

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

**ROBERT L. SHULZ, et al.,
Plaintiffs**

v.

**STATE OF NEW YORK, et al.,
Defendants**

**NOTICE OF MOTION TO DISMISS
ON BEHALF OF DEFENDANTS
COMMONWEALTH OF
PENNSYLVANIA AND PEDRO A.
CORTÉS**

**NO. 07-CV-0943
(LEK/DRH)**

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law; the memorandum of law filed by co-defendants which are incorporated by reference; and all prior proceedings, the defendants Commonwealth of Pennsylvania and Pedro A. Cortés on January 18, 2008 at 9:30 a.m., or as soon thereafter as is convenient for the Court, shall move before this Court for an Order dismissing the Plaintiffs' Amended Complaint with prejudice as to Commonwealth of Pennsylvania and Pedro A. Cortés pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(2) and 12(b)(6). In support of this motion, the undersigned will rely upon the memorandum of law submitted herewith. A proposed form of Order is submitted hereto.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 7.1(b) of the Local Rules of Practice of the United States District Court for the Northern District of New York, any papers to be submitted in opposition to the within motion must be filed with the clerk and served upon counsel for the defendants no later than seventeen (17) days before the return date of the motion, exclusive of that day. These papers must include, at a minimum, a memorandum of law containing relevant factual and legal arguments.

PLEASE BE FURTHER ADVISED that if you do not respond in opposition to the motion, the motion to dismiss, if appropriate, will be granted and judgment will be entered

against you. If the motion to dismiss is granted, your case will be dismissed and there will not be any trial concerning any of the issues asserted in your Amended Complaint. It is respectfully requested that the Court rule upon the moving papers submitted without requiring appearance of counsel pursuant to FRCP 78.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

By: *s/Michael L. Harvey*
MICHAEL L. HARVEY
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
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Date: December 17, 2007

CERTIFICATE OF SERVICE

I, Michael L. Harvey, Senior Deputy Attorney General, Commonwealth of Pennsylvania, hereby certify that on this date, I caused to be served a copy of the foregoing document via ECF to counsel for the other named defendants. I further certify that a copy of the foregoing document was served on the following non-ECF participant who has been designated by the Court as the "Lead Plaintiff Representative" by depositing a copy in the United States mail, first class postage prepaid, in Harrisburg, Pennsylvania, addressed to the following individual:

Robert L. Shulz
2458 Ridge Road
Queensbury, NY 12804

s/Michael L. Harvey
MICHAEL L. HARVEY
Senior Deputy Attorney General

Date: December 17, 2007