

April 3, 2014

The Honorable Garry J. Furnari, J.S.C.
Superior Court of New Jersey
Law Division, Essex County
Historic Courthouse
470 Martin Luther King, Blvd., 2nd Floor
Newark, New Jersey 07102

RE: Jeremy Rubin d/b/a Tidbit v. New Jersey Division of Consumer Affairs
Docket No. ESX-L-567-14

Dear Judge Furnari,

This letter-brief replies to the state's opposition to Mr. Rubin's motion to file an amended complaint, substituting Acting Attorney General John Hoffman in his official capacity for the State of New Jersey as defendant.

Completely missing from the state's analysis of whether Mr. Rubin can sue Mr. Hofmann in his official capacity is any discussion or reference to *Ex Parte Young*, 209 U.S. 123 (1908), where the U.S. Supreme Court explained that a suit for prospective declaratory and injunctive relief is not barred by Eleventh Amendment sovereign immunity. *Young*, 209 U.S. at 159-60; *see also Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974) ("settled" after *Young* "that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law.").

Indeed, one of the cases cited by the state and attached to Mr. Graham's supplemental certification notes that one of the exceptions to state sovereign immunity are "suits against state official in their official capacities where Plaintiff seeks prospective, injunctive relief for ongoing violations of federal law." *Slinger v. New Jersey*, 2008 U.S. Dist. LEXIS 71723, *11 (D.N.J. Sep. 4, 2008) (unpublished) (citing *Young*, 209 U.S. at 159-60); *see* Exhibit C to Supplemental Certification of Glenn T. Graham.

Mr. Rubin's suit seeks the precise relief contemplated in *Young*. Mr. Rubin is not seeking monetary damages for past violations of federal law, *see Slinger*, 2008 U.S. Dist.

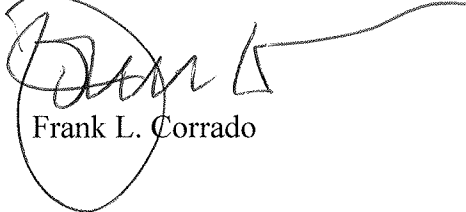
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LEXIS 71723, *11, but rather injunctive relief prohibiting the state from compelling Mr. Rubin to comply with a subpoena *duces tecum* requiring him to produce documents and written answers to interrogatories in violation of the federal constitution. As Mr. Rubin has yet to produce the material sought by the subpoena, this suit is necessarily for prospective relief. In turn, Mr. Hoffmann can be sued in his official capacity under *Young* notwithstanding Eleventh Amendment sovereign immunity.

As Mr. Rubin explained in his original motion to amend, because amending the complaint will not cause delay or require additional briefing or substitution of counsel, this Court should permit Mr. Rubin to cure the complaint's original defect by substituting Mr. Hoffmann as a defendant in his official capacity.

Respectfully submitted,

BARRY, CORRADO & GRASSI, PC

A handwritten signature in black ink, appearing to read "Frank L. Corrado", is written over a circular stamp. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Frank L. Corrado

FLC/sh

cc Glenn Graham, Deputy Attorney General (via e-mail)
Edward Mullins, Deputy Attorney General (via e-mail)