

WEISSMAN & MINTZ LLC

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Attorneys for Plaintiff

SUSAN ALTMAN,

Plaintiff

v.

NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY and
MARCUS SALDUTTI, as Custodian of
Records of the New Jersey Economic
Development Authority,

Defendants

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – MERCER COUNTY

DOCKET NO.: _____

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Code 802 – OPRA summary matter

COMES NOW PLAINTIFF, Susan Altman, who by way of Verified Complaint against the Defendants, alleges and says:

INTRODUCTION

1. This case is brought pursuant to the New Jersey Open Public Records Act (“OPRA”) and the common law right to access public records. In a request dating back to July of this year, Plaintiff has sought records on one of the most pressing public policy issues of the State – the use and abuse of the State’s economic development laws. Extending multiple courtesies and extensions to Defendants, Plaintiff has nevertheless been refused the overwhelming majority of her request. Delay in responding is tantamount to denial, and Plaintiff now brings this action to vindicate her rights.

PARTIES

2. Plaintiff Susan Altman ("Plaintiff") is a citizen of New Jersey. She is the Executive Director of the New Jersey Working Families Alliance, a nonprofit organization ("Working Families"), and maintains a business address at 15 West Front Street, Trenton, in Mercer County.

3. Working Families is an advocacy group that promotes the interests, needs, and values of working families. Working Families devotes substantial organizational efforts to promote transparency in government. It further devotes substantial organizational efforts to promote the adoption, amendment and repeal of state laws, including the annual budget (both in regards to revenue and expenditures) that are necessary and appropriate to promote the needs of its constituency.

4. In furtherance of that mission, Plaintiff and Working Families have devoted substantial effort to investigating and exposing the creation of enabling legislation for the Defendant New Jersey Economic Development Authority ("NJEDA"), and NJEDA's implementation of that legislation, and the oversight (and lack thereof) of its programs.

5. Plaintiff and Working Families are uniquely interested in NJEDA affairs because of (a) the losses to state revenue that could otherwise be used for other purposes throughout the State, caused by the grant of tax credits by the NJEDA; (b) projects facilitated by the NJEDA that have caused damage to Working Families' constituents and partner groups throughout the State, including in the City of Camden; (c) the special legislation creating NJEDA in a manner that was authored in a secretive and nonpublic manner and ultimately approved in Mercer County; and (d) NJEDA's approval, in Mercer County, of transactions that were illegal and

contrary to public policy, and which inured to the benefit of politically-connected individuals and their families.

6. By thoroughly investigating and learning about the NJEDA's actions, Plaintiff and Working Families are in a better position to advocate for changes in law and enforcement of existing laws than they would be without full access to relevant information.

7. Defendant NJEDA an entity in the executive branch of the State government charged with, among other things, the administration and operation of various State tax incentive programs including the GROW NJ Assistance Program, and the Economic Redevelopment and Growth (ERG) Program. The principal office of the NJEDA is located at 36 West State Street, City of Trenton, Mercer County, New Jersey. Pursuant to N.J.S.A. 34:1B-5 and other applicable law, NJEDA has the express and implied power to make and keep each of the records that were requested in the request that led to this litigation.

8. Defendant Marcus Saldutti ("Saldutti" or the "Custodian") is an employee of the NJEDA and has been appointed as its Custodian of Records. Saldutti receives written OPRA requests directed to the EDA at a post office box located in Mercer County, specifically, PO Box 990, Trenton, New Jersey 08625.

JURISDICTION AND VENUE

9. This Court has jurisdiction to hear the within action pursuant to N.J.S.A. 47:1A-6. Venue is appropriate in Mercer County because the defendant agency is headquartered in Mercer County and because the cause of action arose in this County.

FACTS

10. On or about July 17, 2019, Plaintiff made a request to NJEDA, through Saldutti, for email correspondence between EDA staff and: (a) Philip Norcross; (b) other persons from the

law offices of Parker McCay; (c) persons with an email from the parkermccay.com domain; (d) persons from a lobbying firm named Optimus Partners.

11. On or about August 8, 2019, the request was rejected as overly broad, and Plaintiff was asked by defendant Saldutti to reformulate it.

12. On or about August 15, 2019, without conceding the claim of overbreadth or any other deficiency, Plaintiff nevertheless reformulated and resubmitted the request. The request at issue sought email correspondence (I) between EDA staff and: (a) Philip Norcross; (b) other persons from the law offices of Parker McCay; (c) persons with an email from the parkermccay.com domain; (d) persons from a lobbying firm named Optimus Partners; (II) for the period January 1, 2016 to July 1, 2019; (III) that included any of the following keywords/terms: LPT, Liberty, Chierici, Norcross, Goldenberg, Ravitz, Orsen, Jingoli, Fuentes, C1, P1, Waterfront, CRA, Camden Redevelopment Agency, Conner Strong, CSB, NFI, Michaels, TMO, Christie, NBT, net benefit, Gold, Lizura, CTC, Camden Tower Center, Grabell, Muscella, jmuscella@connerstrong.com, Tiagwad, CPT, GSGZ, Camden Towner, Camden Office Tower, and Purcell.

13. Hereinafter, documents falling within items I(a), (b) and (c) above are referred to as the "Parker McCay documents" and documents falling within item I(d) above are referred to as the "Optimus documents"

14. On or about August 26, 2019, the Custodian requested a two-week extension to respond.

15. On or about September 9, 2019, the Custodian requested a further extension to September 23, 2019. In that same letter, the Custodian raised the possibility of seeking further extensions, on the grounds that the Custodian was going to invite one or more third parties to

conduct a review of the requested documents and opine on which documents, if any, included confidential or proprietary information or trade secrets.

16. The Custodian did not, at the time, specify whether the third parties' view on which documents, if any, included confidential or proprietary information or trade secrets, was going to be given dispositive weight, or was simply going to be a factor for the Custodian to consider.

17. The September 23, 2019 date came and went without production of any documents in response to this request.

18. On or about October 15, 2019, the Custodian requested yet another two-week extension to respond.

19. The October 29, 2019 date came and went without production of any documents in response to this request.

20. On November 8, 2019, the Custodian's representative produced documents responsive to the request, but only (a) for Parker McCay documents and (b) for calendar year 2016, and sought a two-week extension to respond to the request for "the remaining portion" of the request.

21. The description of the items withheld or redacted accompanying the November 8, 2019 production left unanswered a core question of whether the Custodian had exercised independent judgment in determining what items were exempt as "trade secrets, proprietary commercial, confidential, or financial information" as to the 2016 Parker McCay documents or whether the Custodian had simply and uncritically followed the determinations of the third-party reviewers in regard to assertions of items being exempt as "trade secrets, proprietary commercial, confidential, or financial information."

22. The Custodian has produced no responsive Optimus documents whatsoever within the relevant time period and with the specified keywords.

23. On or about November 13, 2019, the attorney for the NJEDA apprised Plaintiff that the third parties reviewing the documents have not completed their review for confidential or proprietary information or trade secrets for the Parker McCay documents of 2017, 2018, or 2019. And Plaintiff was not been apprised of any deadline imposed on the third parties by which a response or input from them will be required.

24. On or about November 22, 2019, the Custodian sought yet another two-week extension.

25. On the date the requested extension expired, December 6, 2019, the Custodian responded that they had received the 2017 Parker McCay documents, but that the Custodian needed additional time to review the redactions sought by Parker McCay. Accordingly, no documents from either the Parker McCay documents or the Optimus documents were actually produced.

26. The Custodian also sought a one-week extension to December 13, 2018. However, there is little realistic prospect that all the remaining requested but unproduced items will be fulfilled by that time, given Defendants' abysmal prior record of requesting but then failing to honor deadlines set in their extension requests.

27. At no time has the Custodian claimed that the records requested are "in storage or archived" within the meaning of N.J.S.A. 47:1A-5(i).

28. At no time has the Custodian claimed that the records request is of such extraordinary nature or volume that the procedures of N.J.S.A. 47:1A-5(c) can be invoked.

29. In sum, as of today, the Custodian has failed to respond to the August 15, 2019 records request in the following ways:

- a. None of the “Parker McCay documents” for 2017, 2018, or 2019 have been produced and there is no realistic prospect of when such documents will be turned over; and
- b. None of the “Optimus documents” for 2016, 2017, 2018, or 2019 have been produced and there is no realistic prospect of when such documents will be turned over.

COUNT ONE

30. Plaintiff repeats and realleges Paragraphs 1-29 above as if fully set forth at length herein.

31. Plaintiff is a citizen of New Jersey entitled to make requests under OPRA.

32. NJEDA is a “commission, agency, or authority of the State” and its staff and employees are “officers” of the State within the meaning of N.J.S.A. 47:1A-1.1.

33. All documents requested are “government records” within the meaning of N.J.S.A. 47:1A-1.1.

34. The Custodian is personally and statutorily obligated to respond to and fulfill records requests “as soon as possible but not later than seven business days after receiving [the] request.” N.J.S.A. 47:1A-5(i).

35. Over three months have passed since the request was made. To the extent the Custodian could seek reasonable requests for extension of time to respond, the multiple extensions sought by the Custodian for responding to either the “Parker McCay” documents or the “Optimus documents”; the repeated failure to honor those requests for extension; the

production of only a trivial amount of “Parker McCay documents”; and the failure to produce any “Optimus documents” are no longer reasonable.

36. The failure to timely respond to a request and produce documents responsive thereto is deemed a denial as a matter of law, and makes this matter judicially reviewable under N.J.S.A. 47:1A-5(i) and -6.

37. The denial of access to the requested documents is a violation of OPRA.

38. The Custodian’s conduct is a knowing and willful violation of OPRA and has resulted in an unreasonable denial of access under the totality of the circumstances under N.J.S.A. 47:1A-11.

39. The right to access to public documents is a substantive right, privilege, or immunity secured by the constitution and laws of the State of New Jersey.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants:

A. For interim relief enjoining Defendants, their representatives, and those acting in concert with them, from destroying, damaging, altering, modifying, or alienating any document potentially responsive to the records request, and any metadata associated therewith, and setting a briefing schedule suitable for summary actions such as this;

B. Compelling the immediate production of the 2017, 2018, and 2019 “Parker McCay documents” and the 2016, 2017, 2017, and 2019 “Optimus Documents”;

C. For the issuance of a penalty under N.J.S.A. 47:1A-11;

D. For reasonable attorneys’ fees under N.J.S.A. 47:1A-6 and N.J.S.A. 10:6-2(f).

E. Retaining jurisdiction of the matter to oversee compliance with the production of the documents; and

F. For such other and further legal and equitable relief as is just and proper.

COUNT TWO

40. Plaintiff repeats and realleges Paragraphs 1-39 as if fully set forth at length.

41. The records requested are common-law public records in that they are writings made or kept by a public officer who is authorized by law to keep them, or were made or kept at the behest of a public officer in the exercise of a public function.

42. The Plaintiff, for among other reasons, the wholesome public interests cited in Paragraphs 2 through 6 above, has a cognizable interest in the subject matter contained in the requested material.

43. The Plaintiff's interest in accessing the records outweighs any State interest in preventing disclosure. Denial of records under the common law can only be justified if there is a State interest in nondisclosure, without regard to whatever private interests in nondisclosure might be asserted.

44. Defendants' failure to produce the requested documents in their entirety and without redactions is a violation of the common law right of access to public documents.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants:

A. For interim relief enjoining Defendants, their representatives, and those acting in concert with them, from destroying, damaging, altering, modifying, or alienating any document potentially responsive to the records request, and any metadata associated therewith, and setting a briefing schedule suitable for summary actions such as this;

B. Compelling the immediate production of the 2017, 2018, and 2019 "Parker McCay documents" and the 2016, 2017, 2017, and 2019 "Optimus Documents";

C. Retaining jurisdiction of the matter to oversee compliance with the production of the documents; and

D. For such other and further legal and equitable relief as is just and proper.

COUNT III

45. Plaintiff repeats and realleges Paragraphs 1-44 as if fully set forth at length.

46. A justiciable controversy about Plaintiff's rights, status, and legal relations under the Open Public Records Act and the common law right of access to public records now exists between Plaintiff and Defendants on the following points:

47. Under Mason v. Hoboken, 196 N.J. 51 (2008), the Court set a 45 day deadline for challenging the denial of a public records request. Specifically, the Court held that "requestors who choose to file an action in Superior Court to challenge the decision of an OPRA custodian must do so within 45 days. For like reasons, we adopt the same approach for common law actions."

48. Here, the Custodian has produced records on "rolling" basis, that is, providing responsive records as they receive and process them and at different times. While this is a salutary practice that gives requestors quicker access to records, it also set up a conundrum over when requestors, if they challenge the Custodian's actions, must seek judicial recourse.

49. On the one hand, if requestors had to judicially challenge a Custodian's production and/or the withholding or redaction of documents on the basis of privilege, within 45 days of the receipt of any partial, "rolling" production, that would create the risk of either multiple and duplicative litigation; or the loss of Plaintiff's right to seek judicial review of the partial production. And, since the 45-day rule set up in Mason applies to both OPRA and common-law requests, it would impact Plaintiff's rights under both laws.

50. On the other hand, if the Plaintiff was permitted to wait until the full records request had been either fulfilled or otherwise responded to, that would permit the Court to

entertain, in a single proceeding, all disputes related to the scope of production, the propriety of withholdings or redactions, the propriety of the identity of the person(s) deciding on withholdings or redactions, and any other disputes that might remain. Such an approach would further judicial economy and minimize fiscal impacts to the Court, the public agencies, and the requestor.

51. It is respectfully suggested that the correct rule of law for measuring the timeliness of actions is that, while rolling production is to be encouraged, the requestor has 45 days from the final answer of the Custodian on all aspects of the request, under both the common law and OPRA, to file a judicial challenge to the scope of production.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants:

A. For a declaratory judgment that in the case of a rolling production of documents in response to a single records request relying on both OPRA and the common law, that the requestor has 45 days from the final answer of the Custodian on all aspects of the request, under both the common law and OPRA, to file a judicial challenge to the scope of production;

B. For a declaratory judgment that Plaintiff need not file suit challenging the aspects of the rolling production made on November 8, 2019, or any subsequent rolling production, until 45 days from the final answer of the Custodian on all aspects of the request; and

C. For such other and further legal and equitable relief as is just and proper.

Respectfully submitted,

WEISSMAN & MINTZ

Attorneys for Plaintiff

By: /s/ Flavio L. Komuves
Flavio L. Komuves, Esq. (No. 018891997)

Dated: December 10, 2019

VERIFICATION

I have read the aforesaid complaint and certify that the factual statements made therein are true. I am aware that if any of the foregoing statements made by me are willfully false, that I am subject to punishment.

A handwritten signature in black ink, appearing to be 'Susan Altman', written over a horizontal line.

Susan Altman

Dated: December 10, 2019

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4 and R. 4:4-1(c), Flavio L. Komuves, Esq. is designated as trial counsel on behalf of Plaintiffs in the within matter.

/s/ Flavio L. Komuves
Flavio L. Komuves

Dated: December 10, 2019

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, I certify that the within matter in controversy is subject to no other action pending in any Court or arbitration proceeding and that the names of all parties who should be joined in this action are set forth in the Complaint and joined in the action.

/s/ Flavio L. Komuves
Flavio L. Komuves

Dated: December 10, 2019

WEISSMAN & MINTZ LLC

By: Flavio L. Komuves, Esq. (No. 018891997)

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Attorneys for Plaintiff

SUSAN ALTMAN,

Plaintiff

v.

NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY and
MARCUS SALDUTTI, as Custodian of
Records of the New Jersey Economic
Development Authority,

Defendants

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – MERCER COUNTY

DOCKET NO.: _____

ORDER TO SHOW CAUSE

Code 802 – OPRA summary matter

This matter being brought before to the court by Weissman & Mintz, LLC, attorneys for plaintiff (Flavio L. Komuves, Esq., appearing), seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the verified complaint filed herewith; and the court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to and for good cause shown.

It is on this _____ day of _____, 2019, ORDERED that defendant(s), New Jersey Economic Development Authority and Marcus Saldutti, appear and show cause on the _____ day of _____, 2019, before the Superior Court at the County Courthouse in Trenton, New Jersey at _____ a.m/p.m., or as

soon thereafter as counsel can be heard, on why judgment should not be entered for Plaintiff and against Defendants:

A. Compelling the immediate production of the 2017, 2018, and 2019 “Parker McCay documents” and the 2016, 2017, 2017, and 2019 “Optimus Documents” described in the Verified Complaint, pursuant to both the Open Public Records Act and the common law right of access to public records;

B. For the issuance of a penalty under N.J.S.A. 47:1A-11;

C. For reasonable attorneys’ fees under N.J.S.A. 47:1A-6 and N.J.S.A. 10:6-2(f).

D. Retaining jurisdiction of the matter to oversee compliance with the production of the documents;

E. Resolving the declaratory judgment claim posited in Count III of the Verified Complaint by holding that the 45-day limit for requesting judicial review of an denial of OPRA rights does not begin to run until the Custodian has given his or her final response to all document requests in a particular request, rather beginning to run as each production under a rolling basis is made;

F. For such other and further legal and equitable relief as is just and proper.

And it is further ORDERED that Defendants, their officers, agents, employees and attorneys, and upon such persons in active concert or participation with them who have actual notice of this order by personal service or otherwise, are restrained and enjoined from destroying, damaging, altering, modifying, or alienating any document potentially responsive to the records request, and any metadata associated therewith.

And it is further ORDERED that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the defendant(s), personally, or within days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The plaintiff must file with the court his/her/its proof of service of the pleadings on the defendant(s) no later than three (3) days before the return date.

3. Defendant(s) shall file and serve a written answer, an answering affidavit or a motion returnable on the return date to this order to show cause and the relief requested in the verified complaint and proof of service of the same by _____. The answer, answering affidavit or a motion as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge _____. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by _____. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If the defendant(s) do/does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendant(s) take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the order to show cause and proof of service before the return date of the order to show cause. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf. Include a \$ _____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer, answering affidavit or motion to the plaintiff's attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than days before the return date.

J.S.C.

WEISSMAN & MINTZ LLC

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Attorneys for Plaintiff

SUSAN ALTMAN,

Plaintiff

v.

NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY and
MARCUS SALDUTTI, as Custodian of
Records of the New Jersey Economic
Development Authority,

Defendants

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – MERCER COUNTY

DOCKET NO.: _____

**[PROPOSED]
FINAL ORDER**

This matter being brought before to the court by Weissman & Mintz, LLC, attorneys for plaintiff (Flavio L. Komuves, Esq., appearing), seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the verified complaint filed herein; and the court having determined that this matter may be commenced by order to show cause as a summary proceeding; and the Court having received a certification that good and sufficient service of the Verified Complaint and Order to Show Cause was served on Defendants; and the Defendants having been offered the opportunity to submit papers and otherwise be heard thereon; and the Court having considered the submissions and arguments by counsel on behalf of the parties; and for good cause shown,

IT IS on this _____ day of _____, 2019, ORDERED that:

1. Defendants are to immediately produce complete and unredacted copies of the 2017, 2018, and 2019 “Parker McCay documents” identified in the Verified Complaint, in response to Plaintiff’s August 15, 2019 request for public records under the Open Public Records Act and the common law right of access to public records;

2. A penalty in the amount of \$ _____ is imposed against the Custodian of Records, Marcus Saldutti, for knowing and willful violation of OPRA.

3. The Plaintiff is the prevailing party and shall file an certification of services in support of an award of reasonable attorneys’ fees within ____ days of the date hereof.

4. This Court retains jurisdiction of the matter to oversee compliance with the production of the documents ordered herein.

5. As to the declaratory judgment claim posited in Count III of the Verified Complaint, the Court adjudges and declares that the 45-day limit for requesting judicial review of an denial of OPRA rights does not begin to run until the Custodian has given his or her final response to all document requests in a particular request, rather beginning to run as each production under a rolling basis is made;

J.S.C.

WEISSMAN & MINTZ LLC

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JOEL N. WEISSMAN (1957-1998)
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December 10, 2019

Filed via E-Courts

Deputy Clerk

Superior Court of New Jersey

Law Division, Mercer County

175 South Broad St., 1st Floor

Trenton, New Jersey 08650

Re: Altman v. New Jersey Economic Development Authority
Docket No. MER-L-_____-19

Dear Sir/Madam:

Enclosed for filing please find a Verified Complaint in Lieu of Prerogative Writs and proposed Order to Show Cause. This is an Open Public Records Act matter that, pursuant to N.J.S.A. 47:1A-6, is supposed to proceed in a summary or expedited manner.

I will be forwarding these documents to the chambers of Hon. Mary Jacobson, A.J.S.C., who I understand is the Judge designated pursuant to N.J.S.A. 47:1A-6 to hear OPRA matters. A copy of these materials will also be forwarded to AAG Raymond Chance, Esq., who is listed as in the attorney in charge of the Public Records Group at the Division of Law.

This is an Open Public Records Act (OPRA) and common law records access matter that, pursuant to N.J.S.A. 47:1A-6, should proceed in a summary or expedited manner. We respectfully request the Court schedule a case management conference later this week to consider the matters, including interim restraints and scheduling, being presented in the Order to Show Cause.

As addressed fully in the enclosed Verified Complaint, plaintiff Susan Altman requested public records from the New Jersey Economic Development Authority ("NJEDA") on July 17, 2019 and August 15, 2019. The request was for correspondence between staff of the NJEDA and two entities (Parker McCay and Optimus Partners) which have been intimately involved in

drafting the NJEDA enabling legislation and/or in assisting entities in procuring grants under the related to NJEDA's two major programs: the GROW NJ Assistance Program, and the Economic Redevelopment and Growth (ERG) Program. As the Verified Complaint describes, these two programs are the subject of intense investigative interest by the organization directed by Plaintiff, the New Jersey Working Families Alliance.

Under OPRA, NJEDA had until August 26, 2019 to respond to Plaintiff's August 15, 2019 records request. As the Verified Complaint details, in ¶¶ 14-26, the response to the records request has been to request one extension after another, and then to either ignore the extension date altogether, or to not comply with what was promised by the extension date. All that has arrived is a small tranche of Parker McCay documents, but no reliable assurances whatsoever about the remainder of the Parker McCay documents or any of the Optimus documents.

For these reasons, Plaintiff seeks the Court's intervention as set forth in the Verified Complaint, to require the Custodian to immediately produce all responsive documents. Given NJEDA's prior refusal to adhere to promised deadlines in this matter, even after extensions, we are concerned that this further extension to December 13, for which NJEDA offered no justification, may not be the last.

Plaintiff therefore respectfully requests that Your Honor enter the enclosed Order to Show Cause. To avoid prejudice to our ability to represent the needs of Working Families' members, we respectfully request that Your Honor schedule a case management conference later this week to set briefing dates for the OPRA and common law request.

There are two other items in the submitted papers for comment. First, we have asked the Court to enter preliminary restraints against the destruction or alteration of any potentially responsive documents and their accompanying metadata. We make this request because the Custodian has stated that he is soliciting input, at least from Parker McCay, about what privileges, if any, can be validly asserted over the responsive documents. A wholesale delegation of this process to someone who is not a sworn government official, charged with upholding OPRA and only claiming legitimate privileges, would present legal issues. And while there is no evidence that the Custodian is blindly rubber-stamping privileges claimed by third parties, the process is nontransparent. Thus, we ask the Court to enter a status quo injunction that would require the defendants to retain one pristine copy of the documents, with accompanying metadata, while the particulars of this process are sorted out.

Count III of the Complaint also presents for decision a question about the applicable rule of law when, as here, documents are being produced on a rolling basis. In a ruling by the Supreme Court in Mason v. Hoboken, 196 N.J. 51 (2008), the Court set a 45 day deadline for challenging the denial of a public records request. Specifically, the Court held that "requestors who choose to file an action in Superior Court to challenge the decision of an OPRA custodian must do so within 45 days. For like reasons, we adopt the same approach for common law actions."

It is not plain what the correct rule of law is for instances when, as here, the Custodian engages in a rolling production of documents. To put it concretely, the partial response provided on November 8 contains redactions. Not all of those redactions may be justified under OPRA, and even if they are, the common law right of access requires a different analysis. It is not clear to Plaintiff whether such a challenge must be filed by 45 days of November 8 because that was a “decision of an OPRA custodian” or whether, as sound judicial administration would counsel, the Plaintiff can and should wait until she has a full response to all the records requested in the August 15 request before asking the Court to intervene. We will be prepared to discuss this issue at the anticipated case management conference, including, if necessary, a tolling agreement while the issue is sorted out.

As noted above, these documents will, upon filing, be transmitted to Judge Jacobson’s chambers, and to the AAG assigned responsibility for OPRA litigation in the Division of Law.

Respectfully submitted,

WEISSMAN & MINTZ
Attorneys for Plaintiff

By: /s/ Flavio L. Komuves

Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-002343-19

Case Caption: ALTMAN SUSAN VS NEW JERSEY

ECONOMIC DEVELOPME

Case Initiation Date: 12/10/2019

Attorney Name: FLAVIO L KOMUVES

Firm Name: WEISSMAN & MINTZ, LLC

Address: ONE EXECUTIVE DR STE 200

SOMERSET NJ 08873

Phone: 7325634565

Name of Party: PLAINTIFF : Altman, Susan

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

12/10/2019

Dated

/s/ FLAVIO L KOMUVES

Signed