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16 DONALD T. STERLING and
17 THE STERLING FAMILY TRUST

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

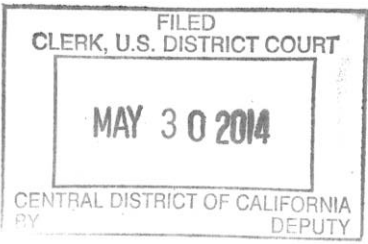
20 DONALD T. STERLING, an
21 individual, and THE STERLING
22 FAMILY TRUST,

23 Plaintiffs,

24 vs.

25 NATIONAL BASKETBALL
26 ASSOCIATION, a New York
27 professional association; ADAM
28 SILVER, an individual; and DOES 1
through 10,

Defendants.



Case No. **CY14-4192 Fmo-54x**

COMPLAINT FOR DAMAGES:

1. **VIOLATIONS FOR DENIAL OF CONSTITUTIONAL RIGHTS;**
2. **BREACH OF CONTRACT;**
3. **ANTITRUST VIOLATIONS;**
4. **CONVERSION; AND**
5. **BREACH OF FIDUCIARY DUTY**

DEMAND FOR JURY TRIAL

Blecher Collins
Pepperman & Joye



1 Plaintiffs Donald T. Sterling and The Sterling Family Trust (collectively
2 “Plaintiffs”) complain against Defendants, and each of them, as follows:

3 **PARTIES**

4 1. Plaintiff Donald T. Sterling (“Sterling”) is, and at all times herein
5 mentioned was, a resident of Los Angeles County, State of California.

6 2. Plaintiff The Sterling Family Trust is the sole shareholder of LAC
7 Basketball Club, Inc. (“Los Angeles Clippers”), a California corporation with its
8 principal place of business in Los Angeles, California. Sterling is a co-trustee of the
9 Sterling Family Trust and co-owner of the Los Angeles Clippers with his estranged
10 wife, Rochelle (“Shelly”) Sterling.

11 3. Defendant National Basketball Association (“NBA”) is, and at all times
12 herein mentioned was, a professional association of basketball teams with thirty
13 franchised members. The principal place of business for the NBA is New York,
14 New York, but the NBA transacts business within the Central District of California.

15 4. Defendant Adam Silver (“Silver”) is, and at all times herein mentioned
16 was, the Commissioner of the NBA. Silver is employed at the NBA offices in New
17 York, New York, but Silver transacts NBA business within the Central District of
18 California.

19 5. Plaintiffs are ignorant of the true names and capacities of Defendants
20 sued herein as DOES 1 through 50, and therefore sues Defendants by such fictitious
21 names. Plaintiffs will amend this complaint to allege their true names and capacities
22 when ascertained. Plaintiffs are informed and believe, and, based on such
23 information and belief, allege each of the fictitiously named Defendants is
24 responsible in some manner for the injuries to Plaintiffs alleged herein. Plaintiffs
25 further allege that their injuries were proximately caused by such Defendants, and
26 each of them.

27 6. Plaintiffs allege that each of the Defendants was the agent, employee,
28 director, officer, member, partner, joint venturer, owner shareholder, principal,

1 successor, or predecessor in interest of the remaining Defendants. In doing the
2 things alleged below, each Defendant was acting within the course and scope of his
3 agency, employment, directorship, capacity as an officer, member, partner, joint
4 venturer, owner, shareholder, principal, successor, or predecessor in interest of the
5 remaining Defendants. Plaintiffs further allege that the acts and conduct attributed
6 to each Defendant were approved, ratified, authorized, and known to the remaining
7 Defendants, and each of them.

8 **STATEMENT OF THE CASE**

9 7. Sterling is the longest-tenured owner in the NBA. Sterling purchased
10 the Clippers in 1981 when they played their home games in San Diego, California.
11 Sterling moved the Clippers franchise to Los Angeles, California in 1984. In 2005,
12 Sterling transferred the Los Angeles Clippers to the Sterling Family Trust.

13 8. On or about April 25, 2014, the gossip website TMZ posted an
14 audiotape of a private conversation between Sterling and his lover, Ms. V. Stiviano
15 (“Stiviano”).

16 9. The conversation that TMZ leaked between Sterling and Stiviano took
17 place in Stiviano’s living room. Unbeknownst to Sterling at the time, Stiviano was
18 surreptitiously recording their conversation. California Penal Code section 632
19 criminalizes the act of recording an individual without their consent. This right
20 flows from the California Constitution’s right-to-privacy guarantee. Sterling had a
21 reasonable expectation of privacy during the personal conversation in Stiviano’s
22 living room, was not informed it was being recorded, and did not consent to Stiviano
23 recording the confidential conversation.

24 10. The impetus for the conversation in question was Stiviano telling
25 Sterling that she was going to bring “four gorgeous black guys” to a Clippers game.
26 During the illegally recorded conversation, Sterling, in a jealous moment, asked
27 Stiviano, who is half African-American, not to bring “black people” to Clippers
28

1 games and to refrain from posting pictures of herself with “black people” on
2 Instagram.

3 11. The release of the illicit audiotape by TMZ prompted a predictable
4 public backlash. On or about April 29, 2014, after a less than three-day
5 “investigation” and in direct response to the illicit audiotape, Silver issued draconian
6 sanctions against Sterling. Silver fined Sterling \$2.5 million and imposed a lifetime
7 ban against Sterling’s involvement with the operation or management of the
8 Clippers and even barred him from attending any NBA game. As Silver stated, this
9 was the most severe penalty that he could lawfully impose under the NBA
10 Constitution. Silver also announced that a vote would be conducted by the NBA
11 Board of Governors on June 3, 2014 to force Sterling to sell the Los Angeles
12 Clippers and stated that he urged the Board of Governors to take such an action.

13 12. On May 19, 2014, Silver served a formal written charge on Sterling.
14 The charge is based entirely or almost entirely on the illegal Stiviano recording.
15 (Charge, Ex. 1 attached hereto, exhibits and additional evidence omitted). The
16 charge contains six counts that allegedly provide a basis for the NBA Board of
17 Governors to terminate Plaintiffs’ ownership in the Los Angeles Clippers.

18 13. Incredibly, despite the clear and precise language of California Penal
19 Code section 632(d)—which states that “Except as proof in an action or prosecution
20 for violation of this section, *no evidence obtained a result* of . . . recording a
21 confidential communication in violation of this section shall be admissible in any
22 judicial, administrative, legislative, *or other proceeding*,” (emphasis added)—in
23 their proceeding against Plaintiffs, Defendants rely almost entirely on an
24 inadmissible transcript of the illegally recorded conversation and other evidence
25 flowing directly from the conversation.

26 14. On May 20, 2014, Commissioner Silver stated during a press
27 conference: “Mr. Sterling still owns the Los Angeles Clippers. Mrs. Sterling, as I
28 understand it, through a trust owns 50 percent of the team as well. It is their team to



1 sell, and so he [Mr. Sterling] knows what the league's point of view is, and so I'm
2 sure if he wanted to sell the team on some reasonable timetable, I'd prefer he sell it
3 than we go through this process."

4 15. In an attempt to comply with Commissioner Silver's May 20, 2014
5 directive, on May 22, 2014, Mr. Sterling's lawyer Doug Walton wrote a letter to the
6 NBA stating: "As you know, I have been a long-time attorney for Donald T.
7 Sterling. Mr. Sterling agrees to the sale of his interest in the Los Angeles Clippers.
8 This letter confirms that Donald T. Sterling authorizes Rochelle Sterling to negotiate
9 with the National Basketball Association regarding all issues in connection with a
10 sale of the Los Angeles Clippers team, owned by LAC Basketball Club, Inc." (Ex.
11 2 attached hereto.)

12 16. In a further attempt to comply with Commissioner Silver's May 20
13 directive, Rochelle Sterling retained Bank of America, and with her attorney Pierce
14 O'Donnell, has been proceeding forward with the sale process, meeting with various
15 prospective buyers and buyer groups, including Steve Ballmer, former Microsoft
16 CEO.

17 17. On May 27, 2014, Sterling submitted his response to the charge.
18 (Answer to Charge, Ex. 3 attached hereto.)

19 18. On May 27, 2014, Rochelle Sterling submitted her response to the
20 charge.

21 19. On May 27, 2014, Mike Bass, Executive Vice President,
22 Communications issued the following statement on behalf of the NBA: "This
23 evening, the NBA received separate responses from lawyers representing Donald
24 and Shelly Sterling to the charge to terminate their ownership interests in the Los
25 Angeles Clippers. These materials, together with the charge, will be distributed to
26 the NBA Board of Governors, who will meet on June 3, 2014 at 1 p.m. in New York
27 City to hear and vote upon this matter. Should the Board vote to sustain the charge,
28 the Sterlings' interests in the Clippers will be terminated and the team will be sold."



1 20. In accordance with Commissioner Silver's request to terminate
2 Plaintiffs' ownership in the Los Angeles Clippers, the NBA Board of Governors
3 will vote on June 3, 2014.

4 21. Given multiple media reports, it is expected that the Board of
5 Governors will unanimously approve Silver's request to terminate Plaintiffs'
6 ownership in the Los Angeles Clippers despite the fact the basis for the charge is
7 unconstitutional, in breach of contract, in restraint of trade, in breach of fiduciary
8 duties, and is malicious and oppressive.

9 22. The NBA has left Sterling no alternative but to file this Complaint and
10 seek a temporary restraining order. Even though Rochelle Sterling has been
11 accepting bids in order to sell the Los Angeles Clippers, the NBA refuses to
12 postpone the June 3, 2014 termination hearing and vote, and in doing so, the NBA
13 will irreparably harm Plaintiffs. On May 28, 2014, the NBA's General Counsel
14 informed Sterling's counsel that the termination hearing was going forward.

15 23. On May 29, 2014, it was announced that Shelly Sterling and the
16 Sterling Family Trust reached an agreement with former Microsoft Chief Executive
17 Officer Steven Ballmer regarding the purchase and sale of the Los Angeles Clippers
18 for \$2 billion.

19 24. On May 30, 2014, Shelly Sterling informed Sterling that the June 3,
20 2014 was cancelled or was going to be cancelled. That same day, Plaintiffs' counsel
21 emailed the NBA's General Counsel asking if the June 3, 2014 hearing regarding
22 the termination of the Sterlings' ownership was cancelled. As of 1:30 p.m. Pacific
23 Standard Time, Plaintiffs' counsel received no response, and at approximately 10:52
24 a.m. on May 30, the Los Angeles Times reported that the June 3, 2014 hearing was
25 going to proceed as scheduled.

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JURISDICTION AND VENUE

25. The United States District Court for the Central District of California has federal question subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 15. Venue is proper under 28 U.S.C. § 1391.

FIRST CLAIM FOR RELIEF

Violation of Plaintiff's Rights Under California Constitution

(against all Defendants)

26. Plaintiffs incorporate by reference paragraphs 1-25 with the same force and effect as though repeated in full herein.

27. California Penal Code section 632(a) criminalizes the recording of a speaker's confidential communication without the consent of the person being recorded. California Penal Code section 632(d) provides that "no evidence obtained as a result of . . . recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative or other proceeding." The Ninth Circuit has construed this provision to embody "a state substantive interest in the privacy of California citizens from exposure of their confidential conversations to third parties." Multiple cases have held that these rights derive directly from the guarantee of the right to privacy contained in the California Constitution. *Feldman v. Allstate Insurance Co.*, 322 F. 3d 660, 667 (9th Cir. 2003); *Rattray v. City of National City*, 51 F. 3d 793, 797 (9th Cir. 1994). In short, Penal Code section 632(d), which precludes the use of such a recording, is more than a rule of evidence—it rises to the level of guaranteeing a constitutional protection.

28. The "Charge" filed by the NBA against Sterling is based "solely" on the illegal Stiviano recording and events flowing from the illegal recording's disclosure to the public. The NBA General Counsel's letter to Maxwell M. Blecher dated May 19, 2014 admits as such. (*See* Ex. 4 attached hereto ("The Charge is based solely on a recording that Mr. Sterling admits is authentic and events directly

1 related thereto.”). All the claimed adverse effects to the NBA flow from the illegal
2 recording. (See Charge, Ex. 1 ¶¶ 27-54). Accordingly, this entire proceeding
3 violates substantive constitutional rights afforded Mr. Sterling by the California
4 Constitution and should be immediately terminated forthwith.

5 **SECOND CLAIM FOR RELIEF**

6 **Breach of Contract**

7 **(against all Defendants)**

8 29. Plaintiffs incorporate by reference paragraphs 1-28 with the same force
9 and effect as though repeated in full herein.

10 30. The NBA Constitution and By-Laws are defined as “a contract among
11 the Members of the Association.” (See Constitution and By-Laws of the National
12 Basketball Association, dated May 29, 2012, Ex. 5 attached hereto.)

13 31. On April 29, 2014, Defendant Silver: (a) levied a \$2.5 million fine
14 against Sterling; (b) banned Sterling’s participation as an owner “for life”; and (3)
15 initiated the process to force Plaintiffs to sell the Los Angeles Clippers. Because
16 none are authorized under the NBA Constitution and By-Laws, each of these acts,
17 individually and cumulatively, offend the NBA Constitution and By-Laws.
18 Accordingly, Sterling requests that the Court to vacate each of the sanctions ordered
19 by Defendant Silver for the reasons set forth below:

20 a. Plaintiff Sterling did not commit any act that violated the NBA
21 Constitution and By-Laws authorizing any fine or ban at all. But even if his private,
22 illegally recorded speech is considered an act offending the NBA Constitution and
23 By-Laws, then the Commissioner (Defendant Silver) exceeded the scope of
24 permissible punishment. Under the NBA Constitution, the maximum allowable fine
25 in these circumstances would be \$1,000,000, not \$2,500,000. Further, when this
26 excessive fine is coupled with the “ban for life,” the punishment is capricious,
27 arbitrary, unreasonable, and grossly discriminatory compared with similar “speech”
28 offenses. For example, despite threats of boycotts from the LGBT community, the



1 NBA ignored an owner who has made highly controversial comments about
2 individuals with HIV/AIDS and has donated a substantial amount of money to anti-
3 homosexual causes. Similarly, Kobe Bryant was fined \$100,000 (but not
4 suspended) for calling a referee *during a televised game* a “fucking faggot.” The
5 NBA did not fine or suspend Shaquille O’Neal for mocking a disabled individual on
6 Instagram and for making multiple racist comments about Asian players on
7 television. While there are several other similar examples, Sterling’s punishment is
8 far and away the most severe ever imposed by an NBA Commissioner for *any*
9 conduct.

10 b. Sterling violated no provision of Article 13 of the constitution,
11 which expressly sets forth the bases for termination of ownership. Therefore, there
12 is no basis for invoking proceedings to terminate Sterling’s ownership of the Los
13 Angeles Clippers.

14 c. The NBA gave Sterling five business days to respond to the
15 extensive allegations of the charge and the approximately 1,000 pages of exhibits,
16 declarations, reports, and surveys submitted by the NBA in support of its “Charge.”
17 The NBA flatly denied Sterling’s request for an extension of time, and Silver stated
18 on television that no extension would be provided. The lack of any extension
19 precluded, among other things, interviewing the declarants and other witnesses,
20 gathering documents, and preparing counter expert surveys. Furthermore, Sterling
21 was locked out of his office at the Staples Center, where he keeps all of his files
22 related to the team. He was forced to rely on Defendants’ evidence alone in
23 defending himself. Accordingly, Sterling has been denied the protections which he
24 should have been afforded under the “fair procedure” doctrine applicable to such
25 matters.

26 32. In levying the \$2,500,000 fine against Sterling, in banning Sterling “for
27 life,” and in implementing procedures to force a sale of the Los Angeles Clippers,
28

1 Defendants Silver and the NBA breached the NBA Constitution and By-Laws vis-à-
2 vis Plaintiff Sterling. Those acts should be enjoined by the Court.

3 **THIRD CLAIM FOR RELIEF**

4 **Violation of the Antitrust Laws Under Sherman Act § 1**

5 **(against all Defendants)**

6 33. Plaintiffs incorporate by reference paragraphs 1-32 with the same force
7 and effect as though repeated in full herein.

8 34. The ownership interest in NBA teams is the relevant product market
9 that is threatened and affected here by the Silver/NBA concerted conduct to
10 terminate Plaintiffs' ownership of the Los Angeles Clippers. *Sullivan v. National*
11 *Football League*, 34 F.3d 1091 (1st Cir. 1994).

12 35. The relevant geographic market is the United States, and alternatively,
13 Southern California.

14 36. Competition exists for ownership of NBA franchises. The Los Angeles
15 market area is uniquely one of the most valuable of those franchises. In a free
16 market, unfettered by the NBA, Plaintiffs would be free to (a) retain or (b) sell the
17 franchise on terms acceptable to them.

18 37. Silver and the competing NBA owners' collective decision to force a
19 sale of the Los Angeles Clippers not only deprives Plaintiffs of that choice
20 guaranteed under the antitrust laws but will also compromise the competitive
21 process for acquiring club ownership. Moreover, the "forced sale" process involves
22 the unfettered subjective discretion of Sterling's direct competitors who each stand
23 to gain financially from Sterling's exclusion from the market. Antitrust law does
24 not entrust such decision-making to the collective action of competitors. *Jane*
25 *Blalock v. Ladies Professional Golf Association*, 359 F. Supp. 1260 (N.D. Ga.
26 1973).

27 38. The forced sale of the Los Angeles Clippers threatens not only to
28 produce a lower price than a non-forced sale, but more importantly, it injures



1 competition and creates antitrust injury by making the relevant market unresponsive
2 to consumer preference and to the operation of the free market, *Sullivan*, 34 F.3d at
3 1101.

4 39. Plaintiffs are informed and believe that the NBA's forced sale of the
5 Los Angeles Clippers would create damages of at least \$1 billion, which includes
6 capital gains taxes, unnecessary and increased investment-banking fees, legal and
7 transactional costs, and the loss of all future appreciation in the Los Angeles
8 Clippers franchise value, before trebling.

9 **FOURTH CLAIM FOR RELIEF**

10 **Conversion**

11 **(against all Defendants)**

12 40. Plaintiffs incorporate by reference paragraphs 1-39 with the same force
13 and effect as though repeated in full herein.

14 41. Defendants' decision to force the sale of the Los Angeles Clippers and
15 terminate Plaintiffs' ownership interest constitutes an actual and substantial
16 interference with Plaintiffs' proprietary rights.

17 42. Plaintiffs are informed and believe that Defendants' conduct is
18 intentional, willful, malicious, and in conscious disregard of Plaintiffs' property
19 rights. Accordingly, Plaintiffs respectfully request that the Court award punitive
20 damages against Defendants to punish their wrongful conduct and deter it from
21 occurring again.

22 **FIFTH CLAIM FOR RELIEF**

23 **Breach of Fiduciary Duties**

24 **(against all Defendants)**

25 43. Plaintiffs incorporate by reference paragraphs 1-43 with the same force
26 and effect as though repeated in full herein.

27 44. Defendants Silver and the NBA, through its Board of Governors, are in
28 a special relationship with Sterling, the Sterling Family Trust, or both, in that

1 Defendants owe these Plaintiffs, as owners of the Los Angeles Clippers, fiduciary
2 duties, including duties of loyalty, cooperation, good faith and fair dealing, and the
3 exercise of due care.

4 45. By bringing charges against Sterling that violate his constitutional
5 rights, by imposing unreasonably harsh and unprecedented penalties
6 disproportionate to the alleged offense and to the offenses of others, by conducting
7 an inadequate investigation, and by expressly denying Plaintiffs an adequate
8 opportunity to fully prepare to defend themselves, Defendants have breached their
9 fiduciary duties to Plaintiffs, and each of them.

10 46. Because of the willful and malicious nature of the conduct described
11 above, Plaintiffs request that the Court award punitive damages against Defendants,
12 and each of them, to punish their wrongful conduct and deter it from occurring
13 again.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs Donald T. Sterling and The Sterling Family Trust,
16 pray for the following relief against Defendants National Basketball Association and
17 Adam Silver:

18 1. On Claim One, Plaintiffs' actual damages, which exceed \$1 billion,
19 plus costs, reasonable attorney's fees, and injunctive relief, which includes
20 eliminating the lifetime ban, eliminating the \$2.5 million fine, the reinstatement of
21 the longtime Chief Executive Officer of the Clippers, Andy Roeser, the removal of
22 the interim Chief Executive Officer, Richard Parsons, and the termination of the
23 NBA's proceedings to strip Donald Sterling and the Sterling Family Trust of their
24 ownership in the Los Angeles Clippers;

25 2. On Claim Two, Plaintiffs' actual damages, which exceed \$1 billion,
26 plus costs, reasonable attorney's fees, and injunctive relief, which includes
27 eliminating the lifetime ban, eliminating the \$2.5 million fine, the reinstatement of
28 the longtime Chief Executive Officer of the Clippers, Andy Roeser, the removal of



1 the interim Chief Executive Officer installed by the NBA, Richard Parsons, and the
2 termination of the NBA's proceedings to strip Donald Sterling and the Sterling
3 Family Trust of their ownership in the Los Angeles Clippers;

4 3. On Count Three, treble Plaintiffs' actual damages, which exceed \$1
5 billion, plus costs, reasonable attorney's fees (15 U.S.C. § 15), and injunctive relief,
6 which includes eliminating the lifetime ban, eliminating the \$2.5 million fine, the
7 reinstatement of the longtime Chief Executive Officer of the Clippers, Andy Roeser,
8 the removal of the interim Chief Executive Officer installed by the NBA, Richard
9 Parsons, and the termination of the NBA's proceedings to strip Donald Sterling and
10 the Sterling Family Trust of their ownership in the Los Angeles Clippers;

11 4. On Claim Four, Plaintiffs' actual damages, which exceed \$1 billion,
12 punitive or exemplary damages, costs, reasonable attorney's fees, and injunctive
13 relief, which includes eliminating the lifetime ban, eliminating the \$2.5 million fine,
14 the reinstatement of the longtime Chief Executive Officer of the Clippers, Andy
15 Roeser, the removal of the interim Chief Executive Officer installed by the NBA,
16 Richard Parsons, and the termination of the NBA's proceedings to strip Donald
17 Sterling and the Sterling Family Trust of their ownership in the Los Angeles
18 Clippers;

19 5. On Claim Five, Plaintiffs' actual damages, which exceed \$1 billion,
20 punitive or exemplary damages, costs, reasonable attorney's fees, and injunctive
21 relief, which includes eliminating the lifetime ban, eliminating the \$2.5 million fine,
22 the reinstatement of the longtime Chief Executive Officer of the Clippers, Andy
23 Roeser, the removal of the interim Chief Executive Officer installed by the NBA,
24 Richard Parsons, and the termination of the NBA's proceedings to strip Donald
25 Sterling and the Sterling Family Trust of their ownership in the Los Angeles
26 Clippers;

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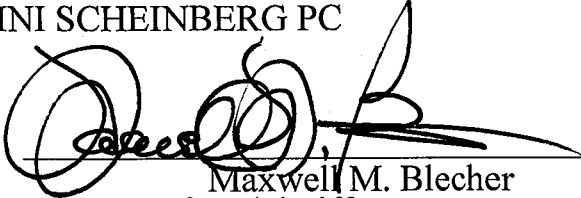
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Dated: May 30, 2014

BLECHER COLLINS PEPPERMAN & JOYE, P.C.

SAMINI SCHEINBERG PC

By:



Maxwell M. Blecher
Attorneys for Plaintiffs
DONALD T. STERLING and THE
STERLING FAMILY TRUST

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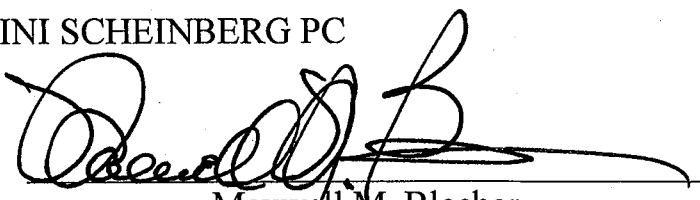
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues triable by a jury.

Dated: May 30, 2014

Respectfully submitted,

BLECHER COLLINS PEPPERMAN & JOYE. P.C.
SAMINI SCHEINBERG PC

By: 

Maxwell M. Blecher
Attorneys for Plaintiffs
DONALD T. STERLING and THE
STERLING FAMILY TRUST

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