

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ROBERT L SCHULZ, *et al*,

*Plaintiffs,*

**NOTICE OF MOTION  
TO DISMISS**

-against-

07-CV-0943

STATE OF NEW YORK, *et al*,

LEK/RFT

*Defendants.*

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PLEASE TAKE NOTICE that upon the annexed declaration of AAG Bruce J. Boivin; the complaint; the memoranda of law filed by co-defendants which are incorporated by reference; and upon all prior proceedings, State of New York, on January 18, 2008 at 9:30 a.m., or as soon thereafter as counsel can be heard, will make a motion at the United States District Court, Northern District of New York, Albany, New York, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, for an order dismissing the Amended Complaint in its entirety with prejudice as to defendant State of New York, together with such other or further relief as may be just.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 7.1(c) 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 Clerk in Syracuse, New York 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 complaint.

Dated: Albany, New York  
December 17, 2007

ANDREW M. CUOMO  
Attorney General of the State of New York  
Attorney for Defendant, State of New York  
The Capitol  
Albany, New York 12224-0341

By: *s/ Bruce J. Boivin*  
Bruce J. Boivin  
Assistant Attorney General, of Counsel  
Bar Roll No. 507894  
Telephone: (518) 473-5093  
Email: Bruce.Boivin@oag.state.ny.us

To: Robert L. Schulz  
Plaintiff *pro se* [as plaintiff liaison]  
2458 Ridge Road  
Queensbury, NY 12804

Defense Counsel of record via CM/ECF