IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LULA WILLIAMS, *et al.*,	)	
	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 3:17-cv-461 (REP)**
	)	
BIG PICTURE LOANS, LLC, *et al.*,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL
INFORMATION WITHHELD ON THE BASIS OF ATTORNEY-CLIENT PRIVILEGE

INTRODUCTION

It is stunning that Martorello continues down the path of attempting to convince this Court that the sale of Bellicose "[redacted]," not the failed litigation against the New York Department of Financial Services. Dkt. 389 at 2. The Court has already found that "credible evidence" showed that Martorello "looked for ways to restructure" following the *Otoe-Missouria* litigation. *Williams v. Big Picture Loans, LLC*, 329 F. Supp. 3d 248, 272 (E.D. Va. 2018). And the Court made this finding without the benefit of compelling evidence, which was recently produced by Rosette on March 1, 2019.

[redacted] confirms exactly why the restructure occurred, and preventing this type of fraud is why the crime/fraud exception exists. *In re Methyl Tertiary Butyl Ether ("MTBE") Prod. Liab. Litig.*, 180 F. Supp. 3d 273, 283 (S.D.N.Y. 2016) (finding the crime fraud exception applied where a corporate "restructuring was a fraudulent scheme to deprive creditors of [the company's] profitable assets").

In addition, Martorello's opposition fails to provide a sufficient basis for this Court to disregard the "the longstanding recognition" that asserting "a defense that depends on a belief in the lawfulness of one's conduct waives privilege." *Edwards v. KB Home*, No. 3:11-CV-00240, 2015 WL 4430998, at *3 (S.D. Tex. July 18, 2015). Martorello attempts to avoid this longstanding

rule by limiting his defense to legal advice contained in non-privileged documents. Not a single case has recognized this distinction, which "would undo, and is at odds with the fairness concerns that animate" the principle behind the waiver. *Id.*

RESPONSE TO COUNTER-STATEMENT OF MATERIAL FACTS

Rather than addressing the facts from Plaintiffs' brief, Martorello provides a "counter-statement" of "facts," which largely ignores the evidence relied on by Plaintiffs' brief. Dkt. 389 at 3-10. Nearly all of Martorello's "facts" derive from: (1) mischaracterized deposition testimony of witnesses who face potential criminal and civil liability for their role in this rent-a-tribe enterprise, (2) inadmissible responses to leading questions, and (3) paid "experts" who regurgitate Martorello's legal arguments under the guise of expert testimony.[1] Putting aside admissibility issues, Martorello's "facts" contain a combination of statements that are patently false, others that are grossly misleading, and legal argument disguised as "facts."

A. Craig Mansfield's deposition testimony demonstrates the LVD's lack of involvement from the inception of the scheme.

Martorello's opposition relies heavily on the deposition testimony of Craig Mansfield, one of the original co-managers of Red Rock. Dkt. 389 at 3-10. Because the other co-managers displayed a complete lack of knowledge and meaningful involvement,[2] Martorello attempts to rehabilitate the role of the LVD by citing Mansfield's responses to leading questions asked by Martorello's attorney. [redacted]

[redacted]

[1] Martorello's experts will be deposed in the next month. Plaintiffs intend to file a motion to strike shortly thereafter.

[2] In the sovereign immunity phase, the Court found that Hazen and Williams' "oversight is narrow in both scope and depth," *Id.* at 277, and that Ascension's role "in effect reduce Hazen's and William's responsibilities in the loan process to pro forma review and approval of key business decisions." *Id.* at 278.

[redacted].[3]

[redacted].[4]

[3] *See, e.g.*, Ex. 3 (loan agreement: (1) identifying the lender as "Red Rock Tribal Lending, LLC d/b/a CastlePayday.com," and (2) instructing consumers to email "support@castlepayday.com.").

[4] [redacted].

[redacted].[5]

B. Response to Part A of Martorello's "facts".

Paragraph 1. Plaintiffs dispute Martorello's characterization in the final sentence of Paragraph 1. Although Mansfield suggested that tribal lending "was always something that [LVD] wanted to do," his testimony lacked any foundation to support this. For example, when specifically asked "who led the effort on the tribe's behalf to get involved in the tribal lending business," Mansfield testified "I don't remember," but it was not him. Ex. 2 at 97:16-19.

Paragraph 2. Martorello mischaracterizes Mansfield's testimony to support the assertions

[5] [redacted].

in this paragraph. [redacted] ." *Id*. at 91:3-14.

[redacted] .

[redacted] .

Paragraph 3. [redacted] Dkt. 389 at 4. [redacted]

[redacted].

Plaintiffs do not dispute, however, that the enterprise established a system by which co-managers reviewed and approved "recommendations" in order to create some appearance of tribal involvement. But this system amounts to nothing more than "pro forma review and approval of key business decisions." *Williams*, 329 F. Supp. 3d at 278. [redacted].

Paragraph 4. Plaintiffs dispute Martorello's assertion that "In Indian country, and in FinTech more broadly, there is nothing atypical about LVD's lending business, nor its relationship

[6] [redacted].

with Bellicose." Dkt. 389 at 5. This statement directly contradicts the Indian Gaming Regulatory Act, the federal law addressing Native American gaming and casinos. Under the IGRA, a tribe "may enter into a management contract for the operation" for gaming activities on tribal lands. 25 U.S.C. § 2711(a)(1). However, the Chairman of the National Indian Gaming Commission must approve any "management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity," and "***such fee shall not exceed 30 percent of the net revenues***." *Id.* at 2711(c)(1) (emphasis added).

Plaintiff further disputes that the Court "found that the loans at issue were originated and collected by the tribal lending entities." Dkt. 389 at 5. The Court's finding of fact and conclusions focused on Big Picture and Ascension, not Red Rock and SourcePoint. *See generally Williams*, 329 F. Supp. 3d 248. [redacted].[7]

Paragraph 5. Martorello claims that the "fact the agreement permitted SourcePoint to do certain things is not proof that SourcePoint" actually did them. Dkt. 389 at 5. Citing his own deposition testimony—and nothing else—Martorello further asserts that the "record is clear that SourcePoint did not exclusively handle communications with LVD's vendors, sweep LVD's bank accounts, collect all (or any) gross revenues…" *Id.* [redacted].

C. Response to Part B of Martorello's "facts".

Paragraph 1. In this section, Martorello argues that the "sale of Bellicose to LVD" was not

[7] [redacted].

"a sham spurred by the NYDFS case and other regulatory events, like Operation Chokepoint." Dkt. 389 at 6. [redacted]

[redacted]

Paragraph 2. Plaintiffs dispute that Martorello "is not now, and has never been, involved in the operations of Big Picture and Ascension Technologies." Dkt. 389 at 6. This is misleading because the restructuring agreements ensured the enterprise continued to operate as Martorello wished. [redacted][10]

[8] [redacted]

[9] [redacted]

[10] Martorello tries to spin this text as favorable to him. Dkt. 389 at 7, n. 2. [redacted] *Id.*

Paragraph 4. Plaintiffs dispute that Martorello, his lawyers, and the LVD's counsel "believed" the operation "was legal," especially after the district court issued its decision in September 2013. Dkt. 389 at 7. [redacted].

Paragraph 5. Plaintiffs further dispute that Martorello's [redacted]

Paragraph 6. Plaintiffs do not dispute that the revenue generated by Red Rock/Big Picture "have benefitted the Tribe." Dkt. 389 at 8. But this statement is misleading and largely irrelevant. [redacted]. And regardless, even if something is beneficial to a Native American tribe, it does make it legal. While a tribe may be immune from liability, immunity does not transform an illegal product into a legal one. If a tribe distributed illegal drugs or guns in

[redacted]" Ex. 18.

Virginia, those products would still be illegal even if it benefitted the tribe.

[redacted] Additionally, if RedRock/LVD were actually running the business as Martorello contends, why would they pay anything for Martorello's company? Martorello's story—that the Tribe ran the business but also needed to purchase it—just does not add up.

Paragraph 7. [redacted].

[redacted]

[redacted].

ARGUMENT

I. Martorello waived privilege by asserting a defense premised on his purported belief regarding the lawfulness of his conduct.

Martorello's opposition is illustrative of why courts waive privilege in certain cases. The reason is simple: fairness. In this case, fairness requires disclosure of the legal advice provided to Martorello for two, interrelated reasons. *First*, Martorello asserts a defense premised on a purported good faith belief in the lawfulness of his actions. *Second*, Martorello intends to rely on non-confidential legal communications to bolster his purported good faith belief. Standing alone, either one of these strategies is sufficient to warrant a finding of waiver of the attorney-client privilege. Considered together, they are unfair attempt to stack the deck against Plaintiffs.

Martorello's opposition altogether fails to address the fairness concerns raised in Plaintiffs' opening brief. *Compare* Dkt. 389 at 12-14, *with* Dkt. 341 at 13-14. Instead, Martorello attempts to dance around these concerns by primarily arguing that waiver is only proper when a "defense is premised upon the use of privilege information." Dkt. 389 at 12-14. No case—from the Fourth Circuit, this Court, or otherwise—draws this distinction. To do so would be contrary to the very purpose of the doctrine, which aims to prevent the unfairness of allowing a party to use "beneficial communications" while simultaneously withholding "less helpful, communication(s) on the same matter." *E.I. Dupont de Nemours & Co. v. Kolon Indus., Inc.*, 269 F.R.D. 600, 605

(E.D. Va. 2010). In rejecting a similar argument, another court explained:

> [R]ecognizing the distinction [the defendant] purports to draw—between a good faith defense that relies on advice of counsel and one that does not even though such advice was given—would essentially result in a good faith defense never resulting in waiver of adverse legal advice. … This 'heads I win, tails you lose' result—in which a party asserting good faith could use attorney communications that help its cause, but shield the communications when they do not by characterizing the defense as one that does not rely on advice of counsel—would undo, and is at odds with the fairness concerns that animate, the longstanding recognition that asserting a claim or defense that depends on a belief in the lawfulness of one's conduct waives privilege.

Edwards, 2015 WL 4430998, at *3. Multiple other courts have reached similar conclusions even when the party did "not attempt to make use of a privileged communication."[11]

In addition, Martorello's opposition attempts to recast Plaintiffs' position as asking the Court to find waiver simply because "the otherwise-privileged communications may be potentially relevant to rebutting Martorello's defense." Dkt. 389 at 12. Plaintiffs' opening brief does not remotely assert this, and Plaintiffs would never ask the Court to adopt such a rule. Instead, Plaintiffs ask the Court to find a waiver because Martorello affirmatively placed his subjective belief *regarding the lawfulness of his conduct* as an issue in this case. By doing so, Martorello opens the door to discovery because "legal advice that a party received may well demonstrate the falsity of its claim of good faith belief." *Leviton Mfg. Co. v. Greenberg Traurig LLP*, 2010 WL 4983183, at *3 (S.D.N.Y. Dec. 6, 2010).[12]

[11] *Bowne of New York City, Inc. v. AmBase Corp*., 150 F.R.D. 465, 488 (S.D.N.Y.1993); *see also Wi-LAN, Inc. v. Kilpatrick Townsend & Stockton LLP*, 684 F.3d 1364, 1370 (Fed. Cir. 2012) ("Even if the party does not expressly disclose the advice received, but only alludes to it, the privilege can be deemed waived by implication."); *Hege v. Aegon USA, LLC*, 2011 WL 1791883, at *4 (D.S.C. May 10, 2011); *Carson v. Lake Cty.*, 2016 WL 1567253, at *7 (N.D. Ind. Apr. 19, 2016); *Walsh v. Seaboard Sur. Co.*, 184 F.R.D. 494, 496 (D. Conn. 1999).

[12] *See also Carson*, 2016 WL 1567253, at *7; *Arista Records LLC v. Lime Grp. LLC*, 2011 WL 1642434, at *3 (S.D. N.Y. Apr. 20, 2011).

A. Martorello's good faith defense is broad, necessitating a broad waiver.

When a waiver occurs, the "widely applied standard for determining the scope of a waiver of attorney-client privilege is that the waiver applies to all communications relating to the same subject matter." *LifeNet, Inc. v. Musculoskeletal Transplant Foundation, Inc.*, 490 F.Supp.2d 681 (2007) (citations omitted); *E.I. Dupont*, 269 F.R.D. at 605 (when a party relies on advice of counsel, it waives privilege "as to the subject matter of the disclosure."). In fashioning an order on waiver, courts consider the subject matter "on a case by case basis consistent with the principles of fundamental fairness." *Greene, Tweed of Delaware, Inc. v. DuPont Dow Elastomers, L.L.C.*, 202 F.R.D. 418, 420 (E.D. Pa. 2001). When the subject matter is broad, it follows that the scope of the waiver must be broad. *Micron Separations, Inc. v. Pall Corp*., 159 F.R.D. 361, 363 (D. Mass. 1995) ("[T]he scope [of waiver] must of necessity be somewhat broad . . .").

As explained in Plaintiffs' opening brief, Martorello's subjective good faith defense is broad. His opposition to this motion further confirms the breadth of his defense. For example, Martorello asserts that "with expert guidance and counsel," the parties "negotiated the terms of a business relationship and came together for the lawful purpose of building an online consumer lending business on LVD's reservation." Dkt. 389 at 2. To further support his defense, Martorello claims that "numerous outside counsel were involved on virtually a daily basis to assure the operation's legal compliance." Dkt. 389 at 2. And "by way of example only," Martorello admittedly intends to use "opinion letters issued by LVD's counsel" regarding "the legality" of the operation, "[p]ublications and other public sources of information regarding the history and legality of" tribal lending, and non-privileged testimony "from various witnesses that they believed" the "lending operations were legitimate and legal." Dkt. 389 at 11-12.

Despite the broad scope of his defense, Martorello urges the Court to narrowly tailor the

waiver to the "the legality of LVD's ability to make loans enforceable exclusively by LVD laws from October 1, 2014, the date the circuit court decided Otoe-Missouria, to September 14, 2015, the date the sale transaction was engaged." Dkt. 389 at 15. Other than proposing this temporal scope, Martorello fails to provide any justification why it is fair in light of his defense. Dkt. 389 at 15. It is not—Martorello's subjective good faith defense is far broader than the legal advice provided between October 1, 2014, and September 14, 2015. His defense encompasses his purported good faith belief leading to the formation of the venture, its ongoing operations, and the post-sale legality of the operations. In fairness then, the scope of the waiver should be tethered to the temporal scope of his defense because any contrary advice during this same time "may well demonstrate the falsity of its claim of good faith belief." *Leviton Mfg.*, 2010 WL 4983183, at *3.[13]

II. Martorello's crime/fraud arguments fail.

A. Martorello's conduct constituted a crime in Virginia.

Martorello argues that the crime/fraud exception does not apply due to the choice-of-law provision in the loan agreements. Dkt. 389 at 17. According to Martorello, the choice-of-law provision requires application of the LVD's law, not Virginia's Consumer Finance Act ("CFA"). However, as fully explained at multiple points in this case,[14] the choice-of-law provisions are unenforceable because: (1) they prospectively waive consumers' federal rights and remedies, (2) violate the public policy of Virginia, (3) they are unconscionable, and (4) they are the product of overreaching. *See also* June 26, 2018 Order at Dkt. 125 (denying motion to dismiss based on choice-of-law provision and allowing each of these theories to move forward).

[13] Plaintiffs agree with Martorello on one point, *i.e.*, communications related to his defense in *Cumming v. Big Picture Loans, LLC*, 5:18-cv-03476 (N.D. Cal.). Plaintiffs did not attach or request the Court to waive privilege as to the log containing entries related to *Cumming*.

[14] *See* Dkt Nos. 84, 85, 236.

Martorello's reliance on the choice-of-law provision also fails for another reason—the CFA is a licensing statute that prohibits parties from engaging in conduct in Virginia without a license. When rejecting the same choice-of-law argument from another lender, the Circuit Court for Fairfax County recently explained: "[n]o exception is provided for the loans made under choice-of-law provisions purporting to apply the substantive laws of another state to adjudicate disputes among contracting parties*." Commonwealth v. NC Fin. Sol. of Utah, LLC*, Case No. CL-2018-6258 at *12 (Va. Cir. Oct. 28, 2018). The failure to comply with this "general obligation to obtain a license" before engaging in business in Virginia is a crime under Virginia law, and participants cannot avoid application of statute through a choice-of-law provision. *Id*. at *13.

Martorello further claims there is not enough "evidence to support a verdict in favor of the party making the claim." Dkt. 389 at 16 (citations omitted). [redacted]. Accordingly, there is more than sufficient evidence to support a verdict in favor of Plaintiffs.

B. Martorello's conduct goes beyond structuring a transaction to limit liability.

Martorello repeatedly attempts to convince the Court that the sale of Bellicose was [redacted], not the failed litigation against the New York Department of Financial Services. Dkt. 389 at 2, 6-8, 17. [redacted]

[redacted].

Recognizing this, Martorello further argues that the restructuring "does not support application of the crime/fraud exception" even if it occurred as a result of the litigation. Dkt. 389 at 18. In doing so, Martorello relies heavily on the Ninth Circuit's decision in *In re Napster Inc. Copyright Litigation*, 479 F.3d 1078, 1097-98 (9th Cir. 2007). In that case, the plaintiff claimed various parties were "vicariously and contributorily liable" for copyright infringements by Napster, who was defunct as a result of a bankruptcy. *Id*. at 1083. According to the plaintiff, the third parties were vicariously liable because they loaned millions of dollars to Napster, thereby assuming control over Napster. *Id*. Because the loan occurred during the pendency of plaintiff's litigation with Napster, plaintiffs sought to compel all attorney-client communications relating to the loan, contending that the loan was a "scheme to defraud the courts." *Id*. at 1084.

The district court granted the motion, but the Ninth Circuit reversed because the evidence did not support the plaintiffs' theory that the entire loan was a sham. *Id*. at 1096. In doing so, it explained that the "strongest evidence" presented by plaintiffs was the defendant's right "to convert the loan to equity once the licensed music distribution system was launched." *Id*. But this right "could hardly have been fraudulently procured, given that it was stated expressly" in the loan documents. *Id*. In addition, the "only other evidence" provided by plaintiffs "in support of this theory" were terms of loan showing that the lender "attempted to structure its deal with Napster to limit its potential liability." *Id*. In rejecting this argument, the court explained that "[i]f a party could establish the crime-fraud exception simply by showing an opponent structured a business transaction to limit its liability, the attorney client-privilege would be worth little…" *Id*.

Ignoring the context of *In Re Napster*, Martorello asserts that "structuring a business transaction to limit liability is not sufficient to establish the crime-fraud exception." Dkt. 389 at

18. Unlike the context of that case, however, this case does not involve a garden variety business transaction in which one party negotiates terms to limit its liability. Instead, it involves a *restructuring* designed to shield Martorello's liability and prevent discovery of evidence showing Martorello's role in the illegal lending enterprise. In similar situations, courts have applied the crime/fraud waiver. *In re Methyl Tertiary Butyl Ether*, 180 F. Supp. 3d at 283 (finding the crime fraud exception applied where a corporate "restructuring was a fraudulent scheme to deprive creditors of [the company's] profitable assets."); *United States v. Gorski*, 807 F.3d 451, 455 (1st Cir. 2015) (finding the crime fraud exception applied where "restructuring of [company] was part of a five-year ongoing scheme" to qualify for government contracts assigned to disabled veterans).

C. Martorello omits a key point regarding CashCall.

Martorello further mischaracterizes the district court's decision in *Consumer Fin. Prot. Bureau v. CashCall, Inc.*, 2018 WL 485963 (C.D. Cal. 2018). Following a bench trial, the court concluded that CashCall "did not recklessly violate" the Consumer Financial Protection Act. *Id.* at *15. Although the evidence showed that CashCall "clearly sought at the outset to avoid state licensing requirements and usury laws," the evidence also showed that CashCall "sought out highly regarded regulatory counsel to assist them with structuring" the program. *Id.* As to CashCall's recklessness, the court reasoned "***[a]t the time***, there was no case law that clearly established" that the business "was not a lawful model" and it "secured multiple formal and informal opinions" that the structure "was viable." *Id*.

Martorello claims that *CashCall* "reached this conclusion despite the dozens of lawsuits with regulators that came before its decision, including the Second Circuit's decision in *Otoe-Missouria*." Dkt. 389 at 21. And so it follows, according to Martorello, that "[j]ust as the defendants in *CashCall* could not be said to have knowingly or recklessly violated the law," the

same must be true for Martorello. Dkt. 389 at 21-22. Martorello, however, omits a critical fact from his brief: "[a]s a result of the NYAG's action and other regulatory actions filed in other states," CashCall "made a business decision to discontinue" its relationship with Western Sky "**in September 2013**." *CashCall*, 2018 WL 485963 at *10 (emphasis added). Thus, the subsequent litigation against the industry from 2013 to 2018, could not be used to establish that CashCall was reckless between 2011 and 2013. This case presents a completely different scenario—Martorello *continues to this day* to receive millions of dollars from the illegal lending enterprise.[15]

III. Martorello's spoliation arguments lacks merit.

Martorello provides two arguments in response to Plaintiffs' spoliation request, which seeks *limited* sanctions at this stage of the litigation.[16] First, Martorello blames the Corporate Defendants for the destruction of the evidence, arguing the he "was not involved in th[e] decision making process and did not spoliate evidence." Dkt. 389 at 27. This argument ignores the legal requirement, which concerns whether a party had the "duty to preserve" the evidence, not the culprit of the actual destruction. *Rambus*, 222 F.R.D. at 288.

Here, Martorello unquestionably had the duty to preserve evidence as of January 2016, *i.e.*, when Martorello transferred the evidence to the Corporate Defendants. [redacted]

[15] Martorello also devotes a significant portion of his brief attempting to distinguish CashCall. Although Martorello correctly points out that "the lending entity at issue in CashCall, was not owned by a Tribe," Dkt. 389 at 20, Martorello's use of the arm-of-the tribe model does nothing to advance his cause. The overarching purpose of Martorello's scheme remained the same: it was designed to evade state and federal laws. Whether the revenue is kicked back to a tribal member or to the Tribe itself, the loan is nonetheless unlawful in places like Virginia and New York, whose "usury laws apply to all lenders," including "tribal lenders." *Otoe-Missouria*, 769 F.3d 10 at 117.

[16] Plaintiffs requested the Court to find that spoliation occurred and order: (1) production of all communications concerning the destruction of any of Martorello or his companies' information; and (2) that privilege is waived as to all such communications, as well as any documents retrieved as part of Plaintiffs' efforts to restore the destroyed information. Dkt. 341 at 26. If it is determined that the information cannot be recovered, Plaintiffs intend to seek far more severe sanctions.

[redacted]" Ex. 1.[17]

Second, Martorello claims that Plaintiffs cannot establish the "relevance" of the spoliated evidence. Dkt. 389 at 30. [redacted][18]

Among other things, the destroyed information would be relevant to show: (1) Martorello's internal discussions with other executives (and other industry insiders) regarding litigation threats and justifications for the sale, (2) the duties actually performed by SourcePoint and Martorello, who claims to have no role at SourcePoint after 2014, (3) Martorello's efforts to conceal the role of his companies in the operations of Red Rock, and (4) Martorello's efforts to restructure the scheme to avoid litigation.

Respectfully submitted,

[17] Martorello also argues that, at most, the duty to preserve "would run to regulators, not Plaintiffs." Dkt. 389 at 29. There are multiple problems with this argument. First, courts "have found the duty to be triggered by industry-wide events, regardless of the status of individual litigation." *In re Ethicon, Inc. Pelvic Repair Sys. Prod. Liab. Litig.*, 299 F.R.D. 502, 513 (S.D.W. Va. 2014) (gathering cases). Second, the standard in the Fourth Circuit is whether the party "reasonably should know that evidence may be relevant to anticipated litigation.'" *Rambus, Inc. v. Infineon Techs. AG*, 222 F.R.D. 280, 288 (E.D. Va. 2004). Whether the "anticipated litigation" is filed by an attorney general or a private law firm, it should make no difference under the legal standard.

[18] Aranca provided the business valuation documents to Martorello, who then produced them after this Court ordered their production. *Williams v. Big Picture Loans, LLC*, Case No. 3:18-mc-1, 303 F. Supp. 3d 434 (E.D. Va. 2018). Thus, although the documents technically have Martorello's bates labeling, they were only uncovered because of subpoenas to third parties.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March 2019, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system which will send a notification of such filing (NEF) to all counsel of record.

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