

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**
No. _____

NANCY LUND, LIESA MONTAG-SIEGEL,)	
and ROBERT VOELKER,)	
)	
Plaintiffs,)	VERIFIED COMPLAINT FOR
)	DECLARATORY AND
v.)	INJUNCTIVE RELIEF AND
)	NOMINAL DAMAGES
ROWAN COUNTY, NORTH CAROLINA,)	
)	
Defendant.)	
_____)	

INTRODUCTION

1. “As our nation becomes more diverse, so also will our faiths. To plant sectarian prayers at the heart of local government is a prescription for religious discord. In churches, homes, and private settings beyond number, citizens practice diverse faiths that lift and nurture both personal and civic life. But in their public pursuits, Americans respect the manifold beliefs of fellow citizens by abjuring sectarianism and embracing more inclusive themes.”¹

2. Across North Carolina, many counties have taken the Fourth Circuit’s recent admonition to heart: Recognizing that sectarian legislative prayer practices are neither compatible with the religious liberty guarantee of the First Amendment nor permissible under the Fourth Circuit’s clear precedent, these counties have adopted policies that require invocations delivered at county commissioner meetings to be nonsectarian.

3. Rowan County, North Carolina, on the other hand, continues to knowingly and willfully flout the law, regularly violating the constitutional rights of local citizens by opening

¹ *Joyner v. Forsyth Cnty.*, 653 F.3d 341, 345 (4th Cir. 2011) (holding county’s sectarian prayer practice unconstitutional), *cert. denied*, 132 S. Ct. 1097 (2012).

meetings of its Board of Commissioners with Christian prayer. Since November 2007, 97% of all Board meetings have featured expressly Christian prayer.

4. This case is brought pursuant to 42 U.S.C. § 1983 to challenge the constitutionality of Defendant Rowan County's practice of delivering sectarian prayer at meetings of its Board of Commissioners. Plaintiffs Nancy Lund, Liesa Montag-Siegel, and Robert Voelker (collectively, "Plaintiffs") bring this lawsuit to vindicate their rights under the First and Fourteenth Amendments to the United States Constitution and Article I, §§ 13 and 19 of the Constitution of North Carolina.

JURISDICTION

5. This action is brought pursuant to 42 U.S.C. § 1983, the First and Fourteenth Amendments to the United States Constitution, and Article I, §§ 13 and 19 of the Constitution of North Carolina. This Court has subject-matter jurisdiction over the federal constitutional claim pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and supplemental jurisdiction over the state constitutional claim pursuant to 28 U.S.C. § 1367(a).

6. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiffs' action for injunctive relief is authorized by the foregoing statutes and by Rule 65 of the Federal Rules of Civil Procedure.

VENUE

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2).

PARTIES

8. Plaintiff Nancy Lund is a long-time citizen and resident of Rowan County, North Carolina. She has been active in the Rowan County community for years. For example, she serves as a volunteer tutor and board member for the Literacy Council. She also has taken an

interest in numerous issues before the Rowan County Board of Commissioners, prompting her to attend a number of Board meetings since 2004. For example, Lund has attended Board meetings on May 7, 2012; May 21, 2012; January 7, 2013; February 4, 2013; and February 18, 2013. At each of these meetings, Lund was subjected to official sectarian prayer. Lund intends to continue attending Board meetings to follow local issues of interest.

9. Lund objects to and is offended by the Board's sectarian prayer practice because it affiliates the County with one particular faith, Christianity, and sends a message that the County and its Commissioners favor adherents of that faith. As Lund is not a Christian and does not subscribe to the religious beliefs promoted by the prayers, the prayers make her feel excluded from the community and the local political process. At meetings, she also feels pressured to participate in the sectarian prayers.

10. Plaintiff Liesa Montag-Siegel is a long-time citizen and resident of Rowan County, North Carolina. She has been active in the community for years. For example, she has been a volunteer at The Faithful Friends, a local animal shelter. She is also a member of the Kol Tikvah synagogue in Davidson, North Carolina. As a retired middle-school librarian with the Rowan County-Salisbury School System, she is very interested in educational funding issues. This interest has led her to attend a number of Board meetings since the early 2000s, including the April 16, 2012, Board meeting and, more recently, the March 4, 2013, Board meeting. She intends to continue attending meetings in the future, especially when educational issues will be considered.

11. Montag-Siegel objects to and is offended by the Board's sectarian prayers because they promote religious beliefs to which she does not subscribe, causing her to feel excluded at meetings and from the community. She feels that the prayers send a message that

the County and the Board favor Christians and that non-Christians, like her, are outsiders. In addition, at meetings, such as the April 16, 2012, and March 4, 2013, meetings, Montag-Siegel felt coerced into participating in the Board's sectarian prayers, which are not in accordance with her Jewish faith.

12. Plaintiff Robert Voelker is a long-time citizen and resident of Rowan County, North Carolina. He has been active in the Rowan County community for years. For example, Voelker has attended Board meetings on March 5, 2012; April 2, 2012; April 16, 2012; May 7, 2012; January 7, 2013; February 4, 2013; and March 4, 2013. In particular, he has closely followed the Board's consideration of educational issues, including its recent debate on the new Rowan County-Salisbury School Administration building. Voelker intends to continue attending Board meetings to follow local issues of interest to him.

13. At each of the Board meetings he has attended, Voelker has been subjected to official sectarian prayer. He objects to and is offended by the Board's sectarian prayer practice because it affiliates the County with one particular faith, Christianity, and sends a message that the County and its commissioners favor adherents of that faith. As Voelker is not a Christian and does not subscribe to the religious beliefs promoted by the prayers, the prayers make him feel excluded from the community and the local political process. At meetings, he also feels pressured to stand and participate in the sectarian prayers because all Commissioners and most audience members are standing and the invocation is immediately followed by the Pledge of Allegiance, for which Voelker feels strongly that he needs to stand.

14. During the public comments portion of a recent Board meeting, Voelker expressed his concern about the Board's sectarian prayer practice and proposed a non-sectarian prayer that the Board could instead use to open its meetings. He proposed this non-sectarian

prayer so that non-Christians citizens, like him, could attend Board meetings without feeling excluded by prayers and without feeling pressured to participate in sectarian invocations that espouse specific religious beliefs they do not share. Voelker worries that his failure to participate in the sectarian prayers and his open questioning of this practice will be noted by the Board and make him a less effective advocate before the Board on other issues of interest to him such as educational funding. He is thus now hesitant to speak out during Board meetings on behalf of causes he supports.

15. Defendant Rowan County (“Defendant” or the “County”) is one of the 100 counties of the State of North Carolina designated in N.C.G.S. § 153A-10 and has the capacity to be sued in its own name under N.C.G.S. § 153A-11. Defendant exercises its power as a county through its elected Board of Commissioners.

FACTUAL ALLEGATIONS

16. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs of this Complaint as if fully set out herein.

Meetings of the Board of Commissioners

17. The Rowan County Board of Commissioners usually meets twice per month. These meetings are open to the public and available for viewing online through Defendant’s website.²

² Videos of the Board’s meetings are available online dating back to November 5, 2007, at <http://www.rowancountync.gov/GOVERNMENT/Commission/MediaArchive.aspx>. This Complaint details the Board’s practices for all meetings held between November 5, 2007, through March 4, 2013, with the exception of (1) Board meetings that were continued over from a previous meeting that had already been called to order; and (2) the February 8, 2013, joint meeting of the Board of Commissioners and the Rowan-Salisbury School Board of Education, which was conducted pursuant to a unique protocol.

18. From November 5, 2007, through the present, the meetings have generally proceeded in the same manner.

19. Per the Board's published agendas,³ the meetings generally open with the Call to Order, Invocation, and Pledge of Allegiance. A copy of the agenda for each Board meeting is attached hereto as Exhibit A and incorporated into this Verified Complaint as if fully set out herein.

20. First, meetings are called to order by a Board member (almost always the Board chairman).

21. After the meeting is called to order, the invocation is delivered, followed by recitation of the Pledge of Allegiance. The Board chairman indicates that everyone in attendance should stand for this portion of the meeting. For example, on November 7, 2011, then-Board Chairman Chad Mitchell stated, "If you will stand for the invocation and pledge, I will lead us tonight." Similarly, on February 18, 2013, current Board chairman Jim Sides stated, "At this time, if you would, please stand. We'll ask Mike Caskey to give us the invocation and the pledge."

22. Then, the Board chairman either delivers the invocation or identifies the Board member who will do so. The Board prayergiver also typically leads the Pledge of Allegiance, although, on occasion, a local Boy Scout Troop has instead led the pledge recitation.

23. Board members always stand during the invocation and pledge and generally bow their heads during the prayer.

³ The agendas for the June 16, 2008, and August 4, 2008, meetings are not accessible online. However, the minutes for these meetings (attached hereto as Exhibit B) confirm adherence to the typical pattern of Call to Order, Invocation, and Pledge of Allegiance.

24. Similarly, most audience members in attendance stand for the invocation and pledge and bow their heads during the prayer.

Sectarian Prayers at Board Meetings

25. From November 5, 2007, through the present, nearly every Board meeting has featured a sectarian invocation.⁴ Specifically, 139 of 143 Board meetings opened with sectarian prayer during that time period. Put another way, 97% of Board meetings in the past five-and-a-half years have featured sectarian prayer.⁵

26. More specifically, all of the sectarian prayers delivered by Board members have invoked the Christian faith by ending with one or more references to Jesus Christ or other beliefs and doctrine specific to Christianity. Board members have closed prayers, for example, with the following sectarian references: “in Jesus’ name,” “in the name of Jesus the Christ,” “in the name of Jesus,” “in the knowledge of our Lord and Savior Jesus Christ,” “in the name of Jesus, the one and only way to salvation,” “in Christ’s name, for His sake,” “in the name of Jesus, the King of Kings and Lord of Lords,” “in the name of Jesus and for the sake of His kingdom,” “in Christ our Savior,” “through Jesus Christ our Lord,” “in the name of our Risen Lord, Jesus

⁴ A “sectarian” prayer has been defined as one that “uses ideas or images identified with a particular religion . . .” *Lee v. Weisman*, 505 U.S. 577, 588 (1992). *See also id.* at 641 (Scalia, J., dissenting) (defining a sectarian prayer as one “specifying details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)”; *Joyner*, 653 F. 3d at 364 (Niemeyer, J., dissenting) (“To be sure, a prayer that references Jesus is sectarian.”).

⁵ At two meetings, then-Commissioner Coltrain (who is no longer a Board member) asked that the audience “join me in a moment of silence or prayer for our meeting” rather than reciting an invocation. The two meetings were held on June 4, 2012, and August 20, 2012. In addition, on March 19, 2012, and November 5, 2012, Coltrain prayed “in His holy name” and “in your holy name.” While Plaintiffs consider Coltrain’s prayers “in His holy name” and “in your Holy name” to be sectarian, for purposes of the Complaint, Plaintiffs counted only those prayers that mentioned “Jesus,” “Christ, or the “Savior” as clearly Christian.

Christ,” “Jesus our Savior,” “in my Lord and Savior’s name,” and “in the name of our Lord and Savior, Jesus Christ.”

27. Many of the prayers delivered at Board meetings have incorporated Christian doctrine and tenets to an even greater extent. For example, the following invocations have been delivered at Board meetings since November 2007:

- a. Father, we thank you for your grace and your glory. We ask you to be with us this evening as we conduct the business of Rowan County. We’d also like to ask you to have your will as it relates to all the burdens and problems the citizens of Rowan County have today. *As we get ready to celebrate the Christmas season, we’d like to thank you for the Virgin Birth, we’d like to thank you for the Cross at Calvary, and we’d like to thank you for the resurrection. Because we do believe that there is only one way to salvation, and that is Jesus Christ. I ask all these things in the name of Jesus. Amen. December 3, 2007 (emphasis added).*
- b. Let us pray. Our Heavenly Father, we will never, ever forget that we are not alive unless your life is in us. You saved us and you call us with the holy calling. We are the recipients of your immeasurable grace and glory. We are the richest people in the world. *Because of our salvation through our Lord Jesus Christ, we cannot be defeated, we cannot be destroyed, and we won’t be denied, because we’re going to live forever with Him.* We confess our sins and we ask you for forgiveness, and we thank you for your blessings. I ask you to be with us as we conduct the business of Rowan County this evening, *and ask these things in the name of Jesus and for the sake of His Kingdom. Amen. June 2, 2008 (emphasis added).*
- c. Our Heavenly Father, we will never, ever forget that we are not alive unless your life is in us. We are the recipients of your immeasurable grace. *We can’t be defeated, we can’t be destroyed, and we won’t be denied, because of our salvation through the Lord Jesus Christ.* I ask you to be with us as we conduct the business of Rowan County this evening, and continue to bless everyone in this room, our families, our friends, and our homes. *I ask all these things in the name of Jesus, Amen. May 18, 2009 (emphasis added).*
- d. Let us pray. *Father, I pray that all may be one as you, Father, are in Jesus, and He in you. I pray that they may be one in you, that the world may believe that you sent Jesus to save us from our sins. May we hunger and thirst for righteousness, be made perfect in holiness, and be preserved, whole and entire, spirit, soul, and body, irreproachable at the coming of our Lord Jesus Christ.* And I pray, Father, that you will continue to bless this nation, because without your blessings, we don’t have any hope. *I ask all these things in the name of Jesus. Amen. October 5, 2009 (emphasis added).*

- e. Heavenly Father, we give you thanks for the many, many blessings that you give to us each and every day, *especially during this time of the year when we celebrate the birth of your Son, our Savior, who came to show us how we should interact with each other for the benefit of each other.* As servants for this community, please help us as the commissioners to really practice that principle so that we can have a positive effect on the lives of the citizens of the county, for your honor and glory. *In Jesus' name we pray.* Amen. December 13, 2010 (emphasis added).
- f. Let us pray. *Holy Spirit, open our hearts to Christ's teachings, and enable us to spread His message amongst the people we know and love through the applying of the sacred words in everyday lives.* *In Jesus' name I pray.* Amen. March 7, 2011 (emphasis added).
- g. Let us pray. Lord, we confess that we have not loved you with all our heart, and mind and strength, and that *we have not loved one another as Christ loved us.* *We have also neglected to follow the guidance of the Holy Spirit,* and have allowed sin to enter into our lives. Forgive us for what we've been and by your spirit, direct what we shall be. *In Jesus' name I pray.* Amen. August 1, 2011 (emphasis added).
- h. Let us pray. Merciful God, although you made all people in your image, we confess that we live with deep division. *Although you sent Jesus to be Savior of the world, we confess that we treat Him as our own personal God.* *Although you are one, and the body of Christ is one,* we fail to display that unity in our worship, our mission, and our fellowship. Forgive our pride and arrogance, heal our souls, and renew our vision. *For the sake of your Son, our Savior, the Lord Jesus Christ, Amen.* October 3, 2011 (emphasis added).
- i. Let us pray. Father we do thank you for your love, mercy, and your grace. We thank you for this time of the year when *we celebrate the birth of Jesus Christ.* *Lord, we realize that the most important thing was not His birth, but His death that made a way for us to have life, and have it more abundantly.* We pray you would be with us today; give us grace and mercy. Lord, give us wisdom in the decisions that we need to make. I pray that you would help us, God, to guide this county in a way that you would see fit. Lord, we thank you for it. *In Jesus' name, Amen.* December 19, 2011 (emphasis added).
- j. Let us pray. Our Heavenly Father, we will never ever forget that we are not alive unless your life is in us. We have been blessed to be the recipients of your immeasurable grace. *We can't be defeated, we can't be destroyed, and we can't be denied because we are going to live forever with you through the salvation of Jesus Christ.* Lord, be with us today and provide us with your supreme guidance and wisdom as we conduct the business of Rowan County. *And, as we pick up the Cross, we will proclaim His name above all names, as the only way to eternal life.* *I ask this in the name of the King of Kings, the Lord of Lords, Jesus Christ.* March 5, 2012 (emphasis added).

- k. Let us pray. Lord, we do not look to the world for strength or encouragement, but we look to your word where we are convinced that you will protect and guard that which you have entrusted to us. *By the empowerment of your in-dwelling Holy Spirit, help us boldly stand when the world, even those close to us, assault our faith.* It is in your strength and your power that we remain faithful. *May the purifying of our faith bring praise, glory and honor to Jesus, our Lord and Savior, Amen.* May 21, 2012 (emphasis added).
- l. *Father God, in the name of Jesus,* we come to you today thanking you for all you've done for us. Thank you for forgiving us of our sins and giving us eternal life. Lord, we pray that you'll bless us in these meetings today. We pray that you'll guide and direct our thoughts. Help us to make the right decisions for Rowan County, Lord. We thank you so much for the rain you sent early this morning. We thank you for all you do, *in Jesus' name, Amen.* July 2, 2012 (emphasis added).
- m. Let us pray. Father God, we thank you for this day. Thank you for grace and mercy and love. *I thank you so much, Lord, for sending your Son; this is the reason for the season, Jesus Christ.* We thank you for all you've done for us these last four year. We pray that you will bless these men and women. God, I pray to you today, that these new commissioners will seek your guidance. *I pray that the citizens of Rowan County will love you Lord, and that they will put you first. In Jesus's name, Amen.* December 3, 2012 (emphasis added).

28. From November 5, 2007, through present, every individual who has been a member of the Board has delivered one or more sectarian invocations.

29. From November 5, 2007, through the present, no invocation has referenced a deity specific to one faith other than Christianity.

30. On February 15, 2012, the American Civil Liberties Union of North Carolina Legal Foundation sent a letter to the Rowan County Board of Commissioners, informing the Board that the sectarian prayers at its meetings violated the First Amendment to the United States Constitution. (A copy of the February 15, 2012, letter is attached hereto as Exhibit C and incorporated into this Verified Complaint as if fully set out herein.)

31. The County never formally responded to the letter, although Board members publicly proclaimed to their intentions to continue offering Christian prayers. For example, then-Commissioner Carl Ford told a local television news station, "I will continue to pray in Jesus'

name. I am not perfect so I need all the help I can get, and asking for guidance for my decisions from Jesus is the best I, and Rowan County, can ever hope for.” David Whisenant, *ACLU: Sectarian Opening Prayers at Community Meetings Need to Stop*, WBTV (Feb. 16, 2012, 7:20 AM), <http://salisbury.wbtv.com/news/news/71442-aclu-sectarian-opening-prayers-commissioner-meetings-need-stop>. And Commissioner Jim Sides wrote in an email obtained by the press, “I will continue to pray in JESUS name . . . I volunteer to be the first to go to jail for this cause . . . and if you [Commissioner Mitchell] will go my bail in time for the next meeting, I will go again!” *Id.*

32. Defendant’s sectarian prayers have promoted divisiveness in Rowan County. Most recently, for instance, the March 5, 2012, Board meeting featured many divisive comments and exchanges relating to sectarian prayer during the public discussion portion of the meeting. For example, Rowan County resident, Shakeisha Gray, was jeered by audience members after expressing opposition to the Board’s use of sectarian prayers. Video: Rowan County Board of Commissioners Media Archive, March 5, 2012, at 47:00-49:33, available at <http://www.rowancountync.gov/GOVERNMENT/Commission/MediaArchive.aspx>.

CLAIMS FOR RELIEF

Establishment Clause Violation (42 U.S.C. § 1983)

33. Plaintiffs re-allege and incorporate by reference all of the preceding paragraphs of this Complaint as if fully set out herein.

34. By Defendant’s conduct alleged above, Defendant has violated, and is continuing to violate, Plaintiffs’ rights under the Establishment Clause of the First Amendment to the U.S. Constitution and the Fourteenth Amendment to the U.S. Constitution.

35. Defendant's past and continued delivery of invocations at its Board of Commissioners meetings, as alleged above, constitutes an official policy, practice, custom, and/or usage for purposes of 42 U.S.C. § 1983.

36. The custom, practice, and policy established by Defendant is the cause-in-fact of the constitutional violation.

37. Specifically, Defendant's invocation practice unconstitutionally affiliates Defendant with one particular faith, Christianity.

38. Defendant's invocation practice has the primary purpose and effect of promoting and advancing one particular faith, Christianity.

39. Defendant's invocation practice also improperly endorses one faith. A reasonable, objective observer aware of the conduct alleged above would conclude that the Defendant has endorsed, and continues to endorse, Christianity.

40. Defendant's invocation practice further coercively exposes Plaintiffs to unwanted sectarian exercises and messages as a condition of attending meetings of their local governmental body, Rowan County.

41. Unless restrained by this Court, Defendant will continue to subject Plaintiffs to this unconstitutional custom, policy, and practice, causing Plaintiffs irreparable harm by denying them their fundamental constitutional right to be free from governmental promotion of sectarian legislative prayer practices and governmental coercion of sectarian practices at meetings of legislative bodies.

42. Plaintiffs have no adequate remedy at law for the denial of their fundamental constitutional rights.

Constitution of North Carolina Violation

43. Plaintiffs re-allege and incorporate the preceding paragraphs of this Complaint as if fully set out herein.

44. For the reasons set forth herein, the sectarian prayer practice and policy of Defendant's Board of Commissioners also violates Article I, §§ 13 and 19 of the Constitution of North Carolina, which has been held to require religious neutrality equal to the neutrality required by the U.S. Constitution.

RELIEF REQUESTED

Plaintiffs respectfully request the following relief:

1. A declaratory judgment declaring that Defendant's custom, policy, and practice, as alleged above, violates the United States and North Carolina Constitutions;
2. An injunction preliminarily and, thereafter permanently, enjoining Defendant, its officers, agents, affiliates, subsidiaries, servants, employees, successors, assigns, those persons in active concert or participation with Defendant, and all other persons within the scope of Federal Rule of Civil Procedure 65, from knowingly and/or intentionally delivering or allowing to be delivered sectarian prayers at meetings of the Rowan County Board of Commissioners;
3. Entry of judgment for Plaintiffs against Defendant for nominal damages of \$1;
4. An order that Defendant pay Plaintiffs reasonable expenses and attorneys' fees, pursuant to 42 U.S.C. § 1988; and
5. Such other and further relief as the Court seems just and proper.

Respectfully submitted,

/s/ Christopher A. Brook

Christopher A. Brook

NC Bar No. 33838

Legal Director, American Civil Liberties Union
of North Carolina Legal Foundation

Post Office Box 28004

Raleigh, North Carolina 27611

Telephone: (919) 834-3466

Facsimile: (866) 511-1344

Email: cbrook@acluofnc.org

Daniel Mach*

D.C. Bar No. 461652

Heather L. Weaver*

D.C. Bar No. 495582

ACLU Program on Freedom of Religion and Belief
915 15th Street, NW

Washington, DC 20005

Tel: (202) 675-2330

Fax: (202) 546-0738

Email: dmach@aclu.org

hweaver@aclu.org

* Appearing pursuant to Local Rule 83.1(d)

Counsel for Plaintiffs

DATED: March 12, 2013

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2013, I electronically filed the foregoing Complaint with the Clerk of Court using the CM/ECF system which will send notification of such filings to the following counsel:

Jay Dees
Ketner & Dees, P.A.
121 East Kerr Street
Salisbury, NC 28144
jay@ketnerlaw.com
Counsel for Defendant

This is the 12th day of March, 2013.

/s/ Christopher A. Brook _____
Christopher A. Brook

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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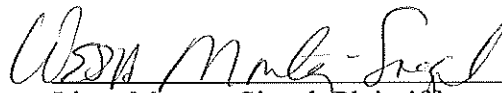
Defendant.)

VERIFIED COMPLAINT FOR
DECLARATORY AND
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NOMINAL DAMAGES

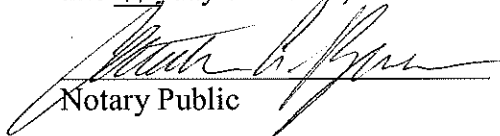
VERIFICATION OF COMPLAINT

I, LIESA MONTAG-SIEGEL, verify, under penalty of perjury under the laws of the United States of America that the foregoing Complaint is true to the best of my knowledge, information, and belief; is based upon my personal knowledge; and is true and correct.

This the 11 day of March, 2013.


Liesa Montag-Siegel, Plaintiff

Sworn to and subscribed before me,
this 11 day of March, 2013.


Notary Public

My Commission Expires 6-2-2015

CHRISTOPHER A BROOK
NOTARY PUBLIC
ORANGE COUNTY, NC
My Commission Expires 6-2-2015

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VERIFICATION OF COMPLAINT

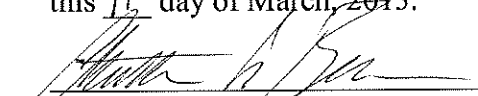
I, NANCY LUND, verify, under penalty of perjury under the laws of the United States of America that the foregoing Complaint is true to the best of my knowledge, information, and belief; is based upon my personal knowledge; and is true and correct.

This the 11 day of March, 2013.



Nancy Lund, Plaintiff

Sworn to and subscribed before me,
this 11th day of March, 2013.



Notary Public

My Commission Expires 6-2-2015

CHRISTOPHER A BROOK
NOTARY PUBLIC
ORANGE COUNTY, NC
My Commission Expires 6-2-2015

