

ORIGINAL

IN THE SUPREME COURT OF OHIO

15-1495

PNC BANK, N.A., TRUSTEE OF )  
 THE LEONARD G. STEUER TRUST, )  
 )  
 Plaintiff-Appellee, )  
 )  
 vs. )  
 )  
 )  
 LOREN N. COUPLIN, et al., )  
 )  
 Defendant-Appellees )

CASE NO. \_\_\_\_\_  
 On Appeal from the Cuyahoga  
 County Court of Appeals, Eighth  
 Appellate District  
 Court of Appeals Case  
 Number: CA 102813

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MEMORANDUM IN SUPPORT OF JURISDICTION

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 Leonard Steuer Trust u/a/d June 19, 1973

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## **EXPLANATION OF WHY THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST**

This case presents several issues of public or great general interest. At the trial level this case presented the trial court with the opportunity to address an issue of first impression in Ohio. Ohio had not yet been provided the opportunity to determine the legal definition of the phrase "lawful blood descendants". The trial court declined to take the opportunity to address this issue and instead awarded summary judgment to Defendant Loren Couplin. *Entry, Exhibit "A-1"*. The trial court stated that there was no Ohio case law on point defining "lawful blood descendant" then inexplicably awarded judgment as a matter of law on that very issue thereby defining a legal phrase for all of Ohio without so much as allowing a hearing on the merits of the case. *Entry at 3*. This is a fundamental injustice not only for Defendant-Appellant Hingada but for all Ohioans who will one day have their possessions transferred to loved ones via a testamentary instrument. Ohioans should not be bound by the decisions of other states when it comes to how their estates will be dispensed. Furthermore, Ohioans should also feel secure that in the event they turn to the judicial system to solve a problem the judiciary will not improperly rely solely on the judgments of other states to create precedent in Ohio. Appellant was deprived of her opportunity to fully litigate her case because the trial court relied on foreign precedent to support an award of summary judgment.

At the appellate level the Appellant was again denied the opportunity to present her case. Appellant filed her appeal with the court, in a timely manner, following a trial court order, which for all intents and purposes, decided the case. *Exhibit A-5*. The day after the Appellant filed her notice of appeal the trial judge issued a second Entry which defaulted a party the first Entry had omitted. This second Entry granted a motion for default which had been filed a year earlier against a party who never made an appearance. The Appellant did not amend her appeal based

on this second Entry. Neither Entry contained language stating it was a final appealable order and once the time frame for appeal ran another party filed a motion to dismiss the original appeal based on untimeliness. The appellate court granted the motion to dismiss (*Exhibit A-3*) and denied a motion for reconsideration (*Exhibit A-4*), thus, effectively denying the appellant her constitutional right to due process and allowing an improperly awarded summary judgment to create precedent on an issue of first impression. Additionally, the appellate court's refusal to allow the appeal is in direct contradiction with the Ohio Rules of Appellate Procedure. Ohio Rule of Appellate Procedure 4(C) states, "A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry." Furthermore, this Court has also repeatedly held that notices appealing a decision but appealing from the wrong entry should be treated as harmless error and that the appeal should still be heard. *Maritime Manufacturers, Inc. v. Hi-Skipper Marina*, 70 Ohio St.2d 257, 24, 436 N.E.2d 1034 (1982). *Barksdale v. Van's Auto Sales, Inc.*, 38 Ohio St.3d 127, 128, 527 N.E.2d 284 (1988). This Court has held that it is a "basic tenet of Ohio jurisprudence that cases should be determined on their merits and not on mere procedural technicalities." *Barksdale at 128*; *State v. Herzog*, 18 Ohio St.3d 337, 481 N.E.2d 593 (1985); *Perotti v. Ferguson*, 7 Ohio St.3d 1, 454 N.E.2d 951( 1983); *DeHart v. Aetna Life Ins. Co.*, 69 Ohio St.2d 189, 431 N.E.2d 644 (1982). Thus, the appellate court issued an order ignoring the rule, Court precedent, and a basic tenet of Ohio jurisprudence.

There is a strong public interest in settling issues of testamentary disposition so that Ohioans can feel secure that their wishes are being fulfilled after their demise. Additionally there is a strong public interest in ensuring that issues of first impression are fully litigated to

allow the courts to make the most informed decision and not simply rely on non-binding foreign precedent.

### STATEMENT OF THE CASE AND FACTS

On June 19, 1973, Leonard G. Steuer entered into a trust agreement (“Trust”) with National City Bank as Trustee. Leonard G. Steuer was survived by his wife, Anne R. Steuer, who was the primary beneficiary of the trust for her lifetime. Upon Anne’s death the trust was to be distributed one fourth to Irwin F. Steuer or his then living issue, one fourth to Beatrice Cohen or to her then living issue, and one half to the group consisting of Edward D. Green, Margaret Green, Joseph and Helen Ulman, or their respective then living issue. Steuer’s trust instrument included a definitions section which states that the terms “child” or “issue” “shall mean persons who are my lawful blood descendants or who are adopted by me or adopted by my lawful blood descendants or adopted by an adopted child or other issue of mine.” *The Leonard G. Steuer Trust, Exhibit "A-2" page 10 Section X*. However, the trust instrument fails to define what constitutes a “lawful blood descendant” or what is contemplated by the phrase “or other issue of mine.”

The trial court found that Leilani Hingada was identified as a possible blood relative of Andrew Couplin, who died on April 30, 2002. Andrew was issue of beneficiary Irwin Steuer, Leilani, as his daughter would be a beneficiary if the trial court determined her a “lawful blood descendant”.

Leilani’s mother and Andrew were never married, though they did live together for a time after Leilani’s birth. Andrew never adopted Leilani but no party seriously disputes that Leilani is Andrew’s biological daughter. Leilani requested that summary judgment be denied, in part, so that she may be afforded the opportunity to prove she was the biological daughter of

Andrew. However, the trial court precluded that possibility by ordering Summary Judgment on behalf of the Appellee. *A-1, at 4.*

The trial court held that because Leilani was not born of a marriage between Leilani's mother and Andrew Couplin she is not a lawful blood descendant of Leonard G. Steuer and therefore not capable of being a beneficiary. *Id. at 3-4.* The trial court based its decision on Leilani's failure to cite any case law supporting her assertions that "lawful blood descendants" means anything other than legitimate children while simultaneously noting there is no Ohio case law on point. *Id. at 3.* Instead, the trial court relied on non-controlling authority from foreign jurisdictions to make its determination. *Id.*

Appellant filed her appeal based on the trial court's March 4, 2015, Entry granting summary judgment to Appellee Loren Couplin. A day after her appeal was filed the trial court issued a new Entry on April 1, 2015, which defaulted Appellee Andrew Couplin, who had never made an appearance in the case. On June 23, 2015, the appellate court issued an Entry denying the appellant's appeal as being untimely filed. *Exhibit "A-3"*. Appellant filed a motion for reconsideration which the court denied on July 29, 2015. *Exhibit A-4.* The Appellant is filing the present Notice of Appeal before this Court based on the appellate court's refusal to allow her appeal.

## **ARGUMENT**

### **PROPOSITION OF LAW NO. 1**

*Where a litigant files a notice of appeal in a timely manner but which is based on an Entry that is not the final appealable order that notice should be treated as timely so long as there is no undue prejudice to any party.*

In this case, the Appellant filed her Notice of Appeal with the appellate court from a March 4, 2015, trial court Entry on March 31, 2015. One day later, on April 1, 2015, the trial

court issued a new Entry adjudicating a non-participating party, who never appeared in the case. *Exhibit A-4*. The appellate court held that the April 1, 2015, Entry was the final appealable order from which the Appellate should have appealed and therefore denied the appellant's appeal as untimely when not re-filed or amended following the April 1, 2015, Entry. The appellate court's refusal to allow the appeal is contrary to established Ohio Supreme Court precedent and the Ohio Rules of Appellate Procedure and it is contrary to the due process guaranteed under the U.S. and Ohio Constitutions and should therefore be reversed.

The United States Constitution provides that "no person...shall be deprived of life, liberty, or property without due process of law ..." *Fifth Amendment to the U.S. Constitution*. And, "... nor shall any State deprive any person of life, liberty, or property, without due process of law..." *Fourteenth Amendment to the U.S. Constitution*. The Ohio Constitution provides that "all courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law..." *Ohio Constitution, Article I, Section 16*.

Ohio Rule of Appellate Procedure 4(C) states, "A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry." In this case, the notice of appeal was filed a day prior to the entry that the court held began running the appeal time period. Therefore, under Ohio Rule of Appellate Procedure 4(C) the notice should have been treated as filed immediately after the April 1, 2015, Entry which would mean it was timely filed. This is especially logical in this case given that the two documents were filed within 24 hours of each other. Yet, the appellate court refused to allow the appeal to move forward, instead dismissing it as untimely and therefore denying the Appellant's constitutional

right to due process. The decision of the appellate court should be reversed under Ohio Rule of Appellate Procedure 4(C).

The decision of the appellate court should also be reversed under Ohio Supreme Court precedent. In *Barksdale*, the Court considered a case where the appellate court refused to hear the merits of a case because the appellant appealed from the denial of the trial court's denial of a motion for judgment n.o.v. and for a new trial as opposed to the court's judgment entry. *Barksdale at 128*. The Court held that it is "a basic tenet of Ohio jurisprudence that cases should be determined on their merits and not on mere procedural technicalities." *Id.* The Court then reversed the appellate court's decision and remanded for a review on the merits. *Id.*

The Court based its decision in *Barksdale* on its decision in *Maritime Manufacturers, Inc. v. Hi-Skipper Marina*, 70 Ohio St.2d 257, 436 N.E.2d 1034 (1982). *Id.* In *Maritime*, the Court held that an appeal from an order denying a new trial as opposed to the final judgment on the merits should be considered harmless error. *Maritime at 260*. The Court held, "any mistake in appealing from the order denying the motion for new trial rather than from the judgment should be treated as harmless error and that the appeal should be treated as if arising from the final judgment." *Id.* Similarly, in this case the Court should hold that the Appellant's March 31, 2015, appeal from the March 4, 2015, Entry should be considered as an appeal from the April 1, 2015, Entry. This will protect the Appellant's constitutional right to due process by allowing her appeal and it will not prejudice any other party in the case because it was clear to all parties that the Appellant intended to appeal. Furthermore, a decision for the Appellant in this case will uphold the basic tenet of Ohio jurisprudence, expounded by this Court, that appeals should be determined on their merits and not mere technicalities. Any other decision would be a

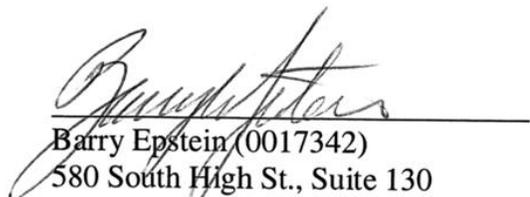
fundamental injustice to the Appellant and a denial of her rights to due process under the Ohio and U.S. Constitutions.

### CONCLUSION

Appellant has been denied her Constitutional right to due process by the decision of the appellate court which denied her appeal without considering the merits. Appellant has a right to an appeal and her notice of appeal while improperly filed from the wrong Entry should have been considered filed after the correct Entry under the Ohio Rules of Appellate Procedure and Ohio Supreme Court precedent.

Therefore, Appellant respectfully urges this Court to accept jurisdiction of this appeal because of the fundamental injustice involved, which violated the Appellant's constitutional right to due process and the public or great general interest of ensuring that Ohio courts are upholding the constitutional right to due process.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Barry Epstein", is written over a horizontal line.

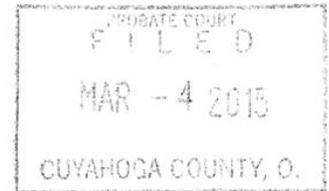
Barry Epstein (0017342)  
580 South High St., Suite 130  
Columbus, Ohio 43215  
Attorney for Defendant-Appellant  
Leilani Hingada

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Memorandum In Support of Jurisdiction was served upon Jeannette M. Weaver, Attorney for PNC Bank, N.A., Trustee of the Leonard G. Steuer Trust, 8748 Brecksville Road, Suite 200, Brecksville, Ohio 44141; Angela Carlin and Karen A. Davey, Attorneys for Defendant Loren Couplin, WESTIN, HURD, LLP, 1301 East Ninth Street, Suite 1900, Cleveland, Ohio 44114; and Aaron Couplin, 14640 Friar St., Apt. 14, Van Nuys, CA, 91411 by regular U.S. Mail this 10 day of July, 2015.

  
Barry W. Epstein      0017342  
Attorney for Defendant-Appellant  
Leilani Hingada

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
PROBATE DIVISION



PNC BANK, N.A., TRUSTEE OF THE  
LEONARD G. STEUER TRUST U/A/D  
JUNE 19, 1973

CASE NO. 2013ADV191191

Plaintiffs

v.

MR. LOREN N. COUPLIN, et al.

Defendants

**JUDGMENT ENTRY**

This matter is before the Court upon Defendant Loren N. Couplin's Motion for Partial Summary Judgment filed September 18, 2014, Leilani Hingada's Memorandum Contra to Defendant Loren N. Couplin's Motion for Partial Summary Judgment filed October 31, 2014, Defendant Loren N. Couplin's Reply to Defendant Leilani Hingada's Memorandum and Motion to Strike Affidavit of Nizar Milbes filed January 5, 2015 and Supplemental Brief filed February 5, 2015 and second Supplemental Brief to Defendant Loren N. Couplin's Motion for Partial Summary Judgment filed February 24, 2015.

Defendant Loren N. Couplin moves this Court to grant summary judgment in this case in his favor and against Defendant Leilani Hingada for the reasons that there is no genuine issue of material fact and defendant Loren Couplin is entitled to a declaration that Defendant Leilani Hingada is not one of the "lawful blood descendants of Leonard G. Steuer and therefore not a beneficiary of the Leonard G. Steuer Trust.

2013ADV191191



857341

AVJE

On June 19, 1973 Leonard G. Steuer entered into a trust agreement with National City Bank as Trustee. Leonard G. Steuer was survived by his wife, Anne R. Steuer who was the primary beneficiary of the trust for her lifetime. Upon Ann's death the trust was to be distributed one fourth to Irwin F. Steuer or his then living issue, one fourth to Beatrice Cohen or tho her then living issue, and one half to the group consisting of Edward D. Green, Margaret Green Joseph and Helen Ulman, or their respective then living issue. Steuer specifically provided in his trust instrument that issue includes only those who are "my lawful blood descendants or who are adopted by me or adopted by my lawful blood descendants or adopted by an adopted child or other issue of mine"

The Court finds that Defendant Leilani Hingada was identified as a possible blood descendant of Andrew Couplin who died on April 30, 2002. As Andrew was issue of beneficiary Irwin Steuer, Leilani would be a beneficiary if she were determined to be the "lawful blood descendent Andrew.

The Court finds that there is no dispute of fact regarding the marital status of Andrew at the time of Leilani's conception and birth. All parties agree that Leilani's mother was never married to Andrew. The parties further agree that there was never a legal determination of paternity and that there was no DNA testing to determine whether Andrew was the biological father of Leilani. The parties further agree that Leilani was never adopted by Andrew.

Defendant Loren N. Couplin argues that although there may be an issue of fact as to whether or not Andrew is Leilani's biological father, it is not a material issue. Loren sets forth several cases that hold that the term "lawful blood children" excludes illegitimate children.

Defendant Leilani Hingada moves this Court to deny summary judgment so as to afford her the opportunity to prove that she is the biological child of Andrew Couplin. Leilani asks this

Court to disregard the word “lawful” in the language of the Trust and asserts that we should not “punish this child over the interpretation of one word”.

Defendant Leilani Hingada sets forth the language of Ohio’s Wrongful Death Statute, R.C. 2125.02(A)(1) in her argument that she is entitled to benefits of the Steuer Trust despite being a possible illegitimate child of Andrew Couplin. This Court finds that application of the wrongful death statute is wholly inapplicable to the interpretation of the language of the Trust in this action.

Defendant Leilani Hingada also attaches to her brief the Affidavit and investigative report of Nizar Milbes as an attempt to convince the Court that although a paternity action filed by Leilani’s mother against Andrew was dismissed without resolution the conclusion should be that paternity was established. Defendant Loren N. Couplin moves this Court to Strike the Affidavit and investigative report as unauthenticated and inadmissible. The Court finds that Defendant Couplin’s Motion is well taken and that the Affidavit and investigation of Nizar Milbes is hereby stricken from the record.

The Court finds that Defendant Leilani Hingada fails to cite any case law to support her assertions that the language of a trust requiring distribution only to “lawful blood descendants” means anything other than a child born of marriage. The Court further finds that while there is no Ohio law on point the cases cited by Defendant Loren N. Couplin from the states of Illinois, Missouri, New York, Iowa, Tennessee, Washington, Kentucky and Georgia unequivocally hold that the word “lawful” in the context of interpreting “lawful blood descendants” means “legitimate”, or born within a marriage.

The Court finds that Defendant Leilani Hingada was not born of a marriage between Leilani’s mother and Andrew Couplin. The Court further finds that Defendant Leilani Hingada

is not one of the "lawful blood descendants" of Leonard G. Steueer and therefore not a beneficiary of the Leaonard G. Steuer Trust.

The Court finds and **Orders** that Defendant Loren N. Couplin is entitled to summary judgment in his favor and against Defendant Leilani Hingada and hereby declares that Defendant Leilani Hingada is not one of the "lawful blood descendants" of Leonard G. Steuer.

It is further **ORDERED** that the Clerk of Court shall serve upon all parties notice of this judgment and date of entry pursuant to Civ. R. 58(B).

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
**JUDGE LAURA J. GALLAGHER**

19. To collect as soon as possible after written notice comes to it of my death any and all moneys due and payable to it according to the terms of the insurance policies now a part of the trust, or which I may from time to time add thereto, whether such moneys are payable at my death or subsequent thereto. For such purposes the Trustee shall have full power and authority to execute and deliver any receipt or voucher for the same, to institute any suit or proceedings, and to do and perform any and all acts necessary for the purpose of collecting any sums which may be due and payable on account of said policies. The receipt of the Trustee shall be a full acquittance and discharge to the companies issuing said policies and shall relieve said companies of any duty to see to the application of the proceeds or the fulfillment of this trust; to deduct all expenses incurred as herein set forth;
20. To pay to the executrix, executor, administrator or representative of my estate or directly to the proper parties such amounts from the principal of the trust estate (excluding the proceeds of any life insurance policies or proceeds of any employee death benefits under a qualified plan as defined in Section 2039(c) of the Internal Revenue Code) as my Trustee may deem necessary to satisfy or assist in satisfying in whole or in part, any and all claims that are legally enforceable against my estate and expenses of its administration, which claims and expenses are allowable as a deduction under Section 2053 of the Internal Revenue Code for Federal Estate Tax purposes.

X

DEFINITIONS

As used herein "support" includes expenses of last illness, funeral or burial; "education" includes all forms and levels and incidentals thereto; and the terms "child" or "issue" shall mean persons who are my lawful blood descendants or who are adopted by me or adopted by my lawful blood descendants or adopted by an adopted child or other issue of mine.

XI

Any reference to "Executor" under the terms of this Trust Agreement shall include Executrix as well as Executor or Co-Executor, if such shall be applicable.

XII

SITUS

The Ohio Law shall govern the interpretation, construction and

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Nailah K. Byrd, Clerk of Courts

PNC BANK N.A. TRUSTEE OF THE LEONARD G STEUER TRUS

Appellee

COA NO.  
102813

LOWER COURT NO.  
2013ADV191191

PROBATE COURT DIVISION

-vs-

LOREN N. COUPLIN, ET AL.

Appellant

MOTION NO. 486009

Date 06/23/15

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Journal Entry

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Motion by appellee to dismiss is granted. The notice of appeal seeks review of an order granting partial summary judgment, which is not a final order. Appellant suggests that the court could allow her to amend her notice of appeal pursuant to App.R. 4(B)(2) to include the default judgment entered the day after the appeal was filed. However Rule 4(B)(2) only applies when a party wishes to appeal from a trial court ruling that was made on remand from this court, concerning a post-judgment motion.

RECEIVED FOR FILING

JUN 23 2015

CUYAHOGA COUNTY CLERK  
OF THE COURT OF APPEALS  
By *[Signature]* Deputy

Judge MARY J. BOYLE, Concurs \_\_\_\_\_

*[Signature]*  
MELODY J. STEWART  
Presiding Judge

CA15102813

89874526



# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Nailah K. Byrd, Clerk of Courts

PNC BANK N.A. TRUSTEE OF THE LEONARD G STEUER TRUS

Appellee

COA NO.  
102813

LOWER COURT NO.  
2013ADV191191

PROBATE COURT DIVISION

-vs-

LOREN N. COUPLIN, ET AL.

Appellant

MOTION NO. 487100

Date 07/29/15

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Journal Entry

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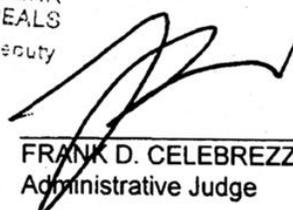
Motion by Appellant for reconsideration is denied.

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JUL 29 2015

CUYAHOGA COUNTY CLERK  
OF THE COURT OF APPEALS  
By  Deputy

Judge LARRY A. JONES, SR., Concur

  
FRANK D. CELEBREZZE, JR.  
Administrative Judge

CA15102813

90326795



IN THE PROBATE COURT  
DIVISION OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

PROBATE COURT  
FILED  
MAR 31 2015  
CUYAHOGA COUNTY, O.

PNC Bank, N.A., Trustee of  
The Leonard G. Steuer Trust,

Plaintiff,

vs.

Mr. Loren N. Couplin, et al.,

Defendants.

Case No. 2013 ADV 191191

JUDGE GALLAGHER

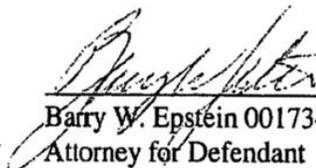
Complaint

CA 15 102813

**NOTICE OF APPEAL**

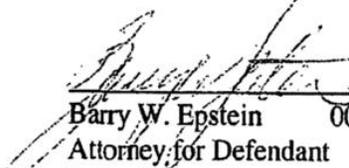
Notice is hereby given that Leilani Hingada appeals to the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, from the final judgment entered in this action on March 4, 2015.

**FILED**  
COURT OF APPEALS  
MAR 31 2015  
Clerk of Courts  
Cuyahoga County, Ohio

  
Barry W. Epstein 0017342  
Attorney for Defendant  
Leilani Hingada  
580 South High Street, Suite 130  
Columbus, Ohio 43215  
614-221-3966

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Notice of Appeal was served upon Jeannette M. Weaver, Attorney for PNC Bank, N.A., Trustee of the Leonard G. Steuer Trust, BOYKO, DOBECK & WEAVER, 7393 Broadview Road, Suite A, Seven Hills, Ohio 44131; Angela Carlin, Attorney for Defendant Loren Couplin, WESTIN, HURD, LLP, 1301 East Ninth Street, Suite 1900, Cleveland, Ohio 44114; and Aaron Couplin, 14640 Friar St., Apt. 14, Van Nuys, CA, 91411 by regular U.S. Mail this 27 day of March, 2015.

  
Barry W. Epstein 0017342  
Attorney for Defendant  
Leilani Hingada

CA15102813

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