

**U.S. District Court
District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:16-cv-02010-WWE**

Kennedy v. Fanning
Assigned to: Judge Warren W. Eginton
Referred to: Judge William I. Garfinkel (Settlement)
Cause: 05:702 Administrative Procedure Act

Date Filed: 12/08/2016
Jury Demand: None
Nature of Suit: 899 Other Statutes:
Administrative Procedures Act/Review or
Appeal of Agency Decision
Jurisdiction: U.S. Government Defendant

Plaintiff

Stephen M. Kennedy
*on behalf of themselves and all others
similarly situated*

represented by **Michael J. Wishnie**
Jerome N. Frank Legal Services – Wall St
Yale Law School
127 Wall Street
New Haven, CT 06511
203-432-4800
Fax: 203-432-1426
Email: michael.wishnie@ylsclinics.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Aaron Paul Wenzloff
Community Activism Law Alliance
17 N. State Street
13th Floor
Ste 1380
Chicago, IL 60602
312-999-0056
Fax: 312-999-0076
Email: aaron@calachicago.org
TERMINATED: 07/18/2018
ATTORNEY TO BE NOTICED

Jacob Tracer
Jenner & Block LLP
919 Third Avenue
39th Floor
New York, NY 10022
212-407-1765
Fax: 312-515-3588
Email: jtracer@jenner.com
ATTORNEY TO BE NOTICED

Jeremy M. Creelan
Jenner & Block, LLP – NY
919 Third Avenue, 37th Floor
New York, NY 10022
212-891-1678
Fax: 212-909-0858
Email: jcreelan@jenner.com
ATTORNEY TO BE NOTICED

Sean D. Nelson
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456
213-239-2247
Fax: 213-590-2638
Email: snelson@jenner.com
TERMINATED: 10/02/2018

ATTORNEY TO BE NOTICED

Susan J. Kohlmann
Jenner & Block LLP
919 Third Avenue
Ste 38th Floor
New York, NY 10022
212-891-1690
Fax: 212-909-0821
Email: skohlmann@jenner.com
ATTORNEY TO BE NOTICED

Plaintiff

Alicia J. Carson
*on behalf of themselves and all others
similarly situated*

represented by **Michael J. Wishnie**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Aaron Paul Wenzloff
(See above for address)
TERMINATED: 07/18/2018
ATTORNEY TO BE NOTICED

Jacob Tracer
(See above for address)
ATTORNEY TO BE NOTICED

Jeremy M. Creelan
(See above for address)
ATTORNEY TO BE NOTICED

Sean D. Nelson
(See above for address)
TERMINATED: 10/02/2018
ATTORNEY TO BE NOTICED

Susan J. Kohlmann
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Eric Fanning
Secretary of the Army
TERMINATED: 04/17/2017

represented by **David Christopher Nelson**
U.S. Attorney's Office-NH
157 Church St., 25th Floor
New Haven, CT 06510
203-821-3700
Fax: 203-773-5373
Email: David.C.Nelson@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

Robert Speer
Acting Secretary of the Army

represented by **David Christopher Nelson**
(See above for address)
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12/08/2016 | <u>1</u> | COMPLAINT against Eric Fanning (Filing fee \$400 receipt number 0205-4223895.), filed by Stephen M Kennedy. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Wishnie, |

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| | | Michael) (Entered: 12/08/2016) |
| 12/08/2016 | | Judge Warren W. Eginton added. (Walker, A) (Entered: 12/09/2016) |
| 12/08/2016 | <u>2</u> | ELECTRONIC FILING ORDER – PLEASE ENSURE COMPLIANCE WITH COURTESY COPY REQUIREMENTS IN THIS ORDER Signed by Judge Warren W. Eginton on 12/8/2016.(Fazekas, J.) (Entered: 12/09/2016) |
| 12/09/2016 | <u>3</u> | NOTICE TO COUNSEL/PRO SE PARTIES : Counsel or pro se parties initiating or removing this action are responsible for serving all parties with attached documents and copies of <u>2</u> Electronic Filing Order, <u>1</u> Complaint filed by Stephen M. Kennedy Signed by Clerk on 12/9/2016.(Fazekas, J.) (Entered: 12/09/2016) |
| 12/16/2016 | | Request for Clerk to issue summons as to Eric Fanning. (Wishnie, Michael) (Entered: 12/16/2016) |
| 12/19/2016 | <u>4</u> | ELECTRONIC SUMMONS ISSUED in accordance with Fed. R. Civ. P. 4 and LR 4 as to *Eric Fanning* with answer to complaint due within *60* days. Attorney *Michael J. Wishnie* *Jerome N. Frank Legal Services – Wall St* *Yale Law School, 127 Wall Street* *New Haven, CT 06511*. (Fazekas, J.) (Entered: 12/19/2016) |
| 02/21/2017 | <u>5</u> | NOTICE of Appearance by David Christopher Nelson on behalf of Eric Fanning (Nelson, David) (Entered: 02/21/2017) |
| 02/21/2017 | <u>6</u> | MOTION for Extension of Time until March 27, 2017 to file a responsive pleading by Eric Fanning. (Nelson, David) (Entered: 02/21/2017) |
| 02/22/2017 | <u>7</u> | ORDER granting <u>6</u> Motion for Extension of Time until March 27, 2017 to file a responsive pleading. Signed by Judge Warren W. Eginton on 2/22/2017. (LaMura, K.) (Entered: 02/22/2017) |
| 02/22/2017 | | Answer deadline updated for Eric Fanning to 3/27/2017. (LaMura, K.) (Entered: 02/22/2017) |
| 03/24/2017 | <u>8</u> | SUMMONS Returned Executed by Stephen M. Kennedy. All Defendants. (Wishnie, Michael) (Entered: 03/24/2017) |
| 03/27/2017 | <u>9</u> | NOTICE of Appearance by Aaron Paul Wenzloff on behalf of Stephen M. Kennedy (Wenzloff, Aaron) (Entered: 03/27/2017) |
| 03/27/2017 | <u>10</u> | MOTION to Dismiss by Eric Fanning.Responses due by 4/17/2017 (Attachments: # <u>1</u> Memorandum in Support)(Nelson, David) (Entered: 03/27/2017) |
| 04/17/2017 | <u>11</u> | AMENDED COMPLAINT against Robert Speer, filed by Stephen M. Kennedy. (Attachments: # <u>1</u> Exhibit Hagel Memo, # <u>2</u> Exhibit Kennedy 2015 ADRB Decision, # <u>3</u> Exhibit Carson 2015 ADRB Decision)(Wishnie, Michael) (Entered: 04/17/2017) |
| 04/21/2017 | <u>12</u> | MOTION for Extension of Time until June 30, 2017 to file a responsive pleading <u>11</u> Amended Complaint by Robert Speer. (Nelson, David) (Entered: 04/21/2017) |
| 04/24/2017 | <u>13</u> | ORDER granting <u>12</u> Motion for Extension of Time. Signed by Judge Warren W. Eginton on 4/24/2017. (LaMura, K.) (Entered: 04/24/2017) |
| 04/24/2017 | | Answer deadline updated for Robert Speer to 6/30/2017. (Fazekas, J.) (Entered: 04/24/2017) |
| 04/25/2017 | <u>14</u> | ORDER denying without prejudice <u>10</u> Motion to Dismiss. Defendant shall file a motion to dismiss or other responsive pleading to the amended complaint by June 30, 2017. Signed by Judge Warren W. Eginton on 4/25/2017. (LaMura, K.) (Entered: 04/25/2017) |
| 06/27/2017 | <u>15</u> | MOTION to Certify Class by Alicia J. Carson, Stephen M. Kennedy.Responses due by 7/18/2017 (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Affidavit, # <u>3</u> Affidavit)(Wishnie, Michael) (Entered: 06/27/2017) |
| 06/30/2017 | <u>16</u> | MOTION to Dismiss by Robert Speer.Responses due by 7/21/2017 (Attachments: # <u>1</u> Memorandum in Support)(Nelson, David). Added MOTION to Remand to Agency on 9/19/2017 (Gould, K.). (Entered: 06/30/2017) |

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| 07/11/2017 | <u>17</u> | MOTION for Extension of Time until August 17, 2017 to respond to the plaintiffs' motion <u>15</u> MOTION to Certify Class by Robert Speer. (Nelson, David) (Entered: 07/11/2017) |
| 07/13/2017 | 18 | ORDER granting <u>17</u> Motion for Extension of Time. Signed by Judge Warren W. Eginton on 7/13/2017. (LaMura, K.) (Entered: 07/13/2017) |
| 07/13/2017 | 19 | Reset Deadline as to <u>15</u> MOTION to Certify Class . Responses due by 8/17/2017 (LaMura, K.) (Entered: 07/13/2017) |
| 07/14/2017 | <u>20</u> | Consent MOTION for Extension of Time to File Response/Reply as to <u>16</u> MOTION to Dismiss until 08/04/17 by Alicia J. Carson, Stephen M. Kennedy. (Wishnie, Michael) (Entered: 07/14/2017) |
| 07/18/2017 | 21 | ORDER granting <u>20</u> Motion for Extension of Time to File Response/Reply re <u>16</u> MOTION to Dismiss Responses due by 8/4/2017 (LaMura, K.) (Entered: 07/18/2017) |
| 07/18/2017 | 22 | Set Deadlines as to <u>16</u> MOTION to Dismiss . Responses due by 8/4/2017 (Gould, K.) (Entered: 07/19/2017) |
| 08/04/2017 | <u>23</u> | Memorandum in Opposition re <u>16</u> MOTION to Dismiss filed by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Exhibit 1)(Wishnie, Michael) (Entered: 08/04/2017) |
| 08/11/2017 | <u>24</u> | MOTION for Extension of Time until September 1, 2017 to file a reply brief <u>23</u> Memorandum in Opposition to Motion by Robert Speer. (Nelson, David) (Entered: 08/11/2017) |
| 08/14/2017 | 25 | ORDER granting <u>24</u> Motion for Extension of Time. Signed by Judge Warren W. Eginton on 8/14/2017. (LaMura, K.) (Entered: 08/14/2017) |
| 08/14/2017 | | Reset Deadline as to <u>16</u> MOTION to Dismiss . Responses due by 9/1/2017 (LaMura, K.) (Entered: 08/14/2017) |
| 08/17/2017 | <u>26</u> | Memorandum in Opposition re <u>15</u> MOTION to Certify Class filed by Robert Speer. (Nelson, David) (Entered: 08/17/2017) |
| 08/31/2017 | <u>27</u> | REPLY to Response to <u>15</u> MOTION to Certify Class filed by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Exhibit Exhibit 1)(Wishnie, Michael) (Entered: 08/31/2017) |
| 09/01/2017 | <u>28</u> | REPLY to Response to <u>16</u> MOTION to Dismiss filed by Robert Speer. (Nelson, David) (Entered: 09/01/2017) |
| 09/19/2017 | <u>29</u> | ORDER denying without prejudice <u>16</u> Motion to Dismiss; granting <u>16</u> Motion to Remand to Agency. Signed by Judge Warren W. Eginton on 9/19/2017. (Gould, K.) (Entered: 09/19/2017) |
| 09/25/2017 | | Set Deadline: Status Report due by 12/19/2017 (LaMura, K.) (Entered: 09/25/2017) |
| 09/25/2017 | | ReSet Deadline: Status Report due by 1/31/2018 (LaMura, K.) (Entered: 09/26/2017) |
| 10/23/2017 | <u>30</u> | STATUS REPORT <i>as to Plaintiff Alicia Carson</i> by Robert Speer. (Attachments: # <u>1</u> Discharge Upgrade Paperwork)(Nelson, David) (Entered: 10/23/2017) |
| 10/31/2017 | 31 | ORDER denying without prejudice pending reconsideration of the applications <u>15</u> Motion to Certify Class. Signed by Judge Warren W. Eginton on 10/31/2017. (Gould, K.) (Entered: 10/31/2017) |
| 01/31/2018 | <u>32</u> | STATUS REPORT by Alicia J. Carson, Stephen M. Kennedy. (Wishnie, Michael) (Entered: 01/31/2018) |
| 02/01/2018 | 33 | SCHEDULING ORDER: The parties are instructed to file a joint status report on or before May 4, 2018. Signed by Judge Warren W. Eginton on 2/1/18.(Gould, K.) (Entered: 02/01/2018) |
| 02/19/2018 | <u>34</u> | MOTION for Status Conference by Alicia J. Carson, Stephen M. Kennedy. (Wishnie, Michael) (Entered: 02/19/2018) |
| 02/20/2018 | 35 | ORDER granting <u>34</u> Motion for Conference. Signed by Judge Warren W. Eginton on 2/20/2018. (Gould, K.) (Entered: 02/20/2018) |

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| 02/20/2018 | 36 | ORDER REFERRING CASE to Magistrate Judge William I. Garfinkel for Settlement Conference. Signed by Judge Warren W. Eginton on 2/20/2018.(Gould, K.) (Entered: 02/20/2018) |
| 02/21/2018 | 37 | ORDER VACATING 36 Order Referring Case to Magistrate Judge. Per the parties request, a status conference will be scheduled. Signed by Judge Warren W. Eginton on 2/21/18.(Gould, K.) (Entered: 02/21/2018) |
| 02/22/2018 | 38 | SCHEDULING ORDER:Telephonic Status Conference set for 2/28/2018 02:00 PM before Judge Warren W. Eginton. The parties are instructed to arrange for a conference call with all counsel on the line prior to calling into chambers at 203-579-5819. Signed by Judge Warren W. Eginton on 2/22/2018.(LaMura, K.) (Entered: 02/22/2018) |
| 02/27/2018 | <u>39</u> | MOTION for Leave to Appear Law Student Intern <i>Helen White</i> by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Law Student Intern Appearance)(Wishnie, Michael) (Entered: 02/27/2018) |
| 02/27/2018 | <u>40</u> | MOTION for Leave to Appear Law Student Intern <i>Jordan R. Goldberg</i> by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Law Student Intern Appearance)(Wishnie, Michael) (Entered: 02/27/2018) |
| 02/28/2018 | 41 | SCHEDULING ORDER: In light of the Government's representations that review of Mr. Kennedy's discharge upgrade application should be completed by the end of March, the Court will hold a telephonic status conference on April 6, 2018 at 2 pm. The parties should arrange for a conference call, All counsel should be on the line prior to calling chambers at 203-579-5819 Telephonic Status Conference set for 4/6/2018 02:00 PM before Judge Warren W. Eginton Signed by Judge Warren W. Eginton on 2/28/2018.(Gould, K.) (Entered: 02/28/2018) |
| 02/28/2018 | 43 | Minute Entry for proceedings held before Judge Warren W. Eginton: Telephonic Status Conference held on 2/28/2018. Total Time: 15 minutes (Gould, K.) (Entered: 03/05/2018) |
| 03/01/2018 | 42 | ORDER granting <u>39</u> Motion to Appear ; granting <u>40</u> Motion to Appear. Signed by Judge Warren W. Eginton on 3/1/18. (Gould, K.) (Entered: 03/01/2018) |
| 03/29/2018 | 44 | AMENDED SCHEDULING ORDER: ** Please note new date**Telephonic Status Conference set for 4/3/2018 02:00 PM before Judge Warren W. Eginton Signed by Judge Warren W. Eginton on 3/29/2018.(LaMura, K.) (Entered: 03/29/2018) |
| 03/29/2018 | <u>45</u> | MOTION for Leave to Appear Law Student Intern <i>Catherine E. McCarthy</i> by Alicia J. Carson, Stephen M. Kennedy. (Wishnie, Michael) (Entered: 03/29/2018) |
| 04/02/2018 | 46 | ORDER granting <u>45</u> Motion to Appear Law Student Intern. Signed by Judge Warren W. Eginton on 4/2/2018. (LaMura, K.) (Entered: 04/02/2018) |
| 04/03/2018 | <u>47</u> | Joint MOTION for Scheduling Order by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Exhibit 1)(Wishnie, Michael) (Entered: 04/03/2018) |
| 04/03/2018 | 48 | ORDER granting <u>47</u> Motion for Order. Plaintiffs' motion for class certification is due on June 4, 2018; defendant's motion to dismiss is due on June 4, 2018. The parties have thirty days to file any responses. Signed by Judge Warren W. Eginton on 4/3/2018. (Welles, T.) (Entered: 04/03/2018) |
| 04/09/2018 | 49 | Minute Entry for proceedings held before Judge Warren W. Eginton: Telephonic Status Conference held on 4/9/2018. Total time 15 minutes (LaMura, K.) (Entered: 04/09/2018) |
| 06/04/2018 | <u>50</u> | MOTION to Dismiss by Robert Speer.Responses due by 6/25/2018 (Attachments: # <u>1</u> Memorandum in Support)(Nelson, David) (Entered: 06/04/2018) |
| 06/04/2018 | <u>51</u> | Second MOTION to Certify Class by Alicia J. Carson, Stephen M. Kennedy.Responses due by 6/25/2018 (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Affidavit of Michael J. Wishnie, # <u>3</u> Exhibit A to Wishnie Declaration, # <u>4</u> Exhibit B to Wishnie Declaration, # <u>5</u> Exhibit C to Wishnie Declaration, # <u>6</u> Affidavit of Susan J. Kohlmann, # <u>7</u> Affidavit of Stephen M. Kennedy)(Wishnie, Michael) (Entered: 06/04/2018) |

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| 07/03/2018 | <u>52</u> | RESPONSE re <u>51</u> Second MOTION to Certify Class filed by Robert Speer. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Nelson, David) (Entered: 07/03/2018) |
| 07/05/2018 | <u>53</u> | Memorandum in Opposition re <u>50</u> MOTION to Dismiss filed by Alicia J. Carson, Stephen M. Kennedy. (Wishnie, Michael) (Entered: 07/05/2018) |
| 07/17/2018 | <u>54</u> | MOTION for Aaron Wenzloff to Withdraw as Attorney by Alicia J. Carson, Stephen M. Kennedy. (Wenzloff, Aaron) (Entered: 07/17/2018) |
| 07/18/2018 | 55 | ORDER granting <u>54</u> Motion to Withdraw as Attorney. Attorney Aaron Paul Wenzloff terminated. Signed by Judge Warren W. Eginton on 7/18/2018. (LaMura, K.) (Entered: 07/18/2018) |
| 08/02/2018 | <u>56</u> | MOTION for Attorney(s) Jeremy M. Creelan to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-4922229) by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Affidavit Affidavit and Certificate of Good Standing)(Wishnie, Michael) (Entered: 08/02/2018) |
| 08/02/2018 | <u>57</u> | MOTION for Attorney(s) Susan J. Kohlmann to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-4922256) by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Affidavit Affidavit and Certificate of Good Standing)(Wishnie, Michael) (Entered: 08/02/2018) |
| 08/02/2018 | <u>58</u> | MOTION for Attorney(s) Sean D. Nelson to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-4922266) by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Affidavit Affidavit and Certificate of Good Standing)(Wishnie, Michael) (Entered: 08/02/2018) |
| 08/02/2018 | <u>59</u> | MOTION for Attorney(s) Jacob L. Tracer to be Admitted Pro Hac Vice (paid \$75 PHV fee; receipt number ACTDC-4922271) by Alicia J. Carson, Stephen M. Kennedy. (Attachments: # <u>1</u> Affidavit Affidavit and Certificate of Good Standing)(Wishnie, Michael) (Entered: 08/02/2018) |
| 08/02/2018 | <u>60</u> | REPLY to Response to <u>51</u> Second MOTION to Certify Class filed by Alicia J. Carson, Stephen M. Kennedy. (Wishnie, Michael) (Entered: 08/02/2018) |
| 08/03/2018 | 61 | ORDER granting <u>56</u> Motion to Appear Pro Hac Vice as to Jeremy M. Creelan. Signed by Clerk on 8/3/2018. (Fazekas, J.) (Entered: 08/03/2018) |
| 08/03/2018 | 62 | ORDER granting <u>57</u> Motion to Appear Pro Hac Vice as to Susan J. Kohlmann. Signed by Clerk on 8/3/2018. (Fazekas, J.) (Entered: 08/03/2018) |
| 08/03/2018 | 63 | ORDER granting <u>58</u> Motion to Appear Pro Hac Vice as to Sean D. Nelson. Signed by Clerk on 8/3/2018. (Fazekas, J.) (Entered: 08/03/2018) |
| 08/03/2018 | 64 | ORDER granting <u>59</u> Motion to Appear Pro Hac Vice as to Jacob L. Tracer. Signed by Clerk on 8/3/2018. (Fazekas, J.) (Entered: 08/03/2018) |
| 08/03/2018 | <u>65</u> | REPLY to Response to <u>50</u> MOTION to Dismiss filed by Robert Speer. (Nelson, David) (Entered: 08/03/2018) |
| 08/06/2018 | <u>66</u> | NOTICE of Appearance by Susan J. Kohlmann on behalf of Alicia J. Carson, Stephen M. Kennedy (Kohlmann, Susan) (Entered: 08/06/2018) |
| 08/08/2018 | <u>67</u> | NOTICE of Appearance by Jeremy M. Creelan on behalf of Alicia J. Carson, Stephen M. Kennedy (Creelan, Jeremy) (Entered: 08/08/2018) |
| 10/01/2018 | <u>68</u> | MOTION for Sean D. Nelson to Withdraw as Attorney <i>for Plaintiffs</i> by Alicia J. Carson, Stephen M. Kennedy. (Nelson, Sean) (Entered: 10/01/2018) |
| 10/01/2018 | <u>69</u> | NOTICE of Appearance by Jacob Tracer on behalf of Alicia J. Carson, Stephen M. Kennedy (Tracer, Jacob) (Entered: 10/01/2018) |
| 10/02/2018 | 70 | ORDER granting <u>68</u> Motion to Withdraw as Attorney. Attorney Sean D. Nelson terminated. Signed by Judge Warren W. Eginton on 10/02/18. (Gould, K.) (Entered: 10/02/2018) |
| 11/16/2018 | <u>71</u> | NOTICE by Alicia J. Carson, Stephen M. Kennedy <i>of Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit Manker Opinion & Order on Class Certification)(Wishnie, Michael) (Entered: 11/16/2018) |

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| 11/19/2018 | <u>72</u> | ORDER – The Court affords defendant until December 7, 2018, to file a response to plaintiff's notice of recent authority. Signed by Judge Warren W. Eginton on 11/19/2018.(Gould, K.) (Entered: 11/19/2018) |
| 11/28/2018 | <u>73</u> | RESPONSE re <u>71</u> Notice (Other), 72 Order filed by Robert Speer. (Nelson, David) (Entered: 11/28/2018) |
| 12/21/2018 | <u>74</u> | MEMORANDUM OF DECISION granting <u>51</u> Motion to Certify Class. Signed by Judge Warren W. Eginton on 12/21/18. (Imbriani, Susan) (Entered: 12/21/2018) |
| 01/09/2019 | <u>75</u> | Ruling denying <u>50</u> Motion to Dismiss. Signed by Judge Warren W. Eginton on 12/21/2018. (LaMura, K.) (Entered: 01/09/2019) |
| 03/06/2019 | <u>76</u> | REPORT of Rule 26(f) Planning Meeting. (Attachments: # <u>1</u> Exhibit Plaintiffs' Proposed Document Production Protocol)(Wishnie, Michael) (Entered: 03/06/2019) |
| 03/06/2019 | <u>77</u> | MOTION Status Conference with the Court regarding the Plaintiffs' proposed discovery plan by Robert Speer.Responses due by 3/27/2019 (Nelson, David) (Entered: 03/06/2019) |