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

ARTHUR P. DUECK, M.D., et al.,	)	CASE NO. 2018ADV234080
	)	
Plaintiffs,	)	JUDGE: ANTHONY J. RUSSO
	)	
v.	)	**MOTION TO DISMISS**
	)	
JOSEPH KERRIGAN, TRUSTEE, CLIFTON PARK TRUST, et al.,	)	
	)	
Defendants.	)	

Now come Joseph Kerrigan, Mary Ellen Fraser, Robert Frost, Warren Coleman, and Ryan Meany, the current trustees of the Clifton Park Trust (hereinafter "Defendants" or "Current Trustees") and move this Court to dismiss Count I of Plaintiffs' Second Amended Complaint, pursuant to Ohio Civ. R. 12(B)(6), for failure to state a claim upon which relief can be granted. Count I of Plaintiffs' Second Amended Complaint requests that this Court make declarations in direct contravention to the law set forth in the Eighth District's opinion in *Dueck v. Clifton Club Co.*, 2017-Ohio-7161. In short, the Eighth District and this Court in its March 19, 2018 final Judgment Entry have already decided the issues set forth in Count 1. Defendants also move to dismiss the entire Second Amended Complaint, pursuant to Ohio Civ. R. 12(B)(7). Plaintiffs have failed to join necessary and indispensable parties including the Clifton Club Company and the other lot owners/beneficiaries whose interests will be substantially affected by any ruling in this case. A Memorandum in Support is attached.

Respectfully submitted,

/s/ John R. Conley

William D. Kloss, Jr. (0040854)
Karen M. Moore (0021978)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, OH 43215
(614) 464-6400
(614) 464-6350 *facsimile*
wdklossjr@vorys.com
kmmoore@vorys.com

John R. Conley (0084079)
VORYS, SATER, SEYMOUR AND PEASE LLP
106 S. Main Street, Suite 1100
Akron, OH 44308
(330) 208-1000
(330) 208-1001 *facsimile*
jrconley@vorys.com

MEMORANDUM IN SUPPORT

I. FACTS[1]

The issues in this case have been litigated and decided by the Eighth District Court of Appeals and this Court. Arthur P. Dueck, Paul A. Bjorn, Nancy Binder, and William R. Keller (hereinafter "Plaintiffs") are lot owners in the Clifton Park Allotment in Lakewood, Ohio ("Clifton Park"). *See* Plaintiffs Second Amended Complaint (hereinafter "Amended Complaint"), ¶ 2. Clifton Park is a residential area owned and developed in the 1800s by the Clifton Park Association ("Clifton Park Association"). *Dueck v. Clifton Club Co*., 2017-Ohio-7161, ¶ 2. Clifton Park Association is the predecessor in interest to the Clifton Park Land & Improvement Company ("Land Company"). *Id*. The Clifton Club Company ("Club") was incorporated in 1902 to operate as a social club in Clifton Park. *Id*. On July 1, 1912, the Land Company conveyed four sublots in Clifton Park to the Club. *Id*. at ¶ 3. Membership in the Club is not "confined to residents of Clifton Park." *Wallace v. Clifton Park Land Co*. 92 Ohio St. 349, *10 (July 2, 1915). Rather, "a large number belonging thereto and patronizing the same are not residents." *Id*. In 2016 the Club purchased one additional sublot in Clifton Park.

In March 1912, the Land Company placed the Clifton Park private park and beach area (collectively the "Beach") into a trust ("Trust") for the use and enjoyment of all Clifton Park lot owners, vesting lot owners with the legal status of Trust beneficiaries ("Beneficiaries"). *Dueck, supra*, at ¶ 10. The Land Company also conveyed the private beach and park to five trustees, to hold for the use and benefit of Clifton Park lot owners.

> [Land Company]…does by these presents absolutely give, grant, remise, released and forever quitclaim unto said grantees [trustees], and their successors in trust or assigns, and the survivors or survivor of them, and the heirs of such survivor, forever, all such right and title as [Land Company] has or ought to have in the

[1] This Court is amply aware of the facts underlying this dispute. A comprehensive statement of facts applicable in full to this case can be found at *Dueck v. Clifton Club Co*., 2017-Ohio-7161, ¶¶ 2-33.

> following described pieces and parcels of land…, which have been reserved for the use and benefit of the owners of land in said allotment…; in trust, nevertheless, for the sole use and benefit of all the owners of sub lots or parts of lots, in the Clifton Park Allotment…; subject to the terms, conditions, and regulations herein contained, that is to say:…
>
> DUTIES OF TRUSTEES
>
> (1) The Trustees shall hold title to and preserve all the land deeded to them for the common use of all the lot owners in the Clifton Park allotment, and their successors in title, and members of their households. (2) No part of said land shall be sold, conveyed or dedicated to public use without the unanimous consent of all the lot owners in said allotment. (3) The trustees shall collect money from the persons interested as hereinafter provided, and from the sums so collected, and from any other moneys coming to their hands, shall pay taxes and assessments on said lands as they become payable; shall keep the weeds and grass cut, and trees, shrubbery and flower beds on said lands in good condition; shall provide for removal of snow and ice when necessary; shall keep the bathing pavilion, stairways, private roadways and sidewalks in repair; shall establish regulations for the use of, and provide for proper policing of private roads, lanes, parks and bathing pavilions; and generally maintain all said property in good order and condition for the use of lot owners in said allotment, as the same is now maintained.

See Amended Complaint, Exhibit A.

Defendants, the Current Trustees of the Trust, are charged with the duty to "hold title to and preserve all the land deeded to them for the common use of all the lot owners in the Clifton Park allotment, and their successors in title, and members of their households." *Id.* Defendants are granted the power to "establish regulations for the use of" the Beach. *Id.* Since at least 1942 the Club has made annual payments to the Trust and in exchange the trustees have granted use of the Beach to a finite number of non-lot-owning Club members. "Over the years, the meeting minutes of the Trustees as well as the Clifton Club's board of directors document the understanding that use of the Beach by the Club Members was regulated by the Trustees." *Dueck, supra,* at ¶61.

II. THE 2012 LITIGATION

In 2011 overcrowding of the Beach and related parking became an issue. *Id*., ¶ 17. In meetings between the Club, the then trustees, and several Clifton Park lot owners, it became apparent that a disagreement had developed as to the various parties' rights and responsibilities under the Trust, including the scope and extent of the non-lot-owning Club members' right to access the Beach. *Id*., ¶¶ 17-22.

On June 2, 2012, several Clifton Park lot owners[2] ("2012 Plaintiffs"), three of whom are plaintiffs here, filed a declaratory judgment action to seek this Court's guidance on the parties' rights and responsibilities under the Trust. *Id*., ¶ 22. Specifically, the 2012 Plaintiffs sought a declaration that non-lot-owning Club members are not Trust beneficiaries and, as a result, have no legal entitlement to use the Beach. *Id*. The 2012 Plaintiffs did not, however, request that non-lot-owning Club members be barred from using the Beach on a negotiated fee basis – a practice that has existed for decades. *Id*. In fact, the 2012 Plaintiffs agreed that non-lot-owning Club members have the right to use the Beach with the permission of the Trustees. *Id*., ¶ 21.

In the 2012 lawsuit, as in this action, the 2012 Plaintiffs did not join all lot owner Beneficiaries as parties. *Id*., ¶ 24. However, this Court held that all Beneficiaries of the Trust had legally protectable interests that would be affected by any ruling, and, accordingly, they were necessary parties to the 2012 case. *Id*. Ultimately this Court granted summary judgment in favor of the Club holding that "due to the status of the Clifton Club as a Beneficiary, the Clifton Club, and through it, all of its members, has a legal right to use Trust property, including the beach, subject to the regulations and restrictions as set forth in the Trust Deed and Club Deed." *Id*., ¶ 33. The 2012 Plaintiffs appealed.

[2] Arthur P. Dueck, Todd Gilmore, Nancy Binder, and William R. Keller.

On appeal, the 2012 Plaintiffs "consistently argued that the Club Members do not have a 'legal right' to use the Beach, **but that the right is by permission, and subject to regulations by the Trustees**." *Id*., ¶ 40 (emphasis added). The Eighth District itself noted that "the parties actually agree that Club Members may use the Beach **by permission, for an annual fee, with regulatory oversight by the Trustees.**" *Id*. (emphasis added). The Eighth District stated that the Trustees and the Club had a "historical understanding…that the [non-lot-owning] Club Members' right to access the Beach is permissive, and that **Trustees have full authority to regulate Beach access**." *Id*., ¶ 66 (emphasis added). Moreover, the Eighth District concluded "that the trial court correctly determined that the [non-lot-owning] Club Members have a 'right' to use the Beach," but, "that the [non-lot-owning] Club Members have no legal right of access as Beneficiaries. **Access by the [non-lot-owning] Club Members is by permission and regulation of the Trustees**." *Id*., ¶ 67, (emphasis added). Indeed, in its final conclusion the Eighth District stated: "[t]he [non-lot-owning] Club Members' [sic] have a permissive right to access the Beach as regulated by the Trustees pursuant to the Trust Deed." *Id*., ¶ 126. This Court's final judgment entered after the case was remanded agreed: "**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that members of the Clifton Club, who are not resident lot owners, are not equal or direct beneficiaries of the Trust and thus have no legal right to access the Beach under the Trust, although they do have a permissive right to access the Beach, as regulated by the Trustees pursuant to the Trust Deed."[3]

III. THIS CASE

Based upon a good faith reading of *Dueck v. Clifton Club Co*., 2017-Ohio-7161, the Current Trustees, named as Defendants, concluded they may grant non-lot-owning Club

[3] The Court initially entered this ruling on October 10, 2017, but stayed same pending the Ohio Supreme Court's jurisdictional decision. The Court lifted the stay on March 19, 2018, and this ruling was reinstated.

members permissive access to the Beach, in exchange for an annual fee and subject to the Trustees' regulation of such access as has occurred for decades. In line with their good faith understanding of the law governing this dispute, the Current Trustees promulgated new regulations controlling the non-lot-owning Club members' permissive access to the Beach during 2018. The Current Trustees also announced their plan to establish a committee comprised of lot owner beneficiaries to study beach use and assist in the promulgation of future beach rules.

On May 2, 2018, Plaintiffs filed their "Second Amended Complaint,"[4] seeking, in part, to enjoin the Defendants from exercising the precise regulatory power granted to them by the Trust, as confirmed by the Eighth District and this Court:

> 97. The Trustees have no authority under the terms of the Trust to grant a right to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust **without unanimous consent of the lot owners**. (Emphasis added).
>
> 98. The Clifton Park lot owners have not given unanimous consent to the Trustees to grant a right to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust.
>
> 99. The Trustees have no authority under the terms of the Trust to grant a right or permission to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust that is equal to the rights of the Trust beneficiaries **without the unanimous consent of the lot owners**. (Emphasis added).
>
> 100. The Clifton Park lot owners have not given unanimous consent to the Trustees to grant a right to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust that is equal to the rights of the Trust beneficiaries.

Thus, despite the Eighth District's decision, Plaintiffs now posit that the Current Trustees' grant of permissive Beach access to any non-lot-owning Club members **without unanimous consent of all lot owners** is a breach of fiduciary duty which must be enjoined. This contradicts the 2012 Plaintiffs' position on this precise issue and, more importantly, the Eighth District's holding that non-lot-owning Club members have the right to use the Beach **with**

[4] Plaintiffs filed their original Complaint on May 1, 2018.

the permission of the Trustees. *Dueck, supra*., ¶ 21, (emphasis added). Again, the Eighth District has made clear that: (1) "the [non-lot-owning] Club Members' right to access the Beach is permissive, and that Trustees have full authority to regulate Beach access." *Id*., ¶ 66; and, (2) "**Access by the [non-lot-owning] Club Members is by permission and regulation of the Trustees**." *Id*., ¶ 67, (emphasis added). This Court should dismiss this issue and order Plaintiffs to pay to the Trust the fees and expenses associated with litigating this already decided issue pursuant to R.C. 5810.04.

IV. LAW AND ARGUMENT

A. Count I of the Second Amended Complaint Must Be Dismissed Under Civ. R. 12(B)(6) Because The Issue Has Been Litigated And Decided.

A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint. *Assn. for the Defense of the Washington Local School Dist. v. Kiger* (1989), 42 Ohio St.3d 116, 117. "The factual allegations of the complaint and items properly incorporated therein must be accepted as true. Furthermore, the plaintiff must be afforded all reasonable inferences possibly derived therefrom." *Mitchell v. Lawson Milk Co*. (1988), 40 Ohio St.3d 190, 192. However, the court does not have to presume the truth of conclusions unsupported by factual allegations. *Guess v. Wilkinson* (1997), 123 Ohio App. 3d 430,434 (emphasis added). It must appear beyond doubt that plaintiff can prove no set of facts entitling her to relief. *O'Brien v. Univ. Community Tenants Union, Inc*. (1975), 42 Ohio St.2d 242; *Vail v. Plain Dealer Publishing Co.* (1995), 72 Ohio St.3d 279, 280.

The Trustees' right to grant permissive access to non-lot owning members of the Clifton Club has been conceded and litigated by Plaintiffs and decided in *Dueck v. Clifton Club Co*., 2017-Ohio-7161. Indeed, the 2012 Plaintiffs (three of whom are plaintiffs here) agreed with the premise that the Trustees may grant permissive access to non-lot owning Clifton Club members.

Id., ¶ 40. More importantly, the Eighth District held that: (1) non-lot-owning Club members have the right to use the Beach **with the permission of the Trustees**. *Id*., ¶ 21, (emphasis added); (2) "the [non-lot-owning] Club Members' right to access the Beach is permissive, and that Trustees have full authority to regulate Beach access." *Id*., ¶ 66; and, (3) "**Access by the [non-lot-owning] Club Members is by permission and regulation of the Trustees**." *Id*., ¶ 67, (emphasis added).

Despite the foregoing, Plaintiffs' Amended Complaint alleges that Defendants are precluded from granting "a right to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust without unanimous consent of the lot owners." Because this issue has been decided by the Eighth District, Plaintiffs may not litigate it again.

The doctrine of *res judicata* precludes both the relitigation of a cause of action, known as claim preclusion, and the relitigation of particular facts or issues between the same parties in another action on a different claim or cause of action, known as issue preclusion, and is often called collateral estoppel. *State ex rel. Schachter v. Ohio Pub. Emps. Retirement Bd*., 121 Ohio St. 3d 526; *State ex rel. Davis v. Pub. Emps. Retirement Bd*., 120 Ohio St. 3d 386; *Fort Frye Teachers Ass'n, OEA/NEA v. State Employment Relations Bd.*, 81 Ohio St. 3d 392. Issue preclusion holds that a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions was identical or different. *State ex rel. Stacy v. Batavia Local School Dist. Bd. of Edn.*, 97 Ohio St. 3d 269.

As noted above, all Clifton Park lot owners were parties to the 2012 litigation; indeed, three of the plaintiffs in that litigation are plaintiffs here. Mr. Bjorn, although not a plaintiff in

the 2012 litigation, was a lot owner and a party to the litigation. The previous trustees were defendants in the prior litigation. And, although four of the five Current Trustees are different people, they occupy the same office occupied by the previous trustees. All have been sued in their capacity as trustees of the Clifton Park Trust, and their rights and obligations under the Trust are identical. Therefore, this litigation is between the same parties and/or their privies.

The rights and responsibilities of the trustees under the Trust was the primary issue in the 2012 litigation. The Eighth District held that: (1) non-lot-owning Club members have the right to use the Beach **with the permission of the Trustees**. *Id.*, ¶ 21, (emphasis added); (2) "the [non-lot-owning] Club Members' right to access the Beach is permissive, and that Trustees have full authority to regulate Beach access." *Id.*, ¶ 66; and, (3) "**Access by the [non-lot-owning] Club Members is by permission and regulation of the Trustees**." *Id.*, ¶ 67, (emphasis added). This Court's final judgment entered after the case was remanded agreed: "**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that members of the Clifton Club, who are not resident lot owners, are not equal or direct beneficiaries of the Trust and thus have no legal right to access the Beach under the Trust, although they do have a permissive right to access the Beach, as regulated by the Trustees pursuant to the Trust Deed." All parties have conceded that this Court and the Eighth District were the appropriate courts to decide this matter. Therefore, the doctrine of issue preclusion prevents Plaintiffs from continuing to litigate this issue and Count I of the Amended Complaint must be dismissed.

Even if the Court indulges Plaintiffs and ignores that this issue has been decided, Count I still must be dismissed. The Trust document, which Plaintiffs agree is the "sole source of authority for the Trustees,"[5] and which Plaintiffs have attached to their Amended Complaint as Exhibit A, states that no part of the Beach can be "sold, conveyed or dedicated to public use

[5] See Plaintiffs' Second Amended Complaint, paragraph 19.

without the unanimous consent of all the lot owners in" Clifton Park. *See* Amended Complaint, Exhibit A. Plaintiffs appear to contend that Defendants' grant of permissive Beach access to non-lot-owning Club members is tantamount to selling, conveying or dedicating the Beach to public use. However, the Current Trustees' exercise of the power conveyed by the Trust (to hold and regulate access to the Beach for the use and benefit of all Clifton Park lot owners, including the Club) could not be a sale, conveyance or dedication to public use under any stretch of the imagination.

The bottom line is this: Plaintiffs' claim that Defendants are required to obtain the unanimous consent of all Clifton Park lot owners before they can grant permissive Beach access to Club members is wrong. So too is Plaintiffs' claim that granting permissive access is a breach of fiduciary duty. The Eighth District ruled that the Trust grants the Trustees "full authority to regulate Beach access." *Id.*, ¶ 66. Furthermore, the Eighth District has ruled that the Trustees may grant permissive access to non-lot owning Club members. Count I of Plaintiffs' Amended Complaint should be dismissed as it fails to state a claim upon which relief may be granted.

B. <u>The Entire Second Amended Complaint Should Be Dismissed Because Plaintiffs Again Have Failed To Join All Necessary Parties.</u>

Under Ohio Civ. R. 12(B)(7), a defendant may move the Court to dismiss an action for failure to join a party under Civ. R. 19 or Civ. R. 19.1. Civ. R. 19(A) requires joinder of a non-party if:

> (2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
>
> (a) as a practical matter impair or impede his ability to protect that interest, or
>
> (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest…

In addition to the joinder requirements of Civ. R. 19, O.R.C. § 2721.12 delineates the standard for determining necessary parties to a declaratory judgment action:

> When Declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration.

Thus, parties must be joined if they are "legally affected." *Driscoll v. Austintown Associates* (1975), 42 Ohio St. 2d 263, 273. The failure to comply with O.R.C. §2721.12, is a jurisdictional defect that precludes a court from properly rendering a declaratory judgment. *Cincinnati v. Whitman*, 44 Ohio St. 2d 58 (1975), syllabus.

1. <u>All Clifton Park Lot Owners Are Necessary Parties And Their Absence Effectively Denies This Court Jurisdiction To Hear This Matter.</u>

Plaintiffs are beneficiaries, as are all Clifton Park lot owners, including the Clifton Club. Plaintiffs ask this Court to determine the rights and interests of the Trust's beneficiaries. Allowing this suit to proceed without all beneficiaries would violate the express mandate of O.R.C. §2721.12, which requires that "parties who have or claim any interest which would be affected by the declaration," be joined. This is especially true as it relates to the Clifton Club – Plaintiffs' Amended Complaint effectively seeks a declaration that Clifton Club members may not use the beach under any circumstances. The importance of that issue to the Clifton Club is self-evident, and the Clifton Club should be a party.

In *Cerio v. Hillroc Condominium Unit Owners Association*, 8th Dist. No. 83309, 2004-Ohio-1254, the Eighth District addressed this precise issue. There, 31 property owners filed suit against their condominium association seeking a declaratory judgment regarding the propriety of an assessment for repairs. The defendant condominium association moved to dismiss arguing that plaintiffs failed to include all condominium unit owners as parties. The *Ceiro* court held that under R.C. §2721.12, the "absence of a necessary party is a jurisdictional defect that precludes

any declaratory judgment." *Id.* at ¶ 10. *Cerio,* Citing *Bretton Ridge Homeowners Club v. DeAngelis,* 51 Ohio App. 3d 183, 185 (8th Dist. 1988). Because it was being asked to declare rights as to all owners, such a declaration "affects the legal interests and claims of those unit owners not named." The court went on to hold that O.R.C. §2721.12 "requires their inclusion in the action," and the failure to join them "renders any declaration by the court void." *Cerio* at ¶ 11.

The same result should follow here. Plaintiffs ask this Court to make a determination that would affect all beneficiaries, especially the Clifton Club. However, beneficiaries not a party to this action have no ability to protect their own deeded interests in this lawsuit, a plain violation of Civ. R. 19(A)(2). Likewise, beneficiaries pay an annual assessment pursuant to the Trust, meaning each lot owner has a "legally protectable interest" in the use of the assessed funds. If non-lot owning Clifton Club members are barred from the Beach, the Clifton Club surely will object to payment of its significant beach assessment, which will result in a significant economic impact to other beneficiaries.

Last, litigating this action with only four of the Clifton Park lot owners will subject the Current Trustees to a "substantial risk of incurring double, multiple or otherwise inconsistent obligations." Civ. R. 19(A)(2)(b). This Court is being asked to interpret deed language that is common to all lot owners. Thus, each and every lot owner has a "legally protectable interest" that could be similarly pursued, and the Current Trustees therefore subjected to the kind of "double, multiple, or inconsistent obligations" that Civ. R. 19 seeks to avoid. The absence of all beneficiaries as parties is a jurisdictional defect that precludes this Court from rendering a declaratory judgment pursuant to O.R.C. § 2721.12, Civ. R. 12(B)(7) and Civ. R. 19. As such, the Amended Complaint should be dismissed.

V. CONCLUSION

The Current Trustees, like all past and future trustees, have the power to grant non-lot-owning Club members permissive access to the Beach in exchange for a negotiated fee and subject to applicable regulations. This issue has been conceded, litigated, and decided and Count I of Plaintiffs' Amended Complaint must be dismissed. In addition, given the nature of Plaintiffs' assertions and requested relief, all Clifton Park lot owners are necessary parties to this action. Therefore, either the case must be dismissed, or Plaintiffs must be given leave to join all necessary parties. Once this Court has ruled on these outstanding issues, Defendants will seek the Court's assistance under the Trust code for guidance on the rules criticized in Counts II and III of Plaintiffs' Amended Complaint.

Respectfully submitted,

/s/ John R. Conley

William D. Kloss, Jr. (0040854)
Karen M. Moore (0021978)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, OH 43215
(614) 464-6360
(614) 464-6350 *facsimile*
wdklossjr@vorys.com
kmmoore@vorys.com

John R. Conley (0084079)
VORYS, SATER, SEYMOUR AND PEASE LLP
106 S. Main Street, Suite 1100
Akron, OH 44308
(330) 208-1000
(330) 208-1001 *facsimile*
jrconley@vorys.com

CERTIFICATE OF SERVICE

I hereby certify pursuant to Civ.R. 5(B)(2)(f), that a true and accurate copy of the foregoing *Motion to Dismiss* was served this 15th day of May, 2018 via email upon counsel for Plaintiffs:

Dennis R. Rose
Casey J. McElfresh
Hahn Loeser + Parks LLP
200 Public Square, Suite 2800
Cleveland, OH 44114-2316
drrose@hahnlaw.com
cmcelfresh@hahnlaw.com
Attorneys for Plaintiffs

/s/ John R. Conley
William D. Kloss, Jr. (#0040854)
Karen M. Moore (#0021978)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, OH 43215
wdklossjr@vorys.com
kmmoore@vorys.com
(614) 464-6400 *telephone*
(614) 464-6350 *facsimile*

John R. Conley (#0084079)
VORYS, SATER, SEYMOUR AND PEASE LLP
106 S. Main Street, Suite 1100
Akron, OH 44308
jrconley@vorys.com
(330) 208-1000
(330) 208-1001 *facsimile*

Counsel for Defendants