

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

PAUL GESSING, *et al.*,

Plaintiffs,

v.

Case No. D-202-CV-2023-00316

STEPHANIE YARA, *et al.*,

Defendants.

DEFENDANTS YARA AND PIERCE'S MOTION TO DISMISS UNDER RULE 1-012(B)(6) NMRA

Defendants Yara and Pierce (collectively "City Defendants"), who are named as Defendants in their official capacities, move, through their undersigned counsel, to dismiss the Complaint with prejudice pursuant to Rule 1-012(B)(6) NMRA ("Rule 1-012(B)(6)"). See Rule 1-012(B)(6) NMRA (providing that any motion asserting a defense under subparts 1-7 of this Rule "shall be made before pleading if a further pleading is permitted.").

Plaintiffs have brought this action to challenge a contract that the City of Albuquerque (the "City") Family and Community Services Department ("FCSD") awarded to a private non-profit organization for the provision of health-related services at the organization's Albuquerque offices. Specifically, Plaintiffs seek a declaratory judgment that a social services agreement between FCSD and Planned Parenthood of the Rocky Mountains, Inc. in New Mexico ("PPRM") for an Albuquerque Reproductive Health Access Project (the "Health Access Project") violates the State's Anti-Donation Clause. See Complaint at ¶¶ 3, 5, 13, and at ¶ 23 (describing funding agreement between FCSD and PPRM and attaching a full copy of the Agreement as Exh. B to Complaint), Exh. B to Complaint, at 18, App'x 2 to Scope of Services under Agreement (identifying Project Title), at 20 (identifying Applicant for funding as PPRM in NM.).

Plaintiffs allege that it is clear from the circumstances surrounding approval of funding to PPRM for the Health Access Project Agreement (the "PPRM Agreement"), that the PPRM Agreement is really just an earmark of public funds for a private organization. See Complaint at ¶¶ 18-24, 26, 29. Plaintiffs allege further that the PPRM Agreement is a clear sham on its face because it lacks specificity about what services PPRM is to provide to the City, and does not set specific performance targets, measurement metrics and accountability measures. *Id.* at ¶¶ 41-44. Plaintiffs also

allege that the PPRM Agreement cannot be read to satisfy the sick and indigent exception to the Anti-Donation clause, as that exception has been construed in several advisory letters by the State's Attorney General ("A.G"). See Complaint at ¶¶ 48-54.

Briefly stated, these allegations are belied by the plain language of the PPRM Agreement, which the Court can review for purposes of resolving this Motion because Plaintiffs attached a full copy of the PPRM Agreement to the Complaint. Additionally, because Plaintiffs cannot correct this fundamental defect through an amendatory pleading, the Court may properly dismiss Plaintiffs' Anti-Donation claim with prejudice. See, e.g., *Amica Mut. Ins. Co. v. McRostie*, 2006-NMCA-046, ¶ 25, 139 N.M. 486 ("We have also held that under Rule 1-015(A) Plaintiff should have been permitted to amend unless, of course, amendment would be futile.").

I. PROPERLY PLEADED FACTS TO BE ACCEPTED AS TRUE

At its May 16, 2022 Meeting, the City Council took action on the City's 2023 budget and approved Floor Amendment 13 to redirect \$250,000 from affordable housing to FCSD for a project with "Planned Parenthood NM." Complaint at ¶¶ 18-20. The day after the Meeting, City Councilwoman Tammy Fiebelkorn issued a press release on the Floor Amendment, noting that she sponsored the Budget Amendment and was proud to do so, affirming her respect for women's reproductive freedoms (the "Fiebelkorn Press Release"). *Id.* at ¶ 21, and Ex. A to Complaint. The Fiebelkorn Press Release also stated the funding would support Albuquerque's local PPRM clinic to "ensure that all Albuquerque women have access to family planning, abortion and other reproductive health services." *Complaint* at ¶ 22, and Ex. A to Complaint. Sometime after the City Council approved Floor Amendment 13 to the City Budget, FCSD entered into a healthcare services agreement with PPRM that would run from July 1, 2022 through June 30, 2023. Complaint at ¶ 23., and Ex. B to Complaint. The PPRM Agreement was formally executed by the Parties on August 5, 2022. *Id.*

At a subsequent City Council Meeting on August 15, 2022, a motion was made to withdraw the FCSD funding that had been approved for PPRM under Floor Amendment 13 and reallocate it for Barrett House, a local homeless shelter. *Id.* at ¶ 26. Council member Fiebelkorn defended the City Council's decision to approve funding for the PPRM Agreement, stating that the reason she sponsored the Floor Amendment 13 to the City's 2023 Budget was that she

was pro-choice and a supporter of Planned Parenthood. *Id.* at ¶ 26. The motion to withdraw the FCSD funding approved under Floor Amendment 13 was amended to provide FCSD with \$100,000 in additional funding for the homeless shelter and another non-profit organization, and retain the \$250,000 approved for the PPRM Health Access Project. *Id.* at ¶ 28. PPRM urged visitors on its website to thank the City Council for appropriating \$250,000 of the City's budget for PPRM to provide reproductive healthcare services for the City's patients. *Id.* at ¶ 29.

Exhibit A to the PPRM Agreement, which is titled Scope of Services, identifies three "Outputs" or that PPRM is expected to deliver to "New Mexico residents" for the \$250,000 from the City, i.e., three deliverables. See Exh. B to Complaint at 16-17, which represents Exh. A to the Agreement between FCSD and PPRM, FY2023 Scope of Services, § B Outputs 1-3; see *also* Complaint at ¶ 55 (noting the services are restricted to New Mexico residents and does not specify patients or participants be City residents). The first such Output requires that PPRM: provide wellness visits, breast exams, telehealth visits, health center visits and any follow up treatment needed, cancer screening and prevention services, provision of birth control and testing for sexually transmitted diseases ("STD(s)"). See Exh. B to Complaint at 16-17, FY2023 Scope of Services, § B Output 1; see *also* Complaint at ¶ 44. The second Output requires that PPRM provide early identification and prevention of cancer through cancer screening tests, HPV vaccinations, breast exams and other preventative and cancer screening services and also report on the number of cancer screening services provided and the number of referrals made to patients who received a positive result on a screening test. See Exh. B to Complaint at 16-17, FY2023 Scope of Services, § B Output 2; see *also* Complaint at ¶ 45. The third Output requires that PPRM provide patient education on healthy choices in sexuality and parenting to 8000 participants in the Project. See Exh. B to Complaint at 16-17, FY2023 Scope of Services, § B Output 3; see *also* Complaint at ¶ 46. Exhibit A to the PPRM Agreement also provides outcomes or matrices by which each such deliverable will be measured. See Exh. B to Complaint at 16-17, § Outcomes.

Exhibit A to the PPRM Agreement establishes reporting requirements for PPRM, which prescribe that PPRM make efforts to bill Medicaid for eligible services provided under the Agreement to maximize use of the City's funding; report outcome rates amount different demographic groups and insurance groups, submit Quarterly Reports, and comply with state and federal requirements for telehealth services. *Id.* at 17, § C.

The PPRM Agreement clarifies that the maximum compensation PPRM can receive for the performance of these services under the City Budget is \$250,000. Exh. B at 2, § 4(A) Compensation and Payment. The PPRM Agreement also states that the City will pay PPRM on a “cost reimbursement basis” upon receipt for requisition of payment that complies with the City’s budgetary and fiscal guidelines. Further, the PPRM Agreement clarifies that only those costs allowable under the Agreement and Exhibit B to the Agreement shall be reimbursed, and all such requisitions for payment must be supported by documentation of services in PPRM’s files. *Id.* at 2, § B(1)-(2) Method of Payment. Exhibit B to the PPRM Agreement consists of several Program Budget Expense Forms for the Health Access Project. Exh. B to Complaint at 18-25. Pursuant to the agreed-upon budget for the Health Access Project, FCSD funding will be used to cover staff salaries and benefits for three nurses and three health center assistants at PPRM’s Albuquerque health centers. Complaint at ¶ 50, Exh. B at 22, Program Budget Detail. None of the funding is budgeted to reimburse PPRM for the costs of materials such as STD test kits, or lab work fee or birth control products. Complaint at ¶ 51.

II. STANDARD OF REVIEW UNDER RULE 1-012(B)(6)

A motion to dismiss for failure to state a claim, or what is known as a Rule 1-012(B)(6) Motion, tests the legal sufficiency of the Complaint. *See Johnson v. Francke*, 1987-NMCA-029, ¶ 5, 105 N.M. 564 (“a dismissal under the rule [1-012(B)(6)] is a legal, not an evidentiary, determination”); *C & H Const. & Paving, Inc. v. Found. Reserve Ins. Co.*, 1973-NMSC-076, ¶ 9, 85 N.M. 374 (discussing standards of review under the Rule 1-012(B)(6) as derived from its federal analog, Rule 12(b)(6), and noting: “The motion to dismiss under Rule 12(b)(6) performs substantially the same function as the old common law general demurrer. A motion to dismiss is the usual and proper method of testing the legal sufficiency of the complaint.”) (quoting 2A Moore’s Federal Practice, 2d Ed. 1972, s 12.08 at 2265). “Because a motion to dismiss addresses only the legal sufficiency of a complaint, both the trial and reviewing courts assume the veracity of all properly pleaded allegations in the complaint.” *Sanders v. Estate of Sanders*, 1996-NMCA-102, ¶ 6, 122 N.M. 468. But conclusions of law or unwarranted deductions of fact are not accepted as true. *C & H Const. & Paving*, 1973-NMSC-076, ¶ 9.

In reviewing a motion to dismiss, a court “must examine the complaint in its entirety”, which includes and “other

documents incorporated into the complaint by reference”. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). When the plaintiff’s claims are dependent on other documents or the plaintiff attaches such documents as exhibits to the complaint, the court can review them in assessing a Rule 1-012 (B)(6) Motion. See *Ruegsegger v. W. NM Univ. Bd. of Regents*, 2007-NMCA-030, ¶ 41, 141 N.M. 306 (noting that plaintiff’s breach of contract claims “are dependent on the terms of the Scholarship Agreements and the Student Handbook. Therefore, these documents effectively merge into the pleadings and can be reviewed in deciding a motion to dismiss.”); *Envtl. Control, Inc. v. City of Santa Fe, et al.*, 2002–NMCA–003, ¶¶ 5–7, 131 N.M. 450, 38 P.3d 891 (reviewing the dismissal of the plaintiff’s complaint for breach of contract and breach of an implied covenant of good faith and fair dealing based upon a prior settlement agreement between the parties which was attached to the complaint as an exhibit).

III. ARGUMENTS FOR DISMISSAL UNDER RULE 1-012(B)(6)

A. PLAINTIFFS CITE NO AUTHORITY IN SUPPORT OF THE PROPOSITION THAT A CITY COUNCIL MEMBER’S PUBLIC STATEMENTS ABOUT A BUDGETARY AMENDMENT ARE DETERMINATIVE OF WHETHER A GOVERNMENTAL FUNDING AGREEMENT VIOLATES THE ANTI-DONATION CLAUSE.

Plaintiffs include a number of allegations in the Complaint about how City Councilwoman Fiebelkorn spoke out publicly in support of providing funding to PPRM in the City’s 2023 Budget. See Relevant Facts section of this Motion at ¶¶ 1-2. Plaintiffs assert that Fiebelkorn was instrumental in sponsoring Floor Amendment 13 to the City’s 2023 Budget, which approved the funding for PPRM services. They also note that Fiebelkorn publicly proclaimed she was motivated to sponsor this Amendment in order to show her support for PPRM’s mission. Plaintiffs argue these are the sort of circumstances that courts need to consider in determining whether a particular funding agreement takes on the character of a donation “in substance and effect.” Complaint at ¶ 37 (quoting *Moses v. Ruskowski*, 2019-NMSC-003, ¶ 50, [458 P.3d 406] and at ¶ 40) (“[T]he expenditures in this case commit one of the ills the anti-donation clause was intended to prevent: it is an earmark by a public official, who is directing public funds to her private charitable goals.”).

Notably, Plaintiffs do not cite any authority that holds public statements by a single member of a governing body bind that body for purposes of establishing a legislative appropriation to a private nonprofit was intended as a donation. Thus, as a prefatory matter, this argument is not supported as it should be by citations to authority. Fiebelkorn may have wanted to support PPRM in some manner, but that does not mean the *City Council* as a legislative body

approved funding PPRM healthcare services in the FY 2023 Budget so as to gift PPRM. The City Defendants submit that, in order to evaluate whether the PPRM Agreement, which is the vehicle that conveys public funds to PPRM, for its substance and effect, the court should look to the terms of that Agreement.

B. THE PPRM AGREEMENT HAS DELIVERABLES, AND MEANS FOR ASSESSING PERFORMANCE AND ACCOUNTABILITY UNDER THE BUDGET; IT IS NOT A SHAM OR A DONATION.

Plaintiffs' claims that the PPRM Agreement is a sham and is lacking in consideration cannot be sustained based on an actual reading of the Agreement, which Plaintiffs attached to and incorporated by reference in the Complaint. The relevant facts on the terms of the Agreement are described in section II of this Motion. Those facts are derived from the Agreement itself and are to be accepted as true for purposes of this Motion.

In contrast, the allegations of the Complaint that characterize the PPRM Agreement in conclusory legal terms or that represent unwarranted deductions of fact are not to be accepted as true. See *C & H Const. & Paving, 1973-NMSC-076*, ¶ 9 (conclusions of law or unwarranted deductions of fact are not accepted as true in reviewing a Rule 1-012(B)(6) Motion). Plaintiffs draw a number of unwarranted deductions of fact about how PPRM may satisfy the deliverables expected under the PPRM Agreement. For example, Plaintiffs allege, with respect to Output 1 of the Scope of Services Exhibit to the PPRM Agreement, that PPRM “could provide a single wellness visit, report on it and satisfy its obligation”, implying that it would be eligible to receive the full funding approved by the City for the Health Access Project. See Complaint at 44. Similarly, Plaintiffs allege that PPRM could satisfy the second Output under the Scope of Services Exhibit to the PPRM Agreement “by producing some sort of report, which could be as simple as reporting demographic data that it already collects”. *Id.* at ¶ 45. Additionally, Plaintiffs assert that the third Output of the Scope of Services Exhibit to the PPRM Agreement does not specify the means by which PPRM is expected to satisfy the patient education obligation. *Id.* at ¶ 46. Plaintiffs assert this obligation could be satisfied if PPRM logs 8000 visitors in traffic to its existing website. *Id.* at ¶ 47. But the actual language of the PPRM Agreement shows these assertions are “unwarranted deductions of fact”.

Obviously, if PPRM only provided services to a single patient, it would not be able to obtain reimbursement for \$250,000 in services. See Relevant Facts, citing Exh. B to Complaint at 2, § 4(A) Compensation and Payment (the

PPRM Agreement also states that the City will pay PPRM on a “cost reimbursement basis”) and citing Exh. B at *Id.* at 2, § B(1)-(2) Method of Payment (all requisitions for payment must be supported by documentation of services in PPRM’s files). Likewise, the healthcare access data that PPRM is to report under Output 2 is data for actual patients who receive services under the PPRM Agreement. See Exh. B to Complaint at 16-17§ B (discussing Output 2 and the Outcome by which this deliverable is to be measured: “The Contractor will track progress. . . by disaggregating data to assess for any difference in *patient access, experience or clinical outcomes* across demographic groups. . .”) (emphasis added). Thus, PPRM would not be able to simply transmit demographic data it already has on file for services provided *before* the Agreement took effect. The data to be tracked is data on actual New Mexico patients presenting for and receiving services under the FY 2023 Health Access Project. And, PPRM could not satisfy the patient education deliverable by simply tracking visits to a website by members of the public. It will have to provide the education to *patients* receiving services under the PPRM Agreement and report on strategies, outputs and outcomes. See Exh. B to Complaint at 17 (discussing Output 3: “The agency will provide *patient* education to 8000 participants regarding healthy choices on sexuality and parenting. The agency will report numbers served, monitor strategies, outputs and outcomes.”) (emphasis added).

In short, there are the actual written requirements on deliverables and performance measures under the PPRM Agreement and then there are Plaintiffs’ allegations about what the Agreement requires. The latter are not well pled given the document at issue is attached to the Complaint.

Plaintiffs argue that there are numerous A.G. opinions that “insist on the equivalency in value between the sums given and the services rendered.” Complaint at ¶ 41 (citing two cases: 2002 N.M. A.G. LEXIS 2, * 10; 2019 N.M. A.G. LEXIS 9, *4). The 2002 A.G. Advisory Letter that Plaintiffs cite in support of this proposition considered the question of whether the City of Rio Rancho could enter into an agreement with a private property that provided the City would pay the developer out of gross receipts tax proceeds in exchange for the developer’s services in building public infrastructure. 2002 N.M. A.G. LEXIS *9. The A.G. concluded this agreement would not violate the Anti-Donation Clause for two reasons: 1) the Resolution supporting the Agreement provided the developer would dedicate and convey the infrastructure improvements to the City of Rio Rancho once they were completed; and 2) “Rio Rancho is not even

conferring the monetary benefit until after the developer has performed these services.” *Id.* at *9. Thus, one of the aspects of the Agreement in the City of Rio Rancho case is akin to the PPRM Agreement in that the City is not even “conferring the monetary benefit” until after PPRM has rendered services. As noted in the Relevant Facts, the PPRM Agreement provides for cost reimbursement for services rendered; it does not confer any monetary benefit in advance.

The 2019 A.G. Advisory Letter that Plaintiffs cite in support of this proposition on how there must be “equivalency in value between the sums given and the services rendered” does not establish there is no such equivalency here. The 2019 A.G. Advisory Letter considered the question of whether a nonprofit public library could enter into a services contract with a local government whereby the library’s provision of certain services could serve as adequate consideration for government funding. 2019 N.M. A.G. LEXIS 9, *4. The A.G. noted in this Letter that in determining whether the Anti-Donation “[c]onsideration, or value in return, is perhaps the definitive factor in determining whether a violation of the Anti -donation Clause has occurred. *Id.* at *4 (citing *State ex rel. Office of State Eng’r v. Lewis*, 2007-NMCA-008, ¶ 49). The A.G. concluded a nonprofit public library could receive government funding without violating the Anti-Donation Clause “so long as the funding governmental entity receives adequate compensation in exchange.” *Id.* at *4. The A.G. did not attempt to draw a bright line as to what constitutes “adequate” consideration. However, the A.G. did cite with favor to a 2015 A.G. Advisory Letter that found a Colfax County Medical Center could pay a private physician a longevity bonus where the physician simply agreed to remain in the community and provide services. *Id.* at 4 (citing N.M. A.G. Advisory Letter of June 22, 2015 to Shawn Lerch, Miners’ Colfax Med. Center). By that yardstick, the PPRM Agreement provides adequate consideration for receipt of FCSD contract funds as PPRM is agreeing to provide specific healthcare services to New Mexico residents through its Albuquerque health centers. Thus, neither of these Advisory Letters stand for the proposition that the PPRM Agreement is not supported by adequate consideration. To the contrary, they appear to support the opposite conclusion.

C. THE PPRM AGREEMENT WOULD FALL WITHIN THE SICK AND INDIGENT EXCEPTION TO THE ANTI-DONATION CLAUSE.

As a prefatory matter, the Court can dispense with Plaintiffs’ first argument on the application of the sick and indigent exception (the “SI Exception”). Plaintiffs’ first argument is that the SI Exception does not apply because two of

the deliverables specified under the PPRM Agreement (Outputs 2 and 3) do not provide direct care for the sick and indigent. Complaint at ¶ 48. Plaintiffs do not cite any support for the proposition that only funding agreements that “provide direct care for the sick and indigent” meet the SI Exception. See *id.* Outputs 1 and 2 in the Scope of Services Exhibit to the PPRM Agreement are clearly tied to prevention of various sicknesses (cancer screening, HPV vaccinations, breast exams, diagnosis and treatment of STDs and other preventative and screening services). Preventative healthcare and screening services fall under the scope of SI Exception as it has been interpreted by the A.G. See 1957-58 Op. Att’y Gen. No. 58-135 (noting that it is not necessary that a person be sick when aid is given, and thus, the Department of Public Health may provide drugs for preventing the development or reestablishment of a disease in a person presumed well at the time the drug is administered because such treatment serves a public purpose and is not a donation or gift even though the recipients may be incidentally benefited.).

Plaintiffs argue further that the SI Exception does justify payments which directly benefit physicians and only incidentally benefit the poor and sick. Complaint at ¶ 49 (citing 1989 N.M. LEXIS A.G. 6, *2 n.1). Obviously, the Scope of Services to be performed under the PPRM Agreement does not only *incidentally* benefit the poor and sick. The cited A.G. Advisory Letter does not construe the SI Exception as barring governmental funding agreements that cover cost of salaries and benefits for healthcare providers offering cancer screenings, diagnosis and treatment of STDs, wellness visits, HPV vaccinations and the like. See 1989 N.M. A.G. LEXIS 6, *2 (“A county cannot justify paying relocation costs for physicians solely on the grounds that the payments will encourage physicians to practice in the county. . . [T]he county must receive some benefit or compensation in exchange such as an agreement by the physician to practice in the county for a period of years.”). The PPRM Agreement covers PPRM personnel costs at its health care centers in Albuquerque in exchange for the delivery of very specific healthcare services to the sick and indigent. Thus, this argument on the inapplicability of the SI Exception is not well taken.

Plaintiffs’ reliance on a 2011 N.M. A.G. Advisory Letter that states the SI Exception does not allow the state or local governments to make donations to cover a private organization’s operating expenses is misplaced. See *Complaint* at ¶ 49 (quoting 2011 N.M. A.G. LEXIS 81, at **15-16). That Advisory Letter was looking specifically at whether a county could lease buildings or property to a private healthcare organization in exchange for the organization’s services

and stay within the confines of the Anti-Donation Clause or its SI Exception. The A.G. found such a lease would only be proper where the value of the healthcare services provided adequate compensation for the use of the real property. See *id.* The PPRM Agreement is paying for the salary and benefits of PPRM health center nurses and case managers who are providing healthcare services in exchange for this funding. It is not a *donation to cover operating expenses*.

Plaintiff's reliance on the earlier A.G. Advisory Letters that discuss the SI Exception---the A.G. Letters from 1970 and 1961---is also misplaced. See Complaint at ¶¶ 52, 54. The 1970 A.G. Advisory Letter on this subject deals with the question of whether a local government could provide funding to a private business in consideration for having the business enter the ambulance services market. 1970 AN.M. A.G. LEXIS 26, **4-5. There was no requirement in the case in question that the business haul sick and indigent persons who were not being cared for by existing private ambulance services. *Id.* at *5. Absent such consideration, the A.G. found that the proposed arrangement "provides a subsidy to a private concern" to enter into a healthcare (i.e., ambulance) services market. *Id.* The 1971 Advisory Letter is not on point here as the PPRM Agreement is not subsidizing PPRM so it can enter the healthcare market in Albuquerque. PPRM was already providing such services here and is being provided with FCSD funding to cover very specific diagnostic and treatment services for New Mexico residents who present for such services in Albuquerque.

The 1961 A.G. Advisory Letter on this subject considered the question of whether a county could reimburse a private business providing emergency ambulance services within the county for unpaid balances on patient accounts. 1960 N.M. A.G. LEXIS 82, at *2. There was no requirement under the proposed funding arrangement that the reimbursements would go to cover services provided to sick and indigent patients in the county. *Id.* Plaintiffs seem to argue that the takeaway from this Advisory Letter is that the PPRM Agreement cannot meet the SI Exception absent specific proof that services were provided to sick and indigent residents of the *City*. See *Complaint* at ¶¶ 54-55. This argument overstates the finding in the 1961 Advisory Letter. Plaintiffs have not cited any authority that holds a municipality can only fund the provision of community healthcare services to persons who reside with the City. The City derives its funds from a number of revenue sources, and City residents are not the only New Mexico residents that contribute to those sources of revenue (e.g., gross receipts tax for work performed in the City, sales tax for purchases made in the City, property tax for persons owning property in the City).

WHEREFORE, in view of the foregoing facts, the clear language of the PPRM Agreement, the arguments and supporting authorities discussed above, the Court should grant City Defendants Motion to Dismiss with prejudice. Plaintiffs have not stated a legally sufficient claim for relief on Anti-Donation Clause grounds, and cannot cure their claim with an amendatory pleading.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of March, 2023, I uploaded a true and correct copy of the foregoing Motion to Dismiss to the Court's Odyssey E-File and Serve System, which caused the Parties listed below to be electronically served with a copy of the Motion, and also sent a courtesy copy to these Parties via electronic mail:

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