

Michael M. Buchman


February 27, 2009

VIA ELECTRONIC FILING AND OVERNIGHT DELIVERY

The Honorable Raymond J. Dearie
Chief United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Luckers, Cohen Goldstein. v. Bayside Cemetery and Congregation Shaare Zedek,*
Civil Action Nos. 07 Civ. 3823, 08 Civ. 3555, 08 Civ. 3923(RJD)(JMA)

Dear Chief Judge Dearie:

I represent Plaintiffs in the above-referenced actions and respectfully submit this letter with the consent of all parties to this litigation. Pursuant to Magistrate Judge Joan M. Azrack's order dated January 12, 2009, the parties write to inform Your Honor that jurisdictional discovery has been completed.

Plaintiffs respectfully submit that jurisdictional discovery confirms that this Court has federal jurisdiction under the Class Action Fairness Act of 2005, Pub. L. No. 109-2, Stat. 4 (codified as part of 28 U.S.C. §1332) ("CAFA"). CAFA amends the diversity jurisdiction statute by adding a new §1332(d) to confer original federal jurisdiction over any class action involving: (i) 100 or more class members; (ii) an aggregate amount in controversy of at least \$5,000,000 exclusive of interests and costs; and (iii) minimal diversity where at least one plaintiff and one defendant are citizens of different states. *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 56 (2d Cir. 2006).

100 or more class members: Defendant Congregation Shaare Zedek conceded at the last conference before Magistrate Judge Azrack that there were at least three hundred perpetual care contracts. A document entitled "Masoleums, Plots and Graves Under Perpetual Care" evidences at least 380 family entries concerning one or more plots or mausoleums. Exhibit A. Defendant's admission combined with this document make clear the first CAFA element is satisfied.

Aggregate Amount In Controversy: Plaintiffs have previously submitted the Declaration of Hayden Burrus dated December 18, 2008 in which Mr. Burrus concluded that the amount in controversy in this case should exceed \$5,000,000. The documents produced by Defendants are incomplete and do not rebut this conclusion. Accordingly, the second CAFA element is satisfied.

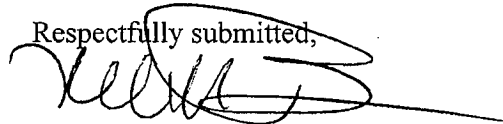
Minimal Diversity: Minimal diversity exists because Plaintiff John Lucker is a citizen of the State of Connecticut. Exhibit B. Plaintiffs Elizabeth Lucker and Nancy Rousseau are residents of the State of Arkansas. Exhibit C. Thus, Plaintiffs have established that this Court has CAFA jurisdiction.

Notably, Plaintiffs state that some of the documents which have been produced by Defendants indicate that there are class members/relatives from many states outside of New York, including: California, Connecticut, Florida, Kentucky, Massachusetts, New Jersey, Pennsylvania, and West Virginia. These documents further support the Declaration of Bob Roberts dated December 24, 2008 wherein he concludes that more than half of the proposed class members in this case are from outside the State of New York.

While Defendants dispute that damages in these actions could even approach \$5 million, as well as the validity of the purported expert declarations on which Plaintiffs rely, they concede that the amount in controversy has been properly *alleged* for purposes of a *prima facie* showing of jurisdiction under CAFA. Moreover, Defendants recognize that once such a *prima facie* showing has been made, the burden of establishing the applicability of one of the CAFA exceptions falls on the party seeking transfer to state court.¹ Since Defendants do not believe that the record at this time supports any conclusion as to the citizenship of any particular percentage of the putative class, they have not sought to invoke any of the CAFA exceptions. Nonetheless, Defendants submit that the exchange of documents in jurisdictional discovery only confirms that, as Defendants have argued in each of their previous briefs, the Plaintiffs lack standing to pursue these claims, and thus that the Court lacks subject matter jurisdiction over these actions.

Therefore, although the parties disagree on the ultimate question of whether or not the Court has jurisdiction, they jointly respectfully submit that, unless the Court wishes to specify additional issues, further briefing appears unnecessary at this time. The parties are available for argument on the pending motions at the Court's convenience.

Respectfully submitted,



Michael M. Buchman

c: Stephen M. Axinn (Counsel for Defendant Congregation Shaare Zedek)

¹ *AVA Acupuncture P.C., v. State Farm Mutual Auto. Ins. Co.*, 08 Civ. 5650, 2008 U.S. Dist. Lexis 99427 (S.D.N.Y. 2008) (citing *Serrano v. 180 Connect Inc.*, 478 F.3d 1018, 1024 (9th Cir. 2007); *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1167 (11th Cir. 2006); *Frazier v. Pioneer Am. LLC.*, 455 F.3d 542, 546 (5th Cir. 2006); *Hart v. FedEx Ground Package Sys.*, 457 F.3d 675, 679-80 (7th Cir. 2006); *Brook v. UnitedHealth Group Inc.*, No. 06 Civ. 12954, 2007 U.S. Dist. Lexis 73640, 2007 WL 2827808, at *3 n. 5 (S.D.N.Y. Sept 27, 2007); *Mattera v. Clear Channel Commc'ns, Inc.*, 239 F.R.D. 70, 80 (S.D.N.Y. 2006)).

EXHIBIT A

MAUSOLEUMS, PLOTS AND GRAVES UNDER PERPETUAL CARE

Aaron Plot # 18	\$ 750.00
Aaron Plot # 36 and Mausoleum	
Aaron Plot # 51 and graves	2000.00
Abalov, graves Celia & David	1000.00
Abraham graves Amelia, Isaac & Julius	1000.00
Abrahams, A. B.	200.00
Abrahams, M	100.00
Abrahams, Yetta	500.00
Ackerman, Amelia	350.00
Adler, Isaac & Fannie	700.00
Alexander, Adolph	350.00
Alexander Plot	1000.00
Alter-Zion Plot	1500.00
Altus, Isidore & Sarah	700.00
Amber, Harold	400.00
Aron plot # 198	4500.00
Appleboom, Freida & George	1000.00
Ascher, Bertha, Louis, Samuel, Annie & Sidney	2500.00
Anshum Plot # 143	1500.00
Bach Plot # 25 Emanuel Bach grave	300.00
-Barned Plot # 18	1000.00
-Barnett, Sarah, Abraham, Leah & Hannah	2000.00
Baruth Plot	4000.00
Berman, Dora	400.00
Beinzeicht, Abraham, Hannah & Jacob	1050.00
Beutler Plot # 27	2000.00
Bialis, Eva	400.00
Bialis, Ida & Bialistosky Morris	700.00
Bienenfeld, Rosabelle	350.00
Bleicher, Gladys	250.00
-Block Plot and graves Louia, Marth a, & child Sarah	4000.00
Block, Millie, Jennie & Isaac	1050.00
Bloom, Max	500.00
Bloomberg Plot # 94	1500.00
Blum, Fannie & Res.	350.00
Blumenson, Fanny & Henry J	1000.00
Blumenthal Plot	200.00
Blumstein Plot & Mausoleum	5000.00
Boley & Jacobs Plot 159	300.00
Bornstein, Eva & William	1000.00
Boroschek Plot # 118	2000.00
Borowsy Plots	700.00
Brickman, Ida & Herman	350.00
Bromberger, Max	350.00
Est. Aaron J. rown	1500.00
Burmeste , Sam & Matilda	700.00
Butler, Charles	500.00
Bytler-Stitch Plots	700.00
-Caplain Plot	1500.00
Caskel Plot	k500.00
Casper-Arendt Plot # 13 and 8 graves	3000.00

\$ 63,200.00

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Chevra Shebath Acjim Society	\$ 3000.00
Chuck Plot# 64 graves Esther & Marcus Levy	500.00
Cinnamon, Yetta	350.00
- Cla,an, Leoni	500.00
Cohn, Simon	350.00
Cohen, Abraham, Rachel & Jacob	1050.00
Cohen, Blanche, William & Cohen plot	900.00
Cohen, Charles & Annie	700.00
Cohen, Fanny * Isaac	700.00
Cohen, Max & Sarah	700.00
Cohen, Moe & Sol	700.00
Cohen Plot # 41 5 graves	2000.00
Cohen Plot # 43 7 graves	2500.00
Cohen-Coleman Plot and 8 graves	2000.00
Cohen- Jacob Plot #65 graves Leah & K ashill	500.00
Cohn, Harry & Anna	1000.00
Cohn Plot # 42	930.00
Cohen, Revecca & Isidore	700.00
Cohn Mausoleum	2500.00
Cohn, Morris	250.00
cowen Plot	2000.00
Croner, Amelia & Abraham	700.00
Curzan Plo # 47 and grave Meyer Curzan	2500.00
- Davis, Bertha Moss, Abraham & Joseph	1000.00
Davis, Frances	350.00
Davis M Plot	500.00
Davis Plot & graves SadieDavis & Vernard Marcuss	2500.00
Davis, Rebecca & Joseph	700.00
Davis - Jessie & Louis	700.00
Deutsch, Bernard	350.00
Doblin Plot # 30	2000.00
Dobrer, Jacob & Sophie	700.00
- Dryer Plot 7 graves	4200.00
Edelman, Lena, Harry & Minnie, Joseph	1600.00
Elias, Jack	350.00
Engel Plot # 28	2500.00
Epstein Plot	2000.00
Fano, Guili O., & Hannah	1000.00
Feder Plot # 34	250.00
Feinberg, Minna & Maier	500.00
Fine, Barnett & Ethel	1000.00
Finkelstein, Bessie	350.00
Frank, David	350.00
Frankel Plot # 14	2000.00
Feinberg, Harris, Hannah, Tillie, Abraham & twin graves	2500.00
Fishkin, Ida, Solomon & Kate Cohen	1500.00
Freizer, Philip	
Grohman, Hyman & Hannah,	
Cohen, Jeanette & Harris Cohen	2000.00
French Society	2000.00
Friedlander Plot	1000.00
Freeman, Julia & Benjamin, xxxx	800.00
Freudenthat Plot # 157 & grave Max FreudenthaK	7500.00

\$ 65,230.00

3

Freund, Ira	\$ 350.00
Freund, Miriam	350.00
Fru-Nyberg Plot and Mausoleum	2000.00
Furth, Frances & Rebecca	700.00
Gallin, Louis	500.00
Gehr, Pauline	350.00
Geist Plot and Mausoleum & 4 graves	5000.00
Geozler Plot # 14	1000.00
Gellert Plot	1500.00
Gerard, Edward & Esther	1000.00
Gerschel Plot grave Berth a Gerschel	300.00
Gluck Plot # 46	2500.00
Gluck, Fannie & Elias	700.00
Goetz, Pearl	350.00
Goldberg, Harry M & Jessie J.	500.00
Goldberg, Israel, Bessie & Louis	1050.00
- Goldman, Minnie	600.00
Goldstein, Samuel	1000.00
Goldstein Plot # 82	1200.00 in bo
Goodman, Max	500.00
Graf, Yetta	350.00
Graw, HerMAN & Sophie	1000.00
Greenberg, athan	225.00
-Grohman, Ja ob & Mausice	1000.00
Gross Plot # 124	1750.00
Guggenheimer Plot and Mausoleum	3000.00
Harris, Samuel, Rose & Leo	900.00
Harris-Jalkut Plot	2000.00
-Harris, Jacob & Rebecca	1200.00
Harris, Leopold	350.00
Harris, Meyer, Mollie & Robert	700.00
Harris-Moses Plot # 12	1500.00
Hartfield Plot and 5 graves	1000.00
Heilbrum Plot # 39	1250.00
	500.00
-Heller, Ephraim & Eva	1200.00
Henryson Plot	1000.00
Hertz, Herman N in Leow plot # 52	5000.00 - 500
Herzfeld Plot graves Gustave S. ertha & Louis	2500.00
Herzog, Plot	1322.50
Hessberg Plot	1500.00
Hessin, Aaron, Anna, Eleanor, Rebecca & Philip	1500.00
Heyman Plot 213	350.00
Hines, Daniel & Jennie	1000.00
Hirschfeld Plot	2500.00
Gross Plot 124 graves Isaac, Minnie & Isidore	700.00
- Est. Spphia Jacobs Plot 106	3118.72
Hacobs Plot Est. of M. Jacobs	2000.00
Jacobs Mausoleum # 107	3500.00
Jarrett, Lena & William	700.00
Joseph, Bertha, Simon, Marry & Rachel	1000.00
Josephson, Fay	350.00
Jacobson, Isidore & Deborah	1000.00
Kahn, Bertha & Leo	700.00
Kahn, Hdnrietta & Newmanm	700.00
Kalkulator, Regina & Samuel	700.00
-Kamsler, Annie & Samuel	1000.00
Kanter, Solomon, Pasha Rachel	700.00

967,716.22

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Kantorowicz 3 graves	\$ 1000.00	
Kaplan, Philip & Sarah	700.00	
Katzky plot # 66	250.00	
Kaufman, Samuel, Lewis, Blanche Augusta & Milton	1700.00	
Kirschbrown, Isidore & Ida	700.00	
Klein, Sussman, Lena & Yetta	1050.00	
Klein Plot	1000.00	
Kohn H rold Storsch	350.00	
Kopelman, Essie	600.00	
Korn Plot and graves William & Fannie Ko rn	4400.00	
Korn Mausoleum # 180-186	4000.00	
Korn-Sink Plot 67	1400.00	
Koszyn, Louis	4000.00	400
Krakower, Arthur	250.00	
Krause Plot 12 and vault	2500.00	
Ks̄mko plot	2000.00	
Krontha , Emma & Sharles	700.00	
Krooks Plot # 239 Fannie Krooks grave	200.00	
Ksulewitch Vault	4500.00	
Kupfer, Pauline	500.00	
Lasher, Bechie, Abraham		
Weinstein, Sarah & Herman	1700.00	
Lasker, Samirgax George	350.00	
Leipzig Plot # 41 & 6 graves	1000.00	
Lenchitsky, Hillel & Pearl	900.00	
Lesle Society	3000.00	
Lesser, Lazarus	350.00	
Leventhal, Ethel, Benjamin & Emma Stoloff	1200.00	
Levine, Elaine	100.00	
Levinson 3 grave Plot	1500.00	
Levy, Nathan, & Bella	1000.00	
Levy, Barnett	350.00	
Levy, Jonas & Sarah, Ross & Louis	1250.00	
Levy, Rosa	300.00	
Leichtag, Bertha & Isaac		
Marks, Lillisl & Louis	2000.00	
Levy, Alice, Raphael & Jeanette	500.00	
Levy Plot 13A	1200.00	
Levy Mausoleum and graves Bella & Israel Levy	5000.00	
Lewis Plot	1050.00	
Lewkowitz 4 graves	1000.00	
Levy, Abraham & Rosalie and Pearcy Dora	1800.00	
Lichtenstein, Jermai h, Delia		
Davis, Solomon, Lilly & Spph ie	1250.00	
Lillenstein Plot	3200.00	
Lippman, Hattie & David	500.00	
Lipschitz, Betsy, Isaac		
Kornicker, Gerson & Jennie	1400.00	
Lipschitz, Solomon	350.00	
Lipsius, Samuel & Mae	700.00	
Est. Jack Lipman	1000.00	
Lipton, Nathan	500.00	
Lisner, Arnold	150.00	
Lithauer Plot # 151		
Graves Hannah Lithauer & Florentine Leipzig & Cedar	2000.00	
Litthauer G. Plot and 3 graves	600.00	
Loeb Plot 24	2500.00	
Loeffler, Frances & Charles	700.00	

\$68,600.00

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Lowenstein, Bernard & Fanny	\$ 500.00
Loewenstein, David & Gretchen	1000.00
Lowenstein Plot	2000.00
Marks, Joseph	350.00
Marks Mausoleum	5000.00
Marks Plot # 208 Manton Marks	2880.00
May Simon	300.00
Moritz Mayer Plot	1500.00
Mendelson-Pakulski Plot # 19	1000.00
Meyer, eorge II grave	700.00
Meyers Rose Plot # 158 and 6 graves	4000.00
Meyerson Plot and Mausoleum	5000.00
Michaelis Siegfried	350.00
Michalis Plot and 6 graves	3000.00
Miller Abraham, Moses & Rose	700.00
Monash Plot # 116	1000.00
- Morris, Sarah & Simon	1000.00
Morrison, Rubin & Pearl	1000.00
Morse, Herman & Fanny Elias	1500.00
(Est. Victoria Bitterman	
(Graves Anna & David Moss in Moss plot 165	700.00
Munstick Plot	750.00
Murzin, Ray & Israel	700.00
Myres Sarah & Rudolph	506.25
Nelson Phillipine, & Dr. Siegfried Nelson	700.00
Newman Carrie	350.00
Est. Norman Herrmann	2000.00
Oppenheim, Rose	350.00
Ortlieb Emma & Levi	600.00
Pantiel Plot	1000.00
Paris, Julius & Rebecca	500.00
- Pell Plot	1000.00
Pereira Abraham	350.00
(Adelaide & Hermard Peyser in Peyser plot 81	
(Unger, 1 adult & 2 children graves	1150.00
Peyser, Nettie & Morris	700.00
Pincus Plot	2000.00
Pinfyvk 3 graves	1050.00
Post Edward & reserve	800.00
Price-Geiger Plot 245	1000.00
Rappoport, Boris & Eda	700.00
Ratkowsky, Libbie, Max & Alice	1050.00
Ratkowsky, May	350.00
Propp, Louis & Pansy	800.00
Ratkowsky May & Celia	700.00
Rosenberg Plot	2400.00
Rothman-Jones Plot	2000.00
Rothman Plot	950.00
Rosenberg, Celia	350.00
Rosenson Plot	2000.00
(Rosenzweig Gitel, Max FriedMAN	
(Friedman, Rose & Wolf Rose Morris	1500.00
Roth, Leo Dr. & H. Roth	730.00
(Rubin Plot# 16	
David & Rhina Rubin	4750.00
Rothman plot and graves	1500.00
Rudansky Betsy and Mendel	700.00
Rudansky, Sarah	350.00

 68,818.25

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Robinson-Spiegel 2 graves	\$ 500.00
Rieben, Joshua & Toba	1000.00
Richman Plot 172	1991.33
Est. Estelle Richter, Isidore	500.00
Rodecker, Reuben	1560.00
Rosenberg, Jacob	350.00
Rosenberg, Mary	300.00
Rosenberg Plot # 59	1000.00
Rosenberg Plot # 60	1500.00
Schlesinger Plot # 166 and vault	300.00
Schwalbach, Louis & Sarah	300.00
Schless, Dora, Elazer & Charles	1200.00
Sachs, Gertrude & Henry	1000.00
Schhs Vault # 175	2500.00
Sachs Plot #215	1000.00
Sachs, Emil	400.00
Safier, Na alie & Jessie	700.00
Salberg, Esther & Rochi & Al	
Lobell, Charles & Essie	2000.00
Salinger, Hulda, Sigmund, Edgar, Gertrude, Salo	2100.00
Saltzman, Chana, Jacob & Abraham, Dora Glick	800.00
Samuels Muriel	350.00
Scheyer Plot	1000.00
Schlosberg, Louis & Jennie & Bertha Levy	900.00
Schnair, Jacob	250.00
Schnair, Lena	300.00
Sachs, Barnett	400.00
Schulang Plot	5000.00
Schulberg, Jacob	350.00
Schulberg, Mollie & Joseph	700.00
Schldenfreni, Henry & Hattie	600.00
Schwartz Plot 27	2000.00
Schweitzer, David II grave	
Brooks, Louis & Hannah	2000.00
Segal-Samuels Plot	1500.00
Sentlowitz, Max	500.00
Sherman, Lee	350.00
Sherwood, Harry	350.00
Silberstein Plot # 33	2000.00
Silver, Rose, Beckie & David	1050.00
Silver, Abraham	350.00
Silver, Morris & Sarah	700.00
Silverberg, Jennie & Charles	800.00
Silverberg Plot # 244 & Vault	1000.00
Silverstein, Isidore & Jennie	1000.00
Simon Plot 43 Westerly half	1850.00
Simon-Cooperman Plot	2500.00
Sink, Fanny, Charles, Phillip & Sarah	200.00
Slade, Abraham	350.00
Sobel, Samuel, Sarah & Elias	1000.00
Sobel Frederick Plot # 207	2000.00
Solomon, Augusta, Abraham, Rachel & Harris	1400.00
Solomon Plot # 52	981.00
Solomon Plot 229	1500.00

55,232.33

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Solomon Morris Plot	\$ 2500.00
Solomon H Plot and Vault	200.00
(Sperber, Minnie & Esther	
Kaufman, Slawin	1050.00
Spivack, Harry & Ethel	700.00
Spivack, Joseph & Fannie	700.00
Stawiska Society	1000.00
Stebbins II Graves	700.00
Stein, Nathan, Glara & Isaac	1000.00
Steinman, Betsy & Philip	400.00
Sternglanz, Elias & Cecelia	700.00
Stich Mausoleum	4500.00
Strauss, Gustave	350.00
Stream, Phylis	1500.00
Stream Plot & Mervyn	1400.00
Stream Plot # 163A	6000.00
Stutz, Israel	500.00
Sundel, Rachel & Harris	600.00
Tableporter Plot	500.00
Taft-Farber Plot	1000.00
Tenzer, Sarah	400.00
Suchow II grave	1000.00
Traubner, Lawrence & Reserve	1000.00
Turkheim Haas Plot	2000.00
Tuttleman, Meyer & Pauline	700.00
Ullnick, Mary & Abraham	500.00
United Mutual Hand Society	1000.00
Vogel, Bernard & Reserve	700.00
Vogel, Rose & Ignatz	1000.00
Wallerstein, Max & Elizabeth	700.00
Washer Plot 17	2000.00
Wasser Plot 192	2000.00
Werner Plot	2000.00
Weigert Plot 231	1500.00
Weil Plot # 26	2500.00
Weinberg, David	350.00
Werner Plot	1000.00
Werner Mausoleum & Plot # 92	3000.00
Werner Plot # 100	1500.00
Willner, Mary	250.00
Wolf Plot # 46	2500.00
Wolf Plot 112-113	2000.00
Wolfe Plot 88	700.00
Wolfenstein Mausoleum # 7	2500.00
Wolfenstein Plot # 8	1000.00
Wolfenstein Plot 20	2000.00
Wolff, William, Jennie & Phobr	1050.00
Wolffe Plot	1150.00
Wolin, Philip & Beatrice Wolin	700.00
Yalomstein, Solomon	350.00
Zabinski Plot	1200.00
Zeitlin, Hyman	500.00
Zimmerman, Charles	500.00

66,550.00

EXHIBIT B

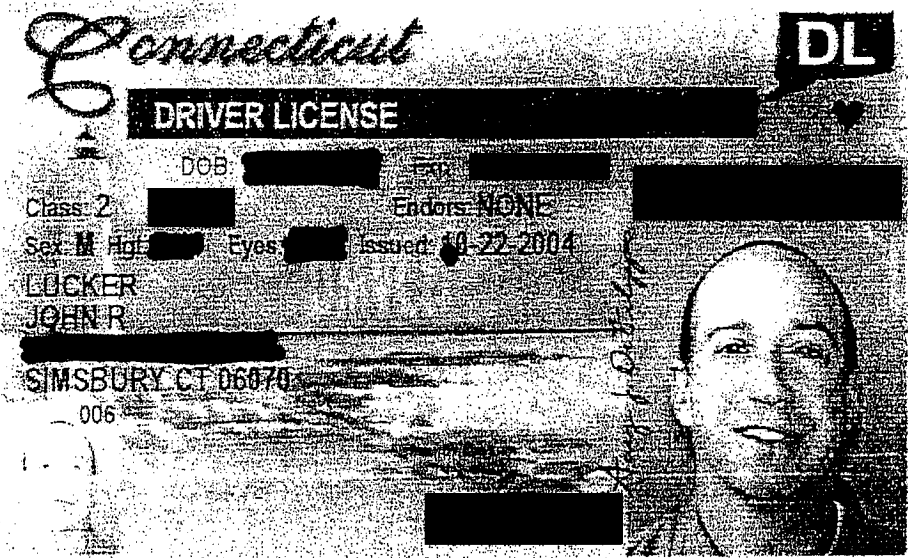


EXHIBIT C

Arkansas
THE NATURAL STATE

DRIVERS LICENSE

DLN [REDACTED]


LUCKER, ELIZABETH ANN,
[REDACTED]
LITTLE ROCK, AR, 72207

Issued: [REDACTED] Sex: F Height: [REDACTED] Eyes: [REDACTED]
Expires: [REDACTED] Endors: [REDACTED] Restr: [REDACTED]

[Signature]

ORGAN DONOR Birthdate: [REDACTED]

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Arkansas
THE NATURAL STATE



DRIVERS LICENSE



DLN [REDACTED]



ROUSSEAU, NANCY L



LITTLE ROCK, AR 72207

Issued: Sex: Height: Eyes:

[REDACTED] F [REDACTED] [REDACTED]

Expires: Endors: Restr:

[REDACTED] B [REDACTED]

Nancy L. Rousseau

ORGAN DONOR Birthdate: [REDACTED]