

For Opinion See: [2001 WL 767070](#)

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Court: U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
(WHITE PLAINS)

Case Title: EWING, ET AL v. COCA COLA BOTTLING, ET AL

Case: [00-CV-07020](#)

Judge: JUDGE [COLLEEN MCMAHON](#)

Date Filed: 09/19/2000

CASE INFORMATION

Case Number: 7:00CV07020

Referred To: MAGISTRATE JUDGE [LISA MARGARET SMITH](#)

Jury Demand: PLAINTIFF

Nature of Suit: CIVIL RIGHTS: EMPLOYMENT (442)

Key Nature of Suit: CIVIL RIGHTS; EMPLOYMENT (110.25)

Jurisdiction: FEDERAL QUESTION

Cause: [42 USC 1981](#) EQUAL RIGHTS UNDER THE LAW

PARTICIPANT INFORMATION

Plaintiff: WILLIAM EWING, INDIVIDUALLY AND ON BEHALF OF ALL
OTHER SIMILARLY SITUATED

Attorney(s): [JOHN R. CUTI](#)
212-763-5000

Firm Name: EMERY, CUTI, BRINCKERHOFF & ABADY P.C.

Attorney Address: 545 MADISON AVENUE
3RD FLOOR
NEW YORK, NY 10022

Plaintiff: MICHAEL HAMLETT, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED

Attorney(s): [JOHN R. CUTI](#)
212-763-5000

Firm Name: EMERY, CUTI, BRINCKERHOFF & ABADY P.C.

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Plaintiff: JOHN JOHNSON, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED

Attorney(s): [JOHN R. CUTI](#)
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Firm Name: EMERY, CUTI, BRINCKERHOFF & ABADY P.C.

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Plaintiff: MARCUS GARVIN, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED

Attorney(s): [JOHN R. CUTI](#)
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Firm Name: EMERY, CUTI, BRINCKERHOFF & ABADY P.C.

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Plaintiff: CLARENCE CAVNESS, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED

Attorney(s): [JOHN R. CUTI](#)
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Firm Name: EMERY, CUTI, BRINCKERHOFF & ABADY P.C.

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Plaintiff: EDWARD QUINOY, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED

Attorney(s): [JOHN R. CUTI](#)
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Firm Name: EMERY, CUTI, BRINCKERHOFF & ABADY P.C.

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Defendant: COCA COLA BOTTLING COMPANY OF NEW YORK, INC.
Attorney(s): [BRADFORD G. HARVEY](#)
423-756-6600

Firm Name: MILLER & MARTIN, LLP
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Firm Name: MILLER & MARTIN, LLP
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Defendant: COCA COLA ENTERPRISES, INC.

Attorney(s): [BRADFORD G. HARVEY](#)
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Firm Name: MILLER & MARTIN, LLP
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ATLANTA, GA 30309

DOCKET PROCEEDINGS

Entry#:	Date:	Description:
	09/06/2001	CASE CLOSED. (DC) (ENTERED: 10/01/2001) Send Runner to the Court
34	09/06/2001	ORDER: IT IS HEREBY ORDERED THAT THE SETTLEMENT AND DISCONTINUANCE IS APPROVED; AND IT IS FURTHER ORDERED THAT NO NOTICE IS NECESSARY TO THE MEMBERS OF THE PROPOSED CLASS, THE COURT FINDING THAT THIS CASE IS AT A MASCENT AND PRELIMINARY STAGE WITH NO CLASS HAVING BEEN CERTIFIED, THAT THERE HAS BEEN NO SIGNIFICANT PUBLICITY OF THIS LITIGATION, THAT NO NOTICE HAS PREVIOUSLY BEEN GIVEN TO THE MEMBERS OF THE PUTATIVE CLASS, AND THAT THERE IS NO EVIDENCE OF COLLUSION BETWEEN THE PARTIES TO THE MEMBERS OF THE PROPOSED CLASS; AND IT ACCORDINGLY FURTHER ORDERED THAT THE ABOVE REFERENCED MATTER BE, AND HEREBY IS, DISCONTINUED WITHOUT PREJUDICE TO THE MEMBERS OF THE PROPOSED CLASS; AND IT IS FURTHER ORDERED THAT THE PARTIES WILL BEAR THEIR OWN COSTS AND ATTORNEYS FEES. SO ORDERED: (SIGNED BY JUDGE COLLEEN MCMAHON); COPIES MAILED. (DCR) (ENTERED: 09/20/2001) Send Runner to the Court
33	08/02/2001	AFFIDAVIT OF SERVICE OF 2ND AMENDED S&C AS TO COCA COLA BOTTLING, COCA COLA ENTERPRISE BY IAN JOHNSON ON 8/1/01 . ANSWER DUE ON 8/21/01 FOR COCA COLA BOTTLING, FOR COCA COLA ENTERPRISE . (LL) (ENTERED: 08/07/2001) Send Runner to the Court
32	08/01/2001	ANSWER TO THE SECOND AMENDED COMPLAINT BY COCA COLA ENTERPRISE (ATTORNEY PHILIP M. HALPERN FROM THE FIRM: COLIER, HALPERN, NEWBURG, NOLL). (PF) (ENTERED: 08/02/2001) Send Runner to the Court
31	08/01/2001	ANSWER TO THE SECOND AMENDED COMPLAINT BY COCA COLA BOTTLING (ATTORNEY PHILIP M. HALPERN FROM THE FIRM: COLIER, HALPERN, NEWBURG, NOLL). (PF) (ENTERED: 08/02/2001)

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07/26/2001 MEMO ENDORSED ON MOTION; GRANTING [27-1] MOTION FOR SHELBY R- GRUBBS TO APPEAR PRO HAC VICE. EN- DORSED: THE MOTION IS GRANTED. \$25.00 FEE PAID. RE- CEIPT# E406019. (SIGNED BY JUDGE COLLEEN MCMAH- ON); COPIES MAILED. (DC) (ENTERED: 07/26/2001)

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30 07/24/2001 SECOND AMENDED COMPLAINT BY WILLIAM EWING, MICHAEL HAMLETT, JOHN JOHNSON, MARCUS GARVIN (ANSWER DUE 10/31/00 AMENDING [13-1] AMENDED COMPLAINT AGAINST CLARENCE CAVNESS, EDWARD QUINOY; SECOND AMENDED SUMMONS ISSUED. JURY TRIAL DEMANDED. (DC) (ENTERED: 07/27/2001)

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27 07/23/2001 NOTICE OF MOTION BY COCA COLA BOTTLING, COCA COLA ENTERPRISE FOR SHELBY R- GRUBBS TO APPEAR PRO HAC VICE . RETURN DATE 1/25/01. (LL) (ENTERED: 07/25/2001)

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29 07/20/2001 CASE MANAGEMENT PLAN IN A STANDARD OR COMPLEX CASE: THIS CASE IS TO BE TRIED TO A JURY; PLAINTIFF WILL FILE A SECOND AMENDED COMPLAINT, ADDING TWO NAMED PLAINTIFFS, BY JULY 25, 2001. DEFENDANT WILL HAVE UNTIL 08/01/01 TO ANSWER THE SECOND AMENDED COMPLAINT. NO FURTHER AMENDMENT OF THE PLEADINGS WILL BE ALLOWED; CLASS DISCOVERY WILL BE CONCLUDED BY 08/20/01; MOTION FOR CLASS CERTIFICATION IS TO BE FILED ON OR BEFORE 09/07/01; DEFT'S RESPONSE IS DUE ON 09/21/01,AND PLAINTIFF'S REPLY ON 09/28; A JOINT PRETRIAL ORDER IN THE FORM PRESCRIBED BY JUDGE MCMAHON'S INDIVIDUAL RULES, TOGETHER WITH ALL OTHER PRETRIAL SUBMISSIONS REQUIRED BY THOSE RULES, SHALL BE SUBMITTED ON OR BEFORE 01/11/02; RESPONSES TO IN LIMINE MOTIONS, IF ANY ARE DUE 01/18/02; THE SCHEDULING ORDER WILL NOT BE ALTERED OR AMENDED FOR ANY REASON. SO ORDERED: (SIGNED BY JUDGE COLLEEN MCMAHON); COPIES MAILED. (DC) (ENTERED: 07/25/2001)

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28 07/20/2001 ORDER THAT CASE BE REFERRED TO THE CLERK OF COURT FOR ASSIGNMENT TO A MAGISTRATE JUDGE FOR ANY AND ALL DISCOVERY DISPUTES & SETTLEMENT CONFERENCE. REFERRED TO MAGISTRATE JUDGE LISA M. SMITH. SO ORDERED: (SIGNED BY JUDGE COLLEEN MCMAHON) (DC) (ENTERED: 07/25/2001)

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26 07/17/2001 ANSWER TO THE AMENDED COMPLAINT BY COCA COLA ENTERPRISE (ATTORNEY PHILIP M. HALPERN FROM THE FIRM: COLLIER,HALPERN,NEWBERG,NOLLET). (PF) (ENTERED: 07/18/2001)

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25 07/17/2001 ANSWER TO THE AMENDED COMPLAINT BY COCA COLA BOTTLING (ATTORNEY PHILIP M. HALPERN FROM THE FIRM: COLLIER, HALPERN, NEWBERG, NOL). (PF) (ENTERED: 07/18/2001)

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24 06/29/2001 CALENDAR NOTICE: PLEASE TAKEN NOTICE THAT THE ABOVE CAPTIONED MATTER HAS BEEN SCHEDULED FOR PRE-TRIAL CONFERENCE BEFORE THE HON. COLLEEN MCMAHON, USDJ, ON FRIDAY, JULY 20, 2001 AT 11:45 A.M. IN COURTROOM 521 AT THE U.S. DISTRICT COURTHOUSE, 300 QUARROPAS STREET WHITE PLAINS, NY. ANY SCHEDULING DIFFICULTIES MUST BE BROUGHT TO THE ATTENTION OF THE COURT IN WRITING. SO ORDERED: (SIGNED BY JUDGE COLLEEN MCMAHON); COPIES MAILED. (PF) (ENTERED: 07/03/2001)

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23 06/26/2001 DECISION ON DEFENDANTS' MOTIONS TO DISMISS; DENYING [17-1] MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(B)(6) OF F.R.CV.P., DENYING [15-1] MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(B)(1) F.R.CV.P., DENYING [9-1] MOTION TO DISMISS, DENYING [8-1] MOTION TO DISMISS. I CANNOT DISMISS THE COMPLAINT AS AGAINST CCE FOR FAILURE TO STATE A CLAIM - EVEN THOUGH I RECOGNIZE THAT PLAINTIFFS MUST MEET AN EXTRAORDINARILY HIGH STANDARD OF

PROOF IN ORDER TO AVOID A PROPERLY DOCUMENTED SUMMARY JUDGMENT MOTION. ACCORDINGLY, CCE AND COKE NEW YORK'S MOTIONS TO DISMISS ARE DENIED. (SIGNED BY JUDGE COLLEEN MCMAHON); COPIES MAILED. (DC) (ENTERED: 07/03/2001)

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22 02/16/2001 REPLY BY COCA COLA BOTTLING, COCA COLA ENTERPRISE RE: [20-1] OPPOSITION MEMORANDUM (LL) (ENTERED: 02/16/2001)

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21 02/16/2001 REPLY BY COCA COLA BOTTLING, COCA COLA ENTERPRISE RE: [17-1] MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(B)(6) OF F.R.CV.P. (LL) (ENTERED: 02/16/2001)

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20 02/07/2001 MEMORANDUM OF LAW BY WILLIAM EWING, MICHAEL HAMLETT, JOHN JOHNSON, MARCUS GARVIN IN OPPOSITION TO [15-1] MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(B)(1) F.R.CV.P. . (PF) (ENTERED: 02/08/2001)

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19 02/07/2001 MEMORANDUM OF LAW BY WILLIAM EWING, MICHAEL HAMLETT, JOHN JOHNSON, MARCUS GARVIN IN OPPOSITION TO [17-1] MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(B)(6) OF F.R.CV.P. . (PF) (ENTERED: 02/08/2001)

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18 01/16/2001 DEFENDANT COCA-COLA BOTTLING COMPANY OF NEW YORK, INC'S MEMORANDUM OF LAW IN SUPPORT BY COCA COLA BOTTLING IN SUPPORT OF [17-1] MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(B)(6) OF F.R.CV.P. . (KZ) (ENTERED: 01/16/2001)

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17 01/16/2001 NOTICE OF MOTION BY COCA COLA BOTTLING TO DIS-

MISS COMPLAINT PURSUANT TO RULE 12(B)(6) OF
F.R.CV.P. . RETURN DATE 8/6/97. (KZ) (ENTERED: 01/16/2001)

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16 01/16/2001 DEFENDANT COCA-COLA ENTERPRISES INC'S MEMO-
RANDUM OF LAW IN SUPPORT BY COCA COLA ENTER-
PRISE IN SUPPORT OF [15-1] MOTION TO DISMISS COM-
PLAINT PURSUANT TO RULE 12(B)(1) F.R.CV.P. . (KZ) (EN-
TERED: 01/16/2001)

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15 01/16/2001 NOTICE OF MOTION BY COCA COLA ENTERPRISE TO DIS-
MISS COMPLAINT PURSUANT TO RULE 12(B)(1) F.R.CV.P. .
(KZ) (ENTERED: 01/16/2001)

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14 01/08/2001 MEMO-ENDORSEMENT ON LETTER ADDRESSED TO USDJ
MCMAHON FROM PHILIP M. HALPERN, DATED JANUARY 3,
2001. RE: DFTS INTEND TO FILE A NEW MOTION TO DIS-
MISS...ENDORSEMENT: GRANTED. SO ORDERED: (SIGNED
BY JUDGE COLLEEN MCMAHON); COPIES MAILED. (PF)
(ENTERED: 01/09/2001)

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13 12/27/2000 AMENDED COMPLAINT BY WILLIAM EWING, MICHAEL
HAMLETT, JOHN JOHNSON, MARCUS GARVIN (ANSWER
DUE 1/9/01 FOR COCA COLA ENTERPRISE, FOR COCA COLA
BOTTLING) AMENDING [1-1] COMPLAINT ; SUMMONS IS-
SUED. (PF) (ENTERED: 12/28/2000)

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12 11/21/2000 RULE 1.9 CERTIFICATE FILED BY COCA COLA BOTTLING,
COCA COLA ENTERPRISE . (PF) (ENTERED: 11/21/2000)

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11/16/2000 ORDER GRANTING [6-1] MOTION FOR CHARLES C. LEE TO
APPEAR PRO HAC VICE PAID \$25.00 FEE RECEIPT #382385
(SIGNED BY JUDGE COLLEEN MCMAHON); COPIES
MAILED. (LL) (ENTERED: 11/21/2000)

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11/16/2000 ORDER GRANTING [5-1] MOTION FOR BRADFORD G. HARVEY TO APPEAR PRO HAC VICE PAID \$25.00 FEE RECEIPT #382386 (SIGNED BY JUDGE COLLEEN MCMAHON); COPIES MAILED. (LL) (ENTERED: 11/21/2000)

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11/16/2000 ORDER GRANTING [7-1] MOTION FOR KAREN M. SMITH TO APPEAR PRO HAC VICE PAID \$25.00 FEE RECEIPT. #382389 (SIGNED BY JUDGE COLLEEN MCMAHON); COPIES MAILED. (LL) (ENTERED: 11/21/2000)

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11 11/16/2000 MEMORANDUM OF LAW BY COCA COLA ENTERPRISE IN SUPPORT OF [8-1] MOTION TO DISMISS . (PF) (ENTERED: 11/17/2000)

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10 11/16/2000 MEMORANDUM OF LAW BY COCA COLA BOTTLING IN SUPPORT OF [9-1] MOTION TO DISMISS . (PF) (ENTERED: 11/17/2000)

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9 11/16/2000 NOTICE OF MOTION BY COCA COLA BOTTLING TO DISMISS . RETURN DATE 12/4/00. (PF) (ENTERED: 11/17/2000)

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8 11/16/2000 NOTICE OF MOTION BY COCA COLA ENTERPRISE TO DISMISS . RETURN DATE 12/4/00. (PF) (ENTERED: 11/17/2000)

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7 11/14/2000 NOTICE OF MOTION BY COCA COLA BOTTLING, COCA COLA ENTERPRISE FOR KAREN M. SMITH TO APPEAR PRO HAC VICE . RETURN DATE 11/30/00. (PF) (ENTERED: 11/14/2000)

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6 11/14/2000 NOTICE OF MOTION BY COCA COLA BOTTLING, COCA COLA ENTERPRISE FOR CHARLES C. LEE TO APPEAR PRO HAC VICE . RETURN DATE 11/30/00. *CHECK IS IN VAULT* (PF) (ENTERED: 11/14/2000)

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5 11/14/2000 NOTICE OF MOTION BY COCA COLA BOTTLING, COCA COLA ENTERPRISE FOR BRADFORD G. HARVEY TO APPEAR PRO HAC VICE . RETURN DATE 11/30/00. *CHECK IN VAULT* (PF) (ENTERED: 11/14/2000)

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4 11/03/2000 LETTER FILED BY COCA COLA BOTTLING, COCA COLA ENTERPRISE ADDRESSED TO JUDGE MCMAHON FROM PHILIP HALPERN, DATED 11/01/00, RE: ADVICE TO THE COURT THAT THE LAW FIRM OF GOLLIER, HALPERN, NEWBERG, NOLLETTI & BOCK LLP HAS BEEN RETAINED BY DEFT'S IN THIS ACTION.. (FK) (ENTERED: 11/03/2000)

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3 10/18/2000 RETURN OF SERVICE EXECUTED AS TO COCA COLA BOTTLING, COCA COLA ENTERPRISE BY CHRISTOPHER WARNER ON 10/11/00 . ANSWER DUE ON 10/31/00 FOR COCA COLA BOTTLING, FOR COCA COLA ENTERPRISE . SERVED SUMMONS AND COMPLAINT ON BOTH DFTS BY LEAVING WITH SUE NICHOLS AT 80 STATE ST. ALBANY, NY (PF) (ENTERED: 10/19/2000)

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2 09/21/2000 ORDER RE SCHEDULING AND INITIAL PRETRIAL CONFERENCE: ORDERED AS FOLLOWS: 1. COUNSEL RECEIVING THIS ORDER SHALL PROMPTLY MAIL COPIES HEREOF TO ALL OTHER COUNSEL OF RECORD OR, IN THE CASE OF PARTIES FOR WHICH NO APPEARANCE HAS BEEN MADE, TO SUCH PARTIES; 2. COUNSEL FOR ALL PARTIES ARE DIRECTED TO CONFER REGARDING AN AGREED SCHEDULING ORDER. IF COUNSEL ARE ABLE TO AGREE ON A SCHEDULE AND THE AGREED SCHEDULE CALLS FOR FILING OF THE PRETRIAL ORDER NOT MORE THAN SIX(6) MONTHS FROM THE DATE OF THIS ORDER, COUNSEL SHALL SIGN AND FILE WITHIN FORTY-FIVE(45) DAYS

FROM THE DATE HEREOF A CONSENT ORDER IN THE FORM ANNEXED FOR CONSIDERATION BY THE COURT. THE TRIAL READY DATE SHALL BE LEFT BLANK. IF SUCH A CONSENT ORDER IS NOT FILED WITHIN THE TIME PROVIDED, A CONFERENCE WILL BE HELD ON 11/20/00 IN COURTROOM 521, 300 QUARROPAS STREET, WHITE PLAINS, NY AT 9:00 A.M.; 3. ANY PARTY DESIRING A CONFERENCE WITH THE COURT FOR PURPOSES OF DISCUSSING SETTLEMENT, NARROWING OF ISSUES, OR OTHER PERTINENT PRETRIAL MATTERS MAY REQUEST A CONFERENCE BY LETTER; 4. PARTIES ARE TO FOLLOW THE ATTACHED INDIVIDUAL PRACTICE RULES; SO ORDERED: (SIGNED BY JUDGE COLLEEN MCMAHON); COPIES MAILED. (PF) (ENTERED: 09/25/2000)

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09/19/2000 MAGISTRATE JUDGE SMITH IS SO DESIGNATED. (PMO)
(ENTERED: 09/20/2000)

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1 09/19/2000 COMPLAINT FILED. SUMMONS ISSUED AND NOTICE
PURSUANT TO . FILING FEE \$ 150.00 RECEIPT # 384822.
(PMO) (ENTERED: 09/20/2000)

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END OF DOCUMENT