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## JURISDICTIONAL STATEMENT

Jurisdiction of this appeal is proper in Court of Appeals for the State of Missouri, Eastern District pursuant to Article V, Section 3, of the Missouri Constitution because the issues presented in this appeal do not involve the validity of a treaty or statute of the United States, the validity of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office, or the imposition of the death penalty. The Circuit Court of Franklin County is within the territorial jurisdiction of this Court. § 477.050, RSMo.

The Court of Appeals for the State of Missouri, Eastern District, entered an Order on or about August 6, 2013, transferring this Appeal to the Supreme Court after finding that the Appeal presents an issue involving the validity of a state statute and holding that the Supreme Court has exclusive appellate jurisdiction of all cases involving the validity of a State statute. While Appellants' Pleadings did challenge the validity of a Missouri Statute, the trial Court dismissed Appellants' cause of action for failing to state a claim upon which relief could be granted and neither took evidence concerning the validity of said Statute and nor ruled on the validity of said Statute. "The Missouri Supreme Court, however, does not have exclusive jurisdiction, and transfer to that court is not required, where it is not necessary to construe the constitution or determine the constitutionality of

a statute to resolve the issues presented on appeal.” Evans v. Empire Dist. Electric Co., 346 S.W.3d 313, 319 (Mo. App., 2011).<sup>1</sup>

### STATEMENT OF FACTS

Appellants Arthur Lebeau, Eric Reichert (hereinafter “Appellants”) and eight other Plaintiffs (hereinafter collectively “Plaintiffs”) filed their original Petition on or about October 30, 2012. Record on Appeal (hereinafter “R. \_\_\_”) R. 5.<sup>2</sup> Plaintiffs’ Original Petition contains the hand-written note to “Hold [service] for entry of app[earance].” R. 5. Plaintiffs’ original Petition has two counts: the first count alleges that House Bill 1171 is unconstitutional and the second count alleges that Commission Order 2012-260 establishing County Municipal Court is void. R. 5. Nowhere in Plaintiffs’ original Petition do they allege that they have standing conferred to them by statute or that any Plaintiff is directly and adversely affected by either the House Bill or the Commission Order. R. 5-9, generally.

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<sup>1</sup> Appellants certainly accept the Court of Appeals’ decision to transfer this matter to the Supreme Court and is merely pointing out for purposes of a complete and accurate Jurisdictional Statement that said transfer was not mandatory.

<sup>2</sup> The Record on Appeal filed by Appellants contains an unnumbered page between pages “4” and “5”. Said unnumbered page is the fifth page of the Docket Sheets and is not directly referenced by Respondents in their Brief.

The Commissioners of Franklin County (hereinafter “Respondents”) submitted to the Personal Jurisdiction of the trial Court on or about November 16, 2012 when Matthew C. Becker signed and had filed an Entry of Appearance on behalf of Respondents. R. 1.

On or about November 16, 2012 Respondents also filed their Motion to Dismiss Plaintiffs’ Petition for lack of standing. R. 11

On or about November 26, 2012 Plaintiffs filed Motion to “Deny Defendants ‘Entry of Appearance’” and “Deny Defendants ‘Dismissal Motion.’” R. 13.

On or about January 11, 2013, the trial Court heard argument on, in relevant part, Defendants’ Motion to Dismiss. R. 48. On or about January 25, 2013, the trial Court granted Defendants’ Motion to Dismiss on grounds that Plaintiffs lack standing to file same. R. 48. Pursuant to Missouri Supreme Court Rule 67.06, the trial Court granted Plaintiffs until March 1, 2013 to file an amended Petition. R. 48.

On or about February 26, 2013 Plaintiffs filed their Amended Petition. R. 49. Nowhere in Plaintiffs’ Amended Petition do they allege that they have standing conferred to them by statute or that any Plaintiff is directly and adversely affected by either the House Bill or the Commission Order. R.49-53, generally. Plaintiffs’ Amended Petition does not contain a short and plain statement of facts, containing almost exclusively argument. R.49-53, generally. Furthermore, Plaintiffs’ Amended Petition fails to allege any action whatsoever, much less wrongdoing, on the part of Respondents save a *possible*

attempt to improperly incorporate their previously stricken original Petition. R.49-53, generally, 52, specifically.

On or about March 15, 2013 Defendants filed a Motion to Dismiss Plaintiffs' Amended Petition for lack of standing. R. 54.

On or about March 22, 2013 Plaintiff Eric Reichert filed his "Motion to Dismiss as Defendant's alleged representative lacks the legal status to stand before this Court." [sic] R. 71.<sup>3</sup>

On or about March 22, 2013 the Court heard argument on Respondents' Motion to Dismiss Plaintiffs' Amended Petition and Plaintiffs' Motion to Dismiss Defendant's Alleged Representative. R. 76. On or about March 28<sup>th</sup>, 2013 the trial Court dismissed Plaintiffs' Amended Petition, and found that said dismissal rendered Plaintiffs' "Motion to Dismiss Defendant's Alleged Representative" moot. R. 77.

On or about May 3, 2013, Appellants Arthur Lebeau and Eric Reichert (hereinafter "Appellants") filed their Notice of Appeal. R. 78.

At no point did the trial Court ever hear evidence concerning the Constitutionality of the legislation attacked by Plaintiffs. R. generally.

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<sup>3</sup> Ironically, Appellants, who are not attorneys, filed a document entitled "Plaintiffs Memorandum of Facts" on behalf of all Plaintiffs, an action that they clearly did not have legal status to do, while maintaining that Respondents' counsel, a licensed attorney, does not have legal status to represent Respondents. R. 65.

## ARGUMENT

### Standard of Review

The Judgment and Order entered by the Trial Court granted Respondents' Motion to Dismiss Plaintiffs' Amended Petition for failure to state a claim upon which relief can be granted because Plaintiffs failed to allege facts, even if assumed as true, indicating that Plaintiffs have standing to bring said action. "The standard of review for a trial court's grant of a motion to dismiss is *de novo*." Evans, supra, 346 S.W.3d at 315, citing Lynch v. Lynch, 260 S.W.3d 834, 836 (Mo. banc 2008). "When this Court reviews the dismissal of a petition for failure to state a claim, the facts contained in the petition are treated as true and they are construed liberally in favor of the plaintiffs." Evans, 315, citing Adams v. One Park Place Investors, LLC, 315 S.W.3d 742, 753 (Mo.App. W.D.2010).

However, "[i]f the motion to dismiss can be sustained on *any meritorious grounds*, the ruling of the trial court will be affirmed." Estate of Dean v. Morris, 963 S.W.2d 461, 464 (Mo. App., 1998), citing Farm Bureau Town and Country Ins. Co. of Missouri v. Angoff, 909 S.W.2d 384, 351 (Mo. banc 1995)) (emphasis added).

**POINT 1**

THE TRIAL COURT DID NOT ERR IN RULING THAT PLAINTIFFS' AMENDED PETITION FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED. THE TRIAL COURT WAS CORRECT BECAUSE PLAINTIFFS' AMENDED PETITION DID NOT ALLEGE A STATUTORY OR FACTUAL BASIS DEMONSTRATING THAT THE PLAINTIFFS HAD STANDING TO BRING THIS ACTION.

Plaintiffs' Amended Petition sought a Judicial Declaration that House Bill 1171 is unconstitutional, null and void. The threshold issue, perhaps the only issue, is whether Appellants have legal standing to bring this suit.

A party has standing to challenge the validity of an ordinance only if standing is conferred by statute or another applicable ordinance or if the party can demonstrate that he is directly and adversely affected by the ordinance. City of Bridgeton v. Ford Motor Credit Co., 788 S.W.2d 285, 290 (Mo., 1990).

In the present matter, Plaintiffs' Amended Petition is devoid of any allegation, and the Record on Appeal is without any factual support, that Plaintiffs had standing via statutory authority. Accordingly, the issue of whether or not the Plaintiffs had statutory standing need not be addressed by this Court. Accordingly, if Plaintiffs have standing, which they do not, it must be because they were and continue to be directly and adversely affected by the subject Statute. See City of Bridgeton v. Ford Motor Credit Co., 788 S.W.2d 285 (Mo., 1990).

In City of Bridgeton v. Ford Motor Credit Co., St. Louis County sought to block

the annexation of land by the city of Creve Coeur after a majority of voters in voters in the relevant tracts voted in favor of annexation. Id. The Court held that since St. Louis County failed to assert a cognizable claim that it was adversely affected by the proposed legislation, it therefore lacked standing to contest said legislation. Id. In the case at hand, Plaintiffs fail to allege that they have statutory standing or that they are directly and adversely affected by this legislation.

Although not pled by the Appellants, § 527.020, RSMo.2012, provides: Any person ... whose rights, status or other legal relations are affected by a ... municipal ordinance ... may have determined any question of construction or validity arising under the ... ordinance ... and obtain a declaration of rights, status or other legal relations thereunder. In Miller v. City of Manchester, the city of Manchester enacted legislation to prohibit trapping within its city limits. Miller v. City of Manchester, 834 S.W.2d 904, 905 (Mo. App. E.D., 1992). The Plaintiff in Miller successfully demonstrated that he was and would continue to be directly and adversely affected by the ordinance since he suffered and would continue to suffer an economic detriment if he was prohibited from trapping in the City. The Court held that the preservation of business opportunities and economic well-being are sufficient interests to confer standing. Id., at 906.

In the present case, appellants do not allege that they are suffering or will suffer any economic detriment (or any detriment whatsoever). Indeed, Appellants candidly admit that HB 1171 is not going to regulate a facet of their lives. R. 67. Accordingly, Plaintiffs' lawsuit should be dismissed for lack of standing.

### Appellants' Reliance on Hammerschmidt is Misguided

The *Arguments* section of Plaintiffs' Amended Petition referenced Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo banc 1994) and claimed it "clearly and absolutely demonstrates the merits of this mater [sic] at bar," R. 51, 52. Putting aside the impropriety of an "Arguments" section in a petition which requires a short and plain statement of the facts showing that the pleader is entitled to relief pursuant to Missouri Supreme Court Rule 55.05, Hammerschmidt does not address the Appellants' standing deficiency. To put it succinctly, there is nothing in Hammerschmidt that suggests that Appellants' have the legal standing in this case because there is no standing analysis in Hammerschmidt. See Hammerschmidt v. Boone County, 877 S.W.2d 98, generally (Mo banc 1994). Presumably, this is either because the Plaintiff in Hammerschmidt was directly and adversely affected by the complained of legislation, standing was conferred specifically by statute, or the Defendants in Hammerschmidt did not raise the issue of standing.

The other case cited in Plaintiffs' Amended Petition, Legends Bank and John Klebbs v. State of Missouri, 361 S.W. 3d 383 (Mo banc 2012), also contains no standing analysis and also can't be cited as authority conferring standing upon the Appellants.

Appellants specifically cite to the language in Hammerschmidt wherein this Court notes that he was a resident and taxpayer. Hammerschmidt, at 100. To the extent that Appellants now seek to invoke taxpayer standing (ie it was neither properly pled in their

Amended Petition nor supported by the Record on Appeal), their Petition and Amended Petition both fail to plead facts that would give rise to taxpayer standing. It has long been held that "[a]bsent fraud or other compelling circumstances, in order to have standing as a taxpayer, the taxpayer must be able to demonstrate that the transaction in issue effects a direct expenditure of funds generated through taxation ... or a pecuniary loss attributable to the challenged transaction." State ex rel. Mid-Missouri Limestone, Inc. v. County of Callaway, 962 S.W.2d 438, 441 (Mo. App.W.D., 1998), citing Mid-America Georgian Gardens, Inc. v. Missouri Health Facilities Review Committee, 908 S.W.2d 715, 717-718 (Mo.App.1995) (citing Eastern Missouri Laborers Dist. Council v. St. Louis County, 781 S.W.2d 43, 47 (Mo. banc 1989)). Neither Appellants' Petition nor their Amended Petition ever plead facts demonstrating that the transaction in issue effects a direct expenditure of funds generated through taxation or a pecuniary loss attributable to the challenged transaction and accordingly. Accordingly, Appellants have not pled the facts necessary to have taxpayer standing.

In Weber v. St. Louis County, the Plaintiffs sought to challenge St. Louis County's creation and implementation of a waste management system in unincorporated St. Louis County. Weber v. St. Louis County, 342 S.W.3d 318, 320 (Mo., 2011). The plaintiffs in Weber alleged that St. Louis County violated its own Charter by not approving trash collection areas through a vote and Missouri Statute in creating the trash collection program by not giving the previous trash haulers the required statutory notice and that therefore the trash collection program was null and void. Id. at 322-23. The

plaintiffs in Weber were taxpayers who lived in the waste collection areas. Id., at 321. The plaintiffs in Weber were otherwise unable to demonstrate how they were directly and adversely affected by the County's actions. Id., generally. In deciding that the Plaintiffs lacked standing to challenge this allegedly illegal activity, the Court noted that, "[i]f a party is without standing to bring a particular claim, a court shall dismiss the claim because the court lacks the authority to decide the merits of the claim." Id. at 323, citing Farmer v. Kinder, 89 S.W.3d 447, 451 (Mo. banc 2002). The Court in Weber further recognized that under Missouri Law, plaintiffs must have a "legally protectable interest in the litigation so as to be directly and adversely affected by its outcome." Id., citing Missouri State Medical Ass'n v. State, 256 S.W.3d 85, 87 (Mo. banc 2008). The Court in Weber reaffirmed the definition of a "legally protectable interest" as one that "exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff's interest is conferred by statute." Id., citing Ste. Genevieve School District R-II v. Board of Alderman of City of Ste. Genevieve, 66 S.W.3d 6, 10 (Mo. banc 2002).

Just as in Weber, the Appellants in the case at bar have failed to plead or otherwise demonstrate that they are directly and adversely affected by the action in question or that the Appellants' interest is conferred by statute and therefore the trial court's dismissal of Appellants' case was appropriate.

## POINT 2

THE TRIAL COURT DID NOT ERR IN RULING THAT PLAINTIFFS' AMENDED PETITION DOES NOT ALLEGE FACTS INDICATING THAT A "JUSTICIABLE CONTROVERSY" EXISTS IN REGARD TO HB 1171, INCLUDING BUT NOT LIMITED TO, THE REQUIREMENT THAT THE CONTROVERSY BE "RIPE" FOR JUDICIAL DETERMINATION.<sup>4</sup>

Appellants argue in their Amended Brief that a Justiciable Controversy is Ripe for Judicial Determination the moment a bill is signed into law and that any citizen and tax payer can challenge it, regardless of whether or not it affects him or her. Appellants' Amended Brief, pages 16-19. Appellants offer no authority supporting this argument and simply conclude that they are right and the trial Court was incorrect. Appellants' Amended Brief, pages 19.

Perhaps, the case with the analysis most dispositive of the case at bar is Missouri Health Care Ass'n v. Attorney General of the State of Missouri. In Missouri Health Care Ass'n the Plaintiffs challenged a piece of legislation because the subject of the bill was not clearly expressed in the title; the bill contained more than one subject; and the bill

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<sup>4</sup> Appellants' Point 2 on appeal could be properly considered as being redundant with Point 1 in that it is the same trial court ruling or action that the appellant challenges in point. MO Supreme Court Rule 84.04 (d). Respondents will address the arguments Appellants present in their second point herein.

was amended so as to change its original purpose. Missouri Health Care Ass'n v. Attorney General of the State of Missouri 953 S.W.2d 617, 619 (Mo. banc 1997). The Plaintiffs in Missouri Health Care Ass'n alleged that the proposed legislation caused injury to them in that it forced them to preemptively change their course of business or else suffer potential prosecution. Id., at 620. The Court recognized that the threshold issue in that case was whether or not the Plaintiffs had standing. Id.

In order for a plaintiff to have standing to bring a Petition for a Declaratory Judgment action, such as in the case at bar, the plaintiff must plead facts evidencing a justiciable controversy. Id. citing Akin v. Dept. of Revenue, 934 S.W.2d 295, 298 (Mo. Banc 1996). A justiciable controversy has three elements, to wit: (1) the plaintiff has a legally protectable interest at stake, (2) a substantial controversy exists between parties with genuinely adverse interests, and (3) that controversy is ripe for judicial determination. Id., citing State ex rel. Chilcutt v. Thatch, 359 Mo. 122, 129, 221 S.W.2d 172, 176 (banc 1949).

#### **A Justiciable Controversy requires a Legally Protectable Interest**

The Court in Missouri Health Care Ass'n held that the plaintiffs had standing to bring their suit because those plaintiffs demonstrated a legally protectable interest in that they were forced to choose between changing the way they operated their business in order to follow a law they believed to be unconstitutional, or be subject to potential prosecution. Id., at 620. In the case at hand, Appellants alleged no facts demonstrating any legally protectable interest and therefore lack standing to bring this suit. Indeed with

regard to Missouri Health Care Ass'n, the Appellants in the case at bar do not dispute that there is a similar controversy between the parties in the matter at bar. R. 66-67.

**A Justiciable Controversy also requires that the Controversy be ripe for Judicial Determination**

The other element of a justiciable controversy that the appellants were unable to meet is that the controversy is ripe for judicial determination. A court cannot render a declaratory judgment unless the petition presents a controversy ripe for judicial determination. Id., at 621, citing Akin, 934 S.W.2d at 298. A ripe controversy is a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Id., citing State ex rel. City of Crestwood v. Lohman, 895 S.W.2d 22, 30 (Mo.App.1994). A ripe controversy exists if the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character. Id., citing Commonwealth Ins. Agency, Inc. v. Arnold, 389 S.W.2d 803, 806 (Mo.1965).

In the case at hand, the Appellants did not plead that they have been charged with any offenses currently pending in the Franklin County Municipal Court. In such a scenario (a scenario lacking enforcement of the complained of law against the plaintiffs) the Appellants must demonstrate, in relevant part, that the law at issue is affecting the Appellants in a manner that gives rise to an immediate, concrete dispute. Missouri Health Care Ass'n 953 S.W.2d 617, 621 (Mo. banc 1997), citing Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 34 (Mo. banc 1982); Borden Co. v. Thomason, 353 S.W.2d 735, 741 (Mo. banc 1962); and Tietjens v. City of St. Louis, 222 S.W.2d 70, 72 (banc 1949).

In Missouri Health Care Ass'n, the complained of legislation sought to regulate the plaintiffs and affected the way in which they conducted business. Missouri Health Care Ass'n, 953 S.W.2d 617, 621 (Mo. banc 1997). The complained of legislation caused the plaintiffs to change their representations to the public about the services they provide. Id. The complained of legislation affected the disclosure of documents plaintiffs made to consumers who request information in response to such representations. Id. The complained of legislation subjected its members to penalties if they fail to comply with these statutory requirements. Id. Accordingly, the Court in Missouri Health Care Ass'n found that those plaintiffs demonstrated that they were affected in a manner that gave rise to an immediate, concrete dispute. Id.

In the case at hand, Appellants failed to demonstrate that they are being affected in a manner that gives rise to an immediate, concrete dispute (or are being affected in any manner whatsoever), and therefore no ripe controversy exists for judicial determination, and therefore, the Appellants lacked the legal standing necessary to bring this suit.

### POINT 3

THE TRIAL COURT DID NOT ERR IN DEEMING THAT PLAINTIFFS' MOTION TO DISMISS DEFENDANT'S ALLEGED REPRESENTATIVE WAS RENDERED MOOT BY THE TRIAL COURT'S DISMISSAL OF PLAINTIFFS' AMENDED PETITION.

After dismissing the Plaintiffs' Amended Petition for failing to state a claim upon which relief can be granted because the plaintiffs lacked standing, the Court further ruled that Plaintiffs' "Motion to Dismiss Defendant's Alleged Representative" was rendered moot. The term "moot" means "[h]aving no practical significance; hypothetical or academic." Peachtree Apartments v. Pallo, 317 S.W.3d 189, 192 (Mo. App., 2010), citing Black's Law Dictionary 1024 (7th ed.1999). When an event occurs that renders a court's decision unnecessary or a grant of effectual relief impossible, the action becomes moot, and the court should generally dismiss it. Kinsky v. Steiger, 109 S.W.3d 194, 195 (Mo.App. E.D.2003). In the case at bar, once the trial Court dismissed Plaintiffs amended Petition, any ruling it made with regard to Plaintiffs' "Motion to Dismiss Defendant's Alleged Representative" was unnecessary. Moreover,

#### Additional Arguments

As previously stated, "[i]f the motion to dismiss can be sustained on any meritorious grounds, the ruling of the trial court will be affirmed." Estate of Dean, 963 S.W.2d 461, 464 (Mo. App., 1998)

Pursuant to Missouri Supreme Court Rule 67.06, the trial Court's Order of January 25, 2013, which dismissed Plaintiffs' original Petition for lack of standing, directed

Plaintiffs to file an Amended Petition by March 1, 2013. Plaintiffs filed a document purporting to be said Amended Petition on February 26, 2013.

Not only did Plaintiffs' Amended Petition fail to address the deficiency the Court cited when it dismissed their original Petition, i.e., that Plaintiffs lacked standing, Plaintiffs' Amended Petition created and/or exacerbated other legal deficiencies. Plaintiffs' Amended Petition did not contain a short and plain statement of the facts showing that the pleader is entitled to relief, as required by Missouri Supreme Court Rule 55.05. Rather than plead facts, Plaintiffs sought to argue the motion Plaintiffs lost on January 11, 2013. R. 49 – 52.

In fact, with respect to the Defendants, Commissioners of Franklin County, Missouri, Plaintiffs' Amended Petition failed to allege any action whatsoever, much less wrongdoing, on the part of Defendants. In fact, Appellants admit in their brief that they failed to include Count II of their Original Petition, which alleged that the Franklin County Municipal Court was null and void, in their Amended Petition. Appellants' Amended Brief, page 14.

After upholding a trial Court's decision to dismiss a Petition for failing to state a claim upon which relief can be granted, the Court of Appeals further held that the trial Court's decision could also be upheld because the plaintiff's petition failed to contain a short and plain statement of the facts showing that the pleader is entitled to relief, warranting dismissal. Sparks v. PNC Bank, ED98945, pages 8-9. (Mo. App., 2013). Similarly, in the case at bar, this Court would be well within its bounds to decide that in

addition to Appellants' not having standing, Appellants' Amended Petition is fatally deficient because it does not comply with Missouri Supreme Court Rule 55.05 and it fails to allege any action or inaction taken on the part of Respondents.

### CONCLUSION

Contrary to Appellants' Brief, the Constitutionality of the challenged Statute is not before the Court. Rather, and only if this Court ignores the requirements of Missouri Supreme Court Rule 84.04 as applied to Appellants, the only issue that could be properly before the Court is whether or not the trial Court erred in dismissing Plaintiffs' Amended, finding that they lacked the standing requisite to bring this case.

As discussed herein, Appellants clearly do not have standing because Appellants never pled or otherwise alleged a statutory basis for standing and also did not demonstrate that that they were directly and adversely affected by the complained of legislation.

Respondents' therefore believe it would be appropriate for this Court to affirm the trial Court's decision.

Respectfully Submitted,

*/s/ Matthew C. Becker*

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CERTIFICATE OF SERVICE

A copy of the foregoing was sent via U.S. mail (postage prepaid) this 14th day of August, 2013, to:

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Matthew C. Becker

**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 4,218, exclusive of the cover, signature block, table of contents, table of authorities, and certificates of service and compliance.

The undersigned further certifies that the electronic copies of this brief filed with the Court and served on the other parties were scanned for viruses and found virus-free through the Norton anti-virus program.

*/s/ Matthew C. Becker*

\_\_\_\_\_  
Matthew C. Becker