadows, advertises gambling services and invites potential players to gamble at The Meadows casino. Defendants deny that Cannery and WTA Acquisition engage in such activities. The allegations of the second and third sentences of Paragraph 16 state legal conclusions to which no response is required.

17. The allegations of Paragraph 17 purport to describe a document, which speaks for itself. Accordingly, no response is required. To the extent that a response is deemed necessary, Defendants state that Cannery indirectly owns WTA, which registered "The Meadows Racetrack & Casino" as a fictitious name in Pennsylvania.

18. The allegations of Paragraph 18 are denied. To the contrary, WTA is the owner and operator of The Meadows and is licensed to operate The Meadows by the Pennsylvania Gaming Control Board ("PGCB"). The PGCB investigated and qualified Cannery in connection with the ownership and licensure of WTA.

19. The allegations of Paragraph 19 are denied. To the extent that Paragraph 19 refers to the operation of The Meadows, WTA is The Meadows' owner and operator.

20. The allegations of Paragraph 20 are denied. To the extent that Paragraph 20 refers to the operation of The Meadows, WTA is The Meadows' owner and operator.

21. The allegations of Paragraph 21, subparagraphs (a) through (c) inclusive, are denied. To the extent that Paragraphs 21(a) through (c) refer to the operation of The Meadows, WTA is The Meadows' owner and operator. By way of further answer, Defendants incorporate their answer to Paragraph 18 as though set forth in full.

22. The allegations of Paragraph 22 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied. By way of further answer, Cannery indirectly owns WTA, which is the owner and operator of The Meadows.

23. The allegations of Paragraph 23 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

[Unnumbered]. After reasonable investigation, Defendants lack knowledge sufficient to form a belief regarding the truth or falsity of the allegations contained in the unnumbered paragraph between Paragraphs 23 and 24 of the Complaint. Accordingly, those allegations are denied.

24. In response to the allegations of Paragraph 24, Defendants admit only that WTA, as the owner and operator of The Meadows, published rules for table games as required by the PGCB. The remaining allegations of Paragraph 24 purport to describe the published rules, which speak for themselves. Accordingly, no response is required.



25. The allegations of Paragraph 25 are denied. To the extent that Paragraph 25 refers to gaming at The Meadows, WTA never charged a vigorish on all bets, but only on winning bets. Cannery and WTA Acquisition did not directly operate The Meadows at any time relevant to the Complaint and, accordingly, never charged a vigorish.

26. The allegations of Paragraph 26 are denied. While Plaintiffs made a complaint to The Meadows concerning the collection of vigorish, WTA never "prosecuted" Mastroianni. Plaintiffs never made any complaints to Cannery or WTA Acquisition.

**COUNT I**  
**Breach of Oral Contract**

27. Defendants incorporate by reference their answers to paragraphs 1 through 26 of Plaintiffs' Third Amended Complaint as though set forth in full.

28. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

29. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

30. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

31. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

32. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

33. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

34. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

35. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

36. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

37. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

38. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

39. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count I of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

**COUNT II**  
**Breach of Written Contract**  
**(In the alternative to Count I)**

40. Defendants incorporate by reference their answers to paragraph 1 through 39 of Plaintiffs' Third Amended Complaint as though set forth in full.

41. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count II of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

42. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count II of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

43. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count II of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

44. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count II of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

45. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count II of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

**COUNT III**  
**Breach of Contract Implied in Fact**  
**(in the alternative to Count I)**

46. Defendants incorporate by reference their answers to paragraph 1 through 45 of Plaintiffs' Third Amended Complaint as though set forth in full.

47. The allegations of Paragraph 47 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

48. The allegations of Paragraph 48 are denied as stated. Assuming that the "licensed facility" referred to in Paragraph 48 is The Meadows, Defendants deny that Cannery or WTA Acquisition directly solicited gambling patrons for The Meadows. WTA solicited gambling patrons at The Meadows, provided that such patrons were over 21 years of age and otherwise entitled to participate in gaming at The Meadows.

49. The allegations of Paragraph 49 are admitted in part and denied in part. Defendants admit only that Plaintiffs engaged in gambling at The Meadows, which is owned and operated by WTA, at various times in 2010 and 2011. Defendants deny that Cannery or WTA Acquisition ever provided gambling services to Plaintiffs. After reasonable investigation, Defendants lack knowledge sufficient to form a belief regarding the truth or falsity of the allegation that Plaintiffs acted in reliance on WTA's solicitations and accordingly deny the same.

50. The allegations of Paragraph 50 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied. Defendants specifically deny that Cannery or WTA Acquisition solicited Plaintiffs or rendered gambling services to them.

51. After reasonable investigation, Defendants lack information sufficient to form a belief regarding the truth or falsity of the allegations of Paragraph 51 and accordingly deny the same.

In response to the WHEREFORE clause of Count III, Defendants Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. deny that Plaintiffs are entitled to any of the relief set forth therein and respectfully request that judgment be entered in their favor and against Plaintiffs Janine Litman and Timothy Mastroianni, together with costs, attorneys' fees and such other relief as justice requires.

**COUNT IV**  
**Unjust Enrichment**  
**(in the alternative to Count I)**

52. Defendants incorporate by reference their answers to paragraph 1 through 51 of Plaintiffs' Third Amended Complaint as though set forth in full.

53. In response to the allegations of Paragraph 53, Defendants admit only that Plaintiffs patronized The Meadows at various times in 2010 and 2011. After reasonable investigation, Defendants lack knowledge sufficient to form a belief regarding the truth or falsity of Plaintiff's alleged reliance and accordingly deny the same. All other allegations of Paragraph 53 state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied. Defendants specifically deny that Plaintiffs engaged in gambling activities with Cannery or WTA Acquisition.

54. The allegations of Paragraph 54 state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

55. The allegations of Paragraph 55 state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

56. The allegations of Paragraph 56 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

57. The allegations of Paragraph 57 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

In response to the WHEREFORE clause of Count IV, Defendants Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. deny that Plaintiffs are entitled to any of the relief set forth therein and respectfully request that judgment be entered in their favor and against Plaintiffs Janine Litman and Timothy Mastroianni, together with costs, attorneys' fees and such other relief as justice requires.

**COUNT V**  
**Breach of Fiduciary Duty**

58. Defendants incorporate by reference their answers to paragraph 1 through 57 of Plaintiffs' Third Amended Complaint as though set forth in full.

59. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

60. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

61. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

62. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

63. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

64. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

65. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

66. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

67. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count V of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

**COUNT VI**  
**Tortious Interference with Contract**  
**and Prospective Business Relations and Advantage**  
**Plaintiff Mastroianni v. The Meadows**

68. Defendants incorporate by reference their answers to paragraph 1 through 67 of Plaintiffs' Third Amended Complaint as though set forth in full.

69. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VI of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

70. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VI of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

71. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VI of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

72. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VI of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

73. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VI of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

74. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VI of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

75. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VI of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

**COUNT VII**  
**Unfair and Deceptive Trade Practice**  
**Violation of 73 P.S. § § 201 – 1**

76. Defendants incorporate by reference their answers to paragraph 1 through 75 of Plaintiffs' Third Amended Complaint as though set forth in full.

77. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VII of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.



78. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VII of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

79. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VII of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

80. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VII of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

81. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VII of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

82. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VII of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

83. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VII of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

84. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count VII of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

**COUNT VIII**  
**Fraud**

85. Defendants incorporate by reference their answers to paragraph 1 through 84 of Plaintiffs' Third Amended Complaint as though set forth in full.

86. The allegations of Paragraph 86 are denied. To the contrary, all statements by WTA and Cannery concerning the ownership of The Meadows are accurate. WTA Acquisition has not made statements to potential customers concerning the ownership of The Meadows.

87. The allegations of Paragraph 87 are denied. To the contrary, all statements by WTA and Cannery concerning the ownership of The Meadows are accurate. WTA Acquisition has not made statements to potential customers concerning the ownership of The Meadows.

88. The allegations of Paragraph 88 are denied. To the contrary, all statements by WTA and Cannery concerning the ownership of The Meadows are accurate. WTA Acquisition has not made statements to potential customers concerning the ownership of The Meadows.

89. The allegations of Paragraph 89 state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

90. The allegations of Paragraph 90 state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

In response to the WHEREFORE clause of Count VIII, Defendants Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. deny that Plaintiffs are entitled to any of the relief set forth therein and respectfully request that judgment be entered in their favor and against Plaintiffs Janine Litman and Timothy Mastroianni, together with costs, attorneys' fees and such other relief as justice requires.

**COUNT IX**  
**Conversion**

91. Defendants incorporate by reference their answers to paragraph 1 through 90 of Plaintiffs' Third Amended Complaint as though set forth in full.

92. The allegations of Paragraph 92 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

93. The allegations of Paragraph 93 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

In response to the WHEREFORE clause of Count IX, Defendants Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. deny that Plaintiffs are entitled to any of the relief set forth therein and respectfully request that judgment be entered in their favor and against Plaintiffs Janine Litman and Timothy Mastroianni, together with costs, attorneys' fees and such other relief as justice requires.

**COUNT X**  
**Negligence**  
**(in the alternative to intentional torts)**

94. Defendants incorporate by reference their answers to paragraph 1 through 93 of Plaintiffs' Third Amended Complaint as though set forth in full.

95. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count X of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

96. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count X of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

97. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count X of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

98. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count X of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

**COUNT XI**  
**Violation of Gaming, 4 Pa.C.S.A.**

99. Defendants incorporate by reference their answers to paragraph 1 through 98 of Plaintiffs' Third Amended Complaint as though set forth in full.

100. By Order dated December 17, 2013, the Court sustained Defendants' Preliminary Objections to Count XI of Plaintiffs' Third Amended Complaint for lack of specificity and granted Plaintiffs leave to amend Count XI within 20 days. As Plaintiffs chose not to amend, no response is required to this Paragraph.

101. By Order dated December 17, 2013, the Court sustained Defendants' Preliminary Objections to Count XI of Plaintiffs' Third Amended Complaint for lack of specificity and granted Plaintiffs leave to amend Count XI within 20 days. As Plaintiffs chose not to amend, no response is required to this Paragraph.

In response to the WHEREFORE clause of Count XI, Defendants Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. deny that Plaintiffs are entitled to any of the relief set forth therein and respectfully request that judgment be entered in their favor and against Plaintiffs Janine Litman and Timothy Mastroianni, together with costs, attorneys' fees and such other relief as justice requires.

**COUNT XII**  
**Civil Conspiracy**

102. Defendants incorporate by reference their answers to paragraph 1 through 101 of Plaintiffs' Third Amended Complaint as though set forth in full.

103. The allegations of Paragraph 103 state legal conclusions to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

In response to the WHEREFORE clause of Count XII, Defendants Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. deny that Plaintiffs are entitled to any of the relief set forth therein and respectfully request that judgment be entered in their favor and against Plaintiffs Janine Litman and Timothy Mastroianni, together with costs, attorneys' fees and such other relief as justice requires.

**COUNT XIII**  
**Accounting**

104. Defendants incorporate by reference their answers to paragraph 1 through 103 of Plaintiffs' Third Amended Complaint as though set forth in full.

105. In response to the allegations of Paragraph 105, Defendants admit only that WTA possesses information regarding gaming at The Meadows. The description of such information in Paragraph 105 is vague and ambiguous and therefore denied. Defendants deny that Cannery or WTA Acquisition are solely in control of accounting information regarding gaming at The Meadows.

106. The allegations of Paragraph 106 state a legal conclusion to which no response is required. To the extent that a response is deemed necessary, those allegations are denied.

In response to the WHEREFORE clause of Count XIII, Defendants Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. deny that Plaintiffs are entitled to any of the relief set forth therein and respectfully request that judgment

be entered in their favor and against Plaintiffs Janine Litman and Timothy Mastroianni, together with costs, attorneys' fees and such other relief as justice requires.

**COUNT XIV**  
**Special Damages**

107. Defendants incorporate by reference their answers to paragraph 1 through 106 of Plaintiffs' Third Amended Complaint as though set forth in full.

108. By Order dated December 17, 2013, Defendants' Preliminary Objections to Count XIV of Plaintiffs' Third Amended Complaint were sustained. Accordingly, no response is required to this Paragraph.

**NEW MATTER**

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs have not sustained any damages as a result of any matter alleged in the Complaint.
3. WTA is the owner and operator of The Meadows.
4. Cannery indirectly owns WTA.
5. WTA Acquisition merged into WTA in 2001.
6. "Cannery Casino Resorts" does not exist as a business entity apart from Cannery Casino Resorts, LLC.
7. Neither WTA, WTA Acquisition, nor Cannery does business through an unincorporated association.
8. The Meadows paid Plaintiffs all winnings from gaming to which Plaintiffs were entitled.
9. Plaintiffs have received payment of all amounts to which they are entitled from any of the Defendants.

10. The Meadows has only ever charged a craps vigorish for winning buy bets and winning lay bets.

11. Plaintiffs have never paid a craps vigorish for buy bets or lay bets in excess of the vigorish that The Meadows was entitled to charge.

12. The full ownership structure of The Meadows is publicly available on the Pennsylvania Gaming Commission website.

13. The public statements made by Cannery and WTA concerning the ownership of The Meadows have been truthful.

14. The Court lacks subject matter jurisdiction over Plaintiffs' claims.

15. Plaintiffs' claims are preempted by the Pennsylvania Race Horse Development and Gaming Act.

16. Plaintiffs have failed to exhaust administrative remedies.

17. Plaintiffs consented to the purportedly unlawful conduct alleged in the Complaint.

18. Plaintiffs are estopped from obtaining the relief sought in the Complaint.

19. Plaintiffs regularly patronized The Meadows with knowledge of The Meadows' ownership and business practices, including without limitation the manner in which The Meadows charged a craps vigorish.

20. Defendants did not proximately cause the damages alleged in the Complaint.

21. Plaintiffs caused and/or contributed to the damages that they seek to recover in the Complaint.

22. Plaintiffs' alleged damages should be precluded or reduced by their failure to mitigate.

23. Plaintiffs have unclean hands.

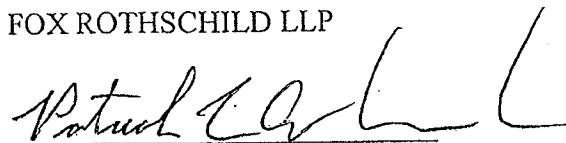
24. The Meadows has conducted its business in conformity with the Pennsylvania Gaming Control Board regulations and oversight.

25. Defendants assert the doctrines of justification and license.

26. To the extent justified by the facts developed during discovery or introduced at trial, Plaintiff's claims may be barred in whole or in part by the applicable statute of limitations and/or laches.

FOX ROTHSCHILD LLP

By:



Patrick L. Abramowich, Esquire

PA ID No. 74494

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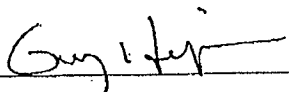
*Counsel for Defendants,  
Cannery Casino Resorts, LLC,  
Washington Trotting Association, Inc.,  
WTA Acquisition Corp., Cannery Casino Resorts,  
LLC, Cannery Casino Resorts and  
Washington Trotting Association, Inc. t/d/b/a The  
Meadows Racetrack & Casino, and Cannery  
Casino Resorts*



VERIFICATION

I, Guy Hillyer, the Executive Vice President of Cannery Casino Resorts, LLC, have read the foregoing Answer and New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

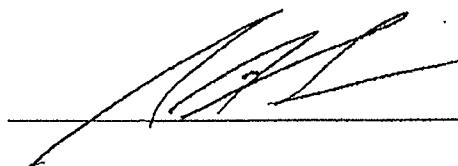
  
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DATED: January 15, 2014

**VERIFICATION**

I, Sean A. Sullivan, the Vice-President and General Manager of Washington Trotting Association, Inc., have read the foregoing Answer and New Matter. The statements therein are correct to the best of my personal knowledge or information and belief. I am providing this Verification on behalf of Washington Trotting Association, Inc. in its own right and as a successor by merger to WTA Acquisition Corp.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



Sean A. Sullivan  
Vice President & General Manager

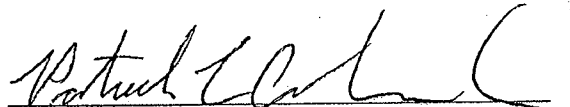
DATED: January 15, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2014, a true and correct copy of Answer and New Matter of Defendants to Plaintiff's Third Amended Complaint was served upon the following counsel of record via e-mail and United States mail, First Class, postage prepaid:

Gregg R. Zegarelli, Esquire  
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*Counsel for Plaintiffs,  
Janine Litman and  
Timothy Mastroianni*

  
Patrick L. Abramowich

IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JANINE LITMAN and TIMOTHY MAS-  
TROIANNI, individually and  
jointly,

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a Ne-  
vada limited liability company,  
WASHINGTON TROTTING ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware cor-  
poration, CANNERY CASINO RESORTS,  
LLC, CANNERY CASINO RESORTS and  
WASHINGTON TROTTING ASSOCIATION,  
INC. t/d/b/a THE MEADOWS RACETRACK  
& CASINO, an unincorporated asso-  
ciation, CANNERY CASINO RESORTS,  
an unincorporated association con-  
sisting of one or more yet uniden-  
tified natural and/or legal per-  
sons, individually and jointly,

Defendants.

CASE NO: 2012-8149

REPLY TO NEW MATTER

On behalf of Plaintiffs

Counsel of Record for this Party:

Gregg R. Zegarelli, Esq.  
PA I.D. #52717

Z E G A R E L L I  
Technology & Entrepreneurial  
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EXHIBIT

2

IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JANINE LITMAN and TIMOTHY MAS-  
TROIANNI, individually and  
jointly,

CASE NO: 2012-8149

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a Ne-  
vada limited liability company,  
WASHINGTON TROTting ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware cor-  
poration, CANNERY CASINO RESORTS,  
LLC, CANNERY CASINO RESORTS and  
WASHINGTON TROTting ASSOCIATION,  
INC. t/d/b/a THE MEADOWS RACETRACK  
& CASINO, an unincorporated asso-  
ciation, CANNERY CASINO RESORTS,  
an unincorporated association con-  
sisting of one or more yet uniden-  
tified natural and/or legal per-  
sons, individually and jointly,

Defendants.

REPLY TO NEW MATTER

AND NOW, come Plaintiffs, by and through their legal counsel, and  
file this Reply to New Matter, averring as follows:

1. Denied. Defendants' averment is a nullity as a result of the  
Order of this Court, dated December 17, 2013. To the extent that any re-  
sponse is required, it is denied that the Complaint fails to state a claim  
upon which relief can be granted.

2. Denied. It is denied that Plaintiff has not sustained any  
damages as a result of any matter alleged in the Third Amended Complaint  
(the "Complaint").

---

3. **Denied as stated.** By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny as stated that WTA is "the owner and operator" of the Meadows.

4. **Denied as stated.** By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny as stated that Cannery indirectly owns WTA. Moreover, the term "indirectly" is vague, ambiguous and is undefined.

5. **Denied as stated.** By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny as stated that WTA Acquisition merged into WTA in 2001. Moreover, the term "merged" is vague, ambiguous and is undefined. Discovery is continuing, and strict proof is demanded.

6. **Denied.** By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny that that "Cannery Casino Resorts" does not exist as a business entity. Discovery is continuing, and strict proof is demanded.

7. **Denied.** By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny that Plaintiffs were paid all winnings from gaming to which Plaintiffs were entitled.

8. **Denied.** By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny that Plaintiffs were paid all winnings from gaming to which Plaintiffs were entitled.

9. **Denied.** By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny that Plaintiffs were paid all amounts to which Plaintiffs were entitled.

10. **Denied.** By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny that the Meadows has only ever charged a craps vigorish for winning buy bets and winning lay bets.

11. Denied. By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny that Plaintiffs have never paid a craps vigorish for winning buy bets and winning lay bets.

12. Denied as stated. By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny as stated that the full ownership of The Meadows is publicly available on the Pennsylvania Gaming Commission website.

13. Denied. By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein, and, accordingly, deny that the public statements made by Cannery and WTA concerning the ownership of The Meadows have been truthful.

14. Denied. Defendants' averment is a nullity as a result of the Order of this Court, dated October 7, 2013. To the extent that any response is required, it is denied that the Court does not have subject matter jurisdiction.

15. Denied. Defendants' averment is a nullity as a result of the Order of this Court, dated October 7, 2013. To the extent that any response is required, it is denied that Plaintiffs' claims are preempted by the Pennsylvania Race Horse Development and Gaming Act.

16. Denied. Defendants' averment is a nullity as a result of the Order of this Court, dated October 7, 2013. To the extent that any response is required, it is denied that Plaintiffs' failed to exhaust administrative remedies.

17. Denied. By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein. It is denied that Plaintiffs' consented to the averred unlawful conduct of Defendants.

18. Denied. It is denied that Plaintiffs' are estopped from obtaining relief.

19. Denied in part, as stated. By this reference, Plaintiffs hereby incorporate the averments made in its Complaint as if fully stated herein. Plaintiffs admit the averments in the Complaint as made, but deny as stated to any extent that Plaintiffs had such knowledge of ownership or

business practices in a manner that is a defense to the averments made in the Complaint.

20. **Denied.** It is denied that Plaintiffs' proximately caused the damages alleged in the Complaint.

21. **Denied.** It is denied that Plaintiffs' caused or contributed to the damages that they seek to recover in the Complaint.

22. **Denied.** It is denied that Plaintiffs refused to mitigate or necessarily that damages should be reduced for such a non-existent cause.

23. **Denied.** It is denied that Plaintiffs have unclean hands.

24. **Denied.** It is denied that the Defendants have conducted business in conformity with the Pennsylvania Gaming Control Board regulations and oversight.

25. **Denied.** To the extent a response is required, it is denied that any of the Defendants may properly assert the doctrines of justification and/or license, or that there are facts to support the assertion.

26. **Denied.** Plaintiffs deny that, for any reason, that Plaintiffs' claims are barred by the statute of limitation and/or laches.

WHEREFORE, Plaintiffs hereby demand judgment in their favor for compensatory, incidental, nominal and punitive damages, treble damages and attorneys' fees to the fullest extent permitted by law, and all other damages deemed to be just, in an amount exceeding \$50,000, exclusive of interest and costs.

January 28, 2014

Respectfully submitted,

TEV LAW GROUP, PC

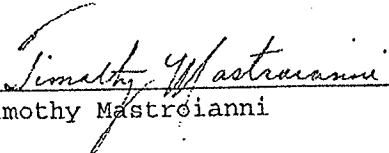
By: /Gregg Zegarelli/  
Gregg R. Zegarelli

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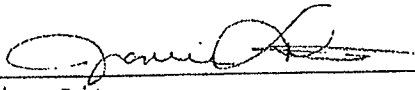
VERIFICATION

I, Timothy Mastroianni, verify that the facts set forth in the attached document 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. Section 4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Timothy Mastroianni

VERIFICATION

I, Janine Litman, verify that the facts set forth in the attached document 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. Section 4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Janine Litman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on this date, by depositing the same in the United States Mail, First Class, Postage Pre-Paid, upon the following:

2/3, 2014

PATRICK L. ABRAMOWICH  
FOX ROTHSCHILD LLP  
625 LIBERTY AVENUE, 29<sup>TH</sup> FLOOR  
PITTSBURGH, PA 15222-3115

~~s/ Gregg R. Zegarelli, Esq./~~  
Gregg R. Zegarelli, Esq.  
PA I.D. #52717

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412.833.0600

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of February, 2014, a true and correct copy of Defendants' Preliminary Objections to Plaintiffs' Reply to New matter was served upon the following counsel of record via e-mail and United States mail, First Class, postage prepaid:

Gregg R. Zegarelli, Esquire  
Zegarelli Technology & Entrepreneurial  
Ventures Law Group, P.C.  
2585 Washington Road, Suite 134  
Summerfield Commons Office Park  
Pittsburgh, PA 15241  
[mailroom.grz@zegarelli.com](mailto:mailroom.grz@zegarelli.com)

*Counsel for Plaintiffs,  
Janine Litman and  
Timothy Mastroianni*



Patrick L. Abramowich



Fox Rothschild LLP  
ATTORNEYS AT LAW

625 Liberty Avenue, 29th Floor  
Pittsburgh, PA 15222-3115  
Tel 412.391.1334 Fax 412.391.6984  
www.foxrothschild.com

PATRICK L. ABRAMOWICH  
Direct Dial: 412-394-5566  
Email Address: PAbrahamowich@Foxrothschild.com

February 13, 2014

**VIA EMAIL, FACSIMILE  
AND FIRST-CLASS MAIL**

Gregg R. Zegarelli, Esquire  
Zegarelli Technology & Entrepreneurial  
Ventures Law Group, P.C.  
2585 Washington Road, Suite 134  
Summerfield Commons Office Park  
Pittsburgh, PA 15241

**Re: Janine Litman, et al., v. Cannery Casino Resorts, LLC, et al.  
Court of Common Pleas of Washington County, Pennsylvania; No. 2012-8149**

Dear Mr. Zegarelli:

I am writing in response to (i) the Motion for Sanctions, of which I received service yesterday, and (ii) your fax dated February 12, 2014.

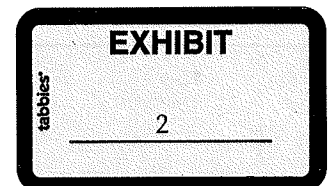
With regard to the Motion for Sanctions, Defendants Cannery Casino Resorts, LLC, Washington Trotting Association, Inc., and WTA Acquisition Corp. (collectively, "Defendants") are entitled to have Plaintiffs Janine Litman and Timothy Mastroianni (collectively, "Plaintiffs") allege the factual basis for denying every allegation in Defendants' New Matter. Pa.R.Civ.P. 1029(b). Since Plaintiffs' Reply to New Matter lacked any such factual allegations, Defendants' Preliminary Objections are perfectly appropriate, and the Motion for Sanctions is baseless.

Nonetheless, in an effort to streamline the matters for the Court's consideration, Defendants will exclude from their Preliminary Objections Plaintiffs' answers to Paragraphs 1, 14, 15, 16, 18, 23, 25, and 26 of Defendants' New Matter, which state primarily legal defenses. Accordingly, Defendants will limit the relief sought in their Preliminary Objections to Paragraphs 2 through 13, 17, 19, 20, 21, 22, and 24 of Defendants' New Matter, which are either exclusively or significantly factual in nature.

A Pennsylvania Limited Liability Partnership

California Colorado Connecticut Delaware District of Columbia  
Florida Nevada New Jersey New York Pennsylvania

ACTIVE 24740127v1





Fox Rothschild LLP  
ATTORNEYS AT LAW

Gregg R. Zegarelli, Esquire  
February 13, 2014  
Page 2.

With regard to your fax, as we discussed on Monday, Defendants are not going to make a piecemeal production and will produce all documents when a stipulated confidentiality order is entered. I trust that the draft I forwarded will be acceptable, and that production can be made soon. In addition, to the extent that Defendants withhold documents from their production based upon claims of privilege, they will provide a privilege log.

Finally, as Mr. Stang is no longer litigating this case, he has requested that all communications be directed exclusively to me.

Very truly yours,

Patrick L. Abramowich

PLA:msh

cc: William L. Stang, Esq.

PATRICK ABRAMWICZ, CSR.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

JANINE LITMAN and TIMOTHY  
MASTRIOANNA, individually and jointly,

Plaintiff,

vs.

CANNERY CASINO RESORTS, LLC, a  
Nevada limited liability company,  
WASHINGTON TROTTING ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware  
corporation, CANNERY CASINO RESORTS,  
LLC, CANNERY CASINO RESORTS and  
WASHINGTON TROTTING ASSOCIATION,  
INC., t/d/b/a THE MEADOWS RACETRACK  
& CASINO, an unincorporated association,  
CANNERY CASINO RESORTS, an  
Unincorporated association consisting of one or  
More yet unidentified natural and/or legal  
Persons, individually and jointly,

Defendants.

CIVIL DIVISION

No. 2012 - 8149

ENTRY OF OPINION, ORDER DECREE,  
ADJUDICATION OR JUDGMENT FILED 12-17-13  
MAILED 12-18-13  
TO Abramwicz

ORDER

AND NOW, this 17 day of December, 2013, upon consideration of Defendants'

Preliminary Objections and argument thereupon, it is hereby ORDERED, ADJUDGED and  
DECREED that the Preliminary Objections are SUSTAINED in part and OVERRULED in part.

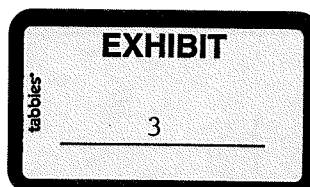
Count I: Preliminary Objections are SUSTAINED.

Count II: Preliminary Objections are SUSTAINED.

Count III: Preliminary Objections are OVERRULED.

Count IV: Preliminary Objections are OVERRULED.

Count V: Preliminary Objections are SUSTAINED.



Count VI: Preliminary Objections are SUSTAINED.

Count VII — 73 P.S. §§ 201-1: Preliminary Objections are SUSTAINED, as Plaintiffs have not articulated any link between Defendants' alleged unlawful activity (*i.e.*, misrepresentations about who owns and operates The Meadows) and their own "ascertainable loss of money or property." 73 P.S. § 201-9.2.

Count VII — 15 Pa. CSA § 8981: Preliminary Objections are SUSTAINED.

Count VIII: Preliminary Objections are OVERRULED.

Count IX: Preliminary Objections are OVERRULED.

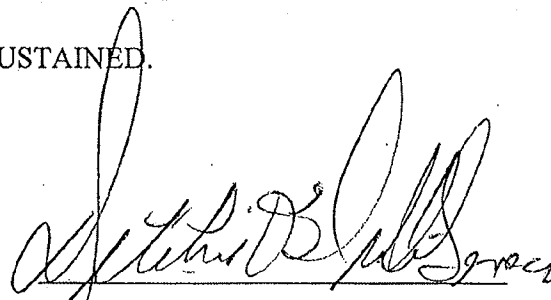
Count X: Preliminary Objections are SUSTAINED.

Count XI: Preliminary Objections are SUSTAINED for lack of specificity. Plaintiffs have 20 days to specify precisely which sections of the Gaming Act were violated and how they were violated, so that Defendants may file an answer. Failure to do so within 20 days will result in this count being dismissed.

Count XII: Preliminary Objections are OVERRULED.

Count XIII: Preliminary Objections are OVERRULED.

Count XIV: Preliminary Objections are SUSTAINED.



Debbie O'Dell-Seneca, P.J.



---

**From:** Kaiser, Amy on behalf of Stang, William  
**Sent:** Friday, September 27, 2013 3:50 PM  
**To:** mailroom.grz@zegarelli.com  
**Cc:** ghillyer@canneryresorts.com; Feldman, Benjamin I.; Jones, Marie J.; Stang, William  
**Subject:** Litman and Mastroianni v. Cannery Casino Resorts, LLC, et al.

September 27, 2013

VIA E-MAIL ([mailroom.grz@zegarelli.com](mailto:mailroom.grz@zegarelli.com)) AND REGULAR MAIL

Gregg R. Zegarelli, Esquire  
Zegarelli Technology & Entrepreneurial Ventures Law Group, P.C.  
2585 Washington Road, Suite 134  
Summerfield Commons Office Park  
Pittsburgh, PA 15241

Re: Janine Litman and Timothy Mastroianni v. Cannery Casino Resorts, LLC, et al.  
No. 2012-8149 (Washington County)  
Our File No. 007599-00025

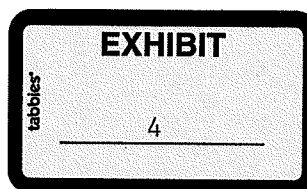
Dear Mr. Zegarelli:

This will confirm our understanding that discovery for the above case is on hold until resolution of the pending Preliminary Objections and/or we have had an opportunity to address discovery matters with the court at a Rule 212(b) conference. Please contact me promptly if your understanding of this matter is other than as set forth in this letter.

Very truly yours,

William L. Stang

Amy Kaiser  
Legal Administrative Assistant  
Fox Rothschild LLP  
625 Liberty Avenue  
29th Floor  
Pittsburgh, PA 15222-3115  
(412) 394-5565 - direct  
412-391-6984- fax  
[AKaiser@foxrothschild.com](mailto:AKaiser@foxrothschild.com)  
[www.foxrothschild.com](http://www.foxrothschild.com)



**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of April, 2014, a true and correct copy of Defendants' Brief in Opposition to Plaintiffs' Motion for Sanctions was served upon the following counsel of record via facsimile, e-mail, and United States mail, First Class, postage prepaid:

Gregg R. Zegarelli, Esquire  
Zegarelli Technology & Entrepreneurial  
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[gregg.zegarelli@zegarelli.com](mailto:gregg.zegarelli@zegarelli.com)

*Counsel for Plaintiffs,  
Janine Litman and  
Timothy Mastroianni*



Patrick L. Abramowich