

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MAXINE GOODEN

v.

PECO ENERGY COMPANY

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:

DOCKET NO. C-2010-2203014

NOTICE TO PLEAD

To: Maxine Gooden

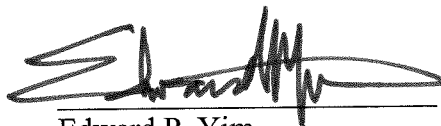
Pursuant to 52 Pa. Code §§5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Judgment on the Pleadings within 20 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Edward P. Yim, and where applicable, the Administrative Law Judge presiding over the issue.

Failure to respond to this Motion could result in the dismissal of your case.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Edward P. Yim
Stevens & Lee
1818 Market Street, 29th Floor.
Philadelphia, PA 19103

Dated: February 2, 2011



Edward P. Yim
Dana Pirone Carosella
Stevens & Lee
1818 Market Street, 29th Floor.
Philadelphia, PA 19103
Tel. (215) 751-1955
Fax (610) 988-0852
epy@stevenslee.com
dpc@stevenslee.com

COUNSEL FOR PECO

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MAXINE GOODEN

v.

PECO ENERGY COMPANY

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:
:

DOCKET NO. C-2010-2203014

MOTION FOR JUDGMENT ON THE PLEADINGS

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §5.102, respectfully requests that your Honorable Commission dismiss the instant complaint inasmuch as Complainant requests a payment arrangement. No factual dispute has been raised in the pleadings. Pursuant to 66 Pa.C.S. §1405(c), Complainant is ineligible for a Commission-ordered payment agreement, and thus Complainant fails to state a claim upon which relief can be granted. Therefore, PECO is entitled to judgment as a matter of law.

1. On September 27, 2010, Complainant filed a Formal Complaint against Respondent, PECO, requesting to receive a Commission-ordered payment agreement. A copy of Complainant's Formal Complaint is attached hereto as Exhibit 1.

2. PECO was served with the Formal Complaint on October 7, 2010.

3. On October 27, 2010, PECO filed an Answer, New Matter and Notice to Plead. A copy of PECO's Answer and New Matter is attached hereto as Exhibit 2.

4. In its New Matter, PECO averred that Complainant has been enrolled in the Customer Assistance Program (CAP), tier C, since April 28, 2009 and that \$4,663.38 of the \$8,140.96 past due balance are CAP arrears. New Matter ¶¶15-16.

5. PECO also averred in its New Matter that Complainant consistently fails to pay for gas and electric service from PECO and that since January 2010, she has made only two payments: \$28.76 in January 2010 and \$160 in September 2010. New Matter ¶17.

6. As Complainant is enrolled in CAP, PECO averred that, as a result, she is not entitled to a Commission-ordered payment agreement. New Matter ¶18.

7. To date, almost 100 days have passed since PECO filed its New Matter.

8. PECO has not been served with a response to its New Matter, and therefore it requests that the facts stated therein be deemed admitted. 52 Pa.Code §5.63(b) (providing that facts in new matter may be deemed admitted if there is no reply).

9. Under 66 Pa.C.S. §1405(c), the Commission is precluded from establishing a payment agreement for customers participating in CAP. Section 1405(c) states as follows: “Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.”

10. The Commission’s regulations at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. Under 52 Pa. Code §5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

11. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of

all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

12. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlth. 1989).

13. The pleadings in this case reveal the following:

a. There is no factual dispute that (a) Complainant is enrolled in CAP, (b) the majority of her past due balance is CAP arrears, and (c) the sole relief Complainant seeks is a Commission-ordered payment agreement.

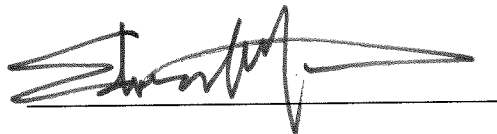
b. Under 66 Pa.C.S. §1405(c), the Commission is prohibited from ordering another payment agreement for account holders who are enrolled in CAP.

Therefore, the Commission cannot grant the sole relief Complainant seeks.

14. Because no factual dispute exists and the Complaint fails to state a claim for which relief can be granted, PECO is entitled to judgment as a matter of law.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice, as it relates to a request for a prohibited payment agreement on CAP arrears, and the Complaint therefore fails to state a claim upon which relief can be granted.

Respectfully submitted,



Edward P. Yim
Dana Pirone Carosella
Stevens & Lee

1818 Market Street, 29th Floor.
Philadelphia, PA 19103
Tel. (215) 751-1955
Fax (610) 988-0852
epy@stevenslee.com
dpc@stevenslee.com

Michael A. Gruin
Stevens & Lee
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-234-1090
Facsimile: 717-234-1099
mag@stevenslee.com

Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
tishekia.williams@exeloncorp.com

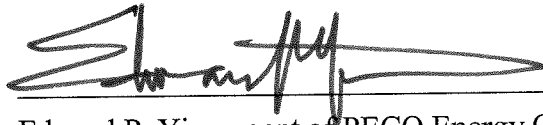
COUNSEL FOR PECO

Dated: February 2, 2011

Commonwealth of Pennsylvania :
: SS
County of Philadelphia :

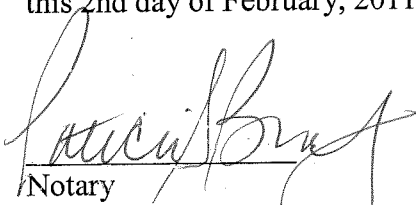
AFFIDAVIT

I, Edward P. Yim, being duly sworn according to law, depose and say I am agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts set forth in the foregoing Motion are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expect to be able to prove the same at any hearing hereof.



Edward P. Yim, agent of PECO Energy Company

Sworn and subscribed before me
this 2nd day of February, 2011



Notary

My Commission Expires:

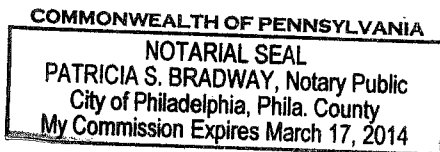


Exhibit 1

Zaketa, Anita D:(BSC)

From: eFile@state.pa.us
Sent: Thursday, October 07, 2010 12:02 PM
To: Smith, Ward L.:(BSC)
Cc: Zaketa, Anita D:(BSC)
Subject: PA PUC eServe Notice
Importance: High

Dear WARD L SMITH,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2010-2203014**.
You may view this document at
GOODEN - FORMAL COMPLAINT - PECO ENERGY COMPANY-ELECTRIC

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

due: 10-27
fuzet 10-25
dist 10-23

PAR

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name MAINE Gooden

Street/P.O. Box 118 Powelton Ave Apt # _____

City Lansdowne State P.A Zip 19050

County Delaware

Daytime Telephone Number Where We Can Contact You: (484) 461-4482

E-mail Address (optional): _____

Utility Account Number 43265-29064
(from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(e.g., taxi, moving company, limousine)

TELEPHONE
(local, long distance)

RECEIVED
2010 OCT -4 AM 9:56
PA P.U.C.
SECRETARY'S BUREAU

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

I AM in a financial Hard ship with my bill and I am unable to pay the money for me to get on a payment plan the significant about they are requiring \$800.00 my income per month is 496.00 from public assistant. I am out of my job since 12/7/09 because I got injury in my back I have disc herniation I am not receiving any workers comp I waiting to go to court I am below poverty level and I have 3 children I am caring for also my daughter has Astma⁶

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

I am asking how ~~can~~ ^{can} I get on a payment plan because I cannot afford to pay \$2800.00, I am trying to pay on my current bill according to my income, I am really asking for some help I am disable at this point I cannot work, I am struggling with my monthly expense.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer **in this matter** you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I Maxine Gooden, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Maxine Gooden (Signature) 9/27/10 (Date)

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

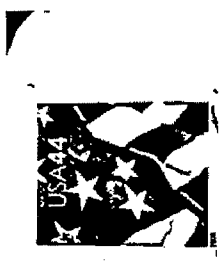
Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

Maxine Gooden
118 Powelton Ave
Janssowne P.A
19050



Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg P.A. 17105-3265

171053265

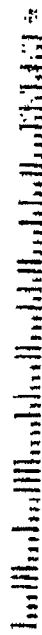


Exhibit 2

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

October 27, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Maxine Gooden v. PECO Energy Company
Docket No. C-2010-2203014

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Answer and New Matter to the above-referenced Complaint. This document has been e-filed at the Pennsylvania Public Utility Commission's website. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE


Michael A. Grun

Encl.

cc: Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION



- My Filings
- New Filing
- Modify Account
- POR Search
- eService Directory
- Subscriptions
- Technical Assistance
- eFiling FAQs
- Log Off

eFiling Successfully Transmitted



Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

The PUC is temporarily requiring all eFilers to submit one paper copy of all documents that are filed electronically. This paper copy should be submitted to the Secretary's Bureau within 3 business days of submitting the electronic filing online. Please print a copy of this page and attach it to the paper copy of your filing as the first page.

eFiling Confirmation	
Docket Number:	C-2010-2203014
Description:	
Transmission Date:	10/27/2010 2:19:16 PM
Filed On:	10/27/2010 2:19:16 PM
eFiling Confirmation Number:	1453913

Uploaded File List

File Name	Document Class	Document Type
PECO Answer and New Matter Gooden Complaint.pdf	Communication	Answer to Formal Complaint

You can view a record of any previous eFiling, including the one you just made, by clicking the [My Filings](#) link in the left menu.

If a paper copy is required in accordance with the eFiling Regulations, please print this page and include it with your paper filing.



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MAXINE GOODEN	:	
Complainant	:	
	:	
v.	:	Docket No. C-2010-2203014
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

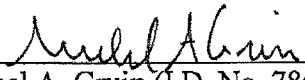
To: *Maxine Gooden*

You are hereby notified to file a written response to the attached Answer and New Matter of PECO within twenty (20) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed New Matter within twenty (20) days of service, the facts set forth by PECO may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

You must also serve a copy of your response on the undersigned counsel for PECO. Failure to respond to this Answer and New Matter could result in the dismissal of your case.

STEVENS & LEE


Michael A. Gruin (I.D. No. 78625)
17 N. 2nd St., 16th Floor
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
COUNSEL FOR
PECO ENERGY COMPANY

DATE: October 27, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MAXINE GOODEN	:	
Complainant	:	
	:	
v.	:	Docket No. C-2010-2203014
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**ANSWER TO COMPLAINT AND NEW MATTER
OF PECO ENERGY COMPANY**

On October 7, 2010, PECO Energy Company ("PECO") was served with a formal Complaint from Maxine Gooden ("Complainant"), in the above captioned Docket Number. Pursuant to 52 Pa Code § 5.61, PECO hereby responds to the Complaint of the Complainant as follows:

ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. PECO denies that the Complainant is entitled to a payment arrangement from the Commission. To the extent the allegations contained in Paragraph 4 constitute conclusions of law or ultimate fact to which no responsive pleading is required, they are as such deemed denied.

5. Paragraph 5 is a Request for Relief and no answer is required. To the extent the allegations contained in Paragraph 5 require an answer, such allegations are denied.

6. Denied. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

7. Admitted.

NEW MATTER

8. PECO incorporates by reference responses contained in Paragraphs 1 through 7 above as though fully set forth at length.

9. PECO is represented in this matter by:

Michael A. Gruin
Stevens & Lee
17 North Second Street
16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852
mag@stevenslee.com

Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
tishekia.williams@exeloncorp.com

10. On or about August 11, 2010, after proper notice, PECO terminated electric and gas service to Complainant due to an unpaid balance of

\$8,140.96. Complainant has a history of account delinquency and missed payments on the account.

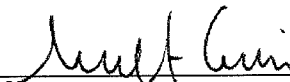
11. After termination occurred, the Complainant contacted PECO regarding restoration of service. PECO informed the Complainant that restoration would be initiated upon payment of \$339.47 towards the unpaid balance, plus a \$155 reconnection fee, and an agreement to pay the unpaid balance pursuant to a payment arrangement.
12. On August 12, 2010, Complainant provided PECO with a medical certification.
13. Upon receipt of the medical certification, PECO restored service to Complainant on August 12, 2010.
14. Complainant also filed an Informal Complaint with the Bureau of Consumer Services on August 11, 2010 at Case # 002725193. The BCS dismissed the case after the medical certification was provided and service was restored.
15. Complainant has been enrolled in PECO's Customer Assistance Program ("CAP"), Tier C since April 28, 2009.
16. Unpaid CAP arrears comprise \$4,663.38 of the \$8,140.96 outstanding balance due on the Complainant's account.
17. Complainant consistently fails to make payment for electric and gas service received from PECO. Since January 1, 2010, Complainant has made only two payments for electric and gas service: \$28.76 on January 26, 2010 and \$160 on September 20, 2010.

18. Because Complainant is a CAP customer and the majority of unpaid balance is comprised of unpaid CAP arrears, the Commission is precluded as a matter of law from ordering a payment arrangement for the Complainant.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that the Complaint be dismissed with prejudice.

Respectfully submitted,



Michael A. Gruin (I.D. No. 78625)
17 North Second Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852
mag@stevenslee.com

Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
tishekia.williams@exeloncorp.com


Counsel for PECO Energy Company

Dated: October 27, 2010

Commonwealth of Pennsylvania :
: SS
County of Dauphin :

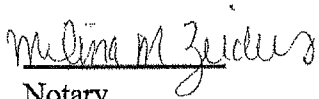
AFFIDAVIT

I, Michael A. Gruin, being duly sworn according to law, depose and say I am agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts above set forth are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expects to be able to prove the same at any hearing hereof.



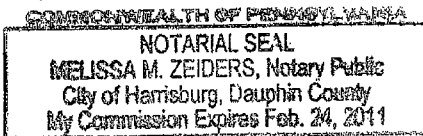
Michael A. Gruin, agent of PECO Energy Company

Sworn and subscribed before me this
27th day of October, 2010



Notary

My Commission Expires:



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MAXINE GOODEN
Complainant

v.

PECO ENERGY COMPANY
Respondent

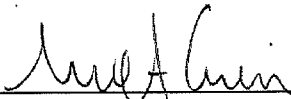
Docket No. C-2010-2203014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Answer and New Matter upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA First Class U.S. Mail

Maxine Gooden
118 Powelton Ave.
Lansdowne, PA 19050



Michael A. Gruin

DATED: October 27, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MAXINE GOODEN

v.

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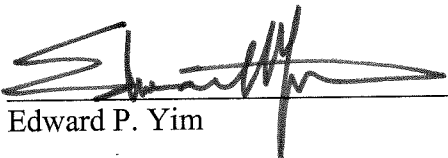
DOCKET NO. C-2010-2203014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion for Judgment on the Pleadings upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

Maxine Gooden
118 Powelton Ave.
Lansdowne, PA 19050


Edward P. Yim

DATED: February 2, 2011