UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

Amber Annis, Lisa Casarez, William Crawford, Sierra Davis, Robert Rainbow, Margaret Scott, Franklin Sage, and Janie Schroeder, Plaintiffs, vs. Jack Dalrymple, in his official capacity, Wayne Stenehjem, in his official capacity, North Dakota Board of Higher Education, The University of North Dakota, and the State of North Dakota, Defendants.	)	**Case No. 2:11-cv-00073-RRE-KKK**

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT

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STATEMENT OF THE CASE

Plaintiffs filed a Complaint (Doc.1) naming as Defendants Jack Dalrymple, in his official and individual capacities, Wayne Stenehjem, in his official capacity, the North Dakota Board of Higher Education (Board), the University of North Dakota (UND), and the State of North Dakota (State). Defendants moved to dismiss the Complaint. Docs. 9, 10. Plaintiffs subsequently filed an Amended Complaint. Doc. 12. Defendants now move to dismiss the Amended Complaint under Rule 12(b)(1), (6) of the Federal Rules of Civil Procedure. This memorandum is in support of that motion (Doc. 13).

ARGUMENT

The amendments to the original Complaint (Doc. 1) relate to Plaintiffs' attempt to bring a claim under Title VI of the Civil Rights Act of 1964. In addition to adding references to Title VI (Doc. 12 ¶¶ 1, 2) and noting the University of North Dakota (UND) is federally funded (Doc. 12 ¶¶ 18, 31), the Amended Complaint adds conclusory allegations that Plaintiffs and other Native American students at UND are subjected to a racially discriminatory educational environment (Doc. 12 ¶¶ 5-12, 34, 35). Based on these conclusory allegations, the Amended Complaint attempts to assert a cause of action under Title VI. Doc. 12 ¶¶ 50-55.

I. Counts II, III, IV, and V of the Amended Complaint fail to state a claim.

The additions to the Amended Complaint do not impact the validity of Defendants' Motion to Dismiss Complaint (Doc. 9) with regard to all counts in the original Complaint (Doc. 1). Accordingly, Defendants rely on and incorporate their Memorandum in Support of Motion to Dismiss Complaint (Doc. 10) with regard to Counts II, III, IV, and V of the Amended Complaint. However, to the extent the Memorandum in Support of Motion to Dismiss Complaint (Doc. 10) addresses Jack Dalrymple in his individual capacity, those arguments are moot because the Amended Complaint only names Jack Dalrymple in his official capacity. See Doc. 12 caption, ¶ 14.

II. Count I of the Amended Complaint fails to state a claim.

A. A complaint must plead facts that, if true, state a claim.

As discussed on pages 2 and 3 of the Memorandum in Support of Motion to Dismiss Complaint (Doc. 10), to survive a motion to dismiss, a complaint must plead facts that, if true, state a claim as a matter of law. Conclusory allegations are not sufficient.

The Rule 8 pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Id. (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557 (2007)). As explained by the Supreme Court, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id.

The Amended Complaint does not meet the Rule 8 minimal pleading threshold with regard to the Title VI claim. Accordingly, the Title VI claim should be dismissed with prejudice.

B. Title VI prohibits intentional discrimination.

It is well-settled "that Title VI prohibits only intentional discrimination. Proof of disparate impact is not sufficient." Mumid v. Abraham Lincoln High Sch., 618 F.3d 789, 794 (8th Cir. 2010), cert. denied, 131 S. Ct. 1478 (2011). As explained by one court, "a claim of discrimination under Title VI must plead (1) that defendants discriminated against them on the basis of race, (2) that the discrimination was intentional, and (3) that the discrimination was a substantial or motivating factor for defendants' actions." TC v. Valley Cent. Sch. Dist., 777 F. Supp. 2d 577, 594 (S.D.N.Y. 2011).

In the present case, Plaintiffs do not allege Defendants directly discriminated against them; rather, it appears they are attempting to allege Defendants' actions

created a racially hostile educational environment. That type of claim is analyzed under the "deliberate indifference" standard:

> To prevail on a hostile educational environment claim under Title VI, the plaintiff must show that the school "1) had actual knowledge of, and 2) was deliberately indifferent to 3) harassment that was so severe, pervasive and objectively offensive that it 4) deprived the victim of access to the educational benefits or opportunities provided by the school."

DT v. Somers Cent. Sch. Dist., 588 F. Supp. 2d 485, 493 (S.D.N.Y. 2008) (quoting Rodriguez v. N.Y. Univ., No. 05 CIV. 7374 JSR, 2007 WL 117775, at *6 (S.D.N.Y. Jan. 16, 2007)) (emphasis added), aff'd, 348 F. App'x 697 (2d Cir. 2009); see also Maislin v. Tenn. State Univ., 665 F. Supp. 2d 922, 931 (M.D. Tenn. 2009); Valley Cent. Sch. Dist., 777 F. Supp. 2d at 595.

Deliberate indifference may be found when a defendant's response to known discrimination is clearly unreasonable in light of the known circumstances. See Hayut v. State Univ. of N.Y., 352 F.3d 733, 751 (2d Cir. 2003); Bryant v. Indep. Sch. Dist. No. I-38, 334 F.3d 928, 933-34 (10th Cir. 2003). However, to avoid liability a school "'must merely respond to known peer harassment in a manner that is not clearly unreasonable . . . .'" Bryant, 334 F.3d at 938 (quoting Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 649 (1999)) (emphasis added). Significantly, "[l]iability can only be found in 'circumstances wherein the [funding] recipient exercises substantial control over both the harasser and the context in which the known harassment occurs.'" Valley Cent. Sch. Dist., 777 F. Supp. 2d at 595 (quoting Davis, 526 U.S. at 645).

C. The Amended Complaint does not allege with factual specificity that Defendants intentionally discriminated against them.

As discussed above, it is the well-settled law that a school may only be held liable for a Title VI claim of student-on-student racial discrimination when the school's response is "clearly unreasonable in light of the known circumstances." Whitfield v. Notre Dame Middle Sch., 412 F. App'x 517, 521 (3rd Cir. 2011) (quoting Davis, 526 U.S. at 648) (emphasis added). "Actual notice of harassment is a predicate to a finding of

hostile educational environment liability." Somers Cent. Sch. Dist., 588 F. Supp. 2d at 493-94. "[A] Title VI claim cannot be premised merely on constructive notice." DT v. Somers Central Sch. Dist., 348 F. App'x 697, 699 (2d Cir. 2009). A "school is not required to take any action unless it has actual knowledge of the harassing conduct." Rosa v. Valparaiso Cmty. Sch., No. 2:04 CV 190, 2006 WL 487880, at *5 (N.D. Ind. Feb. 27, 2006).

The Amended Complaint alleges direct and non-direct (bulletin boards and social networks) student-on-student and non-student-on-student racial harassment,[1] primarily the use of offensive and demeaning phrases towards Native Americans. See Doc. 12 ¶¶ 32, 35-39. Specific allegations are only made with regard to two named Plaintiffs, William Crawford (Crawford) and Franklin Sage (Sage). See id. ¶¶ 38, 39.

1. The Amended Complaint makes no factual allegations regarding Plaintiffs Annis, Casarez, Davis, Rainbow, Scott, and Schroeder.

The Amended Complaint lacks specific, factual allegations regarding Plaintiffs Amber Annis (Annis), Lisa Casarez (Casarez), Sierra Davis (Davis), Robert Rainbow (Rainbow), Margaret Scott (Scott), and Janie Schroeder (Schroeder). Rather, it alleges in conclusory terms that they have been deprived of an equal educational experience and environment at UND. See Doc. 12 ¶¶ 5, 6, 9, 10, 11, 12. No factual enhancement is provided to support that assertion. Because "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," Iqbal, 129 S. Ct. at 1949, the Title VI claim fails to state a claim and must be dismissed as to Plaintiffs Annis, Casarez, Davis, Rainbow, Scott, and Schroeder.

Furthermore, the lack of specific allegations as to these Plaintiffs demonstrates they lack standing to even bring a Title VI claim. See Hodges by Hodges v. Public Bldg. Comm'n, 864 F. Supp. 1493, 1506 (N.D. Ill. 1994) ("In the absence of specific allegations concerning which plaintiffs are affected and how they are discriminatorily

[1] Most of the allegations are too vague to conclude whether the alleged harassment was by students or occurred on campus.

affected, the court can only conclude that plaintiffs lack standing to assert a claim under Title VI."). Accordingly, the Title VI claim should be dismissed as to Plaintiffs Annis, Casarez, Davis, Rainbow, Scott, and Schroeder due to their lack of standing.

2. The Amended Complaint fails to state a Title VI claim as to Plaintiffs Crawford and Sage.

Although the Amended Complaint contains some specific factual allegations as to Crawford and Sage, it is devoid of the requisite factual allegations to establish, if true, the elements of valid Title VI claim. Accordingly, the Title VI claim of Plaintiffs Crawford and Sage should be dismissed.

a. *The Amended Complaint does not allege actual knowledge*.

With regard to Crawford, it is alleged that in 2007 at a UND hockey game Crawford was "pointed at by white fans while clips purporting to depict Sioux culture were played on the scoreboard." Id. ¶ 38. It is further alleged Crawford "witnessed fans engaged in the 'Tomahawk Chop' and was subjected to chants of 'Sioux Suck' and 'F*ing Sioux' by opposing fans." Id.

With regard to Sage, it is alleged that he has been present when "students have made comments such as 'I thought you Indians liked to be honored.'" Id. ¶ 39. It is further asserted that, "[o]n one occasion, two young boys 'war whooped' at Plaintiff Sage as he was studying at a picnic table." Id. Finally, it is alleged Sage "has been subjected to obscene and racially motivated taunts, including: 'Go home you f*ing Indians,' 'You get free education,' 'F*ck NCAA,' 'Get a job,' and 'Find something else to whine about,' (Unsurprisingly, these taunts were typically delivered from moving vehicles)." Id.

Absent, and fatal to Plaintiffs' Title VI claim, are any specific factual allegations that Defendants had actual knowledge of the alleged harassment. For example, there is no allegation any UND official or employee knew "two young boys 'war whooped' at Plaintiff Sage as he was studying at a picnic table." Id. ¶ 39. It is not alleged that any

UND official or employee observed the young boys' actions or that Sage reported the actions to any UND official or employee.[2] Similarly, it is not asserted that any UND official or employee observed or was made aware of the alleged taunts, which typically came from individuals in moving vehicles. Likewise, there is no allegation Crawford complained to UND officials about white fans pointing at him.[3]

Although more specific allegations are made as to Crawford and Sage than the other Plaintiffs, even those allegations lack the requisite factual enhancement to show they are entitled to the requested relief. Specifically, the Amended Complaint does not provide the requisite factual enhancement that Defendants knew of the alleged harassment.

b. *The Amended Complaint does not allege Defendants acted with deliberate indifference*.

A *sine qua non* of deliberate indifference towards harassment is knowledge of the harassment. Thus, it should go without saying that the Amended Complaint fails to allege deliberate indifference when it fails to allege the predicate actual knowledge.

It should be noted, however, that deliberate indifference under Title VI is not simply acting with deliberate indifference – the deliberate indifference must be racially motivated. "Where the alleged discrimination is predicated upon student-on-student harassment, as it is here, Title VI provides for liability only where the educational institution is "deliberately indifferent ... to such an extent that the indifference can be seen as racially motivated." Somers Cent. Sch. Dist., 588 F. Supp. 2d at 493 (quoting

[2] UND's Harassment/Discrimination Policy prohibits harassing behavior and provides procedures for reporting incidents of harassment. See http://www.und.edu/dept/aao/Harass_discrim.htm; http://und.edu/student-affairs/code-of-student-life/_files/docs/code-of-student-life.pdf.

[3] This is equally true of the even more general allegations of racial slurs or hostility being directed at unidentified (non-Plaintiff) Native Americans. For example, it is alleged that in 2000 a "Native American student was 'egged' and called 'dirty Indian.'" Id. ¶ 37. What is not alleged is that Defendants had actual knowledge of the alleged incident. Furthermore, this and other alleged incidents of harassment are not properly before the Court because they were not directed at Plaintiffs or are time barred.

Rodriguez, 2007 WL 117775, at *6. Not only must deliberate indifference be racially motivated, it "'must, at a minimum, cause [students] to undergo harassment or make them . . . vulnerable to it.'" Id. at 496 (quoting Davis, 526 U.S. at 645).

Furthermore, "Title VI does not 'require funding recipients to "remedy" peer harassment . . . [o]n the contrary, the recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable.'" Id. (quoting (Davis, 526 U.S. at 648–49). The principle explained by the Sixth Circuit in a sexual harassment case equally applies to racial harassment: "The [defendant] is not required to 'remedy' sexual harassment nor ensure that students conform their conduct to certain rules, but rather, 'the [defendant] must merely respond to known peer harassment in a manner that is not clearly unreasonable.'" Vance v. Spencer County Pub. Sch. Dist., 231 F.3d 253, 260 (6th Cir. 2000).

Application of these principles dictates dismissal of Plaintiffs' Title VI claim because there are no factual allegations that, if true, would demonstrate Defendants were deliberately indifferent to known peer harassment. In fact, the Amended Complaint does not allege any specific actions by Defendants in response to known racial harassment. Furthermore, and equally fatal, is that there are no factual allegations that any action by Defendants, deliberately indifferent or not, was racially motivated. Finally, and also fatal to Plaintiffs' Title VI claim, is that there are no specific factual allegations that, if true, would show Defendants effectively caused any alleged racial harassment of Plaintiffs.

By way of example, it is alleged that "two young boys 'war whooped' at Plaintiff Sage as he was studying at a picnic table." Doc. 12 ¶ 39. That assertion, by itself, does not state a viable Title VI claim. There is no allegation Defendants knew of the actions of the young boys and intentionally chose to sit by and do nothing. Defendants must have known of the alleged harassment and responded in a clearly unreasonable manner for a viable Title VI claim to exist. See, e.g., Bryant, 334 F.3d at 933,

934 (explaining an administrator's "intentional choice to sit by and do nothing" about "known instances of student-on-student racial harassment" may violate Title VI).

Because the Amended Complaint does not allege knowledge or any response by Defendants, there is likewise no allegation Defendants' actions or inaction were racially motivated. Also conspicuously absent from the Amended Complaint is any factual allegation upon which it could be found the "young boys" war whooping was caused by Defendants' actions.

It should also be noted that liability does not exist unless the funding recipient "exercises substantial control over both the harasser and the context in which the known harassment occurs." Davis, 526 U.S. at 645. The Amended Complaint does not allege Defendants exercised any control over the "young boys" or the situation in which the war whooping occurred. The war whooping was done by "young boys," not students. And it is not alleged the action occurred on campus. Defendants do not have control over non-students' off-campus behavior. Thus, even if Defendants knew of the war whooping, which is not alleged, it is very possible Defendants could not have done anything about it, which limits any possibility of Title VI liability.

The same analysis applies to the other allegations. For example, the mere assertion Sage was subjected to racially motivated taunts, typically from individuals in moving vehicles, does not state a viable Title VI action. There is no allegation Defendants knew of the taunts and responded in a clearly unreasonable manner. In fact, there is no allegation the taunts occurred by students or on campus. If the taunts occurred off-campus by non-students or unidentified individuals, it is unlikely Defendants could have done much, if anything, in response to the taunts. And, as with the other allegations, because the Amended Complaint does not allege knowledge or any response by Defendants, there is no allegation Defendants' actions or inaction were racially motivated. There is also no factual predicate for a finding the taunts were caused by Defendants' actions.

It is truly unfortunate that racial harassment occurs on university campuses and elsewhere. The mere existence of racial harassment, however, does not establish liability under Title VI. Defendants' duty under Title VI is not to remedy all peer or other racial harassment; under Title VI Defendants "must merely respond to known peer harassment in a manner that is not clearly unreasonable." Davis, 526 U.S. at 649. Because there is no allegation they did otherwise, the Title VI claim fails.

c. *The Amended Complaint does not allege harassment so severe, pervasive and objectively offensive that it deprived Plaintiffs of access to the educational benefits or opportunities provided by UND.*

Defendants in no way condone the alleged behavior. However, the few specific alleged actions do not rise to the level of "severe, pervasive, and objectively offensive" harassment that deprived Crawford and Sage of access to the educational benefits or opportunities provided by UND. This is particularly true in light of the alleged surrounding circumstances, including the ages of Crawford and Sage and the alleged harassers, UND's relationship to the alleged harassers, UND's degree of control over the alleged harassers, the location of the alleged harassment, and the context in which the alleged harassment occurred. See Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 206 (3rd Cir. 2001); Valley Cent. Sch. Dist., 777 F. Supp. 2d at 595.

For example, how is "two young boys" war whooping at Sage, possibly off campus, so severe, pervasive and objectively offensive that it deprived him of access to the educational benefits or opportunities provided by UND? The allegation involves a single act by young boys, not UND students. It is not alleged it occurred on campus or had anything to do with UND or Sage's education, other than the fact he was studying at the time.

And how did motorists, possibly non-students and off-campus, taunting Sage deprive him of access to the educational benefits or opportunities provided by UND?

Again, there is no specific allegation that the taunting had anything to do with UND or Sage's education.

The only allegation regarding Sage that, on its face, is related to UND is that "during classroom discussions regarding the logo" students "made comments such as 'I thought you Indians liked to be honored.'" Doc. 12 ¶ 39. Although rude and insensitive, it can hardly be said that such comments are so severe, pervasive, and objectively offensive that they deprived Sage of access to the educational benefits or opportunities provided by UND. This is particularly true in light of the very context of the alleged statement – a classroom discussion regarding the logo.[4] Although Sage alleges rude, insensitive, and immature behavior, he does not allege harassment so severe, pervasive, and objectively offensive that it deprived of access to the educational benefits and opportunities provided by UND.

The only example regarding Crawford is action by fans while he attended a UND hockey game in 2007. Again, although rude and insensitive, an allegation white fans pointed at Crawford does not plead harassment so severe, pervasive, and objectively offensive that it deprived him of access to the educational benefits and opportunities provided by UND. This is also true of the alleged offensive chanting and taunting by fans. Unfortunately, college fans often taunt the opposing team and players in offensive and degrading language. Although rude, inappropriate, and unsportsmanlike, it can hardly be said that taunts by fans at sporting events rise to the level of depriving students of access to the educational benefits and opportunities of the university.

The Amended Complaint does not plead the requisite facts upon which it could be found Plaintiffs were deprived of access to the educational benefits or opportunities

[4] As is common knowledge, many Native Americans feel the logo honors Native Americans. In fact, that is why Native Americans and the Committee for Understanding and Respect sued the State in an effort to enjoin the State Board of Higher Education from retiring the "Fighting Sioux" nickname and logo. See Davidson v. State ex rel. N.D. State Bd. of Higher Educ., 781 N.W.2d 72 (N.D. 2010); cf. Doc. 12-1 at 9 ("The NCAA also acknowledges that reasonable people can disagree about the propriety of Native American imagery in athletics.").

provided by UND due to severe, pervasive, and objectively offensive harassment. Accordingly, the Amended Complaint must be dismissed.

3. The Amended Complaint does not allege intentional discrimination by Defendants.

"Intentional discrimination means that a defendant acted at least in part *because of* a plaintiff's protected status." Maynard v. City of San Jose, 37 F.3d 1396, 1404 (9th Cir. 1994). The Amended Complaint does not provide factual allegations regarding Defendants' knowledge or actions, much less that Defendants took their actions "in part *because of* a plaintiff's protected status." Thus, the Amended Complaint fails to meet the Rule 8 pleading requirement of alleging specific facts that show, if true, Plaintiffs are entitled to relief. See Yusuf v. Vassar Coll., 35 F.3d 709, 713 (2d Cir. 1994) ("A plaintiff alleging racial or gender discrimination by a university must do more than recite conclusory assertions. In order to survive a motion to dismiss, the plaintiff must specifically allege the events claimed to constitute intentional discrimination as well as circumstances giving rise to a plausible inference of racially discriminatory intent."); Muthukumar v. Univ. of Tex., No. 3:10-CV-0115-8, 2010 WL 5287530, at *5 (N.D. Tex. Dec. 27, 2010) (dismissing Title VI claim because "nowhere in this complaint does Plaintiff provide an allegation that a certain act taken by UTD was performed with a discriminatory intent" and "[i]n order for Plaintiff to survive the 12(b)(6) standard of dismissal, Plaintiff must instead provide specific allegations of acts that were taken with discriminatory intent"); Sarver v. Jackson, 344 F. App'x 526, 530 (11th Cir. 2009) (affirming grant of motion to dismiss because plaintiff's "complaint failed to allege facts demonstrating any defendants were on notice of the alleged harassment and demonstrated any deliberate indifference to the matter").

Not only does the Amended Complaint not plead intentional discrimination by Defendants, Exhibit A to the Amended Complaint evidences the contrary. It provides:

> The NCAA recognizes the University of North Dakota's many programs and outreach services to the Native American community and surrounding

> areas. The University of North Dakota is a national leader in offering educational programs to Native Americans.
>
> The University has indicated that it intends to use the current name and logo with the utmost respect and dignity, and only for so long as it may do so with the support of the Native American community. The NCAA does not dispute UND's sincerity in this regard.
>
> The NCAA believes, as a general proposition, that the use of Native American names and imagery can create a hostile or abusive environment in collegiate athletics. However, the NCAA did not make any other findings about the environment on UND's campus.

Doc. 12-1 at 9.

Furthermore, it is undisputed UND prohibits harassment and discrimination. The Code of Student Life book explains that UND "does not tolerate harassment" and provides procedures for reporting incidents of harassment. See http://und.edu/student-affairs/code-of-student-life/_files/docs/code-of-student-life.pdf. UND's policy on harassment is plainly stated and published:

> Harassment/Discrimination
>
> **The University of North Dakota does NOT TOLERATE harassment or discrimination OF ANY KIND!**
>
> **HARASSMENT IS:** unacceptable behavior, which can range from violence and bullying to more subtle behavior such as ignoring an individual at work or study. It subjects an individual or a group to unwelcome attention, intimidation, humiliation, ridicule, offense or loss of privacy. It is unwanted by the recipient and continues after an objection is made. Harassment may take the form of oral, written, graphic, or physical conduct that is related to an individual's or group's protected class. This includes gender, race, national origin, color, disability, or other protected classes. Harassment based on sex, marital status, pregnancy, age, race, ethnicity, disability, or sexuality is a form of Unlawful Discrimination.
>
> This definition includes sexual and racial harassment, and bullying as well as any other form of personal harassment arising from disability, sexual orientation, gender identity, socioeconomic status, age, religion etc. It can be a single explicit incident causing distress or repeated unacceptable behavior affecting the dignity of an individual that appears or feels offensive, demeaning, intimidating or hostile, such as:
>
> - staring, stalking, touching
> - sexual innuendoes and come-ons

- racist or sexist cartoons or posters, jokes about accents, or sexual orientation
- yelling, name-calling, mimicry

http://www.und.edu/dept/aao/Harass_discrim.htm.

Neither the Amended Complaint nor its Exhibits make specific factual allegations of intentional discrimination by Defendants. Because the requisite factual allegations are not made, the Amended Complaint fails to state a Title VI claim and should be dismissed.

CONCLUSION

For the above reasons, Defendants respectfully request that this Court grant their Motion to Dismiss Amended Complaint and dismiss all of the claims against them with prejudice.

Dated this 10th day of October, 2011.

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CERTIFICATE OF SERVICE

CASE NO. 2:11-cv-00073-RRE-KKK

I hereby certify that on October 10, 2011, the following document: **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT** was filed electronically with the Clerk of Court through ECF and that ECF will send a Notice of Electronic Filing (NEF) to Carla Fredericks, Sanford P. Dumain, Peter Safirstein, Roland Riggs, and Thomas W. Fredericks.

/s/ Douglas A. Bahr
Douglas A. Bahr
Solicitor General

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