

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES M. MALONEY,

Plaintiff,

-against-

ANSWER

CV 03-786

ELIOT SPITZER, in his official
capacity as Attorney General of
the State of New York, and
DENIS DILLON, in his official
capacity as District Attorney of
the County of Nassau, and their
successors,

(Spatt, J.)
(Orenstein, M.)

Defendants.

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Defendant ELIOT SPITZER, in his official capacity as
Attorney General of the State of New York ("The Attorney
General"), by Assistant Attorney General DOROTHY OEHLER NESE, of
counsel, hereby interposes the following Answer to the Complaint,
respectfully alleging as follows:

1. The Attorney General denies the truth of each and
every allegation set forth in paragraphs numbered "3", "4", "28",
"30", "32", "34", "36", "38", "40", "42" and "44"; furthermore,
to the extent that the allegations contained in those paragraphs
refers to statutes, rules, laws and/or regulations, The Attorney
General respectfully refers to the Court all questions and
interpretations of the relevant statutes, rules, laws and/or
regulations cited therein.

2. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs numbered "1", "10", "11", "12", "13", "14", "15", "17", "18", "19", "20", "21", "22" and "24".

3. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs numbered "5", "23", and "25"; furthermore, to the extent that the allegations contained in those paragraphs refer to statutes, rules, laws and/or regulations, The Attorney General respectfully refers to the Court all questions and interpretations of the relevant statutes, rules, laws and/or regulations cited therein.

4. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs numbered "6", "7", "8", "9", "16" and "26"; furthermore, to the extent that the allegations contained in those paragraphs refer to statutes, rules, laws and/or regulations, The Attorney General respectfully refers to the Court all questions and interpretations of the relevant statutes, rules, laws and/or regulations cited therein; moreover, to the extent that the allegations contained in those paragraphs purport to characterize the contents of documents, The

Attorney General denies such characterizations as an oversimplification of the contents of such documents and respectfully refers the Court to the documents themselves, as the best evidence of their content.

5. The Attorney General repeats, reiterates and realleges each and every response to the allegations contained in the paragraphs of the complaint inferentially referred to in paragraphs numbered "27", "29", "31", "33", "35", "37", "39", "41" and "43", as if more fully set forth herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

17. The complaint fails to state any colorable constitutional or statutory claims nor any claims upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

24. The Attorney General has not violated any rights, privileges or immunities secured to Plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has The Attorney General violated any act of Congress providing for the protection of civil rights. No statement, regulation or policy officially adopted or promulgated by The Attorney General or otherwise ratified by The Attorney General authorized a deprivation of Plaintiff's constitutional rights.

25. Any actions of The Attorney General complained of herein were in all respects reasonable, proper, lawful, constitutional and an appropriate exercise of discretion.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

32. If Plaintiff sustained any damages or injuries, such damages or injuries were caused, in whole or in part, by the Plaintiff, or by others acting on his behalf or at his behest.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

33. If, in fact, Plaintiff has been damaged, said damages were caused in whole or in part by his failure to take action to mitigate such damages, or by the failure of others acting on his behalf or at his behest.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

36. All or many of Plaintiff's claims are barred by the statute of limitations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

37. Plaintiff has failed to allege facts sufficient to entitle him to declaratory relief.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

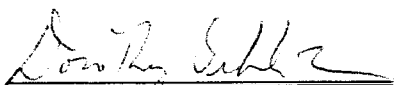
11. This Court does not have jurisdiction over the subject matter of the within action.

WHEREFORE, The Attorney General respectfully requests that judgment be entered dismissing the complaint with costs,

disbursements and an award of reasonable attorneys fees in favor of The Attorney General and against Plaintiff, and granting such other and further relief as this Court may deem just and proper.

Dated: Mineola, New York
May 21, 2003

ELIOT SPITZER
Attorney General of
the State of New York

By:  (DON 9327)
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