

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MICHIGAN

KEWADIN CASINOS GAMING AUTHORITY,
A duly authorized entity created under the laws
of the Sault Ste. Marie Tribe of Chippewa Indians,

Case No. 2:22-cv-00027

Plaintiff,

Hon. Hala Y. Jarbou

v

HONORABLE JOYCE DRAGANCHUK, District
Judge, State of Michigan, Ingham County Circuit
Court, in her Individual and Official Capacities,
JLLJ DEVELOPMENT, LLC, a Michigan Limited
Liability Company, and LANSING FUTURE
DEVELOPMENT II, LLC, a Michigan Limited
Liability Company,

**BRIEF IN SUPPORT OF
DEFENDANT HON. JOYCE
DRAGANCHUK'S MOTION TO
DISMISS AND/OR FOR
SUMMARY JUDGMENT**

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INTRODUCTION

As her initial response to Plaintiff's Complaint, Defendant Ingham County Circuit Court Judge Honorable Joyce Draganchuk has moved pursuant to Fed. R. Civ. P. 12(b)(6) and/or 56, and W.D. Mich. L.Civ.R. 7.1, to dismiss for failure to state a claim upon which relief can be granted and/or for summary judgment of Plaintiff's Complaint (ECF No. 1), on the grounds that Plaintiff's claims are barred by (a) the *Rooker-Feldman* doctrine, (b) the Anti-Injunction Act, (c) res judicata, and (d) judicial immunity, and there otherwise being no genuine issue of material fact, Judge Draganchuk is entitled to judgment as a matter of law.

Plaintiff's claims for declaratory and injunctive relief seek to have this Court second-guess a June 23, 2021, ruling made by Judge Draganchuk in her capacity as an Ingham County Circuit Court Judge in a case raising state law contract claims against Plaintiff over which the Circuit Court had subject matter jurisdiction, and to enjoin further proceedings in the Circuit Court. Specifically, Plaintiff complains as to Judge Draganchuk's ruling in a case currently pending before her that the Plaintiff herein waived its sovereign immunity.

As the presiding Judge in the State Court proceedings, Judge Draganchuk enjoys judicial immunity from suit, and should not be required to personally defend her rulings in matters brought before her Court. The remedy for a party aggrieved by a Circuit Court's ruling is an appeal in the Michigan Court of Appeals, and the parties to the litigation may argue their positions before the appellate Court.

Judge Draganchuk's rulings may not be reviewed by the Federal Courts (except by the U.S. Supreme Court) per the *Rooker-Feldman* Doctrine, and moreover, her rulings otherwise have res judicata effect when the same issue is raised by the same parties in other Courts. Finally, the Anti-

Injunction Act prohibits this Court from enjoining State Court proceedings pending before Judge Draganchuk in the Ingham County Circuit Court.

STATEMENT OF FACTS

A. Plaintiff's Complaint.

On February 4, 2022, Plaintiff Kewadin Casinos Gaming Authority ("Plaintiff" or "Kewadin") filed its Complaint in this Court (ECF No. 1) against JLLJ Development, LLC and Lansing Future Development II, LLC (collectively, "the Developers"), and also against the Honorable Joyce Draganchuk, an Ingham County Circuit Court Judge.

Plaintiff sought declaratory and injunctive relief to enjoin proceedings in the Developers' lawsuit against Kewadin in the Ingham County Circuit Court, claiming that Judge Draganchuk as the presiding judge in the state court proceedings failed to rule on the issue of subject matter jurisdiction, and that the lawsuit should have been dismissed on the grounds that Kewadin had not waived its sovereign immunity as a tribal entity of the Sault Ste. Marie Band of Chippewa Indians ("the Tribe").

Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 2) was denied by this Court in an Order dated February 8, 2022 (ECF No. 15). This Court determined that Judge Draganchuk had expressly ruled on the issue of Kewadin's waiver of sovereign immunity, which was the sole basis for Kewadin's argument that the Circuit Court lacked subject matter jurisdiction, which is the same issue presented by Plaintiff in this case. (Order, ECF No. 15, Page ID.622).

B. Circuit Court Proceedings.

On March 31, 2021, the Developers filed suit against Kewadin in the Ingham County Circuit Court, raising various state law claims for breach of contract and seeking contractual

remedies stemming from two Agreements for the development of casinos on land to be acquired by the Tribe. (See Complaint, ECF 1-5, PageID.105-135; Agreements, ECF No. 1-2, PageID.16-59, and ECF No. 1-3, PageID.60-100.)¹

Kewadin filed a “Motion to Dismiss” in the Circuit Court, seeking summary disposition of the lawsuit on the grounds of lack of subject matter jurisdiction, sovereign immunity, failure to state a claim, and no genuine issue of material fact (Motion, ECF No. 1-13, PageID.174-176), which Motion was brought on for hearing before Judge Draganchuk on June 23, 2021. (See Transcript, ECF 14-3, PageID.471.) However, because Kewadin’s Brief only addressed the sovereign immunity issue, Judge Draganchuk determined to resolve the Motion as one for summary disposition on that basis alone. (ECF 14-3, PageID.490-491.)

Judge Draganchuk heard the parties’ arguments, and upon her review of the Development Agreements and applicable case law, determined that there had been “an express and unlimited, irrevocable waiver of sovereign immunity.” (ECF No. 14-3, PageID.500.) At the conclusion of the hearing, Judge Draganchuk denied Kewadin’s Motion. (ECF No. 14-3, PageID.500.) An Order denying Kewadin’s Motion for Summary Disposition was entered on July 21, 2021. (Order, ECF No. 1-9, PageID.165-166.)

On September 7, 2021, Judge Draganchuk entered an Order denying Kewadin’s Second Motion to Dismiss, considering it a Motion for Reconsideration. (Order, ECF No. 1-10, PageID.167.) Kewadin moved for reconsideration of its Second Motion to Dismiss, which was denied by Judge Draganchuk in an Order dated October 28, 2021, in which Judge Draganchuk

¹ The Circuit Court case was filed one day after the Developers’ Federal lawsuit against Kewadin raising the same state law contract claims was dismissed by U.S. District Judge Jonker for lack of subject matter jurisdiction. (Opinion, ECF No. 14-2, PageID.459-469.)

specifically addressed Kewadin's argument that the Court had failed to rule on jurisdiction, and reiterated her prior ruling on that issue with regard to Kewadin's express waiver of sovereign immunity. (Order, ECF No. 14-4, PageID.504-510.)

The Developers filed a Motion to Compel Discovery, which was granted by Judge Draganchuk on October 27, 2021. (Order, ECF No. 1-11, PageID.170-171.) On January 28, 2022, upon the Developers' Motion that Kewadin should be held in contempt of Court for its failure to comply with the Court's Order compelling discovery, Judge Draganchuk issued an Order to Show Cause, requiring Kewadin to appear and show cause why it should not be held in contempt of Court. (Order, ECF No. 1-12, PageID.172-173.)

At the February 9, 2022 hearing, Judge Draganchuk granted the Motion and found Kewadin in contempt of Court. (See Register of Actions, attached as Exhibit A.) Also on February 9, 2022, Kewadin filed a Delayed Application for Leave to Appeal in the Michigan Court of Appeals, seeking interlocutory appellate review of Judge Draganchuk's July 21, 2021 Order Denying Kewadin's Motion for Summary Disposition. (See Court of Appeals Case Information, attached as Exhibit B.)

GOVERNING LEGAL STANDARDS

A. Motion to Dismiss.

In deciding a Rule 12(b)(6) motion, the Court must view the Complaint in the light most favorable to the plaintiff, treat all well-pleaded allegations as true, and dismiss the plaintiff's claims if it is without doubt that the plaintiff can prove no set of facts in support of the claims that would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46; 78 S.Ct. 99; 2 L.Ed.2d 80 (1957); *Gregory v. Shelby County, Tenn.*, 220 F.3d 433, 445-46 (6th Cir. 2000).

To survive a motion to dismiss under Rule 12(b)(6), a Complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory. *Glassner v. R.J. Reynolds Tobacco Co.*, 223 F.3d 343, 346 (6th Cir. 2000). However, the Court need not accept as true legal conclusions or unwarranted factual inferences. *Gregory, supra*, at 446, citing *Mixon v. State of Ohio*, 193 F.3d 389, 400 (6th Cir. 1999).

B. Summary Judgment.

Fed. R. Civ. P. 56(c) provides that summary judgment should be entered where "the pleadings, depositions answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The presence of factual disputes will preclude granting of summary judgment only if the disputes are genuine and concern material facts. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248; 106 S.Ct. 2505; 91 L.Ed.2d 202 (1986). A dispute about a material fact is "genuine" only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

Although the Court must view the motion in the light most favorable to the nonmoving party, where "the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586; 106 S.Ct. 1348; 89 L.Ed.2d 538 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24; 106 S.Ct. 2548; 91 L.Ed.2d 265 (1986).

Summary judgment must be entered against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving

party's case necessarily renders all other facts immaterial. *Celotex Corp.*, *supra*, at 322-23. A Court must look to the substantive law to identify which facts are material. *Anderson*, *supra*, at 248.

ARGUMENT

I. PLAINTIFF'S CLAIMS ARE BARRED BY THE *ROOKER-FELDMAN* DOCTRINE AND BY RES JUDICATA

A. Legal Standards.

1. Rooker-Feldman Doctrine.

The *Rooker-Feldman* doctrine holds that Federal District Courts have no authority to review final judgments of a State Court in judicial proceedings. See *Holloway v. Brush*, 220 F.3d 767 (6th Cir. 2000). Any attack on the validity of Court Orders entered in underlying State litigation must be rejected under the *Rooker-Feldman* doctrine. See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462; 103 S.Ct. 1303; 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413; 44 S.Ct.149; 68 L.Ed.2d 362 (1923). The *Rooker-Feldman* doctrine also applies to interlocutory orders from lower State Courts. *Pieper v. Am. Arb. Ass'n, Inc.*, 336 F.3d 458, 462 (6th Cir. 2003).

Any shortcomings in State Court Orders should be contested through the State Court appellate process. The only Federal Court with jurisdiction to review decisions of State Courts is the U. S. Supreme Court. *RLR Invs., LLC v. City of Pigeon Forge*, 4 F.4th 380, 385 (6th Cir. 2021).

2. Res Judicata.

The doctrine of res judicata bars subsequent causes of action when a court of competent jurisdiction has already rendered a final decision on the merits involving the same parties and claims in a prior action. *Sanders Confectionery Products, Inc. v. Heller Financial, Inc.*, 973 F.2d 474, 480 (6th Cir. 1992); *Consolidation Coal Co. v. Maynes*, 739 F.3d 323, 327 (6th Cir. 2014).

There is a related defense of collateral estoppel, which bars relitigation of previously decided issues in a later suit, e.g., probable cause, even where the defendant in a prior criminal case was acquitted. *Coogan v. City of Wixom*, 820 F.2d 170, 174 (6th Cir. 1987), citing *Allen v. McCurry*, 449 U.S. 90, 94-96 (1980).

Collateral estoppel precludes entertaining a cause of action dependent on the invalidity of unchallenged adjudications regarding reasonable and probable cause. *Hardesty v. Hamburg Tp.*, 461 F.3d 646, 651 (6th Cir. 2006) (federal courts give state court judgments the same preclusive effect they would have in a state court); *Lomaz v. Hennosy*, 151 F.3d 493, 499 n. 8 (6th Cir. 1998) (where state court denied motion to suppress evidence under the 4th Amendment, although defendant was acquitted, the ruling collaterally estopped a claim predicated on the invalidity of the search warrant); *Berger v. City of Cleveland*, 110 F.3d 63, Part II (6th Cir. 1997) (holding state court adjudications had collateral estoppel effect in federal lawsuit under 42 U.S.C. §1983).

B. Claims as to Judge Draganchuk Are Barred.

Plaintiff is apparently of the belief that Judge Draganchuk may be sued in Federal Court and made to personally defend her judicial opinions and orders in State Court litigation filed in her Court. Plaintiff's position here is that Judge Draganchuk erred in denying Kewadin's Motion to Dismiss and its subsequent attempts at dismissal of the State Court litigation. But Plaintiff's direct attack in this Court on Judge Draganchuk's rulings as expressed in her Orders is expressly prohibited by the *Rooker-Feldman* doctrine. It is not the province of a Federal District Court to second-guess or undermine the judicial rulings of a State Circuit Court. Rather, a party aggrieved by the Circuit Court's Orders may file an appeal in the Michigan Court of Appeals, which Kewadin has done here. (See Exhibit B.) Otherwise, absent reversal on appeal, Judge Draganchuk's Orders constitute res judicata, for which the parties are estopped from challenging in another trial Court.

Plaintiff complains that the Circuit Court lacked subject matter jurisdiction, and failed to rule on Plaintiff's arguments of a lack of subject matter jurisdiction. Unlike the Federal District Court, whose subject matter jurisdiction is limited -- absent diversity of citizenship between litigants, the Federal Court lacks jurisdiction over standard State law contract claims that do not implicate a Federal question -- as determined by Judge Jonker in the Developers' prior lawsuit, (ECF No. 14-2, Page ID.463), a Michigan Circuit Court has broad subject matter jurisdiction. See Mich. Comp. Laws §600.601 *et seq.*; See also Mich. Const. 1963, art. 6, § 1 ("judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court..."); *Campbell v. St. John Hosp.*, 434 Mich. 608, 613-614; 455 N.W.2d 695 (1990).

Circuit Courts in Michigan "have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." Mich. Comp. Laws §600.605; *Winkler by Winkler v. Marist Fathers of Detroit, Inc.*, 500 Mich. 327, 334; 901 N.W.2d 566 (2017); *Campbell*, 434 Mich. at 613. "In construing such statutes or constitutional provisions, retention of jurisdiction is presumed and any intent to divest the circuit court of jurisdiction must be clearly and unambiguously stated." *Campbell*, 434 Mich. at 614.

Under Michigan law:

Jurisdiction over the subject-matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial.

Joy v. Two-Bit Corp., 287 Mich. 244, 253-254; 283 N.W. 45 (1938).

As a matter of State law, Judge Draganchuk had subject matter jurisdiction over the Developers' state law contract claims against Kewadin. Kewadin challenged the Circuit Court's exercise of jurisdiction in its serial Motions to Dismiss and a Motion for Reconsideration. Judge Draganchuk determined, in her judicial role as a Circuit Court Judge, that Kewadin had contractually waived its sovereign immunity, and therefore the Circuit Court would continue to exercise subject matter jurisdiction over the case. As far as defending her ruling in this Court, Judge Draganchuk refers to the transcript of the June 23, 2021 hearing (ECF No. 14-3, PageID.471, 490-500), and her subsequent Orders in the litigation.

Judge Draganchuk's rulings in the Circuit Court case are res judicata as between the parties (unless reversed on appeal to the Michigan appellate Courts), and otherwise barred from review and reconsideration by this Court under the *Rooker-Feldman* doctrine. This Court is duty-bound to abstain from rendering a decision in this case that would undermine Judge Draganchuk's sound judicial rulings in the underlying State Court litigation, and interfere with principles of comity between State and Federal Courts. Therefore, Plaintiff's claims against Judge Draganchuk must be dismissed.

II. PLAINTIFF'S CLAIMS ARE BARRED BY THE ANTI-INJUNCTION ACT

Plaintiff seeks an injunction to enjoin proceedings in the Developers' lawsuit against Kewadin that is presently pending in the Ingham County Circuit Court. Plaintiff likely named Judge Draganchuk as a Defendant in this case so as to include her in the scope of any injunction. However, Plaintiff's request for an injunction in this case is barred by the Anti-Injunction Act (AIA), 28 U.S.C. §2283, which states:

A Court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

See *Cheyenne & Arapaho Tribes v. First Bank & Tr. Co.*, 560 F. Appx. 699, 705 (10th Cir. 2014).

This Court acknowledged in its February 8, 2022 Order denying Plaintiff's Motion for TRO and for Preliminary Injunction that any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the State Courts to proceed in an orderly fashion to finally determine the controversy. (ECF No. 15, PageID.624, citing *Atl. Coast Line R.R. Co. v. Bhd. Of Locomotive Engineers*, 398 U.S. 281, 297 (1970)).

This Court further determined that, notwithstanding Plaintiff's arguments, none of the express or implied exceptions to the prohibition against enjoining State Court proceedings in the AIA were applicable in this case. (ECF No. 15, PageID.624-625.)

In light of these determinations, it is clear that Plaintiff's request to enjoin proceedings in the ongoing Circuit Court case should be denied, and therefore Plaintiff's claims for injunctive relief in its Complaint as to Judge Draganchuk should be dismissed.

III. PLAINTIFF'S CLAIMS ARE BARRED BY JUDICIAL IMMUNITY

A. Legal Standards.

It is well-established that judges enjoy judicial immunity from suits arising out of the performance of their judicial functions. *Pierson v. Ray*, 386 U.S. 547, 553-54; 87 S.Ct. 1213; 18 L.Ed.2d 288 (1967); *Mann v. Conlin*, 22 F.3d 100, 103 (6th Cir. 1994) (a judge performing judicial functions is entitled to immunity from a suit seeking monetary damages). The Supreme Court has specifically held that state judges are absolutely immune from liability under 42 U.S.C. §1983. *Briscoe v. LaHue*, 460 U.S. 325, 334; 103 S.Ct. 1108; 75 L.Ed.2d 96 (1983); *Pierson*, 386 U.S. at 554-55; *Brookings v. Clunk*, 389 F.3d 614, 617 (6th Cir. 2004).

The United States Supreme Court has held that judges are absolutely immune from tort liability for acts performed in their judicial capacity. In *Mireles v. Waco*, 502 U.S. 9; 112 S.Ct. 286; 116 L.Ed.2d 9 (1991), the Court held:

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial. “[I]mmunity applies even when the judge is accused of acting maliciously and corruptly.” *Id.*, at 112 S.Ct. 288 (emphasis added).

Case law makes clear that judicial immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for non-judicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Mireles, supra*. Absolute immunity applies for all actions taken in the judicial capacity, which clearly was the case here. See *Ireland v. Tunis*, 113 F.3d 1435, 1440 (6th Cir. 1997).

B. Judge Draganchuk Has Judicial Immunity from Suit.

The Circuit Court's rulings on Kewadin's Motions to Dismiss, and the subsequent Orders entered by Judge Draganchuk, constitute the sole basis for Plaintiff's claims against Judge Draganchuk. All of Plaintiff's allegations against Defendant Judge Draganchuk relate to her judicial role as the presiding judge in a State Court lawsuit against Plaintiff. As a Judge for the Ingham County Circuit Court, Defendant Judge Joyce Draganchuk is absolutely immune from liability. Mich. Comp. Laws §691.1407(5).

In its Complaint, Plaintiff has merely alleged that in her official capacity as Circuit Court Judge, Judge Draganchuk held hearings and entered Orders with which Plaintiff disagreed. The most that is alleged against Judge Draganchuk is that she may have erred in her ruling on the waiver of sovereign immunity and/or failed to rule as to subject matter jurisdiction. Plaintiff does

not allege that Judge Draganchuk acted outside the scope of her judicial authority, or that she otherwise acted judicially in the complete absence of jurisdiction. Rather, Plaintiff alleges that only this Court has jurisdiction as to the Developer's contract claims, even though on March 30, 2021, Judge Jonker dismissed those precise claims in Federal Court for lack of Federal jurisdiction. (ECF No. 14-2, PageID.459-469.)

Even assuming Plaintiff's conclusory allegations of error were true (they are not), Judge Draganchuk is absolutely immune from suit and liability. *Pierson, supra; Mireles, supra*. Her presence in this litigation is unnecessary. Although Plaintiff seeks declaratory and injunctive relief instead of monetary damages, Judge Draganchuk should not be named as a litigant in this Court. It is unseemly that a presiding judge should be made to personally defend her rulings before any Court. She clearly informed Plaintiff during the hearing on the Developers' Motion to Compel Discovery that in the event Kewadin disagreed with her rulings, its avenue for relief was an appeal. (ECF No. 1-8, PageID.161.) Kewadin has since then pursued its remedies by filing a Delayed Application for Leave to Appeal in the Court of Appeals (see Exhibit B), the granting of which at this point in the proceedings is discretionary with the Court of Appeals. See MCR 7.205(E)(2), (G)(1).

Assuming this Court were to determine that the current State Court proceedings should be enjoined, Judge Draganchuk is not a necessary party, just as State Court Judges are not named in bankruptcy cases where an automatic stay is entered to halt litigation against a Debtor. Plaintiff has failed to state a claim against Judge Draganchuk upon which relief can be granted. Therefore, Plaintiff's Complaint against Judge Draganchuk must be dismissed on the grounds of judicial immunity, among other reasons.

IV. THERE IS NO GENUINE ISSUE OF MATERIAL FACT, AND JUDGE DRAGANCHUK IS ENTITLED TO JUDGMENT AS A MATTER OF LAW

The facts in this case are not in dispute. Plaintiff seeks to have this Court issue a declaratory ruling at odds with a decision made by Judge Draganchuk under State law in a case brought before the Ingham County Circuit Court, and otherwise to enjoin the Circuit Court proceedings. This Court has already denied Plaintiff's request for preliminary injunctive relief, finding that Plaintiff lacked a substantial likelihood of success on the merits, based upon the *Rooker-Feldman* doctrine and the Anti-Injunction Act. (ECF No. 15.)

This Court should not interfere with Judge Draganchuk's well-reasoned and legally supported decision as to Kewadin's waiver of sovereign immunity. Nor should this Court prevent the active Circuit Court case from continuing, knowing that all Circuit Court Orders are subject to appeal as a matter of right in the Michigan Court of Appeals. MCR 7.203(A). There is no genuine issue of material fact, and Judge Draganchuk is entitled to judgment as a matter of law.

CONCLUSION AND RELIEF

For all the foregoing reasons, the Honorable Joyce Draganchuk respectfully requests that this Honorable Court grant Judge Draganchuk's Motion to Dismiss and/or for Summary Judgment, dismiss Plaintiff's Complaint, and grant Judge Draganchuk such other and further relief as may be required.

Respectfully submitted,

COHL, STOKER & TOSKEY P.C.

Date: March 2, 2022

/s/ Timothy M. Perrone

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CERTIFICATE OF COMPLIANCE

Timothy M. Perrone (P37940) certifies, under L.Civ.R. 7.2(b)(1), that this Brief contains 3,881 words, inclusive of headings, footnotes, citations and quotations, as counted by Microsoft Word 365, the word processing software used to create this Brief.

Dated: March 2, 2022

By: /s/ Timothy M. Perrone
Timothy M. Perrone (P37940)