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THE
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A WEEKLY JOURNAL
CONTAINING THE DECISIONS RENDERED IN THE
12th JUDICIAL DISTRICT
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TERMS: Advertisements must be received before 12 o'clock noon on Tuesday of each week at the office
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41 Years in Harrisburg

THE
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Estate Notices

DECEDENTS ESTATES

NOTICE IS HEREBY GIVEN that letters testamentary or of administration have been granted in the following estates. All persons indebted to the estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors or their attorneys named below.

FIRST PUBLICATION

ESTATE OF CHARLOTTE FRIEDA SPECE, late of Susquehanna Township, Dauphin County, Pennsylvania. Attorney: James H. Turner, Esq., Turner and O'Connell, 4701 North Front Street, Harrisburg, PA 17110. j6-j20

ESTATE OF GLENN H. OXENRIDER, late of Millersburg Borough, Dauphin County, Pennsylvania (died December 11, 2011). Executor: Larry Oxenrider, 404 Shaffer Road, Millerburg, PA 17061. Attorney: Terrence J. Kerwin, Esq., Kerwin & Kerwin, LLP, 27 North Front Street, Harrisburg, PA 17010. j6-j20

ESTATE OF MARY LYNN KUNKEL WRIGHT, late of the City of Harrisburg, Dauphin County, Pennsylvania (died December 13, 2011). Executrix: Nancy Wright Bergert, P.O. Box 220, Camp Hill, PA 17001. Attorney: Stanley A. Smith, Esq., Rhoads & Sinon LLP, Attorneys at Law, One S. Market Square, P.O. Box 1146, Harrisburg, PA 17108-1146. j6-j20

ESTATE OF JOSEPH J. PENDAL, late of the Township of Williams, Dauphin County, Pennsylvania (died December 18, 2011). Co-Executrixes: Beth L. Miller, 316 Nelson Terrace, Millersburg, PA 17061 and Jeanmarie Pendal Klinger, 217 Main Street, Lykens, PA 17048. Attorney: Joseph D Kerwin, Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, PA 17023. j6-j20

SECOND PUBLICATION

ESTATE OF Luther S. Wells, late of West Hanover Township, Dauphin County, Pennsylvania (died October 22, 2011). Co-Executors: Ronald L. Wells and Elaine L. Gehers. Attorney: Diane S. Baker, P.O. Box 6443, Harrisburg, PA 17112-0443. d30-j13

ESTATE OF DORIS J. BARBUSH, late of the Borough of Paxtang, Dauphin County, Pennsylvania. Administratrix: Christina Knaus, 3152 Camberly Drive, Gibsonia, PA 15044. Attorney: James H. Turner, Esq., Turner and O'Connell, 4701 North Front Street, Harrisburg, PA 17110. d30-j13

BAR ASSOCIATION PAGE – Continued
MISCELLANEOUS SECTION

Position: Deputy Court Administrator - Human Resources
Starting Salary Range: \$44,181 - 58,908

Position ID #: 11-49
Location: Harrisburg
Organization: Unified Judicial System
Category: Professional
Department: 12th Judicial District, Dauphin County
Remarks: Starting salary will vary depending upon the qualifications and employment history of the selected candidate.

Description:

This is professional administrative work overseeing human resources activities for the Dauphin County Court of Common Pleas. The selected candidate will act as the liaison between court HR management and the county human resources department. Work is performed with a high degree of independence and confidentiality under the general direction of the President Judge and District Court Administrator.

Minimum Qualifications:

- Bachelor's degree in Judicial, Business, or Public Administration, or closely related field; AND
- Three years of experience in court management or four years of varied office management work including experience in personnel management.
- An equivalent combination of education, training, and / or experience may be considered.

Additional Requirements / Preferences:

- Satisfactory criminal background check required.

How to Apply:

Candidates interested in applying for this position are requested to submit a written resume (video or audio resumes will not be accepted), along with a cover letter noting position title, position ID #, and salary requirements to:

AOPC - Human Resources
PO Box 61260 (OR) Human.Resources@pacourts.us
Harrisburg, Pennsylvania 17106-1260

d30-j13

BAR ASSOCIATION PAGE – Continued

MISCELLANEOUS SECTION

PA PUBLIC UTILITY COMMISSION

PUC ASSISTANT COUNSEL 2

The Pennsylvania Public Utility Commission has a full-time PUC Assistant Counsel 2 position available in the The Bureau of Investigation & Enforcement in Harrisburg.

This is an attorney position responsible for the review of rate filings and the proper investigation and enforcement response. Works with technical staff and under senior attorney in the preparation of all reports to the Commission. Prepares research, analysis and recommendations on a variety of increasing complex issues involving ratemaking, administrative procedure, evidence, and trial practice. Requirements include two years of progressively responsible experience in professional legal work which provided exposure to governmental regulatory law (regarding public utilities)/administrative law and graduation from an approved school of law and possession of a certificate of admission to the Bar of the Supreme Court of Pennsylvania; or eligibility for such certification. Based on experience, the salary range is \$57,252 to \$86,983.

Applicants should submit a resume to:

Susan Schoenberger
Human Resource Office
PA, Public Utility Commission
P.O. Box 3265
3rd Floor, Keystone Building
Harrisburg, PA 17105-3265
(717) 787-8714
FAX (717) 772-3177
Email: suschoenbe@pa.gov

Applications for this position must be received no later than Monday, January 23, 2012. The list of essential functions for this position is available from the Human Resource Office upon request. The Pennsylvania PUC is an equal opportunity employer. j6

477 (2011)]

DAUPHIN COUNTY REPORTS

477

Saunders v. Pennsylvania State Police

Saunders v. Pennsylvania State Police

Civil Rights - Employment Discrimination - Disability

Plaintiff sought employment as a Liquor Enforcement Officer (LEO) Trainee with Defendant. After passing a written exam and an oral interview, he was offered employment, conditioned upon a physical examination. The physical exam included a hearing test, which the Plaintiff failed. He was then informed by the Defendant that he would no longer be considered for employment as an LEO Trainee. The Court determined that the Defendant had a legitimate reason for not hiring Plaintiff based upon his inability to hear certain frequencies.

1. Under the Pennsylvania Human Relations Act, an employer may not discriminate against any employee or potential employee on the basis of a non-job related handicap or disability. See 43 P.S. §951, et seq.

2. In order for a plaintiff to establish a prima facie case of employment discrimination based upon a disability, a plaintiff must allege that: 1) he is disabled; 2) he is qualified for the particular job; and 3) he has suffered an adverse employment action because of his disability. *Volitis v. Merck & Co.*, 129 F.Supp.2d 765, 768-69 (E.D. Pa. 2001); (citing, *Deane v. Pocono Med. Ctr.*, 142 F.3d 138, 142 (3d Cir. 1998).

3. If the plaintiff establishes a prima facie case of employment discrimination, the employer is charged with showing a valid non-discriminatory reason for not hiring the plaintiff. *General Electric Corp. v. Commonwealth, Human Relations Com.*, 365 A.2d 649 (Pa. 1976); *Harrisburg School Dist. v. Commonwealth, Pennsylvania Human Relations Com.*, 466 A.2d 760, 762 (Pa. Commw. Ct. 1983). If the employer meets its burden, the plaintiff must rebut the employer's non-discriminatory reason for not hiring the plaintiff by showing that the reason is merely a pretext for discrimination. *Harrisburg Sch. Dist.*, 466 A.2d at 763.

Defendant's Motion for Summary Judgment. C.P., Dau. Co., No. 2002-CV-3786. Motion granted.

Jennifer A. Yankanich, for Plaintiff

M. Abbegael Pacuska, for Defendant

Cherry, J., November 29, 2011.

MEMORANDUM OPINION

Presently before this Court is Pennsylvania State Police's (Defendant) Motion for Summary Judgment against Wilson Saunders (Plaintiff).

PROCEDURAL HISTORY

Plaintiff initiated the above captioned matter on August 16, 2002 by filing a Complaint. Defendant filed an Answer and New Matter on December 2, 2002, to which Plaintiff filed a Reply to the New Matter on

January 27, 2003. Subsequently, Defendant filed a Motion for Summary Judgment on May 19, 2008 with a supporting brief. Plaintiff responded to this Motion for Summary Judgment on June 12, 2008 and also submitted a supporting brief in opposition to Defendant's Motion for Summary judgment. The above captioned matter was subsequently scheduled for trial in September of 2008, but Plaintiff and Defendant filed a Joint Motion to Remove the Case from the September 2008 trial term on September 5, 2008. Subsequently, the Court filed a Notice of Proposed Termination in this matter on January 31, 2011 to which Plaintiff filed a Statement of Intention to Proceed on March 10, 2011. Both parties were ordered to file a Joint Status Report on June 7, 2011 and submitted their Joint Status Report on June 24, 2011. On November 8, 2011, this Court held an oral argument on whether Defendant's Motion for Summary Judgment should be granted.

STATEMENT OF FACTS

Plaintiff applied for a position as a Liquor Enforcement Officer (LEO) Trainee with Defendant in 1996. (Pl.'s Br. at 2; Def.'s Br. at 1). Plaintiff subsequently passed a written examination and an oral interview for the position. (Pl.'s Br. at 2; Def.'s Br. at 2). In June of 1998, Defendant notified Plaintiff that it had openings for LEO trainees and Plaintiff received a conditional offer of employment. (Def.'s Br. at 2). As a prerequisite to employment, Defendant asked Plaintiff to complete a physical examination, a portion of which included a hearing test. (Pl.'s Br. at 2; Def.'s Br. at 2). In its brochure for potential candidates, Defendant specifies that applicants must be able to "clearly distinguish a whispered voice with each ear at a distance of eight feet without the use of either mechanical or electronic aid." (Def.'s Mot. for Summary Judgment, Exhibit 3 of Ex. B at p. 181). However, during the period between when the brochure was published and when Defendant tested Plaintiff's hearing, Defendant began to use a mechanical audiometer rather than the whisper test for auditory testing. (Def.'s Br. at 2).

Defendant administered a mechanical hearing test to Plaintiff twice on the same day, approximately thirty (30) minutes apart. (Pl.'s Br. at 2; Def.'s Br. at 3). The requirements to pass the auditory test are:

- (a) 25 dB or better for pure tone stimulation between 500 Hz, 1000 Hz, 2000 Hz and 3000 Hz
- (b) 25 dB or better for speech reception in quiet
- (c) 90% or better speech discrimination in noise with noise not to exceed 20 dB or the speech signal.

(Def.'s Mot. for Summary Judgment, Exhibit 4 of Ex. B).

BAR ASSOCIATION PAGE
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Directors

The Board of Directors of the Bar Association meets on the third Thursday of the month at the Bar Association headquarters. Anyone wishing to attend or have matters brought before the Board should contact the Bar Association office in advance.

REPORTING OF ERRORS IN ADVANCE SHEET

The Bench and Bar will contribute to the accuracy in matters of detail of the permanent edition of the Dauphin County Reporter by sending to the editor promptly, notice of all errors appearing in this advance sheet. Inasmuch as corrections are made on a continuous basis, there can be no assurance that corrections can be made later than thirty (30) days from the date of this issue but this should not discourage the submission of notice of errors after thirty (30) days since they will be handled in some way if at all possible. Please send such notice of errors to: Dauphin County Reporter, Dauphin County Bar Association, 213 North Front Street, Harrisburg, PA 17101-1493.

DAUPHIN COUNTY COURT SECTION

Motion Judge of the Month

JANUARY 2012
FEBRUARY 2012

Judge John F. CHERRY
Judge Andrew H. DOWLING

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Plaintiff did not pass the hearing test because he could not hear greater frequency than 25 dB at 750 Hz in his left ear or any frequency at 25 dB in his right ear. (Def.'s Br. at 3). The results indicated that Plaintiff had a diminished ability to detect noises at very high frequencies. (Def.'s Br. at 3). Defendant told Plaintiff that he could seek an independent evaluation and he was administered a third mechanical hearing test by Dr. Laura Lum on July 31, 1998 which was consistent with the results of the tests administered by Defendant. (Pl.'s Br. at 2-3; Def.'s Br. at 3). Because of Plaintiff's failure to pass the hearing test, Defendant informed him that he would no longer be considered for employment as a LEO trainee. (Pl.'s Br. at 3).

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In its Motion for Summary Judgment, Defendant alleges that Plaintiff does not make out a prima facie case for employment discrimination. (Def.'s Br. at 5). Specifically, Defendant argues that Plaintiff is not a member of a protected class because his inability to detect noises at extremely high frequencies is not a disability within the meaning of the Pennsylvania Human Relations Act ("PHRA"). (Def.'s Br. at 6-7). In support of this assertion, Defendant points to Plaintiff's deposition in which Plaintiff testified that his hearing impairment has no effect on his life activities or his ability to maintain employment. (Def.'s Br. at 7). Defendant claims that this indicates that Plaintiff's hearing impairment does not limit any major life activities, including hearing. (Def.'s Br. at 7). Additionally, Defendant asserts that Plaintiff was not "regarded as" disabled by Defendant because, despite his inability to hear high frequencies, he has obtained and kept a wide variety of jobs that utilize his particular skills. (Def.'s Br. at 6-7).

Defendant argues in the alternative that, if Plaintiff is "regarded as" disabled, Plaintiff's disability is job-related and would interfere with his ability to perform the essential tasks of a LEO trainee. (Def.'s Br. at 9). Defendant argues that the medical standards used to determine which individuals are able to safely perform the job duties of a LEO trainee are based on a University Research Corporation Study and "provide recommendations regarding the degree of impairment for any medical condition." (Def.'s Br. at 10).

1. Defendant claims that Plaintiff would have a diminished capacity to gather and interpret information in various investigations which may include interviewing and obtaining the statements of victims, witnesses, suspects and confidential informers; conduct video and audio surveillance for extended periods of time; and detect and collect evidence and substances which provide the basis of administrative and criminal offenses or infractions and/or indicate the presence of dangerous conditions. (Def.'s Br. at 10).

If it is found that Plaintiff has pled a prima facie case for discrimination, Defendant claims that it had a legitimate non-discriminatory reason for not hiring Plaintiff. (Def.'s Br. at 11). Defendant again argues that the hearing standards were established by professionals in the medical field and that Plaintiff did not meet the standards. (Def.'s Br. at 11). It is Defendant's contention that Plaintiff was disqualified from the position of LEO trainee to protect the health and safety of Plaintiff and other LEO trainees. (Def.'s Br. at 11). Defendant is concerned that communication between LEO trainees or other officers during an investigation or arrest will be hindered because of Plaintiff's inability to detect high frequencies. (Def.'s Br. at 12). According to Defendant, this concern is compounded by a LEO trainee's role in maintaining public safety by carrying firearms and taking armed violators into custody. (Def.'s Br. at 12).

PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Plaintiff argues that he has proven a prima facie case for disability discrimination within the meaning of the PHRA in a way that is sufficient to overcome Defendant's Motion for Summary Judgment. In support of his argument, Plaintiff claims that he is disabled according to the definition contained in the PHRA and is therefore a member of a protected class. (Pl.'s Br. at 9). Additionally, Plaintiff claims that, even though his impairment did not significantly limit his important life activities, Defendant regarded him as having such impairment and treated him as if his impairment was limiting. (Pl.'s Br. at 13-14). Plaintiff also argues that Defendant's Motion for Summary Judgment should be denied because whether Defendant regarded Plaintiff as having a hearing impairment and whether they were discriminatory toward Plaintiff because of their opinion is a question of fact for the jury. (Pl.'s Br. at 14).

Additionally, Plaintiff argues that he was qualified for the LEO trainee position with Defendant. (Pl.'s Br. at 14). He primarily asserts that his prior and subsequent positions as a cadet with Defendant, as a corrections officer with the Pennsylvania Department of Corrections, and as a Deputy Waterways Conservation Officer indicate that his hearing impairment does not limit his ability to perform jobs with significant law enforcement functions such as the position as a LEO trainee. (Pl.'s Br. at 14). Plaintiff also argues that he was fit for employment with Defendant as a LEO trainee because, excluding the hearing requirements at extremely high frequencies, he passed all of the required physical, medical, and written prerequisites. (Pl.'s Br. at 14). As evidence of his fitness to perform the necessary tasks, Plaintiff emphasizes his train-

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ing and qualifications in carrying firearms with his other positions as well as his performance of other law enforcement functions that were as demanding or more demanding than that of a LEO trainee. (Pl.'s Br. at 14-15). Plaintiff also claims that Defendant's evidence that Plaintiff's disability would prevent him from performing the essential duties of the position he was being considered for is insufficient to support the Motion for Summary Judgment. (Pl.'s Br. at 15).

To show that he meets the additional requirements to recover under the PHRA, Plaintiff avers that his employment with Defendant as a LEO trainee was rejected and that Defendant continued to seek other applicants for the LEO trainee position of equal qualification to Plaintiff. (Pl.'s Br. at 16). Plaintiff also argues that Defendant cannot prove that it had a legitimate, nondiscriminatory reason for failing to hire Plaintiff. (Pl.'s Br. at 17). In support of this argument, Plaintiff claims that the studies that Defendant relied on to disqualify Plaintiff because of his hearing impairment were created for a cadet position rather than that of a LEO trainee. (Pl.'s Br. at 18). Also, according to Plaintiff, Defendant has never studied the level of hearing an applicant must possess to adequately perform the functions of a LEO trainee. (Pl.'s Br. at 18). Additionally, Plaintiff argues that he had previously met the requirements to become a cadet with Defendant in 1981, even though his hearing impairment was present at that time as well. (Pl.'s Br. at 19).

Finally, Plaintiff claims that he has presented evidence that shows that Defendant's proffered non-discriminatory reason for failing to hire Plaintiff is merely a pretext. (Pl.'s Br. at 20). As support, Plaintiff argues that Defendant fails to present evidence that Plaintiff's hearing impairment would result in serious or job-related problems. (Pl.'s Br. at 22). Plaintiff also points to the fact that he has carried firearms for a number of years with other positions he has held without an incident relating to his hearing impairment. (Pl.'s Br. at 22).

DISCUSSION

When deciding whether to grant a motion for summary judgment, the relevant inquiry is whether the moving party is entitled to summary judgment as a matter of law because the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits show that there is "no genuine issue of any material fact." Pa.R.Civ.P. 1035.2(1); See also, *Summers v. Certaineed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010); *Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). "A material fact is one that directly affects the outcome of the case." *Kuney v. Benjamin Franklin Clinic*, 751 A.2d 662, 664 (Pa. Super. 2000). All

facts of record and reasonable inferences made from the facts must be considered in a light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Toy v. Metropolitan Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007); *Fine v. Checcio*, 870 A.2d 850, 857 (Pa. 2005). Additionally, "a court may grant summary judgment only when the right to such a judgment is clear and free from doubt." *Sevast v. Kakouras*, 915 A.2d 1147, 1153 (Pa. 2007).

Plaintiff alleges that he was discriminated against when he applied for a position with Defendant based upon an alleged disability due to Plaintiff's inability to hear certain sound frequencies. Under the PHRA, an employer may not discriminate against any employee or potential employee on the basis of a non-job related handicap or disability. See, 43 P. S. §951, et seq. The PHRA, in part, specifies that "[i]t shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification ... [f]or any employer because of the non-job related handicap or disability to refuse to hire or employ such individual ... if the individual or independent contractor is the best able and most competent to perform the services required." 43 P.S. §955. In order for a plaintiff to establish a prima facie case of employment discrimination based upon a disability, a plaintiff must allege that: "1) he is disabled; 2) he is qualified for the particular job; and 3) he has suffered an adverse employment action because of the disability." *Volitis v. Merck & Co.*, 129 F. Supp. 2d 765, 768-69 (E.D. Pa. 2001) (citing, *Deane v. Pocono Med. Ctr.*, 142 F.3d 138, 142 (3d Cir. 1998)).

If the plaintiff establishes a prima facie case of employment discrimination, the employer is charged with showing a valid non-discriminatory reason for not hiring the plaintiff. *General Electric Corp. v. Commonwealth, Human Relations Com.*, 365 A.2d 649 (Pa. 1976); *Harrisburg School Dist. v. Commonwealth, Pennsylvania Human Relations Com.*, 466 A.2d 760, 762 (Pa. Commw. Ct. 1983). If the employer meets its burden, the plaintiff must rebut the employer's non-discriminatory reason for not hiring the plaintiff by showing that the reason is merely a pretext for discrimination. *Harrisburg Sch. Dist.*, 466 A.2d at 763.

Plaintiff claims that he is a member of a protected class because he has a disability within the meaning of the PHRA. The PHRA specifies that a handicapped or disabled individual is one who has "a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of having such impairment, or is

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regarded as having such impairment." 16 Pa.Code §44.4 (i). A physical or mental impairment is "a physiological disorder or condition" that affects the special sense organs or other body systems. *Id.* §44.4 (ii)(A). An impairment is considered to limit major life activities when it interferes with a function such as hearing. *Id.* §44.4 (ii)(B). "When the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum that plaintiffs allege they are unable to work in a broad class of jobs." *Sutton v. United Airlines, Inc.*, 119 S.Ct. 2139, 2151 (1999). While an employer may use physical criteria to determine whether an applicant qualifies for a position, an employer may not base its decision on an impairment that it regards as substantially limiting a major life activity. *Id.* at 2150.

In the present case, Defendant claims that Plaintiff has failed to establish a prima facie case for employment discrimination because Plaintiff has not shown that he is among the protected class of those who have a disability or are regarded as having a disability. Plaintiff has not demonstrated that he has a physical disability that substantially impairs one of his major life activities. Through Plaintiff's admission, he has acquired other employment as a maintenance supervisor, has done commercial wiring for an electrical contractor, was employed part time as a Deputy Waterways Conservation Officer for the Pennsylvania Fish and Boat Commission, and was employed as a Corrections Officer with SCI-Camp Hill. (Def.'s Mot. for Summary Judgment Exhibit A at pp. 31-39). This broad range of employment indicates that Plaintiff's diminished hearing ability has not affected Plaintiff's life function of being able to work. Because Plaintiff has not alleged how his diminished hearing ability has affected any other major life activity recognized under the PHRA this Court finds that Plaintiff's diminished hearing ability is not a disability as defined under the PHRA.

Plaintiff, however, further contends that he was regarded by Defendant as having a disability because Defendant did not evaluate whether Plaintiff could perform the functions of a LEO trainee despite his inability to detect noises at high frequencies. An individual is considered to be "regarded as having a disability" when the individual "has a record of such an impairment" or when the individual "[h]as a history or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities." 16 Pa.Code §44.4 (ii)(C).

The facts show that Defendant did not regard Plaintiff as disabled when it refused to hire him based upon the results of his auditory test.

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Defendant had a set standard for the hearing ability of its LEO trainees and Plaintiff simply did not meet the standard. Plaintiff's inability to hear the high frequencies required of LEO trainees does not automatically render Plaintiff disabled under the PHRA. Plaintiff's assertion that he was "regarded as" disabled fails because Plaintiff has no history of a disability as defined under the PHRA. While the auditory tests indicate that Plaintiff has an impaired ability to detect high frequencies, Plaintiff has ultimately failed to demonstrate how this condition interferes with his major life activities under the PHRA as discussed previously. Therefore, without Plaintiff having a history of a disability as defined under the PHRA, Defendant could not have regarded Plaintiff as disabled under the PHRA.

Defendant next alleges that even if Plaintiff is classified as being disabled or "regarded as" disabled that he still fails to plead a prima facie case of disability because the alleged disability is job related. Specifically, the parties dispute whether Plaintiff's inability to detect high frequencies is a job-related disability that disqualifies Plaintiff for the position of LEO trainee. A handicap or disability is considered non-job related when it "does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in, or has been engaged in." 16 Pa.Code §44.4 (i). While a disability is not automatically job-related if it poses a risk of harm to the employee or applicant, if the risk is of "demonstrable and serious harm" or "would pose a demonstrable threat of harm to the health and safety of others," it may be job related. *Id.* §44.4 (ii) and (iii).

Defendant has put forth evidence that supports its contention that the hearing requirement is job related and that Plaintiff's inability to hear certain frequencies would substantially interfere with his ability to perform the essential functions of a LEO trainee. Many of the essential job functions of a LEO trainee require such an employee to have adequate hearing. Some of the functions listed by Defendant include: gathering and interpreting information including interviewing and obtaining victim, witness, suspect and informant statements; conducting audio surveillance; and detecting and collecting evidence that provides the basis of offenses or infractions or indicates the presence of dangerous conditions. (Def.'s Mot. for Summary Judgment Exhibit 2 of Ex. B at p. 13-14). Defendant has explained that a LEO trainee must conduct undercover and open investigations by mingling with patrons in licensed establishments to determine possible liquor-related law violations. (Def.'s Mot. for Summary Judgment Exhibit 3 of Ex. B at p. 3). LEO

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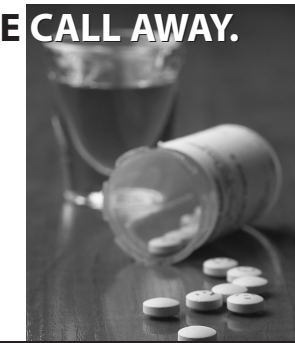
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trainees must also carry a weapon and take armed violators into custody. Plaintiff's inability to hear certain frequencies would pose a threat to the safety of Plaintiff and his fellow officers if he were unable to hear threats during altercations with suspects while on duty. (Def.'s Mot. for Summary Judgment Exhibit 3 of Ex. B at p. 3). For these reasons, Defendant requires a LEO trainee to have a certain level of hearing in order to effectively conduct these essential functions. Defendant has based its physical standards on "research and reports for medical standards as well as a study by Management Scientists, Inc." (Def.'s Mot. for Summary Judgment Exhibit 4 and 5 of Ex. B). Therefore, we find that even if Plaintiff were to be considered disabled that Defendant has demonstrated that the hearing requirement goes to a job applicant's ability to effectively perform the essential functions of a LEO trainee.

Finally, Defendant asserts that even if Plaintiff is found to have successfully pled a prima facie case of discrimination that Defendant had a legitimate non-discriminatory reason for not hiring Plaintiff. Once a plaintiff successfully pleads a prima facie case of discrimination, the burden then shifts to the defendant employer to proffer evidence that it had a legitimate non-discriminatory reason for not hiring the plaintiff. *Harrisburg School Dist. v. Commonwealth Pennsylvania Human Relations Commission*, 466 A.2d 760, 762 (Pa. Commw. Ct. 1983).

As discussed above, Defendant had a legitimate reason for not hiring Plaintiff based upon his inability to hear certain frequencies. Defendant has provided this Court with the job functions a LEO trainee must perform and has explained why a diminished ability to hear will substantially inhibit a LEO trainee from performing those functions. Clearly, an acute sense of hearing is necessary for a LEO trainee to effectively conduct investigations while in licensed establishments as such establishments are being frequented by patrons. If a LEO trainee had a diminished ability to hear, that LEO trainee could potentially not hear important conversations conducted in licensed establishments, thus seriously compromising such investigations. At oral argument, Plaintiff further argued that Defendant's auditory test is irrelevant because Plaintiff would have remained employed with Defendant as a cadet with his diminished hearing ability. This demonstrates that his hearing did not inhibit his ability to perform the essential functions of a cadet position with Defendant. However, this Court fails to see how a test administered in 1981 has any bearing on an auditory test conducted in 1998 and a test administered for an entirely different job position with Defendant. Therefore, even if this Court were to find that Plaintiff established a prima facie case of discrimination, we find that Defendant has proffered

Saunders v. Pennsylvania State Police

evidence establishing that Plaintiff was not hired by Defendant because of a legitimate non-discriminatory purpose.

Accordingly, we enter the following:

ORDER

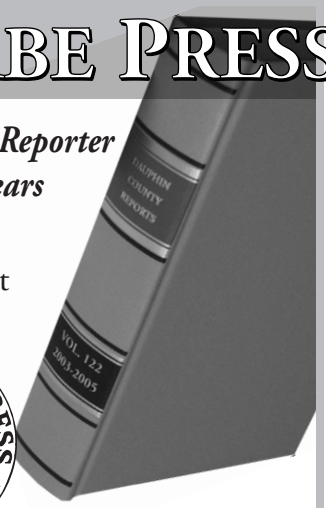
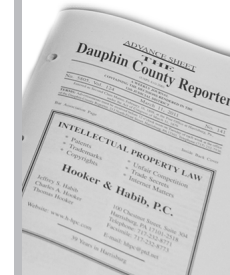
AND NOW, this _____ day of November, 2011, upon consideration of Defendant Pennsylvania State Police's Motion for Summary Judgment with supporting brief, Plaintiff Wilson Saunders' Response in Opposition to Defendant's Motion for Summary Judgment with supporting brief and oral argument that was held on this matter on November 8, 2011, IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is GRANTED and that Plaintiff's Complaint is DISMISSED.

—o—

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SECOND PUBLICATION

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ESTATE OF RAYMOND L. HORTING, JR., late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 25, 2011). Executrix: Virginia L. Little. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. d30-j13

ESTATE OF TIMOTHY KVERAGAS, late of East Hanover Township, Dauphin County, Pennsylvania (died August 2, 2011). Executrix: Brenda Lentz. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. d30-j13

ESTATE OF RICHARD W. BISKING, SR., late of Wayne Township, Dauphin County, Pennsylvania (died October 28, 2011). Executrix: Doris M. Bisking, 337 Swamp Road, Halifax, PA 17032. Attorney: Aaron C. Jackson, Esq., Tucker Arensberg, P.C., 2 Lemoyne Drive, Suite 200, Lemoyne, PA 17043. d30-j13

ESTATE OF IDA G. GOLDBERG, late of Lower Paxton Township, Dauphin County, Pennsylvania (died December 12, 2011). Personal Representative: Jill M. Freedman, 681 Stoverdale Road, Hummesltown, PA 17036. Attorney: Robert G. Radebach, Esq., 912 North River Road, Halifax, PA 17032. d30-j133

ESTATE OF CORA E. CROCKET, late of West Hanover Township, Dauphin County, Pennsylvania (died December 3, 2011). Co-Executor: Joseph L. Crockett, 7756 Hanoverdale Dr., Harrisburg, PA 17112. Co-Executor: Linda D. Flowers, 206 Paxtang Avenue, Harrisburg, PA 17111. d30-j13

THIRD PUBLICATION

Estate Notices

ESTATE OF KENNETH GAILYN HIXON, SR., late of Hummelstown Borough, Dauphin County, Pennsylvania. Executrix: Kim Mansberger, 826 W. Maple Street, Palmyra, PA 17078. d23-j6

ESTATE OF GLENN A. SMITH, late of Derry Township, Dauphin County, Pennsylvania (died November 25, 2011). Executrix: Isabelle Cameron Smith, 304 Hallmark House, Briarcrest Apartments, Hershey, PA 17033. Attorney: Ann E. Rhoads, Esq., Cleckner and Fearen, P.O. Box 11847, Harrisburg, PA 17108-1847. d23-j6

ESTATE OF ELEANOR A. SNYDER, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 27, 2011). Co-Executrices: Mary I. Smith and Kathryn C. Arandas c/o Edward P. Seeber, Esq., James, Smith, Dietterick & Connelly, LLP, Suite C-400, 555 Gettysburg Pike, Mechanicsburg, PA 17055; (717) 533-3280. Attorney: Edward P. Seeber, Esq., James, Smith, Dietterick & Connelly, LLP, Suite C-400, 555 Gettysburg Pike, Mechanicsburg, PA 17055. Telephone (717) 533-3280. d23-j6

ESTATE OF MARGARETTE JOSEPHINE ARMSTRONG, late of Dauphin County, Pennsylvania (died October 30, 2011). Executor: Donald Yost, 1500 High Street, Camp Hill, PA 17011. Attorney: Elizabeth J. Goldstein, Esq., Dilworth Paxson LLP, 112 Market Street, Suite 800, Harrisburg, PA 17101. d23-j6

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Estate Notices

ESTATE OF EARL G. LIGHT, late of Derry Township, Dauphin County, Pennsylvania. Personal Representatives: Gregory E. Light and Joseph T. Plebani. Attorney: Timothy E. Shawaryn, Esq., Gibbel Kraybill & Hess LLP, P.O. Box 16, Litiz, PA 17543. d23-j6

ESTATE OF NORMAN WILSON DANIELS, late of Swatara Township, Dauphin County, Pennsylvania (died November 20, 2011). Personal Representative: Norman L. Daniels, 500 Bonnymeade Avenue, Harrisburg, PA 17111. d23-j6

ESTATE OF ALMA I. SALERNO, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 25, 2011). Executrix: Mrs. Wendy S. Lutz, 7208 Catherine Drive, Harrisburg, PA 17112. Attorney: Gary L. Rothschild, Esq., 2215 Forest Hills Drive, Suite 35, Harrisburg, PA 17112. d23-j6

ESTATE OF SEAN M. WIESER, SR., late of Lykens Township, Dauphin County, Pennsylvania (died December 31, 2009). Administrator: Edward P. Seeber, Esq., James, Smith, Dietterick & Connelly, LLP, Suite C-400, 555 Gettysburg Pike, Mechanicsburg, PA 17055. Telephone (717) 533-3280. d23-j6

ESTATE OF LESLIE ANNE TORRENSEN, late of Lower Paxton Township, Dauphin County, Pennsylvania. Trustee: Leslie Anne Torrensen Living Trust, Virginia Berk c/o Larry Scott Auerbach, Esq., 1000 Easton Road, Abington, PA 19001. Attorney: Larry Scott Auerbach, Esq., 1000 Easton Road, Abington, PA 19001. d23-j6

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Corporate Notices

NOTICE IS HEREBY GIVEN that **INROADS, Inc**, a foreign non-profit corporation incorporated under the laws of the State of Illinois where its principal office is located at 10 S. Broadway, Ste 300, Saint Louis, MO 63102, has applied for a Certificate of Authority in Pennsylvania, where its registered office is located at 2595 Interstate Dr, Ste 103, Harrisburg, PA 17110. The purposes for which it has been organized is to develop and place talented underserved youth in business and industry and prepare them for corporate and community leadership.

The registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania. j6

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 4129/6129 of the Pennsylvania (PA) Bus. Corp. Law of 1988, **Universal Underwriters Acceptance Corporation**, a corporation incorporated under the laws of the State of IL with its principal office located at Zurich American Insurance Company, Corp. Law Dept., 1400 American Ln., Schaumburg, IL 60196 and a registered office in PA at c/o Corporation Service Co., Dauphin County, which on 9/21/1994, was granted a Certificate of Authority to transact business in the Commonwealth of PA, intends to file an Application for Termination of Authority with the Dept. of State. j6

FIRST PUBLICATION

Fictitious Notices

NOTICE IS HEREBY GIVEN that an application for registration of a fictitious name, **Green Acres Country Market** for the conduct of business in Dauphin County, Pennsylvania, with the principal place of business being 1802 Armstrong Valley Rd, Halifax, PA 17032 was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 21st day of December, 2011 pursuant to the Act of Assembly of December 16, 1982, Act 295.

The name and address of the only person or persons owning or interested in the said business are: MW Management Group LLC. j6

NOTICE IS HEREBY GIVEN that an application for registration of a fictitious name, **MTS Automotive Repair** for the conduct of business in Dauphin County, Pennsylvania, with the principal place of business being 1751 Mahantongo Creek Rd., Dalmatia, PA 17017 was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 1st day of November, 2011 pursuant to the Act of Assembly of December 16, 1982, Act 295.

The name and address of the only person or persons owning or interested in the said business are: Mountain Top Services Inc. j6

FIRST PUBLICATION

Miscellaneous Notices

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY PENNSYLVANIA

NO. 2011 CV 5503-MF

CIVIL ACTION NOTICE TO DEFEND

MORTGAGE FORECLOSURE

CitiFinancial Services, Inc., a Pennsylvania Corporation, Plaintiff

vs.

**Felix Narvaez-Cumba
4723 Berkley Street,
Harrisburg, PA 17109**

**Maria Gerena
4723 Berkley Street
Harrisburg, PA 17109, Defendants**

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim of relief requested by the plaintiff. You may lose money or property or other rights important to you.

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **POPLAR POWER CORPORATION**, a corporation of the State of Delaware, with principal office located at c/o Bechtel Enterprises Holdings, Inc., 50 Beale St., San Francisco, CA 9401, and having a Commercial Registered office Provider and county of venue as follows: CT Corporation System, Dauphin County, which on December 23, 1993, was granted a Certificate of Authority, to transact business in the Commonwealth, intends to file an Application for Termination of Authority with the Department of State. j6

NOTICE IS HEREBY GIVEN that **Arthurs, Lestrangle & Company Incorporated**, which was incorporated on 08/22/2002 in the State of PA and having a Commercial Registered Office Provider and county of venue as follows: Corporation Service Company, Dauphin County, is winding up its affairs and has filed Articles of Dissolution with PA Dept. of State in accordance with PA Business Corporation Law. j6

NOTICE IS HEREBY GIVEN that **Arthurs, Lestrangle Investment Advisory, Inc.**, which was incorporated on 08/22/2002 in the State of PA and having a Commercial Registered Office Provider and county of venue as follows: Corporation Service Company Dauphin County, is winding up its affairs and has filed Articles of Dissolution with the PA Dept. of State in accordance with PA Business Corporation Law. j6

NOTICE IS HEREBY GIVEN that an Application for Certificate of Authority was filed with the PA Dept. of State on 12/20/11 by **Cutanea Life Sciences, Inc.**, a foreign corporation formed under the laws of the State of DE with its registered office located in the State of DE at 2711 Centerville Rd., Suite 400, Wilmington, DE 19808, to do business in PA under the provisions of the Business Corporation Law of 1988. The principal office of Cutanea Life Sciences, Inc. in the Commonwealth of PA is located at 507 Chaumont Drive, Villanova, PA 19085.

The principal office in PA shall be deemed for venue and official publication purposes to be located in Dauphin County. j6

NOTICE IS HEREBY GIVEN that articles of Incorporation were filed on December 28, 2011, with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania for the purpose of obtaining a Certificate of Incorporation.

The name of the Corporation organized under the Pennsylvania Nonprofit Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented, is **The LutheranHANDS Foundation**.

The purpose for which the Corporation was organized is to serve churches by providing Christian mission trips to youth and adults.

RHOADS & SINON LLP
Jonathan W. Cox, Esq.
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146

j6

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 4129/6129 of the Pennsylvania (PA) Bus. Corp. Law of 1988, **Southern Container Corp.**, a corporation incorporated under the laws of the State of Georgia with its principal office located at 504 Thrasher St., Norcross, GA 30071 and a registered office in PA at c/o Corporation Service Co., Dauphin County, which on 4/3/1991, was granted a Certificate of Authority to transact business in the Commonwealth of PA, intends to file an Application for Termination of Authority with the Dept. of State. j6

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 4129/6129 of the Pennsylvania (PA) Bus. Corp. Law of 1988, **Intrasphere Technologies, Inc.**, a corporation incorporated under the laws of the State of New York with its principal office located at c/o Vincent McGill, Esq., Eaton & Van Winkle LLP, 3 Park Ave., NY, NY 10016 and a registered office in PA at c/o Corporation Service Co., Dauphin County, which on 12/1/2010, was granted a Certificate of Authority to transact business in the Commonwealth of PA, intends to file an Application for Termination of Authority with the Dept. of State. j6

NOTICE IS HEREBY GIVEN that a Certificate of Authority was filed in the Department of State of the Commonwealth of Pennsylvania for **Healthcare Interactive, Inc.** The address of its principal office under the laws of its jurisdiction is The Corporation Trust Company, 1209 Orange St., Wilmington, DE 19801. The commercial registered agent provider is United Corporate Services, Inc., in Dauphin County. The Corporation is filed in compliance with the requirements of the applicable provisions of 15 Pa. C.S. 4124(b). j6

NOTICE IS HEREBY GIVEN that **Granite City Restaurant Operations, Inc.**, a foreign business corporation incorporated under the laws of the State of Minnesota, where its principal office is located at 5402 Parkdale Drive, Ste 101, Minneapolis, MN 55416, has applied for a Certificate of Authority in Pennsylvania, where its registered agent is located at National Registered Agents, Inc.

The registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania. j6

NOTICE IS HEREBY GIVEN that **Comfort Sleep Services, Inc.**, a corporation formed under the laws of the state of New Jersey, in compliance with the Pennsylvania Business Corporation Law of 1988 §4124(b) hereby publishes notice of its application for a Certificate of Authority. Comfort Sleep Services, Inc.'s corporate offices are located at: 2240 Highway 33, suite 114, Neptune NJ, 07753. Its registered agent in Pennsylvania is CT Corporation System, 116 Pine St., Suite 320, Harrisburg PA, 17101.

The registered office of the corporation shall be deemed for venue and official publication purposes to be located Dauphin County, Pennsylvania. j6

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 12/20/2011 under the Domestic Business Corporation Law, for **Steager Capital Partners, Inc.**, and the name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. j6

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that **JONES LANG LASALLE CONSTRUCTION COMPANY, INC.**, a foreign business corporation incorporated under the laws of , with its princ. office located at ONE POST OFFICE SQUARE, Boston, MA 02109, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988.

The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. j6

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 12/6/2011 under the Domestic Business Corporation Law, for **DWH MEDICAL CENTER, PC**, and the name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. j6

NOTICE IS HEREBY GIVEN that **True Commerce, Inc.**, a foreign business corporation incorporated under the laws of , with its princ. office located at 800 Cranberry Woods, Ste. 450, Cranberry Wood, PA 16066, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988.

The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. j6

NOTICE IS HEREBY GIVEN that **Just Solar Development Corp.**, a foreign business corporation incorporated under the laws of , with its princ. office located at 2711 Centerville Rd., Ste. 400, Wilmington, DE 19808, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988.

The commercial registered office provider in PA is c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. j6

NOTICE IS HEREBY GIVEN that **Compliance 360, Inc.**, a foreign business corporation incorporated under the laws of the State of Georgia , where its principal office is located at 3780 Mansell Road, Suite 200, Alpharetta, Georgia 30022, has applied for a Certificate of Authority in Pennsylvania, where its registered office is located at 2595 Interstate Drive, Suite 103, Harrisburg, Pennsylvania 17110.

The registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania. j6

NOTICE IS HEREBY GIVEN that Articles of Incorporation-Nonprofit were filed on April 18, 2011, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on behalf of **WHATEVER IT TAKES AMIGO**. The said Nonprofit Corporation has been incorporated under the Pennsylvania Nonprofit Corporation Law of 1988.

j6 Janice L. Meadath
446 North Nyes Road
Harrisburg, PA 17112

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN of the filing of Articles of Incorporation as follows:

1. The name of the corporation is **Mountain Top Services Inc.**
 2. The location of the registered office of the corporation is 1751 Mahantongo Creek Rd., Dalmatia PA 17017.
 3. The Articles of Incorporation were filed under the provisions of the Business Corporation Law of 1988.
 4. The corporation shall have unlimited power to engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law.
 5. The Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania and approved by said Department on the 1st day of November, 2011. j6
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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 19, 2011, by **Hummel Construction Company**, a foreign corporation formed under the laws of the State of Ohio where its principal office is located at 127 E. Main St., Ravenna, OH 44266, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. j6

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 28, 2011, by **Jacobi Carbons, Inc.**, a foreign corporation formed under the laws of the State of Ohio, where its principal office is located at 432 McCormick Blvd., Columbus, OH 43213, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. j6

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 13, 2011, by **International Millennium Consultants Inc.**, a foreign corporation formed under the laws of the State of Illinois, where its principal office is located at 2324 Castilian Circle, Northbrook, IL 60062, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o National Registered Agents, Inc., Dauphin County, Pennsylvania. j6

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 15, 2011, by **65 Green Mountain Road Realty DST**, a foreign statutory trust formed under the laws of the State of Delaware, where its principal office is located at Div. of Corporations, 401 Federal St., Dover, DE 19901, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. j6