

## IN THE SUPREME COURT OF OHIO

Case No. 11-1050

Case No. 11-1327

(Consolidated per Court order)

LISA VACHA, :

Plaintiff-Appellee/Cross-Appellant :

vs. :

CITY OF NORTH RIDGEVILLE, et al., :

Defendants-Appellants/Cross-Appellees :

Appeal/Cross-Appeal from Lorain  
County App. No. 10CA009750,  
Ninth Judicial District of Ohio

## MERIT BRIEF OF APPELLEE/CROSS-APPELLANT LISA VACHA

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## SUMMARY OF ARGUMENT

This case, involving public employer liability for intentional torts arising out of the employment relationship, can be summarily affirmed on the basis of this Court's recent decision in *Sampson v. Cleveland Metropolitan Housing Authority*, 131 Ohio St.3d 418, 2012-Ohio-570, 966 N.E.2d 247.

Appellee/Cross-Appellant Lisa Vacha was raped by a fellow employee while working at the City of North Ridgeville's water treatment plant. Her assailant, Charles Ralston, was a fellow employee, hired by the City despite having seven prior convictions for crimes of violence. Ralston's past was not a secret to the Mayor of North Ridgeville, who oversaw the hiring of Ralston – Ralston was the unwed father of two of the Mayor's grandchildren and two of Ralston's prior crimes of violence were against the Mayor's daughter. After he was hired, Ralston presented disciplinary problems, yet he was allowed to remain on the job with virtually no supervision or oversight.

Lisa Vacha brought a lawsuit which, in Count V of the amended complaint, sought recovery of damages resulting from the City's intentional conduct in hiring, and then failing to supervise and control, Ralston. The City has argued that the intentional tort claim arose from outside the course and scope of Ms. Vacha's employment and that the City should avoid liability by virtue of the sovereign immunity conferred by Chapter 2744 of the Revised Code.

The City, in an argument echoed by its amicus, has miscast the issue that this case presents. In arguing that the instant case is not controlled by *Sampson*, the City claims that Ms. Vacha is attempting to recover from the City for *Ralston's* intentional tort of rape, an action that

the City claims was outside of *Ralston's* duties. But Count V alleges that the *City* committed the intentional tort when it hired and then failed to supervise and control Ralston. Viewed in this, proper, context, Count V is an allegation that satisfies the *Sampson* test -- an intentional tort by a sovereign employer that has a causal connection to the plaintiff's employment. And *Sampson* thus compels the conclusion that sovereign immunity is unavailable.

### STATEMENT OF THE CASE

On June 2, 2006, Charles Ralston raped Lisa Vacha. The rape occurred on the premises of the North Ridgeville French Creek Wastewater Treatment Plant, hereinafter referred to as "Treatment Plant," a facility owned and operated by Defendant City of North Ridgeville (hereinafter "City"). Both Plaintiff and Ralston were employees of the

Treatment Plant. The Plaintiff filed a Complaint against Ralston and the City. In its Amended Complaint, filed on December 23, 2008, the Plaintiff alleged the following against the City:<sup>1</sup>

**Count I** alleges that North Ridgeville is liable for the rape of Plaintiff because the rape occurred during the course and scope of Ralston's employment with North Ridgeville.

**Count II** alleges that North Ridgeville is liable for the rape of the Plaintiff because it failed to provide a safe working environment due to the negligent hiring supervision and employment of Ralston.

**Count III** alleges that North Ridgeville is vicariously liable for the actions of Ralston because the rape occurred while he was acting in his capacity as an employee of the North Ridgeville.

**Count IV** alleges that North Ridgeville was reckless in hiring and supervising Ralston which resulted in the failure to provide a safe work environment for the Plaintiff.

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<sup>1</sup> An additional count, Count VI, is an allegation against Ralston.

**Count V** alleges that North Ridgeville acted intentionally with willful and wanton disregard for the safety of the Plaintiff in hiring, supervising or otherwise controlling Ralston.

On or about June 30, 2009, the City of North Ridgeville ("City) filed its Motion for Summary judgment. Following briefing, the trial court granted summary judgment as to Counts I and III and denied summary judgment as to the remaining counts.

Pursuant to R.C. 2744.02(C), the City noted an appeal to the Ninth District Court of Appeals. The Ninth District agreed with Ms. Vacha and affirmed the trial court's denial of summary judgment regarding Count V. In this regard, the Ninth District held that the City could not avail itself of sovereign immunity to shield itself from Ms. Vacha's intentional tort claim in Count V. As to the unintentional torts alleged in Counts II and IV, the Ninth District agreed with the City that summary judgment should have been granted on the basis of Worker's Compensation immunity. Because the parties agreed that Worker's Compensation does not apply to intentional torts, the Ninth District's decision regarding Worker's Compensation immunity did not affect Count V.

Both parties asked the Ninth District Court of Appeals to certify conflicts with other districts regarding the various aspects of their decision. The City's motion, regarding sovereign immunity, was granted; a certified conflict was submitted to the Court in Case No. 2011-.1327. Ms. Vacha's motion, regarding Worker's Compensation immunity, was denied.

While their certified conflict motions were pending in the Ninth District, both parties noted appeals to this Court, in Case No. 2011-1050. The City appealed the denial of sovereign

immunity regarding Count V and presented a single proposition, Proposition of Law I, which is the proposition now before the Court in the merits briefs being filed.

Ms. Vacha cross-appealed, arguing that Worker's Compensation immunity was improperly applied to Counts II and IV. Ms. Vacha raised two propositions of law, numbered Propositions of Law II and III (so as to distinguish them from the City's single proposition of law in the same case). On October 5, 2011, this Court accepted the City's Proposition of Law I in Case No. 2011-1050, and held it for the decision in *Sampson*. That same day, the Court accepted the certified conflict case, No. 2011-1327, and also held it for *Sampson*. The Court consolidated the two cases. At the same time, by a 4 to 3 vote (Pfeiffer, Lundberg Stratton, and O'Donnell, dissenting), this Court declined to hear Ms. Vacha's Propositions of Law II and III. The dissenting justices would have accepted the two propositions presented by Ms. Vacha, and then held the entire case for *Sampson*. On November 30, 2011, with the same three justices dissenting, this Court declined to reconsider its jurisdictional decision regarding Ms. Vacha's cross-appeal.

*Sampson* was decided on February 16, 2012. On May 9, 2012, this Court ordered that the briefing stay be lifted and that the City's proposition of law and the certified question be briefed in a consolidated brief. Two members of this Court (Pfeiffer and Lanzinger, JJ.) dissented and opined that they would simply affirm the Ninth District.

### **STATEMENT OF THE FACTS**

Plaintiff Lisa Vacha was hired by the Defendant City of North Ridgeville ("City") to work at its French Creek Wastewater Treatment Plant ("Treatment Plant") in 1999. At some

point during her employment she became an unlicensed operator, responsible for plant maintenance, meter reading and high flows if the plant was flooding. (Plaintiff Dep., relevant portions attached to Response to Motion for Summary Judgment, Ex. A, at pp. 43, 46 and 47.)<sup>2</sup>

Approximately five years after Ms. Vacha was hired, Charles Ralston (“Ralston”) was hired by the City, in March of 2004, to work at the same Treatment Plant. (Ralston Dep., relevant portions attached hereto as Ex. B, at p. 8 and Notice of Job Posting, Ex. C.) Ralston is the father of two of then-North Ridgeville Mayor G. David Gillock’s, (“Mayor Gillock”) grandchildren. (Ralston Dep., Ex. B, at pp 7-9.) The grandchildren are the result of a four to five year relationship Ralston had with the Mayor’s daughter. (Gillock Dep., relevant portions at Ex. D, p. 6.) Ralston has known Mayor Gillock personally for at least 13 years. (Ralston Dep., Ex. B, at p. 24.) Ralston saw Mayor Gillock every weekend when he picked up his children for visitation. (*Id.* at p. 40.) On occasion they would sit down and talk. (*Id.* at p. 40.) At the time he was hired by North Rideville, Ralston owed over \$4,000.00 in back child support for the Mayor’s grandchildren. (Ralston Dep., Ex. B, at pp. 10-11.)

Ralston was convicted of domestic violence six times and once for assault prior to being hired by North Ridgeville. (*Id.* at pp. 18-20.) In fact, the victim in two of those domestic violence cases was Mayor Gillock’s daughter. (Ralston Dep., Ex. B, pp. 18-19, 22.) According to Ralston, he did not hide his criminal past or his domestic violence convictions from Mayor Gillock. (*Id.* at p. 81.) Mayor Gillock was aware that on two occasions his daughter called the police regarding claims of domestic violence by Ralston. (Gillock Dep., Ex. D, at pp. 7-8.)

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<sup>2</sup> Throughout this Brief, “Ex.” refers to exhibits attached to Plaintiff’s Response to Motion for Summary Judgment.

However, Mayor Gillock denied knowing the results of those cases or Ralston's criminal history. (*Id.* at p. 7.) Mayor Gillock admits that he has a good relationship with his daughter. (*Id.* at pp.4-5.)

Despite knowing that Ralston had been involved on at least two occasions with the police for domestic violence related issues, Mayor Gillock oversaw the hiring of Ralston for a Helper position at the Treatment Plant. (Johnson Dep., relevant portions, Ex. E, at p. 7.) As Mayor for the City of North Ridgeville, Mayor Gillock was somewhat involved in the hiring process of city employees; he conferred with department heads regarding open positions. (Gillock Dep., Ex. D, at p. 5.) On or about March 3, 2004, the job opening for a Helper D position was posted at the Treatment Plant. (Gillock Dep., Ex. D, at p. 11.) The job opening was not posted in a public avenue, such as a newspaper or the internet. Mayor Gillock contacted Ralston to inform him about the job with the Treatment Plant. (Gillock Dep., Ex. D, at p. 8.) Mayor Gillock told Ralston to go to the Plant and fill out an application (*Id.*) Mayor Gillock also told Ralston that the he would request that the plant supervisor give Ralston an interview. (*Id.* at p. 8.)

Mayor Gillock then contacted Donald Daley ("Daley"), plant superintendent or department head, and requested that Ralston be given an interview. (*Id.* at p. 10.) In this instance, Daley was responsible for interviewing Ralston. (Daley Dep., Ex. F, at p. 12.) Mayor Gillock testified in a deposition that he did not tell Daley about Ralston's involvement with his daughter or his criminal history. (Gillock Dep., Ex. D, at 10.) Daley then gave Dennis Johnson ("Johnson"), Safety Service Director Director, the "heads up" on Mayor Gillock's request to interview Ralston and recommended that he be hired. (Johnson Dep., Ex. E, at p. 7.) Johnson

approved the hiring of Ralston. (*Id.*) Johnson's decision to hire Ralston was done with oversight from Mayor Gillock. (Johnson Dep., Ex. E, at p. 7.)

Ralston admits that he went to the Treatment Plant to fill out an application. (Ralston Dep., Ex. B, p. 36.) Despite discovery requests no application has been produced. A copy of Ralston's resume, however, was produced. (Ralston's Resume, Ex. G.) Daley does not recall seeing Ralston's application. (Daley Dep., Ex. F, at p. 12.) On the same day Ralston allegedly filled out an application he spoke with Daley. (Ralston Dep., Ex. B, p. 36.) During that half hour discussion, Daley never questioned Ralston about his previous employers or previous employment. (Daley Dep., Ex. F, p. 10-11.) Nor did Mayor Gillock contact or have any discussions with Ralston's previous employers. (Gillock Dep. Ex. D, at p. 7.) In fact, during the interview, Daley admits only talked to Ralston about how much he needed the job and what type of work he would be doing. (Daley Dep, Ex. E, at p.11.)

Despite the sketchy existence of his application and the failure to check his past employment record, Ralston was not questioned about his criminal background either. (Daley Dep., Ex. F, at p. 10.) Similarly, no criminal background check was conducted. (Johnson Dep., Ex. E, at p. 10.) Since Daley assumed that City Hall previously vetted Ralston, Daley just "put him to work". (Daley Dep., Ex. F, at p. 12.) No other applicants interviewed for the Helper position. (*Id.* at p. 20.)

Ralston had problems with his employment from the outset. Within the first month of his employment, Ralston was fired by Daley for "missing time". (Daley Dep., Ex. F, at p. 13.)

Ralston was subsequently rehired by Johnson while Daley was on vacation. (*Id.* at p. 15.) Daley was told by Johnson that Ralston was being given a second chance. (*Id.*)

During his second chance, Ralston was involved in a verbal argument with the Plaintiff which started at the filter building. (Ralston Dep., Ex. B, pp. 43-44.) Ralston then followed the Plaintiff to the administration building. (Plaintiff's Dep., Ex. A, p. 71.) The verbal argument escalated whereby Ralston started slamming doors and kicking trash cans. (*Id.*) Plaintiff testified that she was afraid of Ralston. (*Id.*) Plaintiff immediately reported the incident to assistant superintendent, Mark Francis. (Plaintiff's Dep. Ex. A, p. 71.) Plaintiff further reported the incident to Daley. (Ralston Dep., Ex. B, pp. 45-46.) Ralston recalls being talked to by Daley about the incident. (*Id.* at 43-46.) Despite having these conversations, Daley did not recall having any problems with Ralston. (Daley Dep., Ex. F, p. 13.)

On the evening of June 2, 2006, Plaintiff and Ralston were on shift together. They were required to do rounds to check the operation and security of the Plant three times per shift. (Plaintiff's Dep., Ex. A, p. 84.). During that shift, Ralston physically assaulted and raped the Plaintiff.

## ARGUMENT

**In Response to the City's First Proposition of Law and Certified Question:**

**R.C. 2744.09(B) DOES NOT CREATE AN EXCEPTION TO POLITICAL  
SUBDIVISION IMMUNITY FOR INTENTIONAL TORT CLAIMS  
ALLEGED BY A PUBLIC EMPLOYEE.**

**DOES R.C. 2744.09 CREATE AN EXCEPTION TO POLITICAL  
SUBDIVISION IMMUNITY FOR INTENTIONAL TORT CLAIMS  
ALLEGED BY A PUBLIC EMPLOYEE?**

Before addressing what this case is about, it is important to note what this case is *not* about.

**This Case is Not About The City's *Vicarious* Liability for Ralston's Rape of Ms. Vacha**

Count V of the amended complaint<sup>3</sup> contains the allegation that is relevant to this case:

35. Defendant, City, acted intentionally, with willful, wanton disregard for the safety of others, in selecting, supervising or otherwise controlling, Defendant Charles Ralston.

36. Defendant, City's, failure to select, supervise or otherwise control, Defendant, Charles Ralston, was done intentionally, with malicious purpose, in bad faith or in a wanton or reckless manner with disregard for the safety of others and constitutes an intentional tort on the part of Defendant, City.

While the City and its amicus attempt to cast this case as one that decides whether the City is responsible for Ralston's intentional tort, Count V clearly states that the City is being sued in this Count for the City's intentional actions. Vicarious liability was alleged in Counts I and III; the trial court granted the City summary judgment on these counts and they have never been part of the City's interlocutory appeal of this case.

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<sup>3</sup> A copy of the amended complaint has been included as an appendix to this brief.

**This Case is Not About Whether There is Proof that the City Acted Intentionally**

As the Court is aware, normally, the denial of summary judgment is not immediately appealable. However, when a trial court denies a municipality “the benefit of an alleged immunity from liability,” that denial is a final order. R.C. 2744.02(C). The interlocutory appeal available in such a case is limited to the immunity issue and cannot address other aspects of the trial court’s decision. *Nagel v. Horner*, 162 Ohio App.3d 221, 2005-Ohio-3574, at ¶ 1, 833 N.E.2d 300 (4<sup>th</sup> Dist. App. 2005) (“Our review under R.C. 2744.02(C) is limited to the sovereign immunity issue.”). In light of the limited nature of the City’s right to appeal, the City has appropriately limited its argument in this Court to the sovereign immunity issue.

However, the City’s amicus, at pages 9 and 10 of its brief, addresses whether there is sufficient evidence of a common law intentional tort. The amicus argument in this regard thus exceeds (1) the issue presented to and accepted by this Court, and (2) the limited purpose of an interlocutory appeal regarding sovereign immunity. To make matters worse, the amicus argument goes beyond the arguments that the City, itself, made in the Ninth District. See, Opinion Below, at ¶ 16 ff. (City did not challenge sufficiency of evidence supporting the intentional tort claim on appeal). For this additional reason, this Court should likewise ignore the argument when it is now presented by the City’s amicus.

**What This Case is About: An Intentional Tort That Arises Out of the Employment Relationship**

The City’s Proposition of Law I is identical to the proposition that appellant CMHA presented in the *Sampson* case. It appears to have been decided by *Sampson*:

[¶ 17] Therefore, in accordance with the foregoing discussion and with our duty to apply plain statutory language as written, we hold that when an employee of a political subdivision brings a civil action against the political subdivision alleging an intentional tort, that civil action may qualify as a “matter that arises out of the employment relationship” within the meaning of R.C. 2744.09(B). Further, we hold that an employee’s action against his or her political-subdivision employer arises out of the employment relationship between the employee and the political subdivision within the meaning of R.C. 2744.09(B) if there is a causal connection or a causal relationship between the claims raised by the employee and the employment relationship.

*Id*

Applying *Sampson*, it is apparent that the trial court did not err in denying summary judgment because the City is not entitled to sovereign immunity for the intentional tort alleged in Count V. The allegation is one that has arisen out of the employment relationship, *i.e.*, there is a causal connection between the City’s tortious conduct alleged in Count V and the employment relationship. It is undisputed that both Ralston and Ms. Vacha were hired by the City, were required to work together by the City, and were employees of the City.

### CONCLUSION

Wherefore, the decision of the Ninth District Court of Appeals should be affirmed.

Respectfully submitted,



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## **APPENDIX**

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

LISA VACHA

Plaintiff

v.

CITY OF NORTH RIDGEVILLE

and

CHARLES L. RALSTON

Defendants

2008 DEC 23 11:09 AM CASE NO. 08 CV 156999

CLERK OF COMMON PLEAS JUDGE: RAYMOND J. EWERS  
RON NABAKOWSKI

AMENDED COMPLAINT

Now comes Plaintiff, Lisa Vacha, by and through her duly authorized attorney John P. Hildebrand, Sr. and for her Amended Complaint against Defendants, City of North Ridgeville and Charles Ralston, states as follows:

**COUNT I**

1. Plaintiff, Lisa Vacha, is a citizen of the United States of America and the State of Ohio and resides at 6989 River Corners Road, Spencer, Ohio, County of Lorain, State of Ohio.
2. Defendant, City of North Ridgeville (hereinafter referred to as City), is a city located in Lorain County, Ohio.
3. Defendant, Charles Ralston, resides in Lorain County, Ohio.
4. Plaintiff, Lisa Vacha, at all times relevant, was an employee of Defendant, City.
5. Defendant, Charles Ralston, at all times relevant, was an employee of Defendant, City.
6. On June 2, 2006, Defendant, Charles Ralston, while in the course and scope of his employment, assaulted and raped Plaintiff, Lisa Vacha while she was at work for Defendant, City.

7. Plaintiff, Lisa Vacha, sustained substantial and permanent injuries as a result of being assaulted and raped by Defendant, Charles Ralston.
8. As a result of Plaintiff, Lisa Vacha's injuries, she was caused to seek medical attention and incur medical expenses and will require treatment in the future.
9. Further as a result of Plaintiff, Lisa Vacha's injuries, she was caused to miss time from work and sustain a loss of income.
10. Plaintiff, Lisa Vacha's injuries are a direct and proximate result of Defendant, Charles Ralston's conduct.

## COUNT II

11. Plaintiff, Lisa Vacha, restates and realleges Paragraphs 1 through 10 of Plaintiff's Amended Complaint as if fully rewritten herein.
12. Defendant, City, hired, employed and supervised Defendant, Charles Ralston.
13. Defendant, Charles Ralston, was an employee of Defendant, City.
14. Defendant, Charles Ralston, while working in the course and scope of his employment with Defendant, City, did assault and rape Plaintiff, Lisa Vacha.
15. Defendant, City, owed Plaintiff, Lisa Vacha, a duty to provide and maintain a safe work environment for her.
16. Defendant, City, breached its duty to Plaintiff, Lisa Vacha, by hiring, employing and negligently supervising Defendant, Charles Ralston.
17. Plaintiff, Lisa Vacha, sustained substantial and permanent injuries as a direct and proximate result of Defendant, City's negligent supervision, hiring and employment of Defendant, Charles Ralston.

18. As a result of the injuries sustained by Plaintiff, Lisa Vacha, she was caused to seek medical attention and incur medical expenses and will require treatment in the future.
19. Further as a result of Plaintiff, Lisa Vacha's injuries, she was caused to miss time from work and sustain a loss of income.

### COUNT III

20. Plaintiff, Lisa Vacha, restates and realleges Paragraphs 1 through 19 of Plaintiff's Amended Complaint as if fully rewritten herein.
21. Defendant, City, is vicariously liable for the actions of Defendant, Charles Ralston.
22. Defendant, Charles Ralston, as an employee of Defendant, City, was an agent of Defendant, City, and while acting in his official capacity and in the course and scope of his employment did assault and rape Plaintiff, Lisa Vacha.
23. Plaintiff, Lisa Vacha, sustained substantial and permanent injuries as a direct and proximate result of the Defendant, Charles Ralston's conduct.
24. As a result of the injuries sustained by Plaintiff, Lisa Vacha, she was caused to seek medical attention and incur medical expenses and will require treatment in the future.
25. Further as a result of Plaintiff's injuries, she was caused to miss time from work and sustain a loss of income.
26. As a result of the employment relationship between Defendant, City, and Defendant, Charles Ralston, Defendant, City, is vicariously liable for the injuries sustained by Plaintiff, Lisa Vacha.

### COUNT IV

27. Plaintiff, Lisa Vacha, restates and realleges Paragraphs 1 through 26 of Plaintiff's Amended Complaint as if fully rewritten herein.

28. Defendant, City, acted recklessly in hiring Defendant, Charles Ralston, by hiring an employee they knew or should have known had a violent history and convictions for crimes of violence.
29. Furthermore Defendant, City, was reckless in failing to properly supervise Defendant, Charles Ralston, and in failing to protect its other employees.
30. As a result of Defendant, City's reckless actions, Defendant, Charles Ralston, assaulted and raped Plaintiff, Lisa Vacha.
31. Plaintiff, Lisa Vacha, sustained substantial and permanent injuries as a direct and proximate result of the Defendant, Charles Ralston's conduct.
32. As a result of the injuries sustained by Plaintiff, Lisa Vacha, she was caused to seek medical attention and incur medical expenses and will require treatment in the future.
33. Further as a result of Plaintiff's injuries, she was caused to miss time from work and sustain a loss of income.

#### COUNT V

34. Plaintiff, Lisa Vacha, incorporates by reference and realleges Paragraphs 1 through 33 of Plaintiff's Amended Complaint as if fully rewritten herein.
35. Defendant, City, acted intentionally with willful, wanton disregard for the safety of others, in selecting, supervising or otherwise controlling, Defendant, Charles Ralston.
36. Defendant, City's, failure to select, supervise or otherwise control Defendant, Charles Ralston, was done intentionally, with malicious purpose, in bad faith or in a wanton or reckless manner with disregard for the safety of others and constitutes an intentional tort on the part of Defendant, City.

COUNT VI

37. Plaintiff, Lisa Vacha, restates and realleges Paragraphs 1 through 36 of Plaintiff's Amended Complaint as if fully rewritten herein.
38. As a result of the intentional actions of Defendant, Charles Ralston, in assaulting and raping Plaintiff, Lisa Vacha, she has sustained severe emotional distress.
39. Plaintiff, Lisa Vacha's severe emotional distress is a direct and proximate result of the actions of Defendant, Charles Ralston, in assaulting and raping Plaintiff, Lisa Vacha.
37. Defendant, Charles Ralston, intentionally inflicted emotional distress upon Plaintiff, Lisa Vacha.
38. Plaintiff, Lisa Vacha, has incurred damages as a result of Defendant, Charles Ralston's intentional infliction of emotional distress and will continue to incur damages in the future.
39. Plaintiff, Lisa Vacha's damages are the direct and proximate result of Defendant, Charles Ralston's actions.

WHEREFORE, Plaintiff, Lisa Vacha, demands judgment in excess of \$25,000.00 for compensatory damages plus punitive damages and any additional sums as determined at the time

of trial, in addition to interest, costs, reasonable attorney fees and such other and further legal and equitable relief as this Honorable Court deems just and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true copy of the foregoing Plaintiff's Amended Complaint has been sent via U. S. Mail and e-mail, on this 22<sup>nd</sup> day of December, 2008, to:

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