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INTRODUCTION

Defendants NextEra Energy, Inc.; NextEra Energy Resources, LLC; NextEra Energy Constructors, LLC; NextEra Energy Transmission Southwest, LLC; NextEra Energy Marketing, LLC; NextEra Energy Operating Services, LLC; and NextEra Energy Project Management, LLC (collectively, “NextEra” or the “NextEra Defendants”) hereby move to dismiss Plaintiffs’ Amended Complaint (“Am. Compl.”), ECF No. 33-1, for lack of personal jurisdiction.

Despite two bites at the apple, Plaintiffs theory of personal jurisdiction remains legally deficient. There is no general personal jurisdiction over the NextEra Defendants in this Court because they are “at home” only in Florida and (in some cases) Delaware—not the District of Columbia. Nor is there specific personal jurisdiction over the NextEra Defendants, because the conduct at issue in this case does not arise out of or relate to their conduct in the District; it instead relates to Defendant Soldier Creek Wind, LLC’s (“Soldier Creek Wind”) conduct in Kansas. Moreover, the Court should reject Plaintiffs’ last-ditch request for personal-jurisdiction discovery. Plaintiffs are not entitled to a fishing expedition in order to prove jurisdiction when they have not plausibly alleged jurisdiction in the Complaint. This Court should dismiss Plaintiffs’ claims against the NextEra Defendants for lack of personal jurisdiction.

In the alternative, this Court should dismiss the Amended Complaint for lack of subject-matter jurisdiction or failure to state a claim upon which relief can be granted, for the same reasons that it should dismiss Plaintiffs’ claims against Soldier Creek Wind, which are explained more fully in a separately filed motion, ECF No 38.

FACTUAL BACKGROUND

This case is about the Soldier Creek Wind Project, a wind energy project located in Nemaha County, Kansas, that is owned by, and will be operated by, Soldier Creek Wind. *See* Order at 1 (“TRO Order”), ECF No. 28. Soldier Creek Wind is an indirect and wholly-owned subsidiary of NextEra Energy Resources, LLC, and is one of the many NextEra entities Plaintiffs sued in this litigation. *See* Am. Compl. ¶ 11(d). Soldier Creek Wind, unlike the NextEra Defendants, does not contest personal jurisdiction for purposes of resolving this case on the merits in this Court.

A. The NextEra Defendants

In addition to Soldier Creek Wind, Plaintiffs sued other NextEra entities that have no jurisdictionally significant connection to this District: NextEra Energy, Inc., NextEra Energy Resources, LLC, NextEra Energy Constructors, LLC, NextEra Energy Transmission Southwest, LLC, NextEra Energy Marketing, LLC, NextEra Energy Operating Services, LLC, and NextEra Energy Project Management, LLC. In particular, NextEra Energy, Inc. is a Florida corporation with its principal place of business in Juno Beach, Florida. And NextEra Energy Resources, LLC, NextEra Energy Constructors, LLC, NextEra Energy Transmission Southwest, LLC, NextEra Energy Marketing, LLC, NextEra Energy Operating Services, LLC, and NextEra Energy Project Management, LLC are all Delaware limited liability companies with their principal places of business in Juno Beach, Florida.

B. Procedural History

On May 18, 2020, Plaintiffs filed a Complaint and motion for injunctive relief against a number of NextEra entities, alleging that NextEra’s Soldier Creek Wind project violated Kansas’ private nuisance and negligence laws and claiming that Plaintiffs would be irreparably harmed if the Court failed to enjoin the NextEra Defendants from continuing construction. *See* Injunctive Relief & Class Action Compl. at 41-45 (“Compl.”), ECF No. 1; Mot. for Expedited Review of

Mot. for a TRO/Prelim. Inj. at 11 (“TRO Mot.”), ECF No. 3. Plaintiffs also asserted several claims against numerous U.S. government agencies. *See* Compl. at 15-38.

Soldier Creek Wind opposed Plaintiffs’ motion seeking injunctive relief on June 2, 2020. *See* Soldier Creek Wind, LLC’s Resp. in Opp’n to Pls.’ Mot. for TRO/Prelim. Inj. (“Soldier Creek Opp’n”), ECF No. 23. In particular, Soldier Creek Wind pointed out that Plaintiffs lacked personal jurisdiction over all NextEra Defendants—Soldier Creek Wind included—and therefore could not bring this suit in this Court. *Id.* at 16-19. However, Soldier Creek Wind also stated that it (alone amongst the NextEra Defendants) did not intend to contest personal jurisdiction so that Plaintiffs’ allegations could be resolved in this Court. *Id.* at 18. Soldier Creek Wind further stated that the rest of the NextEra Defendants intended to file motions to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). *Id.*

On June 16, 2020, the Court denied Plaintiffs’ motion largely because it found that “Plaintiffs are unlikely to prove that personal jurisdiction can be exercised over the Nextera Defendants in the District of Columbia.” TRO Order at 3. In particular, the Court found “unpersuasive” Plaintiffs’ theory that personal jurisdiction attached to the NextEra Defendants because their business is “subsidized by the United States government[] [so] they must have transacted business in the District of Columbia to receive those subsidies.” *Id.* at 4. The Court also noted that “Plaintiffs do not point to specific acts of the Nextera Defendants in the District of Columbia,” but instead “ask the court to infer that government subsidies necessitate a transaction of business in the District of Columbia,” and stated that it was “unwilling to draw” that inference. *Id.* In addition, even if the Soldier Creek Wind project was made economically feasible by transactions in the District of Columbia—as Plaintiffs claimed—the Court stated that “those transactions would fall under the ‘government contacts’ exception to the ‘transacting business’

provision of the long-arm statute.” *Id.* In the end, the Court concluded that “Plaintiffs’ claims did not arise from business transactions in the District of Columbia.” *Id.* Instead, “they arose from actions surrounding the Soldier Creek Wind Project in Kansas.” *Id.*

Faced with the Court’s guidance as set forth in the TRO Order, Plaintiffs sought leave to file an Amended Complaint, which was granted on July 2, 2020. There, Plaintiffs expanded upon their personal jurisdiction theories, but their amendment still does not state grounds for personal jurisdiction over the NextEra Defendants. Plaintiffs assert that the NextEra entities “are subsidiaries of, and significantly controlled by, parent corporation NextEra Energy, Inc. of Jupiter, Florida.” Am. Compl. ¶ 11. “Plaintiffs allege based on information, knowledge and belief that all of these entities are so controlled by Nextera Energy, Inc. that they are agents of Nextera Energy, Inc. and/or are engaged in a joint venture or alter ego of same.” *Id.* Plaintiffs also make several allegations regarding certain of the NextEra Defendants but conflate the various NextEra Defendants in doing so. In any event, as set forth below, Plaintiffs’ allegations fail on their face to connect the District of Columbia and the conduct at issue in the Complaint. *See id.* Finally, Plaintiffs assert that they “believe that discovery will establish personal jurisdiction.” *Id.* Plaintiffs should not be entitled to discovery to attempt to establish jurisdiction when they have not adequately pled jurisdiction in their Complaint.

ARGUMENT

I. Plaintiffs’ Claims Against The NextEra Defendants Must Be Dismissed For Lack Of Personal Jurisdiction.

Plaintiffs have failed to meet their burden of establishing personal jurisdiction over the NextEra Defendants and, consequently, their claims against those entities must be dismissed. Plaintiffs have not sufficiently alleged general or specific jurisdiction over the NextEra

Defendants, and their efforts to bootstrap personal jurisdiction over one entity by claiming it is connected to another does nothing to save this failure.

The plaintiff bears the burden of “establishing a basis for the exercise of personal jurisdiction ... by alleging ‘specific acts connecting [the] defendant with the forum.’” *Eggink v. Trump*, 257 F. Supp. 3d 27, 29 (D.D.C. 2017) (Chutkan, J.) (citation omitted); *see also* TRO Order at 3 (citing *Second Amend. Found. v. U.S. Conference of Mayors*, 274 F.3d 521, 524 (D.C. Cir. 2001)), and *Crane v. N.Y. Zoological Soc.*, 894 F.2d 454, 456 (D.C. Cir. 1990)). “‘Conclusory statements or a bare allegation of conspiracy or agency’ do not satisfy” plaintiffs’ burden to “‘make a *prima facie* showing of the pertinent jurisdictional facts’ to survive a motion to dismiss for lack of personal jurisdiction.” *Livnat v. Palestinian Auth.*, 851 F.3d 45, 56-57 (D.C. Cir. 2017) (quoting *First Chicago Int’l v. United Exch. Co., Ltd.*, 836 F.2d 1375, 1378-79 (D.C. Cir. 1988)). In conducting this inquiry, the court “need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts.” *Id.* (quoting *Kowal v. MCI Commc’ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)).

Plaintiffs’ personal-jurisdiction allegations in the Amended Complaint confuse and conflate general and specific personal jurisdiction. As this Court well knows, *general* jurisdiction permits a court to hear any cause of action, regardless of the conduct at issue. *Specific* jurisdiction, in contrast, is available only when the cause of action at issue arises out of or relates to the defendant’s activities in the State. *See, e.g., Shatsky v. Palestine Liberation Org.*, 955 F.3d 1016, 1036 (D.C. Cir. 2020). In either case, the Due Process Clause limits the exercise of jurisdiction by requiring that the defendant have “certain minimum contacts with [the State] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”

Int'l Shoe Co. v. Wash., Office of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945) (citation omitted).

General personal jurisdiction attaches only where a defendant's forum contacts are "so 'continuous and systematic'" that it is "essentially *at home* in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014) (emphasis added) (citations omitted). For corporate entities like the NextEra Defendants, the "paradigm" forums for general jurisdiction are the corporation's state of incorporation and its principal place of business. *Id.* at 137. Absent "exceptional" circumstances, corporate entities are not "at home" anywhere else. *Id.* at 138-39 & n.19; *see also Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016). Consequently, having offices in a State, doing substantial business in a State, or allowing products to enter the stream of commerce and be sold in a State is not enough to subject a corporation to general jurisdiction. *See, e.g., BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (no general jurisdiction over defendant in Montana despite more than 2,000 miles of railroad track and more than 2,000 employees in Montana); *Daimler*, 571 U.S. at 137-41 (no general jurisdiction over defendant in California where its California subsidiary performed 2.4% of its worldwide sales and its subsidiary had multiple California facilities); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011) (holding that "[f]low of a manufacturer's products into the forum" does not establish general jurisdiction).

Specific jurisdiction, on the other hand, applies when a defendant is a non-resident of the forum. *See Bristol-Meyers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1780 (2017). This Court requires plaintiffs seeking to establish personal jurisdiction over non-residents such as the NextEra Defendants to establish both that "specific jurisdiction comports with the forum's long-arm statute, D.C. Code § 13-423(a), and does not violate due process." *FC Inv. Grp.*

LC v. IFX Mkts., Ltd., 529 F.3d 1087, 1094-95 (D.C. Cir. 2008); *see Eggink*, 257 F. Supp. 3d at 29. Specific jurisdiction attaches when a suit arises out of or relates to a defendant's contacts with the forum. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 (1985); *Eggink*, 257 F. Supp. 3d at 29 (“[W]here jurisdiction is based solely on the D.C. long-arm statute, only a claim for relief *arising from acts enumerated in this section* may be asserted against the defendants.” (emphasis in original)). In other words, there must be an “affiliation between the forum and the underlying controversy, principally, [an] activity or occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Goodyear*, 564 U.S. at 919 (citation omitted) (alteration incorporated); *see also Koteen v. Bermuda Cablevision, Ltd.*, 913 F.2d 973, 974-75 (D.C. Cir. 1990) (Defendants’ “contacts with the District of Columbia must relate to the factual circumstances giving rise to this suit in order to support the ‘specific jurisdiction’ authorized by this section.” (citation omitted)). A “defendant’s general connections with the forum are not enough” to exercise specific jurisdiction. *Bristol-Meyers*, 137 S. Ct. at 1781.

In the District of Columbia, specific personal jurisdiction is governed by D.C.’s long-arm statute, D.C. Code § 13–423. *See, e.g., FC Inv. Grp.*, 529 F.3d at 1094-95. In relevant part, the long-arm statute allows for the exercise of personal jurisdiction where the plaintiff’s claim arises from the defendant’s:

- (1) transacting any business in the District of Columbia;
- (2) contracting to supply services in the District of Columbia;
- (3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia
- (4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;
- (5) having an interest in, using, or possessing real property in the District of Columbia

D.C. Code §13–423(a). The statute also provides that, “[w]hen jurisdiction over a person is based solely upon this section, only a claim for relief *arising from* acts enumerated in this section may be asserted against him.” *Id.* §13–423(b) (emphasis added).

Of course, this Court has already discussed this Court’s specific jurisdiction principles and analyzed the D.C. long-arm statute in denying Plaintiffs’ motion for injunctive relief. *See* TRO Order at 3-4; *see supra* pp. 3-4.

A. Plaintiffs Have Not Plausibly Alleged General Personal Jurisdiction.

Here, Plaintiffs have not—and cannot—plausibly allege *general jurisdiction* over any of the NextEra Defendants. As all of the NextEra Defendants are Florida or Delaware corporate entities that have their places of incorporation and principal places of business in jurisdictions other than the District of Columbia, *supra* p. 2, none are “at home” in D.C., *see, e.g., BNSF*, 137 S. Ct. at 1559. They are therefore not subject to *general* jurisdiction in the District of Columbia. And Plaintiffs provide no grounds for asserting an exception to the general rule. As explained, having even substantial connections to a forum state far in excess of what Plaintiffs have alleged here—such as thousands of employees and thousands of miles of railroad track in the State—does not give rise to general jurisdiction if the company’s place of incorporation and principal place of business are elsewhere. *Id.*; *see supra* p. 6.

B. Plaintiffs Have Not Plausibly Alleged Specific Personal Jurisdiction.

Plaintiffs’ assertions of *specific jurisdiction* over the NextEra Defendants also fall short, and fail to cure the problems that this Court already identified with Plaintiffs’ jurisdictional theories in the TRO Order. There, this Court found “unpersuasive” Plaintiffs’ argument that, because the NextEra Defendants’ business is subsidized by the United States government, “they must have transacted business in the District of Columbia to receive those subsidies.” TRO Order at 4. And, in any event, even if the project were “made ‘economically feasible’ by business

transactions in the District of Columbia, those transactions would fall under the ‘government contacts’ exception to the ‘transacting business’ provision of the long-arm statute.” *Id.* Finally, the Court properly concluded that “Plaintiffs’ claims did not arise from business transactions in the District of Columbia; they arose from actions surrounding the Soldier Creek Wind Project in Kansas.” *Id.*

Plaintiffs’ Amended Complaint does not cure any of these problems. Though Plaintiffs now purport to allege numerous connections between the NextEra Defendants and the District of Columbia, *see supra*, p. 4, the alleged injuries they claim to suffer in this litigation, which result from the Soldier Creek Wind Project in Kansas, do not arise out of or relate to those purported D.C. connections. Rather, they arise out of and relate to Soldier Creek Wind’s connections to *Kansas*. That is not enough to establish specific jurisdiction in the District of Columbia over any NextEra defendant, let alone all of them. In fact, “[t]he limitation in § 13-423(b) that the claim for relief [itself] must arise from the transaction of business in the District of Columbia is meant to *prevent* the assertion of claims in the forum state that do not bear some relationship to the acts in the forum state relied upon to confer jurisdiction.” *Graphic Commc’ns Conference/Int’l. Bhd. of Teamsters, Local 285M v. McDonald & Eudy Printers, Inc.*, No. 1:18-cv-727(KBJ), 2018 WL 6251009, at *3 (D.D.C. Nov. 29, 2018) (emphasis added) (quoting *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 158 (D.C. 1978)). Plaintiffs therefore also cannot assert *specific* jurisdiction over the NextEra Defendants. *See, e.g., Africa Growth Corp. v. Republic of Angola*, No. 17-2469 (BAH), 2019 WL 3253367, at *9 (D.D.C. July 19, 2019) (rejecting exercise of specific jurisdiction where “AFGC’s alleged injuries with respect to its subsidiaries’ real properties in Angola did not ‘arise out of’ the Andrade Defendants’ alleged conduct in the United States.”), *appeal dismissed* by 2019 WL 6218805 (D.C. Cir. Oct. 23, 2019); *Graphic Commc’ns*, 2018 WL 6251009, at *3

(rejecting exercise of specific jurisdiction where “the parties do not dispute that the Union’s claims against M&E arise exclusively from acts that occurred *outside* of Washington, D.C.”); *Dove v. United States*, No. 86-cv-0065-LFO, 1987 WL 18739, at *3 (D.D.C. Oct. 9, 1987) (“An act within the district will not confer jurisdiction if it is of ‘minimal significance’ to the transaction as a whole.”).

Plaintiffs’ efforts to attach personal jurisdiction over all NextEra entities by alternatively claiming personal jurisdiction over the parent, NextEra Energy, Inc. (“NEE”), and a subsidiary of NEE, NextEra Energy Resources, LLC (“NEER”), also fail. Plaintiffs at times argue that jurisdiction over NEE transmutes into jurisdiction over its subsidiaries, while later arguing that jurisdiction over NEER, a subsidiary, transmutes into jurisdiction over NEE (and, perhaps, its other subsidiaries). *Compare* Am. Compl. ¶ 11 (claiming that the NextEra entities are “so controlled by Nextera Energy, Inc. that they are agents of Nextera Energy, Inc. and/or are engaged in a joint venture or alter ego of same,”), *with id.* at ¶ 11(b) (claiming that “Defendant NEER is the lynchpin and operations arm of the NextEra Enterprise for purposes of the nationwide operations to include, more specifically, clear and substantial ‘minimum contacts’ in the jurisdiction of this Court.”). Plaintiffs’ theories are wrong as a factual matter but, regardless, both theories fail as a matter of law.

To begin, Plaintiffs have not demonstrated personal jurisdiction over NEE in the first place. NEE is subject to general jurisdiction only in Florida—where it is both incorporated and has its principal place of business—and Plaintiffs have failed to plausibly allege that its specific actions in the District gave rise to the injuries the Soldier Creek Wind Project purportedly caused. Plaintiffs allege only that NEE filed “key documents” related to the licensure and sale of electricity in D.C. and purchased an insurance policy in the District on behalf of itself and several

subsidiaries. *See* Am. Compl. ¶¶ 11(i), 11(j). Plaintiffs do not allege that those actions had anything to do with the Soldier Creek Wind Project. In any event, even if Plaintiffs had established personal jurisdiction over NEE, their alter ego theory is simply too thin to support jurisdiction over the other members of the corporate group as a matter of law in this District. *See, e.g., Leitner-Wise v. Clark*, No. 18-771 (BAH), 2018 WL 6787999, at *4 (D.D.C. Dec. 26, 2018) (declining to pierce the corporate veil and exercise personal jurisdiction over a parent company where the complaint alleged only that the subsidiary was “wholly owned” by the parent and was “devoid of any [other] allegation about the two entities’ relationship.”); *Shapiro, Lifschitz & Schram, P.C. v. Hazard*, 90 F. Supp. 2d 15, 22-23 (D.D.C. 2000) (discussing the D.C. Circuit’s two-pronged test for piercing the corporate veil).

Plaintiffs’ theory regarding NEER fails for similar reasons. NEER is not subject to general jurisdiction in D.C.; rather, it is “at home” only in Florida and Delaware. *BNSF*, 137 S. Ct. at 1559. Plaintiffs also fail to sufficiently allege specific jurisdiction over NEER. The Complaint contains several allegations about how NEER buys and sells energy in D.C., *see* Am. Compl. ¶¶ 11(c), 11(e), 11(f), 11(h), but fails to include an allegation about NEER’s involvement in the Soldier Creek Wind Project that arose out of its contacts with D.C. Indeed, the closest Plaintiffs come to making such an allegation is its assertion that NEER is the “primary actor in control of the ‘development’ and ‘construction’ of all wind projects for the NextEra Enterprise throughout the country to include the Soldier Creek Wind LLC Project,” but even there, Plaintiffs fail to allege that any acts of development or construction occurred in the District. *Id.* ¶ 11(d). Regardless, even if Plaintiffs had sufficiently alleged personal jurisdiction over NEER—which they have not—courts in this District have repeatedly rejected plaintiffs’ efforts to transmute personal jurisdiction over a subsidiary into personal jurisdiction over all members of the corporate group. *See, e.g.,*

Crichlow v. Warner Music Grp. Corp., 565 F. Supp. 2d 1, 4 (D.D.C. 2008); *United States v. Smithfield Foods, Inc.*, 332 F. Supp. 2d 55, 62-63 (D.D.C. 2004).

At bottom, because Plaintiffs have failed to make a *prima facie* showing of personal jurisdiction, and the NextEra Defendants' conduct is so disconnected from this District, this Court should dismiss Plaintiffs' claims against the NextEra Defendants for lack of personal jurisdiction. This Court previously identified the problems with Plaintiffs' personal jurisdiction allegations, and Plaintiffs' Amended Complaint fails to cure them. Moreover, nothing in Plaintiffs' allegations supports their request for jurisdictional discovery. There is no discovery that would transform the conduct that Plaintiffs allege between the NextEra Defendants and this District into the kinds of connections that would support personal jurisdiction. As such, discovery into personal jurisdiction would needlessly waste time and resources—of both the parties and this Court. *See, e.g., Nuevos Destinos, LLC v. Peck*, No. 15-cv-1846 (EGS), 2019 WL 78780, at *13 (D.D.C. Jan. 2, 2019) (“A plaintiff may not use jurisdictional discovery to ‘conduct a fishing expedition in the hopes of discovering some basis of jurisdiction.’” (citation omitted)); *Med. Sols., Inc. v. C Change Surgical LLC*, 468 F. Supp. 2d 130, 135-36 (D.D.C. 2006) (denying jurisdictional discovery where “Plaintiff has failed to show that additional discovery would be beneficial to its establishment of jurisdiction.”), *aff’d* 541 F.3d 1136 (Fed. Cir. 2008).

Moreover, as a practical matter, because Soldier Creek Wind is not contesting personal jurisdiction for purposes of this case, and to the extent they can properly allege a cause of action, Plaintiffs can continue to pursue their claims against the entity that is actually responsible for the Soldier Creek Wind Project—Soldier Creek Wind.

For all of these reasons, this Court should dismiss Plaintiffs' claims against the NextEra Defendants for lack of personal jurisdiction.

II. Plaintiffs' Claims Against the NextEra Defendants Must Be Dismissed For Lack of Subject-Matter Jurisdiction And/Or Failure To State A Claim.

Though this Court need not reach the substance of Plaintiffs' claims against NextEra—and should instead dismiss them for lack of personal jurisdiction—the claims suffer additional, independent flaws that warrant dismissal. NextEra hereby incorporates Soldier Creek Wind's Motion to Dismiss, ECF No. 38. For the reasons articulated in that Motion, the Court has ample alternative grounds to dismiss Plaintiffs' claims against NextEra.

CONCLUSION

For the foregoing reasons, this Court should dismiss Plaintiffs' claims against NextEra for lack of personal jurisdiction or, alternatively, for lack of subject-matter jurisdiction and/or failure to state a claim upon which relief can be granted.

Dated: July 23, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send a notice of electronic filing to counsel of record in this case.

/s/ Daniel T. Donovan, P.C.

Daniel T. Donovan, P.C.