

May 20, 2015

Via Electronic Filing – Refiled with Corrected Docket Number

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
400 North Street
Harrisburg, PA 17120

**Re: Docket No. A-2015-2471761
Application of Fabian Transportation, Inc.
Motion to Dismiss the Protest of Keystone Cab Service, Inc.**

Dear Secretary Chiavetta:

Attached for filing is Fabian Transportation's Motion to Dismiss the Protest of Keystone Cab Service, Inc. ("Protestant") in the above captioned proceeding.

A copy of the attached Motion to Dismiss has been forwarded to the Protestant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris
Debra L. Roscioli

MAM/jm
Enclosure

cc: Justine L. Pate, Esquire [w/enc.]
Leandro Brito [w/enc.]

**Re: Docket No. A-2015-2471761
Application of Fabian Transportation, Inc.
Motion to Dismiss the Protest of Keystone Cab Service, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via First Class Mail
Justine L. Pate, Esquire
620 S. 13th Street
Harrisburg, PA 17104

Counsel for Keystone Cab Service, Inc.

Dated: May 20, 2015



Margaret A. Morris, Esquire
Debra L. Roscioli, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Fabian Transportation, Inc.

Docket No. A-2015-2471761

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.101, you are hereby notified that if you do not file a written response answering the enclosed Motion to Dismiss of Fabian Transportation, Inc. within ten (10) days from service of this notice, the facts set forth by Fabian Transportation, Inc. in the Motion to Dismiss may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to the Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Fabian Transportation, Inc., Margaret A. Morris, Esquire, and where applicable the Administrative Law Judge presiding over the issue.

File with:

Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Margaret A. Morris, Esquire
Debra L. Roscioli, Esquire
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Dated: May 20, 2015



Margaret A. Morris, Esq.
Attorney ID No. 75048
Debra L. Roscioli, Esq.
Attorney ID No. 91014
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2929 Arch Street
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(215) 495-6524 tel.
(215) 495-6600 fax

mmorris@regerlaw.com

Counsel for Fabian Transportation, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Fabian Transportation, Inc. : Docket No. A-2015-2471761
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**MOTION OF FABIAN TRANSPORTATION, INC. TO DISMISS
PROTEST OF KEYSTONE CAB SERVICE, INC.**

NOW COMES, Fabian Transportation, Inc. (Fabian or Applicant), by and through its counsel, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101(a)(2), (4) and (7), and files this Motion to Dismiss Protest of Keystone Cab Service, Inc. (Motion) and avers in support thereof as follows:

I. Procedural History

1. On or about February 26, 2015, Fabian filed an Application at this docket with the Pennsylvania Public Utility Commission (Commission) for a certificate of public convenience for motor common carrier of persons in airport transfer service from points in Lebanon County to three specified airports, Philadelphia International Airport, Lehigh Valley International Airport and the Harrisburg International Airport.

2. Notice of the Application was subsequently published on April 11, 2015, in the *Pennsylvania Bulletin* at 45 Pa. Bulletin 1917. Protests were due on or before April 27, 2015.

3. On April 24, 2015, Keystone Cab Service, Inc. (Protestant) filed a timely Protest alleging that: (1) applicant failed to attach documents establishing financial and technical fitness; (2) approval of the Application will “not serve a useful public purpose . . . but will duplicate already existing service to the detriment of existing carriers;” (3) that there is no need for the proposed service; and (4) approval of the Application “would authorize unnecessary and harmful competition . . .”. A copy of the Protest is provided as Attachment 1.

4. Protestant currently has call and demand authority in several counties as well as airport transfer service authority to serve the Harrisburg International Airport under Docket No. A-00118552F.1Am-A and F.2.

5. Protestant does not hold authority to serve either the Philadelphia International Airport or the Lehigh Valley International Airport.

II. The Protest Should Be Dismissed For Lack of Standing.

6. Protestant lacks standing to protest the Application. Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Ass'n v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598 (1991). Generally, Pennsylvania courts and the Commission have held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195-197, 346 A.2d 269, 282-284 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993). A general interest in compliance with the law is insufficient to confer standing to protest an application. Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pennsylvania Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

7. Protestant does not hold authority to provide transportation service to or from the Philadelphia International Airport or Lehigh Valley International Airport. Well-established Commission precedent provides that a protestant must have some operating rights in actual or potential conflict with the authority sought by an applicant in order to have standing to protest an application. *Application of Germantown Cab Company*, Docket No. A-2012-2294922 (Commission Final Order entered November 9, 2012).

III. The Protest Should Be Dismissed for Failure to Comply with Commission Regulations.

8. 52 Pa. Code § 3.381(c)(1)(i)(A)(iv) provides that any protest filed with the Commission must set forth:

A statement of the protestant's interest in the application, including a statement of any adverse impact which approval of the application can be expected to have on the protestant.

9. The Protest fails to meet this standard and is predicated on nothing more than a desire to freeze out healthy competition, with, as it states explicitly, "resulting loss of revenue to Keystone. . ."


10. In addition, the Protest fails to include a statement of any restrictions to the Application which would protect the Protestant's interest, including a concise statement of any amendment which would result in the withdrawal of the Protest as required by 52 Pa. Code § 3.381(c)(1)(i)(A)(vi).

11. Moreover, the Protest incorrectly states that the Applicant lacks the necessary financial and technical fitness by failing to include various documents and information. The Commission's regulations do not require that such documents be attached to applications.

WHEREFORE, Applicant, Fabian Transportation, Inc., respectfully requests that the Commission grant this Motion to Dismiss the Protest of Keystone Cab Service, Inc., and refer the Application to the Commission's Bureau of Transportation and Safety for review and resolution pursuant to 52 Pa. Code § 3.381(c)(1)(iii)(A).

Respectfully submitted,

Dated: May 20, 2015



Margaret A. Morris, Esq.

Attorney ID No. 75048

Debra L. Roscioli, Esq.

Attorney ID No. 91014

Reger Rizzo & Darnall LLP

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Counsel for Fabian Transportation, Inc.

Docket No. A-2015-2471761
In re: Application of Fabian Transportation, Inc.

Attachment 1

Protest of Keystone Cab Service, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Fabian Transportation, Inc.

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: :
Commission Docket No.
A-2015-2471761

**PROTEST OF
Keystone Cab Service, Inc.**

Keystone Cab Service, Inc. (Keystone) hereby files this protest to the Application of Fabian Transportation, Inc., for the right to transport, persons in airport transportation service, from points in Lebanon County to the Harrisburg International Airport, Lehigh Valley International Airport, and Philadelphia International Airport. Keystone respectfully requests that this Commission deny the application for the reasons set forth below.

1. The name and business address of Keystone are:

Keystone Cab Service, Inc.
2304 Walnut Street
Harrisburg PA 17103

2. The name and address of Protestant's attorney is:

Justine L. Pate, Esq.
620 S. 13th Street
Harrisburg, PA 17104

3. Protestant possesses authority at A-00118552. Protestant's operating authority is attached hereto as Exhibit A.

4. Applicant has not attached to its application: a balance sheet, projected revenue and expense statement, or any other financial information that is indicative of its financial fitness to provide the proposed service in this area. Accordingly, Keystone believes and therefore avers that Applicant does not possess the requisite financial fitness to provide the proposed service.

5. Applicant has attached no information to its application that would indicate how Applicant intends to operate. Accordingly, Keystone believes and therefore avers that Applicant does not possess the requisite technical fitness to provide the proposed service in such huge area.

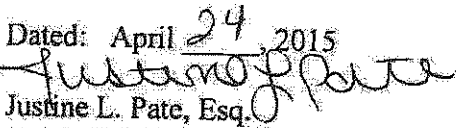
6. Approval of this application will not serve a useful public purpose or need, but will duplicate already existing service to the detriment of existing carriers.

7. There is no need for the proposed service.

8. It would authorize additional unnecessary and harmful competition into the area with the resulting loss of revenue to Keystone and be detrimental to the traveling public.

WHEREFORE, Protestant, Keystone Cab Service, Inc. respectfully requests that this Honorable Commission deny the application of Fabian Transportation, LLC.

Dated: April 24, 2015


Justine L. Pate, Esq.

620 S. 13th Street
Harrisburg, PA 17104

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 23, 2002

Commissioners Present:

- Glen R. Thomas, Chairman
- Robert K. Bloom, Vice-Chairman
- Aaron Wilson, Jr.
- Terrance J. Fitzpatrick
- Kim Pizzingrilli

Application of Keystone Cab Service, Inc., a Pennsylvania corporation, for the right to begin to transport, as a common carrier, persons upon call or demand, in the county of Dauphin.

A-00118552

J. Bruce Walter for Applicant

ORDER

BY THE COMMISSION:

This matter comes before the Commission on an application filed November 30, 2001. Public notice of the application was given in the Pennsylvania Bulletin of January 26, 2002. No protests were filed.

The application is certified to the Commission for its decision without oral hearing. The record consists of a verified statement entered by the applicant and thirty-two supporting statements.

DISCUSSION AND FINDINGS:

Maher Saber, President of Keystone Cab Service, Inc. (Keystone or applicant) entered a verified statement on its behalf. He is presently managing a computer consulting company. Mr. Saber plans on hiring a manager/dispatcher to run the day to day operations of the cab business. A list of possible manager/dispatcher candidates was included with the applicant's statement. Each of the candidates has numerous years of experience in the transportation industry and is familiar with the Dauphin County area.

Keystone is domiciled at 29 Carolyn Street, Harrisburg, Dauphin County. This location will be used initially as the office and garage/parking area. Various other sites are under consideration for use as an office/garage combination. A radio system will be used for communication and dispatch.

The applicant will begin service with three to five vehicles. It expects to acquire another five to ten vehicles as business picks up. Mr. Saber has submitted a financial statement dated March 31, 2002, showing total assets of \$234,481.00, and total liabilities of \$6,021.00.

Thirty-two supporting statements have been entered. These statements are from individuals in the proposed service area. These statements support the need for taxi service to and from destinations in the proposed service area; as well as the need for service from the proposed service area to other points in Pennsylvania, and vice-versa. The frequency of the trips varies from once a week to ten trips a month.

After complete review of the record, we find:

1. The applicant has the equipment and financial fitness to provide the proposed service.
2. Approval of the application is necessary for the accommodation and convenience of the public; **THEREFORE,**

IT IS ORDERED: That the application, be and is hereby approved granting the following right:

To transport, as a common carrier, persons upon call or demand, in the county of Dauphin.

IT IS FURTHER ORDERED: That the applicant shall not engage in any transportation authorized by this order until the following is submitted to the Commission:

1. Form E evidence of Bodily Injury and Property Damage Liability Insurance.
2. A tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That upon compliance with the requirements herein before set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above determined.

IT IS FURTHER ORDERED: That the authority granted herein to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That in the event the applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 23, 2002

ORDER ENTERED: May 24, 2002

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 22, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice-Chairman
Aaron Wilson, Jr.
Glen R. Thomas
Kim Pizzingrilli

Application of Keystone Cab Service, Inc.,
a Pennsylvania Corporation, for amendment
to its common carrier certificate: SO AS TO
PERMIT the transportation of persons upon
call or demand in the counties of Cumberland,
Lebanon, Perry and York.

A-00118552
F.1
Am-A

ORDER

BY THE COMMISSION:

This matter comes before the Commission on an application filed September 10, 2002. Public notice of the application was given in the Pennsylvania Bulletin of November 16, 2002. No protests were filed.

The application is certified to the Commission for its decision without oral hearing. The record consists of a verified statement entered by the applicant and twenty-nine supporting statements.

DISCUSSION AND FINDINGS

Keystone Cab Service, Inc. (Keystone or applicant) is domiciled at 527 B North Cameron Street, Harrisburg, Dauphin County. The applicant has a fully equipped facility at 620 South 13th Street, Harrisburg, which provides garage and office space. The office has seven phone lines; six dedicated for service calls and the other for faxes. Keystone is presently certificated to provide taxi service in Dauphin County. The applicant has a Form E, evidence of insurance, on file with the Commission to cover its current operations; however, we will require the filing of a new Form E, evidence of insurance, to cover the expansion of territory.

On March 14, 2003, Chairman Thomas signed an Emergency Order authorizing Keystone to provide taxi service in the counties of Adams, Perry and York. The applicant has a permanent application pending for Adams County.

Keystone performs routine inspections on the equipment to ensure it is safe and reliable. The applicant has twenty-five vehicles available for use. Drivers are given an orientation and training program with special emphasis on safety.

The applicant has submitted a financial statement in the form of a balance sheet dated April 7, 2003. It shows current assets of \$73,500.00, long term assets of \$220,500.00, current liabilities of \$32,000.00, no long term liabilities, leaving owner's equity of \$264,000.00.

Twenty-nine supporting statements have been entered from individuals in the counties of Cumberland, Lebanon, Perry and York. Each one supports a personal need for call or demand service.

After complete review of the record, we find:

1. The applicant has the experience, vehicles and fitness to provide the proposed service.
2. Approval of the application is necessary for the accommodation and convenience of the public; **THEREFORE,**

IT IS ORDERED: That the unopposed application be and is hereby approved so that the certificate issued July 15, 2002, shall be amended to include the following right:

To transport, as a common carrier, persons upon call or demand in the counties of Cumberland, Lebanon, Perry and York.

IT IS FURTHER ORDERED: That applicant shall submit the following to the Commission:

1. A Form E, as evidence of bodily injury and property damage liability insurance.
2. An acceptable tariff.

IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 22, 2003

ORDER ENTERED: May 30, 2003

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 21, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice-Chairman
Aaron Wilson, Jr.
Glen R. Thomas
Kim Pizzingrilli

Application of Keystone Cab Service, Inc., a Pennsylvania Corporation, for the additional right to transport, as a common carrier, persons in airport transfer service, from points in the counties of Adams, Cumberland, Dauphin, Lebanon, Perry, and York, to the Harrisburg International Airport, located in Dauphin County, and the Capital City Airport, located in Cumberland County.

A-00118552
F.2

ORDER

BY THE COMMISSION:

This matter comes before the Commission on an application filed April 23, 2003. Public notice of the application was given in the Pennsylvania Bulletin of May 17, 2003. No protests were filed.

The application is certified to the Commission for its decision without oral hearing. The record consists of a verified statement entered by the applicant and thirty-four supporting statements.

DISCUSSION AND FINDINGS

Keystone Cab Service, Inc. (Keystone or applicant) is domiciled at 620 South 13th Street, Harrisburg, Dauphin County. The applicant has a fully equipped facility which provides garage and office space. The office has seven phone lines; six dedicated for service calls and the other for faxes. Keystone is presently certificated to provide taxi service in the counties of

Cumberland, Dauphin, Lebanon, Perry, and York. The applicant has a Form E, evidence of insurance, on file with the Commission to cover its current operations; however, we will require the filing of a new Form E, evidence of insurance, to cover the new class of service.

Keystone performs routine inspections on the equipment to ensure it is safe and reliable. The applicant has twenty-five vehicles available for use. Drivers are given an orientation and training program with special emphasis on safety.

The applicant has submitted a financial statement in the form of a balance sheet dated April 7, 2003. It shows current assets of \$73,500.00, long term assets of \$220,500.00, current liabilities of \$32,000.00, no long term liabilities, leaving owner's equity of \$264,000.00.

Thirty-four supporting statements have been entered from individuals in the counties of Adams, Cumberland, Dauphin, Lebanon, Perry and York. Each one supports a personal need for airport transfer service.

After complete review of the record, we find:

1. The applicant has the experience, vehicles and fitness to provide the proposed service.
2. Approval of the application is necessary for the accommodation and convenience of the public; **THEREFORE,**

IT IS ORDERED: That the unopposed application be and is hereby approved to include the following additional right:

To transport, as a common carrier, persons in airport transfer service, from points in the counties of Adams, Cumberland, Dauphin, Lebanon, Perry, and York, to the Harrisburg International Airport, located in Dauphin County, and the Capital City Airport, located in Cumberland County.

IT IS FURTHER ORDERED: That applicant shall submit the following to the Commission:

1. A Form E, as evidence of bodily injury and property damage liability insurance.
2. An acceptable tariff.

IT IS FURTHER ORDERED: That upon compliance with the requirements herein before set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above determined.

IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 21, 2003.

ORDER ENTERED: August 27, 2003

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 30, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice-Chairman
Glen R. Thomas
Kim Pizzigrilli
Wendell F. Holland

Application of Keystone Cab Service, Inc., for
amendment to its common carrier certificate
SO AS TO PERMIT the transportation of persons
upon call or demand in the county of Adams.

A-00118552
F, I
Am-B

ORDER

BY THE COMMISSION:

This matter comes before the Commission upon applications for permanent and temporary authority filed April 2, 2003. Public notice of the applications were given in the Pennsylvania Bulletin of May 10, 2003. No protests were filed.

The unopposed applications are certified to the Commission for its decision without oral hearing. The record consists of a verified statement of applicant and five statements in support of the application.

DISCUSSION AND FINDINGS:

Keystone Cab Service, Inc. (Keystone or applicant) is domiciled at 620 South 13th Street, Harrisburg, Dauphin County. The applicant has a fully equipped facility which provides garage and office space. The office has seven phone lines for service calls. Keystone is presently certificated to provide taxi service in Cumberland,

Dauphin, Lebanon, Perry and York Counties. The applicant has a Form E, evidence of insurance, on file with the Commission to cover its current operations; however we will require the filing of a new Form E, evidence of insurance, to cover the expansion of territory.

On March 14, 2003, then Chairman Thomas signed an Emergency Order authorizing Keystone to provide taxi service in Adams County. The Emergency Order was ratified by the Commission on March 21, 2003. The Emergency Order resulted from the cessation of service of Harrisburg Taxicab and Baggage Company the call or demand service provider in Adams County.

Keystone performs routine inspections on the equipment to ensure it is safe and reliable. The applicant has twelve vehicles available for use. Drivers are given an orientation and training program with emphasis on safety.

The applicant has submitted a balance sheet dated April 7, 2003 showing current assets of \$73,500.00, long term assets of \$225,000.00, current liabilities of \$32,000.00, no long term liabilities, leaving owner's equity of \$263,500.00.

Five letters in support have been submitted. The supporting parties reside in Adams County. Each statement speaks of a continuing need for taxi service in Adams County. Since the application is unopposed, the submission of five supporting statements is sufficient to establish public need.

After complete review of the record, we find:

1. The applicant has the equipment, experience and fitness to provide the proposed service.
2. Approval of the unopposed application is necessary for the continued accommodation and convenience of the public;
THEREFORE,

IT IS ORDERED: That the unopposed application be and is hereby approved so that the certificate issued July 15, 2002, as amended, shall be further amended to include the following right:

To transport as a common carrier, persons upon call or demand in the county of Adams.

IT IS FURTHER ORDERED: That the applicant shall not provide any service granted in this order until the following is submitted to the Commission:

1. Form E evidence of Bodily Injury and Property Damage Liability Insurance.

2. A tariff establishing just and reasonable rates.

IT IS FURTHER ORDERED: That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the applicant, shall not be construed as conferring more than one operating right.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That the temporary authority application filed in this proceeding be and is hereby dismissed as moot.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: October 30, 2003

ORDER ENTERED: November 3, 2003

Certificate of Service

I hereby certify that I served the foregoing Protest by placing a true and correct copy thereof in the United States Mail, first class postage prepaid, addressed as follows:

Fabian Transportation, Inc.

444 North 11th Street

Lebanon, PA 17046

Dated: 4/24/15

Justin J. Pate