

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DODGE

THIRD JUDICIAL DISTRICT

Case Type: Other/Civil

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CASE TITLE:

Court File No. \_\_\_\_\_

Lowell Trom and Evelyn Trom,

Plaintiffs,

vs.

**COMPLAINT**

Ripley Township and Ripley Township  
Board of Adjustments and Appeals

and

Applicants Timothy M. Langdon and Jennifer B. Langdon,

Defendants.

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For their claims against the Defendants, Plaintiffs state and allege as follows:

**PARTIES**

1. Plaintiff Lowell Trom ("Plaintiff") is a resident of and property owner in Dodge County whose mailing address is 12451 700<sup>th</sup> Street, Blooming Prairie, Minnesota, 55917.
2. Plaintiff Evelyn Trom ("Plaintiff") is a resident of and property owner in Dodge County whose mailing address is 12451 700<sup>th</sup> Street, Blooming Prairie, Minnesota, 55917. Plaintiff Evelyn Trom is a temporary resident at Prairie Manor Care Center in Blooming Prairie.
3. Plaintiffs together own the residence located at 12451 700<sup>th</sup> Street, Blooming Prairie, Minnesota, 55917 ("Residence"), along with other real property in Ripley Township, Dodge County, Minnesota.
4. Defendant Ripley Township ("Township") is a political subdivision of the State of Minnesota, with zoning regulations created and existing pursuant to Minn.Stat. § 366 and/or

Minn.Stat. § 462.

5. Upon information and belief, Defendants Timothy M. Langdon and Jennifer B. Langdon (“Developer Defendants”) are individuals who are residents of Goodhue County and whose shared address is 5802 Highway 19, Cannon Falls, Minnesota, 55009.
6. Upon information and belief, the proposed Project of the Developer Defendants includes a 192' by 100' total confinement barn designed to house 2400 hogs equal to 720 animal units, which will generate manure equivalent to a city of 7,200 people ("proposed Project").
7. The Residence owned by Plaintiff is located approximately one mile from the proposed feedlot of Defendants Timothy Langdon and Jennifer Langdon, which constitutes the 12<sup>th</sup> swine feedlot in a 3-mile radius of Plaintiff's residence.

#### **JURISDICTION AND STANDING**

8. This District Court has jurisdiction for this action under and pursuant to Minn.Stat. § 462.361, subd. 1, and Article III, Division 30, Section 30-090 E and 30-030, C.3 of Ripley Township's Zoning Ordinance.
9. Jurisdiction for this action also exists under this District Court's general jurisdiction inasmuch as the proposed Project is located within Section 32 of Ripley Township, Dodge County, Minnesota.
10. Plaintiffs have standing as property owners concerned about their property rights and values and are concerned about the administration and enforcement of the Ripley Zoning Ordinance (“Ordinance”) as applied to the proposed Project.

#### **FACTUAL ALLEGATIONS**

11. Ripley Township adopted an ordinance on December 5, 2005 that enacted a moratorium on the granting of permits for confined animal feedlots.

12. Ripley Township adopted an amended Zoning Ordinance on March 12, 2009 and recorded same on April 2, 2009 ("Township Ordinance").
13. Ripley Township adopted the Township Ordinance lawfully and properly after public hearing, public input, and due deliberation concerning the planning for existing and future land uses in the Ripley Township.
14. The Township Ordinance has been recorded and in effect for more than three years and is accordingly valid under Minn.Stat. § 599.13.
15. The Township Ordinance and public process was supported by a rational basis to promote the public welfare.
16. The Township Ordinance regulates land in Ripley Township in a manner consistent with or more restrictive than Dodge County Ordinance.
17. The Township Ordinance states that the purpose of the Ordinance is to protect the public health, safety and general welfare of the Township; protect and preserve the natural environment; provide a guide for public policy and action, establish official controls and preserve and enhance the quality and the economic and natural environmental values of the Township.
18. The Township Ordinance Feedlot Requirements establishes minimum acreage requirements for proposed feedlots. Proposed feedlots of 101 – 1500 animal units require ten (10) acres plus each additional animal unit over 100 adds an additional 1/10<sup>th</sup> of an acre to a maximum requirement of 150 acres.
19. The Township Ordinance Feedlot Requirements also require that an owner/manager of the feedlot live onsite.
20. Township Ordinance creates a Board of Adjustment and Appeals (“BOA”) with the exclusive

power to grant Variances from strict enforcement of standards and provisions prescribed by the Ordinance which shall only be granted based upon the criteria prescribed in Section 30-040 of this Ordinance.

21. Township Ordinance requires that “Variances from the terms any official controls...shall be granted in accordance with Minn.Stat. § 462...” and “...shall only be permitted when they are in harmony with the general purposes and intent of the official control...” and lists the four following criteria all variances must meet:

a. Has the applicant demonstrated a hardship? “Hardship” means the property cannot be put to a reasonable use under conditions allowed by the Zoning Ordinance.

Economic consideration alone do not constitute a hardship.

b. Are there exceptional circumstances unique to this property, which were not created by landowner?

c. Can the variance be granted without upsetting the purpose and intent of the Zoning Ordinance?

d. Can the variance be granted without altering the essential character of the surrounding area?

22. The Township Ordinance requires that the Township Planning Commission (“PC”) must make an affirmative ruling on all of the above criteria before forwarding recommendation for a Variance to the Board of Adjustment and Appeals.

23. The Township Ordinance states that the applicant has the burden of proof to show all above criteria are met.

24. Township Ordinance requires applicants seeking variances to submit a completed Variance Request form and that such complete form shall be accompanied by information as is

necessary to educate the residents about the project, including but not limited to:

- a. A map or aerial photo showing landscaping, windbreaks, and screening plans, if applicable, as well as all approaches from public roads, and the existing and proposed buildings and manure storage areas and their square footage;
- b. The plan for the manner in which negative impacts to neighbors will be controlled or mitigated;
- c. Certification from Dodge County that all property taxes have been paid;
- d. Such other information as is deemed necessary and reasonable by the Town Board to adequately review the request; and
- e. Written assurances that any damage to bridges and roads by heavy loads will be repaired by the applicant/permit holder.

25. The Township Variance Request Form requires applicants to “Describe the practical difficulties that have caused you to apply for variance from the Township Ordinance, and how the project is consistent with the general purpose of the Township Ordinance and how the project is consistent with the comprehensive plan.”

26. The Township Ordinance requires that the Township Board of Supervisors shall make a recommendation on applications for variance, in writing, to the PC, and forward the request for their review and that the PC shall hold a public hearing in accordance with M.S. 462 (Planning and Zoning) and the provisions of this Ordinance.

27. The Township Ordinance requires that a feedlot proposer, upon submitting an application to Township for a Conditional Use Permit (“CUP”) for that feedlots, must within five (5) days notify in writing all property owners and residents within two miles.

28. The Township Ordinance requires a minimum of 7.5 acres for feedlots of ten (10) to one

hundred (100) AU. Per Township Ordinance, Developer Defendants are allowed fewer than ten (10) AU on their property, not the 720 AU as requested and approved.

29. The Township Ordinance requires that an owner/manager of any feedlot operation live on site.

30. On July 2, 2017 Developer Defendants submitted an incomplete application for a variance (Variance) and an application for a CUP to build proposed Project on their land. Developer Defendant's application for a Variance did not state the size of their property nor did they describe or acknowledge how the property is nonconforming. Developer Defendants did not acknowledge or educate the public that Township Ordinance requires 72 acres for proposed project while Developer Defendant's property is only five (5) acres in size. Developer Defendants did not acknowledge that no one would be living on the site as required by Township Ordinance. Developer Defendant's incomplete application did not include any of the required information enumerated in Town Ordinance. Developer Defendants did not provide plans or address the negative effects on neighbors or any required mitigation efforts. Developer Defendants did not provide required landscaping or tree plan. Developer Defendants did not provide certification from Dodge County that their property taxes were paid. Developer Defendants did not provide required assurances that Developer Defendants would be liable for any proposed Project damage to roads and bridges. Developer Defendants further did not, as required on the Variance Request Form, describe the practical difficulties warranting a Variance nor did they describe how such Variance would be consistent with Township Ordinance. Developer Defendant's Request for a Variance was missing nearly every required piece of information material to the evaluating and granting of variances. In violation of Township Ordinance Developer Defendants did little to educate the public about

their request for Variance.

31. On November 6, 2017, 90 days following the deadline for notice as established in the Township Ordinance, Developer Defendants belatedly notified Plaintiffs of their Variance and CUP application. At least one neighboring property owner did not receive any notice. It is unclear whether Developer Defendants notified anyone in a two-mile radius other than Plaintiffs of Developer Defendant's application for Variance and CUP. Like Developer Defendant's application for Variance, the written notice Developer Defendants provided Plaintiffs provided no details about proposed Project, reasons for requesting a variance or any other information required by Township Ordinance.
32. On November 14, 2017, Township published notice of a December 6, 2017 public hearing regarding Developer Defendant's application for a Variance and CUP. While the published notice identified the proposed Project's location, building size and number of AU involved, the notice did not acknowledge or inform or educate the public that the proposed Project would be nonconforming as detailed above.
33. On November 30, 2017, Sonja Trom Eayrs, daughter of Plaintiffs, hand delivered a twenty-two page letter to the Ripley Township Planning and Zoning Commission objecting to the Variance, together with extensive supporting documentation. In her letter, Ms. Eayrs pointed out that Developer Defendant's application was incomplete, that minimum acreage for a 720 AU feedlot is 72 acres and that allowing proposed Project with no one living onsite undermines the intent and purpose of the Township Ordinance.
34. In her letter to the PC, Ms. Eayrs noted that Developer Defendants purchased their property on November 12, 2004, during the time that the Township was subject to a moratorium and discussion was underway regarding the adoption of local planning and zoning to limit the

size of future feedlots. Ms. Eayrs states that Developer Defendants had notice of the moratorium before purchasing their property and should have been aware that the Township was discussing adoption of local planning and zoning to limit the size of feedlots in the Township.

35. On November 25, 2017, Scott Slocum sent a letter to the PC objecting to Developer Defendant's proposed Variance stating the Ripley Township Ordinances restricting feedlots were well and properly designed to prevent installation of large non-resident feedlots.
36. On November 29, 2017, Pastor Charles H. Leonard sent a letter to the PC objecting to the Developer Defendant's proposed Variance because of the nonconforming size of proposed Project and because no one would be living on site. Pastor Leonard asserted that limits on feedlots enacted into Township Ordinance exist for the greater good and that ground rules set forth in the Township Ordinance should be complied with.
37. On December 6, 2017, the PC held a public hearing on the Variance and CUP. Numerous residents and others spoke out or submitted written materials in objection to the Variance and CUP
38. During the period December 6, 2017 to February 1, 2018, the PC apparently voted to recommend approval of Developer Defendant's request for a Variance. No required affirmative findings of fact nor Notice of Record of Decision of this approval have been published.
39. On February 1, 2018, the Ripley Township Board of Adjustment and Appeals ("BOA") arbitrarily and capriciously approved Developer Defendant's request for a Variance disregarding several requirements of the Township Ordinance. Nowhere in the BOA's approval of Variance does the BOA acknowledge that Developer Defendant's property is less

than 1/14<sup>th</sup> the size required for a 720 AU swine feedlot. (72 acre minimum divided by actual 5-acre site.) Under its “Findings of Fact” regarding required Township Ordinance criteria for approving a Variance, the BOA provided only single-sentence conclusory statements with no specific findings of fact. This includes an incorrect statement that adjacent property owners had been properly notified. Nowhere does the BOA provide findings as to how the Variance is in harmony with the purpose and intent of Township Ordinance. Nowhere does the BOA provide findings of fact that address the demonstrated cumulative effects on Plaintiffs of permitting another animal feedlot in an area with an existing high concentration of confined animal feeding operations. Nowhere does the BOA provide findings addressing the public health, safety and welfare concerns detailed in the extensive documents, letters and public comments expressed by citizens during the public comment period.

40. BOA’s approval of the Variance violates Section 30-040 of Township Ordinance and is contrary to Minnesota law, including Minn.Stat. § 462.
41. The Township Ordinance requires that all parties seeking to construct a new feedlot must comply with the terms and conditions of the Township Ordinance and must obtain a CUP from Ripley Township.
42. The Township Ordinance enumerates Animal Feedlot Requirements including requirements for minimum acreage, onsite living of owner/manager and prompt written notification of property owners and residents within two (2) miles of proposed project. All feedlots shall comply with applicable Dodge County Ordinance and the Minnesota Feedlot Program Rules, Chapter 7020.
43. On July 2, 2017, Developer Defendants submitted, along with their above described request

for a Variance, a request for a CUP to construct proposed Project.

44. Proposed Project would be the twelfth (12<sup>th</sup>) animal feedlot operation, several of which are concentrated animal feedlot operations (CAFOs), within a three-mile radius of Plaintiff's residence.
45. On November 6, 2017, Developer Defendants belatedly provided written notice to Plaintiffs. At least one neighbor reports that they received no written notice.
46. In considering the granting of a CUP, the PC and the Town Board shall, among other things, evaluate the effect of the proposed project on the public health, safety and welfare or residence and the compatibility of the proposed project with the Objectives of the Township Ordinance.
47. The Township Ordinance requires that completed CUP applications be submitted to the Ripley Town Board for written recommendation to the PC. The PC is required to hold a public hearing in accordance with Minnesota Statute Chapter 462, the provisions of the Township Ordinance and other applicable laws, if any governing notices and public hearings.
48. On November 30, 2017, Plaintiff's daughter, Sonja Trom Eayrs, submitted a twenty-two (22) page letter to the PC objecting to issuance of a CUP for proposed Project, together with extensive supporting documentation. Ms. Eayrs' letter describes with specificity and at length the threats to public health and safety posed by the proposed Project. Ms. Eayrs encouraged the PC to acknowledge that Plaintiffs are already surrounded by eleven (11) feedlots within a three-mile radius and that the cumulative effects of the noxious odors and likely hydrogen sulfide emissions from these feedlots was already unbearable and will be made worse by the proposed Project. Ms. Eayrs described two events in November, 2017 when her father became ill while working outside on the Trom Farm. Ms. Eayrs' also

included a summary of public health concerns regarding gaseous feedlot emissions articulated by the Johns Hopkins Center for a Livable Future. Professionals at Johns Hopkins provided evidence of substantial public health impacts from pathogens transmitted and antibiotic resistant bacteria generated in large-scale hog operations. Ms. Eayrs' letter to the PC also expressed concerns that the proposed Project may pollute the nearby Ripley Ditch which is part of the Zumbro Watershed. Ms. Eayrs noted that Developer Defendants had provided no manure management plan as to how Developer Defendants will dispose of the 1.1 million gallons of manure the proposed Project is expected to generate annually. Ms. Eayrs also noted that Developer Defendants did not provide a plan for disposal of dead animal carcasses.

49. Along with her November 30, 2017 letter, Ms. Eayrs also submitted to the PC a large binder of information that included affidavits from family members, three amicus curiae briefs from Plaintiff's recent court challenge of the now-constructed Masching Swine Farms, LLC swine operation one mile directly south of the proposed Project. The binder included substantial other information on the effects and cumulative effects of confined animal feedlot operations. In their sworn affidavits, family members provide detailed testimony regarding the frequently present unbearable stench of hog manure in the air. Amicus curiae briefs provide extensive discussion of the cumulative threats to air and water pollution and antibiotic resistance and other public health concerns related to concentrations of animal feedlots like proposed Project.
50. As part of her evidence to the PC Ms. Eayrs also included a Minnesota Court of Appeals Brief that Plaintiffs recently filed in opposition to the above described eleventh feedlot operation within a three-mile radius their property. This brief discussed the Minnesota

Pollution Control Agency's Pratt Report which demonstrated that a cumulative effect existed when the air emissions from several feedlot operations are considered with predicted violations of air quality standards.

51. Numerous members of the public also provided letters to the PC in advance of or at the December 6, 2017 hearing expressing their concerns and objecting to the proposed Project. Many citizens confirmed that odors from existing surrounding feedlots was already unbearable. Neighbor Janette Emde stated that no matter which way the wind blows the stench from these feedlots can make breathing difficult. Dodge County resident Herman Beede stated that he assisted the Izaak Walton League in collecting water samples from nearby Cedar River. Mr. Beede stated that test results reflected the presence of E coli bacteria at a rate of 60 colony forming units, far in excess of state standards. The Izaak Walton League is poised to publish these and other test results in a new report on suspected feedlot contamination of groundwater in the region in March, 2018. Barbara Murdock, an environmental public health professional, addressed the dangers of feedlot air emissions, contamination of groundwater and resistance to antibiotics that develops in animal feedlot operations such as the proposed Project in her letter dated November 27, 2017. Bob and Kristi Rosenquist provided a December 6, 2017 letter to the PC warning about the lack of Minnesota Pollution Control monitoring of and likely exceedances of feedlot hydrogen sulfide emissions at feedlots in the immediate area. The Rosenquists, who have access to hydrogen sulfide monitoring equipment, conducted air quality testing approximately one mile south of the propose Project in the Spring of 2017 and found concerning levels of hydrogen sulfide emissions. The Rosenquists have recently completed a study of hydrogen sulfide emissions from Goodhue County feedlots and included a copy of that study in their

submission to the PC. As a result of hydrogen sulfide testing in Goodhue County by the Rosenquists and others, the MPCA has ordered continuous air monitoring of area swine feedlots in Goodhue County which will commence this spring.

52. On December 6, 2017, the PC held a public meeting to hear public comment on Developer Defendant's application for a CUP. Sometime between December 6, 2017 and February 1, 2018, the Ripley Planning and Zoning Commission apparently recommended to the Ripley Town Board that the Board approve Developer Defendant's CUP application. No Notice of Record of Decision has been published by the PC.
53. On February 1, 2018, the Ripley Township Board of Supervisors arbitrarily and capriciously approved the CUP. Except for three brief recitals identifying the proposed Project, the approved CUP makes no findings of fact as to how the proposed Project will conform to the CUP and Animal Feedlot Requirements in Township Ordinance. No findings of fact were provided to address the demonstrated cumulative effects on Plaintiffs of permitting another animal feedlot in an area with existing high concentrations of animal feeding operations. No findings of fact addressed the public health, safety and welfare concerns extensively documented and expressed by residents and other concerned parties during the public comment period. No Notice of Record of Decision has been published by Township. Plaintiffs only discovered that the Ripley Township Board had approved the CUP after Sonja Trom Eayrs sent a February 15, 2018 email inquiry to the Township Clerk.
54. Approval of the CUP for proposed Project violates the Township Ordinance including Article II, Section 20-060 and Article III, Section 30-050 and is contrary to Minnesota law, including Minn.Stat. § 462.

#### **COUNT ONE – APPEAL VARIANCE TO DISTRICT COURT**

55. Plaintiffs restate and reallege the preceding allegations of this Complaint.
56. The Court should vacate and set aside the Township's decision to grant the Variance because the incomplete application violated Township Ordinance and statutes requiring notice and hearing before variance are granted. Incomplete Variance application denied the public adequate notice and opportunity to review the Project. The Town Board and BOA's failure to require applications meet information requirements further violated Township Ordinance and statute and deprived the public of its ability to evaluate the proposed Project.
57. The Court should vacate and set aside the Township's decision to grant the Variance because the decision was arbitrary and capricious, results in manifest injustice and was made in bad faith, including for all the reasons put forth in the public record prior to the December 6, 2017 PC hearing.
58. The District Court must vacate and set aside a variance under Minn.Stat. § 394.27. In accordance with Minn.Stat. § 394.27, a variance is prohibited where the applicant creates his or her own practical difficulties. Developer Defendants, by purchasing the property with full knowledge of a pending moratorium and extensive public discussion regarding the adoption of local planning and zoning ordinances to limit large feedlots in the Township, created their own practical difficulties. As such, it is not incumbent upon the Town Board to rectify this situation.
59. The District Court must invalidate the Variance because the Township failed to take the required hard look at the proposed Project for a Variance due to an incomplete feedlot CUP and Variance applications, and missing information about the Project that the applicable Ordinances require for a proper analysis under the variance standards.
60. The District Court should vacate and set aside the County's decision to grant the Variance

because the decision was arbitrary and capricious, results in manifest injustice and was made in bad faith, including for all the reasons set forth in the public record prior to the December 6, 2017 PC hearing.

61. The District Court should vacate and set aside the Township's decision to approve the Variance because the Township failed to include adequate findings to determine if the Variance is in harmony with the purpose and intent of Township Ordinance.
62. The District Court should invalidate the Variance because the County failed to require Developer Defendants to provide a complete application and meet information requirements and this failure deprived the public of its ability to evaluate proposed Project.

#### **COUNT TWO – VARIANCE DECLARATORY RELIEF**

63. Plaintiffs restate and reallege the preceding allegations of this Complaint.
64. An actual bona fide controversy exists between Plaintiffs and the Defendants.
65. The District Court should declare that the Variance violates the Township Ordinance and Minnesota law.
66. The District Court should declare that the approval by the Township of the Variance is contrary to fact and law, was arbitrary and capricious and must be vacated.
67. The District Court should declare that the Township lacked adequate findings to support the decision to approve the Variance.
68. A justiciable dispute therefore exists which is appropriate for determination by a declaratory judgment pursuant to Minn.Stat. § 555, *et seq.*

#### **COUNT THREE – VARIANCE INJUNCTIVE RELIEF**

69. Plaintiffs restate and reallege the preceding allegations of this Complaint.
70. A property owner injured by an improperly issued approval of a proposed project in violation

of a Township Zoning Ordinance is entitled to temporary and permanent injunctive relief to abate the violation.

71. Plaintiffs are entitled to injunctive relief reversing and vacating the Township's approval of the Variance for proposed Project, permanently enjoining the Township from approving a Variance for the proposed Project at the proposed location and permanently enjoining Developer Defendants from establishing and operating the proposed Project at the proposed location.
72. Property owners injured by a Variance issued in violation of Minnesota law and a zoning Ordinance are entitled to injunctive relief.
73. Plaintiffs are entitled to injunctive relief reversing the Determination of the Board of Adjustment granting the Variance and permanently enjoining the Township from approving the Variance and permanently enjoining Developer Defendants from establishing and operating the proposed Project at the proposed location.

#### **COUNT FOUR – APPEAL CUP TO DISTRICT COURT**

74. Plaintiffs restate and reallege the preceding allegations of this Complaint.
75. The District Court should vacate and set aside the Township's decision to approve the CUP for proposed Project because the Developer Defendants failed to properly notify neighboring residents.
76. The District Court should vacate and set aside the Township's decision to approve the CUP for proposed Project and refusal to enforce the Township Ordinance because the Township failed to adequately notify residents of the extent of proposed Projects' lack of compliance with the Township Ordinance.
77. The District Court should vacate and set aside the Township's decision to approve the

proposed Project and refusal to enforce the Township Ordinance because the decision was contrary to the evidence and was unreasonable, arbitrary and capricious.

78. The proposed Project would cause further injury to health of residents, especially due to the close proximity to residences already surrounded by numerous feedlots.

#### **COUNT FIVE – CUP DECLARATORY RELIEF**

79. Plaintiffs restate and reallege the preceding allegations of this Complaint.

80. An actual bona fide controversy exists between Plaintiffs and the Defendants.

81. Plaintiffs have exhausted their administrative remedies regarding the bona fide controversy.

82. A justiciable dispute therefore exists which is appropriate for determination by a declaratory judgment pursuant to Minn.Stat. § 555, *et seq.*

#### **COUNT SIX – CUP INJUNCTIVE RELIEF**

83. Plaintiffs restate and reallege the preceding allegations of this Complaint.

84. A property owner injured by an improperly issued approval of a proposed project in violation of a Township Zoning Ordinance is entitled to temporary and permanent injunctive relief to abate the violation.

85. Plaintiffs are entitled to injunctive relief reversing and vacating the Township's approval of the CUP for proposed Project, permanently enjoining the Township from approving the proposed Project at the proposed location and permanently enjoining Developer Defendants from establishing and operating the proposed Project at the proposed location.

WHEREFORE, Plaintiffs demands judgment as follows:

1. Reversing and vacating the Township approval of the Variance and the CUP for proposed Project of Developer Defendants;

2. Declaring that the issuance of the approval of the Variance and CUP by the Township of the proposed Project to Developer Defendants was arbitrary, capricious and contrary to the Township Ordinance and to Minnesota law;
3. Permanently enjoining the Township from issuing any Variance, CUP or other approval or permit to Developer Defendants in this location for the proposed Project;
4. Permanently enjoining Developer Defendant from establishing or operating a new feedlot in this location for the proposed Project;
5. Awarding Plaintiffs their reasonable costs and disbursements; and
6. For such other and further relief as this Court deems appropriate.

JEFF W. BROWN LAW, PLLC

Dated: February 27, 2018

By: /s/ Jeff W. Brown  
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#### **ACKNOWLEDGEMENT**

The undersigned hereby acknowledges that sanctions may be imposed under Minn.Stat. § 549.211. The undersigned hereby certifies to the best of his/her knowledge, information and belief: (1) this pleading is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have

evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonable based on a lack of information or belief.

Dated: February 27, 2018

By: /s/ Jeff W. Brown

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