UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

v.

PENINSULA TOWNSHIP, Michigan Municipal Corporation,

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

Case No: 1:20-cv-01008

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

PLAINTIFFS' RESPONSE TO PTP'S OBJECTIONS TO MAGISTRATE ORDER AND DECISION ON PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES

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I. INTRODUCTION

PTP insisted on being a defendant in this case. It demanded to take additional discovery. It chose to name its own witnesses beyond those identified by Peninsula Township. It raised 64 affirmative defenses, including 37 new affirmative defenses that Peninsula Township never raised. Admittedly, PTP's discovery started later in the process. But that does not excuse PTP from examination in our adversarial system. If PTP wants to call new, previously unidentified witnesses to submit affidavits at summary judgment or testify at trial, then the Wineries are entitled to depose them to test their credibility. And if PTP wants to raise 37 new affirmative defenses that were never raised in the first two years of this litigation, then the Wineries are entitled to respond and assess the validity of those defenses. PTP can't on one hand demand to be part of this case and on the other complain when the Wineries do what every single litigant does. Magistrate Judge Kent was spot on when he said that discovery goes both ways.

The Wineries served interrogatories and requests for production targeted directly to PTP's affirmative defenses. The Magistrate evaluated the requests, weighed their relevance and proportionality, and issued a nuanced ruling granting some requests and denying others. At every instance, the Magistrate's rulings fell within the range of principled outcomes, and this Court should affirm his order.

II. BACKGROUND

PTP raised 64 affirmative defenses in its First Amended Answer to the Wineries' First Amended Complaint. (ECF No. 291, PageID.10328-10336.) Of those 64 affirmative defenses, 37 are new affirmative defenses that Peninsula Township did not raise. These affirmative defenses include:

> Q. Granting injunctive relief as sought by Plaintiffs would cause immediate irreparable **harm to PTP and its members**, including neighbors who live near existing wineries.

> R. Granting injunctive relief as sought by Plaintiffs would cause substantial harm to the public interest, as well as to **cognizable interests of PTP members** and Township residents and voters.
>
> AAA. Plaintiffs' delay in bringing these claims **prejudiced PTP and its members** because records and witnesses of legislative history regarding the governmental interests advanced by the zoning provisions and the Township's consideration of less restrictive alternatives are no longer available . . . .
>
> BBB. Plaintiffs' delay in bringing these claims **prejudiced PTP and its members** because PTP's members have relied for decades on reasonable investment-backed expectations that the zoning provisions would remain in place . . . .
>
> CCC. Plaintiffs' delay in bringing these claims **prejudiced PTP and its members** . . . .
>
> DDD. Plaintiffs' own actions, . . . have **prejudiced PTP and its members by inducing PTP and its members** to rely on the zoning provisions and invest in accordance with them.
>
> JJJ. Plaintiffs' intended engagement in commercial activity **near the homes and farms of PTP members** without the limitations established by the challenged zoning provisions **would be injurious to PTP and its members**, and therefore would constitute private nuisances.

(*See id.* (emphasis added).) Thus, in a least seven of its affirmative defenses, PTP has placed the interests of its members, and its members' homes and farms, directly at issue.

PTP identified seven witnesses in the care of its counsel—John Jacobs, Grant Parsons, Scott Phillips, Mark Nadolski, John Wunsch, Barbara Wunsch, and Michelle Zebell.[1] (**Exhibit 1: PTP's Initial Disclosures**, at 5)). PTP disclosed that these individuals

> may have information **regarding PTP and PTP member interests**; Township zoning adoption; special use permits; historic land use litigation regarding wineries; township efforts to preserve agriculture including through planning, zoning, purchase of development rights, conservation easements, and land use permits; and harms to residents, visitors, and/or farmers of Peninsula Township who relied upon township zoning, planning and permits that Plaintiffs challenge.

[1] These witnesses apparently are members of PTP, but PTP has not produced a membership list.

(***Id.***) PTP thus raised the interests of its members in at least seven affirmative defenses and then identified seven individuals who could testify as to "PTP and PTP member interests." Peninsula Township did not disclose any of these individuals in its initial disclosures. (**Exhibit 2: Peninsula Township's Initial Disclosures**.)

These are not idle witnesses. Some have submitted three affidavits in this case. (*See* ECF Nos. 41-2 through 41-6; ECF Nos. 237-2; ECF No. 304-1 through 304-5; ECF No. 364-4 through 364-5.) For example, Michelle Zebell wrote in an affidavit that "I am concerned Winery Chateaus would greatly expand the nature and number of events, which in turn would increase the intensity of nonagricultural commercial activities and lead to more visitors with increasing traffic adversely affecting my access to my home, my property value, and my use and enjoyment of my property." (ECF No. 304-5, PageID.10944-10945.) Barbara Wunsch—the only farmer among PTP's members—said she has "concerns that we may receive more complaints about spray drift resulting from our spraying operations and potentially causing claims that the spraying interferes with weddings and other activities at wineries. Such complaints may force us to change our farming operations and/or incur additional costs in our farming operations." (ECF No. 304-4, PageID.10917.) The other affidavits contain similar assertions.

Presumably, PTP intends to have these witnesses submit affidavits at summary judgment and testify at trial. The Wineries pursued discovery into these affirmative defenses and factual assertions by PTP's (supposed) members. The Wineries served requests for production, requests for admission, and interrogatories on PTP. Instead of objecting outright and refusing to participate, PTP answered.

This discovery served its purpose by narrowing the issues. PTP had refused to name its members, and now admits there are only a few. PTP admitted it has no basis to pursue affirmative

defenses like immunity conferred by law. And, most importantly, PTP confirmed it is not complaining about any of the Wineries' previous activities. PTP's evidence at trial will now presumably be speculation by its members about what will happen if the Wineries win. This position is different than the complaints PTP's members made in their intervention affidavits about the Wineries' current activities interfering with their lives.

Now, despite that extensive engagement in discovery, PTP asserts that the Wineries could not take discovery in the first place. Magistrate Judge Kent addressed that objection in two ways:

> I am ruling that they're entitled to discovery. The basis of my ruling is simple fairness. I mean, you can't have a litigation where one side gets discovery and the other doesn't. You're on the other side. You entered of your own volition. You're subject to discovery.
>
> If you want an alternate basis, on the interrogatories at least, by answering, you waived any objection to not responding to discovery. I don't particularly want to go there because I think it's just fair that both sides are treated equally the same.

(ECF No. 378, PageID.14054.) He clearly ruled with respect to depositions as well. "And, you know, so I'm clear, I'm allowing the plaintiffs to take depositions. I know you think they don't have that right and, you know, you obviously have potential remedies on that issue." (*Id.*, PageID.14090.)

The Magistrate ordered the parties to reduce his oral orders to a written order that both parties agreed to. (*Id.*, PageID.14082.) Counsel communicated via email to reduce the oral order to writing and agreed upon the timing of PTP's compliance. (**Exhibit 3: Emails between Ragatzki and Andrews**.) Their agreement was submitted as a proposed order. (ECF No. 380.)

PTP now objects to the order it helped draft.

III. ANALYSIS

When a party objects to a magistrate judge's order regarding a non-dispositive matter, the district judge must "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A); LCivR 72.3(a).

"The 'clearly erroneous' standard applies to the magistrate judge's findings of fact." *Diorio v. TMI Hosp.*, 2017 WL 1399869, at *1 (N.D. Ohio Apr. 19, 2017). "A finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *JGR, Inc. v. Thomasville Furniture Indus., Inc.*, 2006 WL 456479, at *1 (N.D. Ohio Feb. 24, 2006) (quoting *Heights Cmty. Cong. v. Hilltop Realty, Inc.*, 774 F.2d 135, 140 (6th Cir. 1985)). "[T]he test is whether there is evidence in the record to support the lower court's finding, and whether its construction of that evidence is a reasonable one." *Heights Cmty*, 774 F.2d at 140-41 (citing *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985)). "This standard does not empower a reviewing court to reverse the Magistrate Judge's finding because it would have decided the matter differently." *Kovats v. State of Michigan*, 2008 WL 2095423, *1 (W.D. Mich. May 16, 2008) (citing *Anderson*, 470 U.S. at 573).

A "magistrate judge's legal conclusions are reviewed under the 'contrary to law' standard." *Diorio*, 2017 WL 1399869, at *1. This is the "same standard the Sixth Circuit uses to review district court evidentiary rulings on questions of law," which is an "abuse of discretion" standard. *JGR, Inc*., 2006 WL 456479, at *1. "Although legal authority may support an objection, the critical inquiry is whether there is legal authority that supports the magistrate's conclusion, in which case there is no abuse of discretion." *Diorio*, 2017 WL 1399869, at *2 (citation omitted). "That reasonable minds may differ on the wisdom of a legal conclusion does not mean it is clearly erroneous or contrary to law." *Id*.

"A magistrate judge's order on non-dispositive matters should draw great deference, as the clearly erroneous and contrary to law standards of review present a sizeable burden for a district court to overcome." *EMW Women's Surgical Ctr. v. Bevin*, 2018 WL 10229473, at *2, (W.D. Ky. Sept. 28, 2018) (citation omitted, cleaned up). Deference "is especially appropriate where the

magistrate judge has managed a . . . case from the outset and developed a thorough knowledge of the proceedings." *Hyland v. Homeservices of Am., Inc.*, 2012 WL 1680109, at *3 (W.D. Ky. May 14, 2012) (cleaned up).

PTP may not simply recite arguments it already made. "A general objection, or one that merely restates the arguments previously presented is not sufficient to alert the court to alleged errors on the part of the magistrate judge." *VanDiver v. Martin*, 304 F. Supp. 2d 934, 937 (E.D. Mich. 2004). "An 'objection' that does nothing more than state a disagreement with a magistrate's suggested resolution, or simply summarizes what has been presented before, is not an 'objection' as that term is used in this context." *Id.*

A. The Wineries may take discovery from PTP.

1. This Court's order allows the Wineries to take discovery.

PTP contends that because the Second Amended Case Management Order was issued related to PTP's discovery, the Wineries may not take discovery of PTP. However, that Order does not say that the Wineries cannot engage in reciprocal discovery of PTP. In its Second Order Setting Rule 16 Scheduling Conference, this Court stated that "Defendant Peninsula Township is not permitted to pursue discovery." (ECF No. 320, PageID.11893, fn. 3.) This Court did not similarly restrict the Wineries. Thus, the Wineries have engaged in discovery subject to the limitations placed on them by the Court's Amended Case Management Order which allowed the Wineries to serve 25 interrogatories. (*See* ECF No. 72, PageID.3183.) Ironically, PTP took the position in the parties' Joint Status Report that the Wineries could take discovery but would be "limited to 25 interrogatories." (*See* ECF No. 323, PageID.11903.)

Magistrate Judge Kent correctly ruled that discovery goes both ways. (ECF No. 378, PageID.14054.) PTP does not show how Magistrate Judge Kent's ruling was clearly erroneous or contrary to law. PTP does not raise any new argument in its objections that it did not raise before

Magistrate Judge Kent. (*Compare* ECF No. 364, PageID.13304 (arguing Plaintiffs cannot take discovery) with ECF No. 388, PageID.14186-14188 (same).) Instead, PTP merely disagrees with his ruling. That is not enough for this Court to overrule the order. *See VanDiver*, 304 F. Supp. 2d at 937. Nor should this Court, because our adversarial system is premised on the idea that both sides get discovery.

2. PTP produced documents and responded to the Wineries interrogatories, so it waived any objection it may have had.

Regardless, PTP waived its objection to the Wineries taking discovery. "Whenever an answer accompanies an objection, the objection is deemed waived and the answer, if responsive, stands." *Meese v. Eaton Mfg. Co.*, 35 F.R.D. 162, 166 (N.D. Ohio 1964). Magistrate Judge Kent recognized this waiver as an alternative basis for his ruling. (ECF No. 378, PageID.14054.) PTP makes no argument about waiver, so it has not shown how that ruling is clearly erroneous or contrary to law.

3. PTP must produce newly identified witnesses for depositions.

Because the Wineries can take discovery, they may depose PTP's witnesses. *See, e.g.*, *Moore v. Erickson*, No. 2:20-CV-00219, 2022 WL 17184308, at *4 (W.D. Mich. Oct. 21, 2022) ("Moore knows that discovery is a two-way street, knows he must participate, and knows that depositions are part of discovery.").

Counsel for the Wineries asked to block off the week of July 17 for depositions of PTP's members. (ECF No. 388-2, PageID.14268.) PTP had not—and still has not—disclosed its members, so counsel for the Wineries was making an educated guess that PTP had 11 members.

During a meet and confer on June 21, 2023 regarding a separate issue, counsel discussed the Wineries' request to depose PTP's witnesses. PTP's counsel proposed that the Wineries depose only those members identified in PTP's initial disclosures. Instead of waiting for an

answer, PTP filed these objections. If PTP had waited, counsel for the Wineries would have told them they intend to only depose the PTP members identified in the initial disclosures.

Alternatively, the Wineries' counsel suggested that PTP could agree it would not submit affidavits from those members to be used at summary judgment and that it would not call those members as witnesses during trial. Understandably, PTP's counsel was not willing to give up the right to call its own witnesses. PTP's refusal to agree signifies that PTP does intend to call witnesses, which means it is fundamentally unfair to the Wineries if PTP is allowed to call witnesses that have never been examined.

B. While the Wineries are seeking discovery into the truth or falsity of PTP's representations to the Court at the intervention stage, the same proofs go to PTP's own affirmative defenses.

PTP objects to the order addressing RFP's 22, 24, and 25—which seek PTP's members property interests in Peninsula Township and the trucking and spray records of those members who also are farmers— because it claims that discovery was limited to PTP's intervention interests. PTP again makes no effort to show why Magistrate Judge Kent's ruling was incorrect. Regardless, he got it right for two reasons.

First, these requests go directly to PTP's affirmative defenses. Affirmative defense Q contends that "Granting injunctive relief as sought by Plaintiffs would cause immediate irreparable **harm to PTP and its members**, including neighbors who live near existing wineries." It's fair for the Wineries to ask where PTP's members live. RFP 22 does that precisely by asking PTP to produce evidence that its members hold property interests in Peninsula Township. Similarly, affirmative defense JJJ states "Plaintiffs' intended engagement in commercial activity **near the homes and farms of PTP members** without the limitations established by the challenged zoning provisions **would be injurious to PTP and its members**, and therefore would constitute private nuisances." The Wineries are entitled to question why PTP's sole farmer member—Barbara

Wunsch—believes that the Wineries' intended engagement would harm her. She previously submitted an affidavit suggesting her trucking and spraying would be affected. (ECF No. 304-4, PageID.10917.) RFPs 24 and 25 go directly to affirmative defense JJJ. The Wineries argued as much during their initial briefing and at the June 8 hearing. (ECF No. 347, PageID.12571; ECF No. 378, PageID.14080-14089.) Magistrate Judge Kent correctly ordered PTP to respond, and PTP makes zero effort to argue that he was wrong or that this discovery is not relevant to PTP's affirmative defenses.

Second, Magistrate Judge Kent did not rely on the intervention argument when making his ruling, so PTP's objections on that argument are irrelevant. (ECF No. 378, PageID.14087 ("Which affirmative defenses are you tying these to?") It's unclear why PTP is objecting to something that did not form the basis of his ruling. Regardless, intervention is still very much at issue. "When a party that has been granted intervention as of right no longer meets the requirements for such intervention, a court properly dismisses that party from the case." *Coalition to Defend Affirmative Action v. Regents of University of Mich.*, 539 F. Supp. 2d 960 (E.D. Mich. 2008) (reversed on other grounds) (citation omitted). Even where a party is granted intervention, "it would have gained no absolute entitlement to continue as a party until termination of the suit." *Morgan v McDonough*, 726 F.2d 11, 14 (1st Cir. 1984). The Wineries may file a motion to revoke PTP's intervenor status. Discovery into PTP's interests is relevant to see if they are true and whether they have changed over time.

C. The order to search again was reasonable.

1. The order to search for text messages should not be burdensome because PTP only has 11 members.

PTP argues the Magistrate clearly erred "by rewriting Plaintiffs' RFPs and ordering PTP members to conduct an overbroad search for texts with marginal if any relevance." (ECF No. 388,

PageID.14192.) The Wineries originally asked for communications, including text messages, between PTP and various groups of people regarding "the Wineries" and "this Lawsuit." PTP contends that the Magistrate "rewrote" those RFPs in his order. The Magistrate simply ordered PTP to produce text messages regarding claims or defenses.

> MR. INFANTE: I want communications regarding the claims and defenses in this case. They have 67 affirmative defenses, and we plan to start knocking those out.
>
> THE COURT: Okay. Stop right there. I'm ordering that. So search for – if there are discussion – text discussions with your members by or involving your members on your members' devices having to do with claims or defenses including all of the affirmative defenses, produce them. If there aren't any, affidavit from the president.

(ECF No. 378, PageID.14079.) It was not clearly erroneous for the Magistrate to order PTP to produce evidence about the claims and defenses. They relate to "this Lawsuit" and fall within the scope of discovery allowed by the Federal Rules. *See* Fed. R. Civ. P. 26(b)(1). PTP apparently only has 11 members, so the search should not take long.

2. PTP never searched for documents responsive to RFP 11, so Magistrate Judge Kent's order compelling the search was reasonable.

PTP argues that the Magistrate's order to search for documents responsive to RFP 11 was in error because the Wineries may not conduct discovery at all. For the same reasons outlined above, that was not error.

Additionally, PTP never searched for documents responsive to RFP 11, which asks for communications between PTP and Township attorneys. (*See* ECF No. 364-3 (outlining scope of search for PTP members).) PTP contends that documents would have been captured in the search for RFPs 10 (communications with Township officials) and 12 (communications with third parties). Those requests, on their face, are different than RFP 11, so it was not clearly erroneous or contrary to law to order PTP to perform a search in the first instance.

3. PTP never searched for responsive documents to RFP 15.

PTP contends the Magistrate erred in ordering it to search for documents responsive to RFP 15, which asks for communications between PTP and members of the public regarding PTP's contention that the Wineries' intended land uses would constitute nuisances. PTP makes a general relevance argument and says that is has produced press releases, newsletters, etc. (ECF No. 388, PageID.14193.) The Wineries asked for communications with anyone from the public, which PTP did not produce.

The Wineries seek PTP's concerns about the winery activities now or concerns about what might happen in the future. In its affirmative defenses Q, R, and JJJ, PTP asks this Court to weigh its members' concerns of future activities when it decides whether the ordinances are preempted or unconstitutional. While the Wineries believe this information is irrelevant, those affirmative defenses have not been dismissed. If PTP wishes to avoid discovery into its members, it can stipulate that it will not allege in this case that the activities the wineries may engage in will harm PTP members. Until then, the Magistrate's order compelling another search was not in error.

D. PTP must produce a privilege log.

PTP invoked privileged in response to Requests to Produce 5-15 and 27-32. Magistrate Judge Kent ordered PTP to produce a privilege log as required by Federal Rule of Civil Procedure 26(b)(5). Magistrate Judge Kent did not clearly err by following Rule 26(b)(5).

1. The time period for the log is reasonable.

The Magistrate ordered PTP to log communications between its attorneys between the time this lawsuit was filed and when PTP intervened. (ECF No. 383, PageID.14127.) While PTP may disagree with the time limitation imposed, it is well within the range of reasonable outcomes and is not clearly erroneous. PTP's objections are nothing more than a summary of the arguments it made previously. *See VanDiver*, 304 F. Supp. 2d at 937. This log may also demonstrate the degree

to which PTP coordinated efforts with Peninsula Township.

2. Communications between PTP's attorneys and the Township's attorneys cannot be privileged; if they were, PTP had no basis to intervene and must be dismissed as a defendant.

To intervene as of right under Rule 24, PTP had to show that "the parties already before the court cannot adequately protect the proposed intervenor's interest." *Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 779 (6th Cir. 2007). To do that, PTP argued its interests diverged from Peninsula Township's.

- "PTP's interests overlap but are not identical to the Township's." (ECF No. 41, PageID.1981.)
- "While there may be overlapping commonality, PTP's interests in this case are sufficiently adverse to the Township's." (6th Cir. Case No. 21-1744, Doc. 20, Page 53.)
- "Because their interests are substantially different, the Township cannot adequately represent PTP's interests." (*Id.* at 54.)
- "These differences between the Township's and PTP's interests and risk exposure impact their respective litigation priorities and strategies." (6th Cir. Case No. 21-1744, Doc. 23, Page 22.)

The Sixth Circuit relied on these representations. "Protect the Peninsula argues that there is 'ample basis' to believe that it and the Township are animated by different, and possibly conflicting, concerns." *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula, Michigan*, 41 F.4th 767, 774 (6th Cir. 2022). That was the basis for intervention, and PTP would not be here if its interests were identical to the Township's.

But if those representations were true, how could PTP and Peninsula Township enter into a joint defense agreement? To enter a joint defense agreement, "[t]he critical inquiry is whether a 'sufficient commonality of interests' exists between the parties such that the privilege may be asserted." *Younger Mfg. Co. v. Kaenon, Inc.*, 2008 WL 11338146, at *12 (C.D. Cal. Feb. 8, 2008) (citation omitted). "The interest must be identical, not similar, and be legal, not solely

commercial." *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 152 F.R.D. 132, 140 (N.D. Ill. 1993).

PTP's counsel admitted that the joint defense agreement was signed "[w]ell before [PTP] intervened in this case." (ECF No. 378, PageID.14072.) That means when PTP made those representations to this Court and the Sixth Circuit, it already believed its interests were identical to Peninsula Township's. Both intervention and joint defense cannot coexist. PTP can either assert that its interests differ from the Township and remain in this case or admit that its interests are identical and be dismissed.[2]

The Wineries intend to challenge the privilege designations on these communications, so a categorical privilege log is not helpful. The Magistrate recognized that exact possibility: "I'm recognizing the joint defense privilege and saying that those documents do not have to be produced. I supposed we could log them. . . . Then we know what they are." (ECF No. 378, PageID.14073.)

PTP's only remaining argument in support of a categorical privilege log is that it would be unduly burdensome to log each email. Yet PTP's counsel admitted there is no basis for that claim:

MS. ANDREWS: We believe that would be excessively burdensome considering –

THE COURT: How many could there be?

MS ANDREWS: Fair question. I don't know. That's a fair question.

THE COURT: Well, how can you argue it's excessively burdensome, then?

(ECF No. 378, PageID.14073.)

Presumably, PTP and the Township are trying to hide the degree of collaboration between

[2] The Wineries have requested a copy of the joint defense agreement, but PTP has neither provided it in discovery nor attached it to its objections to confirm its existence. *See In re Grand Jury Proceedings*, 156 F.3d 1038, 1043 (10th Cir. 1998) (rejecting joint-defense privilege when intervenor "failed to produce any evidence, express or implied, of a joint-defense agreement").

them, which would be evidence that PTP was adequately represented, and possibly assisting Peninsula Township in its defense of this case, long before the Sixth Circuit allowed it to intervene. If PTP is alleging such a huge burden, then this cuts against PTP's claim that the Township was off on its own, especially at summary judgment. The only way to know is for PTP to fully log these communications. The Magistrate did not clearly err by following Rule 26(b)(5).

IV. CONCLUSION

PTP's objections are nothing more than a disagreement with how the Magistrate ruled on the motion to compel. The Wineries request that this Court overrule PTP's objections.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

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Dated: June 28, 2023

CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(B)(I)

1. This Brief complies with the type-volume limitation of L. Civ. R. 7.3(b)(i) because this Brief contains 4,292 words.

/s/ Joseph M. Infante
Joseph M. Infante

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2023, I filed the foregoing via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
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