

DECOTIIS, FITZPATRICK COLE & GIBLIN, LLP

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Attorneys for Declaratory Plaintiff/Petitioner Township of Verona

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF VERONA, a
Municipal Corporation of the State of New
Jersey,

Plaintiff/Petitioner,

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: ESX-L-**

Civil Action (Mount Laurel)

**COMPLAINT
FOR DECLARATORY JUDGMENT**

Declaratory Plaintiff/Petitioner, the Township of Verona, County of Essex, State of New Jersey (hereinafter “**Verona**” or the “**Township**”), a municipal corporation and body politic organized under the laws of the State of New Jersey, with principal offices located at 600 Bloomfield Avenue, Verona, New Jersey 07044, by way of Complaint for Declaratory Judgment (“**DJ Action**”) as authorized under Directive #14-24 issued by the Administrative Office of the Courts (the “**Directive**”) says:

NATURE OF ACTION

1. The Township is a municipal corporation of the State of New Jersey.
2. The New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality “must, by its land use regulations, make realistically possible the opportunity for an

appropriate variety and choice of housing for all categories of people who may desire to live there,

of course including those of low and moderate income,” In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 NJ. 1, 6 (2015) (“**Mount Laurel IV**”), citing S. Burlington County NAACP v. Township of Mount Laurel (“**Mount Laurel I**”), 67 NJ. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires that municipalities must provide “a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing,” Id., citing S. Burlington County NAACP v. Township of Mount Laurel (“**Mount Laurel II**”), 92 N.J. 158, 205 (1983), (together with Mount Laurel I, the “**Mount Laurel Doctrine**”).

3. On March 20, 2024, Governor Murphy signed into law P.L.2024, c.2. (hereinafter “**A4**”), amending the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the “**Act**”) and establishing a framework for determining and enforcing municipalities' affordable housing obligations under the Mount Laurel Doctrine for the years 2025 - 2035 (the “**Fourth Round**”).

4. Pursuant to the Directive, implementing the Affordable Housing Dispute Resolution Program (the “**Program**”) for the Fourth Round, a municipality seeking certification of its affordable housing obligations and Housing Element and Fair Share Plan in accordance with Act, shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located.

5. Through this DJ Action, the Township seeks the following declaratory relief:

(a) Declaring that the Township has established Jurisdiction for the

Program by the filing of this DJ Action within forty-eight (48) hours after the adoption of a binding resolution to confirm its present and prospective affordable housing obligations;

- (b) Declaring the Township's Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Mayor and Council of the Township on January 20, 2025, a certified copy of which is attached hereto as **Exhibit A** (the "**Resolution**").
- (c) Declaring the Township has prepared and adopted a Fourth Round Housing Element and Fair Share Plan ("**4th Round HEFSP**"), in accordance with A4 and the Act, which will be adopted by the Township's Planning Board and subsequently endorsed by the Township's Mayor and Council, no later than June 30, 2025, which may include adjustments permitted by law, including, but not limited to i) a "windshield survey" or similar survey which accounts for a lower estimate of present need; ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; iii) a Durational Adjustment (whether predicated upon lack of sewer or lack of water or both); iv) an adjustment to the Land Capacity Factor; and/or v) an adjustment predicated upon regional planning entity formulas, inputs, or considerations, including, but not limited to the County and State Regional Master Plan;

- (d) Declaring the Township immune from all exclusionary zoning litigation, including but not limited to the builder's remedy lawsuits, during the pendency of the process outlined in A4 and the Act; and
- (e) Declaring the Township in compliance with A4 and the Act and issue a certificate of compliance and immunity from exclusionary zoning litigation in accordance with A4 and the Act, as well as the Directive, ending on June 30, 2025; and
- (f) Declaring such other relief the Court deems right and proper.

JURISDICTION AND VENUE

6. This DJ Action is brought by the Township pursuant to the New Jersey Declaratory Judgments Act, N.J.S.A. 2A: 16:50 et seq.

7. This DJ Action is also being filed by the Township in accordance with A4, the Act, and the Directive, implementing the Program.

8. Venue is proper in the Superior Court of New Jersey, Essex County Vicinage, pursuant to the Directive, as the Township is situated within Essex County.

FACTUAL AND PROCEDURAL BACKGROUND

9. Pursuant to Mount Laurel IV, the Township filed a declaratory judgment action on July 10, 2015, captioned In the Matter of the Township of Verona and bearing Docket No. ESX-L-4773-15, seeking a judicial declaration that the Township's Housing Element and Fair Share Plan ("**3rd Round HEFSP**") satisfied the "fair share" of the regional need for very low - low- and moderate-income housing, pursuant to the Mount Laurel Doctrine, that culminated in a settlement agreement with Fair Share Housing Center ("**FSHC**") dated February 23, 2021.

10. On September 21, 2021, the Court entered an Order of Fairness and the Township has complied with all requirements and directives thereof.

11. A4 required the New Jersey Department of Community Affairs (the “DCA”) to produce non-binding estimates of need for present and prospective need for low- and moderate- income housing in each municipality for the Fourth Round on or before October 20, 2024.

12. On October 18, 2024, in furtherance of such requirement, the DCA issued a report entitled “Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background” (the “DCA Report”) which established the final calculation and obligations for each municipality in New Jersey, including the Township.

13. The DCA Report calculated the Township’s Fourth Round obligation as follows: a Present Need (or Rehabilitation Obligation) of zero (0) units and a Prospective Need (or New Construction Obligation) of one hundred seventy-three (173) units.

14. Section 3 of A4 provides “the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7” of A4.

15. The Township’s professionals, including legal counsel and affordable housing consultants, utilized the formulas established in sections 6 and 7 of A4 and thereafter determined the Township was eligible to adjust the DCA estimate of Prospective Need for the Township as described in the DCA Report to sixty-six (66) units and the Township accepted the DCA estimate of Present Need for the Township as described in the DCA Report as is more fully set forth and memorialized in the Resolution adopted by the Mayor and Council of the Township.

16. As the calculation of the Present Need and Prospective Need were calculated

in accordance with Sections 6 and 7 of A4, the Township is entitled to a presumption of validity of the same.

17. In the Resolution, the Township specifically reserved the right to adjust the Fourth Round Prospective Need calculated by DCA during the process of promulgating, and prior to the adoption of, the Township's 4th Round HEFSP.

18. The Resolution further provided that the Township's Planning Board "shall adopt and the Council shall endorse" no later than June 30, 2025 the Township's 4th Round HEFSP in accordance with A4, the Act, and the Resolution and any determinations made with respect to this matter in the Program.

COUNT ONE
(JURISDICTION PURSUANT TO A4)

19. The Township repeat, realleges and makes a part hereof each and every allegation contained in Paragraphs 1 – 18 of this Complaint and incorporates same by reference as though fully set forth herein at length.

20. A4 established the Program to provide a mechanism for effectively resolving disputes involving the affordable housing obligations of a municipality as determined under the Act.

21. A4 thereafter authorized the Director of the Administrative Office of the Courts to establish procedures for the Program.

22. In furtherance of the same, on December 13, 2024, the Acting Administrative Director of the Courts issued the Directive which promulgated procedures and guidelines for the implementation of the Program.

23. The Directive provides that in order for a municipality to obtain a certification of compliance pursuant to the Act, the municipality shall be required to file an action in the form

of a declaratory judgment complaint and Civil Case Information Statement in the county in which the municipality is located.

24. Pursuant to the Directive, the declaratory judgment action must be filed within forty-eight (48) hours after adoption of the required municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner and the municipality is required to include a copy of the required resolution adopted by the governing body of the municipality with the municipality's initial filing.

25. The Mayor and Council of the Township adopted the Resolution, a certified copy of which is attached hereto as **Exhibit A**, satisfying the Township's requirement of adopted a binding resolution establishing its present and prospective affordable housing obligations within the timeframe established by A4 and in accordance with the methodology and formula set forth within the Act.

26. Based upon the foregoing, the Township has established jurisdiction within the Program and before the Superior Court of New Jersey, Essex County Vicinage, with regard to this DJ Action.

COUNT TWO
(DETERMINATION OF OBLIGATION)

27. The Township repeats, realleges and makes a part hereof each and every allegation contained in Paragraphs 1 – 26 of this Complaint and incorporates same by reference as though fully set forth herein at length.

28. A4 set forth the specific methodology to calculate a municipality's Present Need and Prospective Need with respect to the municipality's obligation to provide affordable housing for the Fourth Round and directed the DCA to apply said methodology and publish a report with its calculations for all of the municipalities in New Jersey.

29. The DCA released the DCA Report on October 18, 2024.

30. Pursuant to the DCA Report, DCA calculated the Township's Present Need (Rehabilitation Obligation) as zero (0) units and the Prospective Need (or New Construction Obligation) of one hundred seventy-three (173) units.

31. The Mayor and Council of the Township adopted the Resolution on January 20, 2025, memorializing the determination of the Township that the Township was eligible to adjust the DCA estimate of Prospective Need for the Township as described in the DCA Report to sixty-six (66) units and the Township accepted the DCA estimate of Present Need for the Township as described in the DCA Report as is more fully set forth and memorialized in the Resolution.

32. In the Resolution, the Township specifically reserved the right to adjust the Fourth Round Prospective Need calculated by DCA during the process of promulgating, and prior to the adoption of, the Township's 4th Round HEFSP.

33. A certified copy of the Resolution is attached hereto as **Exhibit A**.

COUNT THREE
(4th ROUND HEFSP)

34. The Township repeats, realleges and makes a part hereof each and every allegation contained in Paragraphs 1 – 33 of this Complaint and incorporates same by reference as though fully set forth herein at length.

35. A4 states that every municipality shall adopt a housing element and fair share plan as provided for by the Act and proposed drafts of appropriate zoning and other ordinances and resolutions to implement its Present Need and Prospective Need on or before June 30, 2025.

36. Following adoption of the housing element and fair share plan for the Fourth Round by a municipality, A4 dictates that the municipality shall file its housing and element fair

share plan with the Program within forty-eight hours after adoption.

37. In the Resolution, the Mayor and Council of the Township provided that the Township's Planning Board "shall adopt and the Council shall endorse" no later than June 30, 2025, the Township's 4th Round HEFSP in accordance with A4, the Act, and the Resolution and any determinations made with respect to this matter in the Program.

38. The Resolution further provides that the Township specifically reserved the right to adjust the Township's Fourth Round Prospective Need as calculated by DCA during the process of promulgating, and prior to the adoption of, the Township's 4th Round HEFSP.

39. Following adoption of the Township's 4th Round HEFSP by the Township's Planning Board and endorsement by the Mayor and Council of the Township, the Township shall upload its 4th Round HEFSP to Court within 48 hours of adoption for approval by the Program.

COUNT FOUR
(IMMUNITY)

40. The Township repeats, realleges and makes a part hereof each and every allegation contained in Paragraphs 1 – 39 of this Complaint and incorporates same by reference as though fully set forth herein at length.

41. Pursuant to A4 and the Act, a municipality that complies with the deadlines in A4 and the Act, both for determining Present Need and Prospective Need of the municipality's affordable housing obligation and for adopting the appropriate and required municipal housing element and fair share plan shall have immunity from exclusionary zoning litigation.

42. The Township, with the adoption of the Resolution by the Mayor and Council on January 20, 2025 and with the filing of this Complaint on January 22, 2025, has met the deadline for the adoption and filing of its binding resolution and the filing of the instant matter, in accordance with the Directive and is therefore entitled to immunity from exclusionary zoning

litigation at this time.

43. After timely filing of the Township's 4th Round HEFSP with the Program, the Township shall be entitled to immunity from exclusionary zoning litigation through the end of the Fourth Round, or until June 30, 2035.

WHEREFORE, Plaintiff/Petition, the Township of Verona, seeks a declaratory judgment for the following relief:

(a) Declaring that the Township of Verona has established Jurisdiction for the Program by the filing of this DJ Action within forty-eight (48) hours after the adoption of the Resolution on January 20, 2025 by the Mayor and Council of the Township of Verona, with the Resolution constituting a binding resolution confirming the Township of Verona's Present Need and Prospective Need Fourth Round affordable housing obligations;

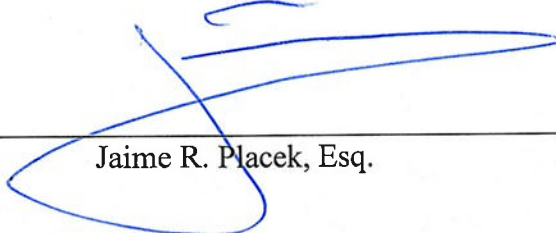
(b) Declaring the Township of Verona's Present Need and Prospective Need Fourth Round affordable housing obligations as is set forth in the Resolution adopted by the Mayor and Council of the Township of Verona on January 20, 2025, a certified copy of which is attached hereto as Exhibit A;

(c) Declaring the Township of Verona has prepared and adopted its 4th Round HEFSP, in accordance with A4 and the Act, which will be adopted by the Township of Verona's Planning Board and subsequently endorsed by the Mayor and Council of the Township of Verona, no later than June 30, 2025, which may include adjustments permitted by law;

(d) Declaring the Township of Verona to be in compliance with A4 and the Act and issue a certificate of compliance and immunity from exclusionary zoning litigation in accordance with A4 and the Act, as well as the Directive for the Fourth Round, ending on June 30, 2025; and

(e) Declaring such other relief the Court deems just and proper.

DECOTIIS, FITZPATRICK COLE & GIBLIN, LLP
Attorneys for Declaratory Plaintiff/Petitioner
Township of Verona

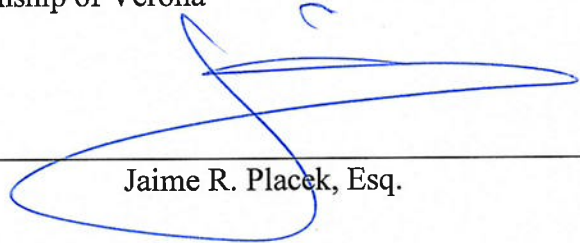
By: 
Jaime R. Placek, Esq.

Dated: January 22, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Jaime R. Placek, Esq. is hereby designated as Trial Counsel in this matter.

DECOTIIS, FITZPATRICK COLE & GIBLIN, LLP
Attorneys for Declaratory Plaintiff/Petitioner
Township of Verona

By: 
Jaime R. Placek, Esq.

Dated: January 22, 2025

CERTIFICATION PURSUANT TOR. 4:5-1

It is hereby certified in accordance with R. 4:5-1 that the specific matter in controversy is not, to my knowledge, the subject of any action pending in any Court, nor of any pending arbitration proceeding. There are no other actions or arbitration proceedings in existence or contemplated at this time, and I know of no other party who should be joined in this action. I hereby certify that these statements made by me are true. I am aware that if any of these statements is willfully false, I am subject to punishment.

DECOTIIS, FITZPATRICK COLE & GIBLIN, LLP
Attorneys for Declaratory Plaintiff/Petitioner Township
of Verona

By: 

Jaime R. Placek, Esq.

Dated: January 22, 2025

EXHIBIT A

**TOWNSHIP OF VERONA
COUNTY OF ESSEX, STATE OF NEW JERSEY**

RESOLUTION No. 2025-25

A motion was made by Councilwoman McGrath; seconded by Councilman Roman that the following resolution be adopted:

VERONA 4TH ROUND NUMBERS DECLARATORY RESOLUTION

WHEREAS, the State Legislature of the State of New Jersey passed, and, on March 18, 2024, Governor Phil Murphy signed, a Bill commonly known as A4/S50 or P.L. 2024, c.2, hereinafter referred to as the 4th Round Rules; and

WHEREAS, the 4th Round rules abolished the Council on Affordable Housing, also known as COAH, and delegated its responsibilities to the New Jersey Department of Community Affairs (hereinafter "DCA"), the New Jersey Housing and Mortgage Finance Agency, and the Affordable Housing Dispute Resolution Program (hereinafter "DRP"), ordered to be formed by the same law; and

WHEREAS, the 4th Round rules ordered the DCA to calculate and publish, not later than October 20, 2024, the "Prospective Need" and "Present Need" housing obligations for each municipality in the State of New Jersey according to a methodology based largely upon the methodology approved by the Honorable Mary C. Jacobsen, A.J.S.C. of Mercer County on March 8, 2018 for the 3rd Round; and

WHEREAS, the Prospective Need represents the need for newly constructed or preserved affordable housing units projected over the next 10 years, calculated for "regions" consisting of three to four counties and allocated to each municipality based upon factors that consider their available vacant land, median household income, and growth in equalized assessed non-residential property value relative to their region. The Township of Verona is located in Region 2, identified in the 4th Round rules as consisting of all municipalities in Essex, Union, Morris, and Warren Counties; and

WHEREAS, the Present Need represents the need for rehabilitation of substandard homes in the municipality, occupied by low- and moderate-income households, based upon publicly available local estimates of housing that lacks adequate plumbing or kitchens, is overcrowded, is more than 50 years old, and is likely to be occupied by low- and moderate-income households; and

WHEREAS, on October 18, 2024, the DCA published its non-binding calculations of the Prospective and Present Needs for every municipality in New Jersey, which included, for the Township of Verona, a Prospective Need of 173 units and a Present Need of zero (0) units; and

WHEREAS, the 4th Round rules require that every municipality adopt before January 31, 2025, and upload onto the DRP's website within 48 hours, a binding resolution identifying their affordable housing obligations; and

WHEREAS, the rules permit municipalities to either accept the calculations published by DCA or alternative numbers which are based upon the methodology laid out in the 4th Round rules; and

WHEREAS, DMR Architects, the Township's affordable housing planning consultant, has reviewed the data utilized by the DCA and determined that the 23.9 acres considered in the land capacity factor for allocating regional affordable housing need to Verona Township includes 18.5 acres of lands that have been preserved for open space and recreation purposes but which were not included in the State-level mapping used in DCA's calculations; and

WHEREAS, correcting the land capacity factor to account for those 18.5 preserved acres reduces the Township's Prospective Need to 149 units; and

WHEREAS, the 4th Round rules, as written at Section 23 of P.L.2024, c.2 (C.52:27D-310.1), allow built-out communities to seek an adjustment of their Prospective Need obligations based

on a lack of vacant, available, and environmentally unconstrained land on which to build new homes, called a vacant land adjustment, with the caveat that any municipality seeking a vacant land adjustment shall be required to prepare a Housing Element and Fair Share Plan providing for the satisfaction of not less than 25% of its 149-unit Prospective Need, or 38 units; and

WHEREAS, DMR Architects conducted an analysis according to the 4th Round rules and methodologies, and concluded that the Township of Verona was eligible to adjust its 149-unit Prospective Need to 66 units, which exceeds the statutory minimum of 25% of the Prospective Need; and

WHEREAS, the Planning Board of Verona Township shall adopt not later than June 30, 2025 a Housing Element and Fair Share Plan addressing its Prospective and Present Needs, with the Prospective Need to be adjusted to reflect the results of the vacant land analysis but not below 38 units, pursuant to section 23 of P.L.2024, c.2 (C.52:27D-310.1); and

WHEREAS, the Township Council shall adopt not later than March 15, 2026, all ordinances necessary to implement that Plan, as required by the 4th Round rules passed by the Legislature and signed by the Governor; and

WHEREAS, failure to comply with the 4th Round rules – including but not limited to meeting the deadlines stated herein, or declaring affordable housing obligations that are not consistent with the methodologies dictated and endorsed in the 4th Round rules -- would leave the Township vulnerable to exclusionary zoning or builders' remedy lawsuits that, if successful, would strip the Township of the zoning powers that enable it to control the location, intensity, and design of multi-unit residential development that would produce affordable housing.

NOW, THEREFORE, THE FOLLOWING SHALL BE RESOLVED, by the Township Council of the Township of Verona, Essex County, New Jersey:

1. The Township declares that it has a 149-unit Prospective Need for the 4th Affordable Housing Round, based upon the methodology used by the DCA in calculating the Prospective Need but accounting for the protected status of 18.5 of the 23.9 acres of land included in DCA's calculation of the Township's land capacity relative to that of its affordable housing region and that reduction complies with the requirements and methodologies in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3); and
2. The Township declares that it has a 0-unit Present Need for the 4th Affordable Housing Round, as calculated by the DCA; and
3. The Township has conducted an analysis of its vacant, available land based upon section 23 of P.L.2024, c.2 (C.52:27D-310.1), and estimates that it will be eligible to adjust its Prospective Need to 66 units. The Township reserves the right and opportunity to update this calculation prior to the adoption of its Fourth Round Housing Element and Fair Share Plan; and
4. The Township Planning Board shall adopt, and the Council shall endorse, a Housing Element and Fair Share Plan, not later than June 30, 2025, that addresses the affordable housing obligations above, as may be adjusted in accordance with the N.J.S.A. 52:27D-301 et seq., P.L. 2024, c.2, and applicable case law and determinations of the Affordable Housing Dispute Resolution Program; and
5. The Township specifically reserves all rights and positions, without prejudice, to revoke this resolution and commitment in the event of a successful challenge to P.L. 2024 c.2 in the context of Borough of Montvale, et al. v. State of New Jersey, Docket No. MER-L-1778-24 or any other such action challenging P.L. 2024 c.2 or calculations of Fourth Round Present or Prospective Obligations, or any legislation adopted and signed into law by the Governor of New Jersey altering the deadlines and/or requirements of P.L. 2024 c.2; and

The Township's Legal Counsel, within 48 hours of the passing of this resolution, file an action with the DRP regarding this resolution in order to maintain the Township's immunity from exclusionary zoning litigation. The Township Clerk shall publish the filing materials and this resolution on a publicly accessible page of the Township's website

ROLL CALL:

AYES: Holland, McGrath, Roman, McEvoy, Tamburro

NAYS:

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF VERONA AT A REGULAR MEETING HELD ON JANUARY 20, 2025.


JENNIFER KIERNAN
MUNICIPAL CLERK



Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-000594-25

Case Caption: IN THE MATTER OF VERONA BORO
Case Initiation Date: 01/22/2025
Attorney Name: JAIME RICHARD PLACEK
Firm Name: DE COTIIS FITZPATRICK COLE & GIBLIN LLP
Address: 61 S PARAMUS RD STE 250
PARAMUS NJ 07652
Phone: 2019281100
Name of Party: PLAINTIFF : Township of Verona
Name of Defendant's Primary Insurance Company
(if known): None

Case Type: AFFORDABLE HOUSING
Document Type: Complaint
Jury Demand: NONE
Is this a professional malpractice case? NO
Related cases pending: NO
If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO
Does this case involve claims related to COVID-19? NO
Are sexual abuse claims alleged by: Township of Verona? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO **Medical Debt Claim?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

01/22/2025

Dated

/s/ JAIME RICHARD PLACEK

Signed

