UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

TEXAS NATIONALIST MOVEMENT and DANIEL MILLER, individually and on behalf of all others similarly situated.	§	
Plaintiffs,	§	
v	§	CASE NO: 1:22-CV-00572-MJT
META PLATFORMS, INC.	§	
Defendant.	§	

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO TRANSFER VENUE
[Relates to Doc. No. 7]

COMES NOW, Plaintiffs, Texas Nationalist Movement ("TNM") and Daniel Miller ("Miller") (together, "Plaintiffs"), and brings this, their Response to Defendant, Meta Platforms, Inc.'s ("Meta") Motion to Transfer Venue, and, in support thereof, respectfully represents the following:

I. INTRODUCTION

1. Meta's forum selection clause cannot be enforced because it operates as a waiver of the protections of HB 20[1] in contravention of strong Texas public policy

[1] CENSORSHIP OF OR CERTAIN OTHER INTERFERENCE WITH DIGITAL EXPRESSION, INCLUDING EXPRESSION ON SOCIAL MEDIA PLATFORMS OR THROUGH ELECTRONIC MAIL MESSAGES, 2021 Tex. Sess. Law Serv. 2nd Called Sess. Ch. 3 (H.B. 20) (VERNON'S) (hereinafter "HB 20"). HB 20 was codified, in relevant part, as Chapter 143A of the Texas Civil Practice & Remedies Code (hereinafter "Chapter 143A").

as expressed in Tex. Civ. Prac. & Rem. Code ("CPRC") § 143A.003 and is a clause in an adhesion contract that unfairly oppresses Plaintiffs by, for all practical purposes, depriving them of their day in court.

2. Prior to reading Meta's introductory statement in its Motion to Transfer Venue (Doc. No. 7) (the "Motion"), Plaintiffs had intended to file a motion to remand this action to state court. However, after realizing Meta intends to make the legality of Texas's right to the "preservation of a republican form of government"[2] a central issue in this case, to use the exact words of TNM President Daniel Miller, "I'll be your huckleberry" (quoting Tombstone).

3. Meta assumes, without citing any authority, that the Court could somehow dismiss this case on the grounds that the democratic process of holding a referendum vote on Texas independence is unlawful. Of course, even if holding such a vote were unlawful, which it is not, there is no provision of HB 20 that would provide a means to dismiss a cause of action pursuant to Rule 12(b) on such grounds. Moreover, the idea that this Court has no personal jurisdiction over Meta is laughable. One would be hard-pressed to find a foreign defendant with more continuous and systematic contacts with the state of Texas, not to mention that this action arose out of Meta's contact directed at Texans.

4. Considering the indisputable fact that there is no provision in the United States Constitution or Code that prohibits states from exiting the Union and that the Texas Constitution explicitly states Texas's membership in the Union is

[2] Tex. Const. Art. 1, § 2, *see also* U.S. Const. Art. 4, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government.").

conditional upon the guarantee to a "republican form of government" and the "maintenance of our free institutions" and "upon the preservation of the right of local self-government, unimpaired to all the States," Plaintiffs very much look forward to responding to Meta's briefing on that issue. Tex. Const. Art. 1, § 1. Specifically, Plaintiffs look forward to finally putting to bed the myth that *Texas v. White*, 113 U.S. 476 (1885) is good law regarding the question of whether states can leave the Union, when the entire premise of that opinion was eviscerated by *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).[3]

II. ARGUMENT AND AUTHORITY

A. Enforcement of Meta's forum selection clause unquestionably contravenes strong Texas public policy expressed in Chapter 143A because it operates as a "waiver of the protections" therein by serving no other purpose than to oppress Plaintiffs in depriving them of their day in court "for all practical purposes" through a contract of adhesion.

5. Meta's forum selection clause is exactly the type of "waiver or purported waiver of the protections provided by [Chapter 143A]" that the Texas Legislature sought to render "void as unlawful and against public policy" because it effectively deprives Texans of any protection under Chapter 143A. CPRC § 143A.003. Meta misrepresents Texas precedent on this issue by claiming that forum selection clauses are "enforceable unless the statute specifically 'requires suit to be brought or

[3] To "*White*-wash" the U.S. federal government's decision to make war upon the seceding states, regardless of the clearly righteous cause of ending slavery, *Texas v. White* rested upon the specious and indefensible reasoning that the Preamble to the Constitution incorporated the Articles of Confederation by reference in stating "to form a more perfect Union." *See White*, 74 U.S. 700, 1868 WL 11083 at *1. The Articles of Confederation contained a clause stating that the Union was "perpetual." *Id.* *White's* reasoning was rejected in *Jacobson v. Commonwealth of Massachusetts*, 25 S.Ct. 358 (1905) where the Supreme Court held that the Preamble "has never been regarded as the source of any substantive power conferred on the government of the United States." *Id.* at 359.

maintained in Texas.'" Motion, p. 8 (citing *In re Autonation, Inc.*, 228 S.W.3d 663, 669 (Tex. 2007)).

6. To the contrary, three years after the *Autonation* opinion, the Texas Supreme Court clarified "we have established no bright-line test for avoiding enforcement of forum-selection clauses." *In re ADM Inv'r Services, Inc.*, 304 S.W.3d 371, 376 (Tex. 2010). Specifically applicable here, the Court indicated in the *ADM* opinion that "exceptional circumstances could exist ***such as a forum-selection clause in a contract of adhesion, or a controversy that the parties could never have had in mind.***" *Id.* (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 17 (1972) (emphasis added). The Court further clarified, "We have consistently refused to close the door to the possibility that exceptional circumstances could exist, even as we have chosen not to confront them in particular cases." *Id.* The Court's purpose in refusing to adopt a bright-line test was to "allow[ ] for exceptions when enforcement of a forum-selection clauses would be unreasonable or unjust." *Id.*

7. When the forum selection clause at issue is contained in a contract of adhesion, such as Meta's Terms of Service, the Texas Supreme Court applies "unconscionability principles" to "prevent unfair surprise or oppression." *In re Lyon Fin. Services, Inc.*, 257 S.W.3d 228, 233 (Tex. 2008). Where the plaintiff "will for all practical purposes be deprived of his day in court," such a forum selection clause should not be enforced. *Id.*

8. Here, for the reasons set forth below, given that Meta's forum selection clause contained in its contract of adhesion specifies venue in the U.S. District Court

for the Northern District of California, Meta cannot seriously dispute that "for all practical purposes," enforcement of the clause in this context would effectively deprive Plaintiffs of their day in court and serves no other purpose than unfair oppression. Such a result would unquestionably contravene the Texas Legislature's "public policy limitation on contractual and other waivers of the highest importance and interest to this state"[4] contained in CPRC § 143A.003 and thus, cannot be enforced. *See ADM*, 304 S.W. at 375 (forum selection clause cannot be enforced where enforcement would "contravene a strong public policy of the forum where the suit was brought").

B. Standard of Review.

9. Under Texas law, enforcement of a forum selection cause is reviewed for abuse of discretion. *See*, *e.g.*, *ADM*, 304 S.W. at 373. "A trial court abuses its discretion in refusing to enforce a forum-selection clause unless the party opposing enforcement of the clause can clearly show that (1) enforcement would be unreasonable or unjust, (2) the clause is invalid for reasons of fraud or overreaching, (3) enforcement would contravene a strong public policy of the forum where the suit was brought, or (4) the selected forum would be seriously inconvenient for trial." *Id.* at 231–32. Here, Plaintiffs make a clear showing that Meta's forum selection clause cannot be enforced under the principles articulated by the Texas Supreme Court.

C. Meta's forum selection clause contravenes strong Texas public policy because it operates as a waiver of the protections of HB 20.

[4] CPRC § 143A.003(b).

10. In passing HB 20, the Texas Legislature clearly indicated that social media platforms are not permitted to impose contracts on Texans that purport to waive the protections provided therein:

> (a) A waiver or purported waiver of the protections provided by this chapter is void as unlawful and against public policy, and a court or arbitrator may not enforce or give effect to the waiver, including in an action brought under Section 143A.007, notwithstanding any contract or choice-of-law provision in a contract.
>
> (b) The waiver prohibition described by Subsection (a) is a public-policy limitation on contractual and other waivers of the highest importance and interest to this state, and this state is exercising and enforcing this limitation to the full extent permitted by the United States Constitution and Texas Constitution.

CPRC § 143A.003.

11. The idea that the Texas Legislature intended to allow a big tech censorship behemoth such as Meta, certain to be one of the most regular offenders of HB 20, to impose a contractual provision on Texans forcing them to sue it in San Francisco is preposterous. As Texas Senator Bryan Hughes, the sponsor of the senate version of the bill that eventually was passed as H.B. 20 indicated in his speech at a press conference with Governor Greg Abbott to announce the bill:

> Sadly, we have a handful of people in America today who want to control the town square—want to control social media—and want to enforce silence. If you have a viewpoint different from theirs, they want to shut you up. That is not the American way, and that is not the Texas way. And so, they enforce that silence for people that don't agree with their agenda on religion or on politics or on freedom.
>
> ***We have a handful of billionaires in San Francisco that run these tech companies.*** It doesn't make them

> the gatekeeper of free speech, and that's not right, that's not how we're gonna do it. These people control the new town square, and everyone should be able to come there and share their ideas and debate and hash things out. So, that's what this bill is about. Because today, they can lock you out. There's no question about that. Many people here have experienced that, getting locked out of social media because you don't conform to their narrow worldview. This bill, Senate Bill 12, would give Texans the right to get back online when they're mistreated in that way. That's what this bill is about. Again, we believe the bill is gonna lead the nation in restoring free speech.

WATCH: Texas Governor discusses bill prohibiting censorship of Texans by social media companies, KCBD11, (March 5, 2021), https://www.kcbd.com/2021/03/05/texas-governor-discuss-bill-prohibiting-censorship-texans-by-social-media-companies/

12. Meta expects the Court to subscribe to the ridiculous notion that the Texas Legislature intended to enforce forum selection clauses in contracts of adhesion requiring Texans to file suit in the federal district that is the backyard of the "handful of billionaires in San Francisco" that are responsible for censoring Texans—the very same people who made the passage of HB 20 necessary in the first place. It is no secret that San Francisco County is home to one of the most politically left-wing populations in the entire United States. San Francisco County voted 85.26% for Joe Biden in the 2020 election.[5] Moreover, every single federal district judge in the San Francisco Division of the Northern District of California was appointed by a Democrat:

- Senior District Judge William Alsup – Clinton Appointee
- District Judge Charles Breyer – Clinton Appointee
- District Judge Edward Chen – Obama Appointee
- District Judge Maxine Chesney – Clinton Appointee

[5] November 3, 2020 Election Results – Summary, City and County of San Francisco Department of Elections, available at https://sfelections.sfgov.org/november-3-2020-election-results-summary.

- District Judge Vince Chhabria – Obama Appointee
- District Judge Jacqueline Scott Corley – Biden Appointee
- District Judge James Donato – Obama Appointee
- District Judge Susan Illston – Clinton Appointee
- District Judge William Orrick – Obama Appointee
- District Judge Richard Seeborg – Obama Appointee
- District Judge Trina Thompson – Biden Appointee

13. With such a left-leaning jury pool and judiciary, it cannot be seriously argued that Plaintiffs have any realistic chance of winning a case brought under Chapter 143A in San Francisco. It is an unfortunate reality that political orientation is dispositive when it comes to the highly partisan issue of social media censorship. This is evidenced by the fact that every single Texas state senator and representative who voted to pass HB 20 is a Republican. *See Votes: TX HB20 | 87th Legislature 2nd Special Session*, https://legiscan.com/TX/votes/HB20/2021/X2. A total of zero Democrats voted for the bill. *See id.*

14. Meta's primary argument seems to be that, under Texas Supreme Court precedent, the waiver prohibition in § 143A.003 must state the words "forum selection clause" in order to render its forum selection clause unenforceable. *See* Motion, p. 8 (citing *AutoNation*, 228 S.W.3d at 669). The Texas Supreme Court, however, has held no such thing. *AutoNation*[6] and its progeny, *AIU*, merely hold that where a Texas statute specifies that Texas law governs a contract, this is "irrelevant to the enforceability of a forum-selection causes where no statute 'requires suit to be

[6] *AutoNation* involved a non-compete agreement, which, under Texas Supreme Court precedent, *DeSantis v. Wackenhut Corp.* 793 S.W.2d 670 (Tex. 1990), required the application of Texas law but not venue in Texas. *See AutoNation*, 228 S.W.3d at 668. The *AutoNation* court declined to "superimpose the *DeSantis* choice-of-law analysis onto the law governing forum-selection-clauses." *Id.* at 669.

brought or maintained in Texas.'" *AutoNation*, 228 S.W.3d at 669 (citing *In re AIU Ins. Co.*, 148 S.W.3d 109, 114 (Tex. 2004)). The Texas Insurance Code provision at issue in *AIU* simply mandates that insurance contracts payable to Texans must be governed by Texas law but, unlike § 143A.003, contains no other provisions relevant to forum selection clauses. *See* Tex. Ins. Code Ann. art. 21.42

15. By contrast, the unmistakable intent of § 143A.003 is to prevent social media platforms from any and all contractual provisions that purport to deprive Texans of the remedies provided in § 143A.007, the section under which Plaintiffs sue Meta. To this effect, § 143A.003 is drafted as a catch-all: "*A waiver or purported waiver* of the protections provided by this chapter is void as unlawful and against public policy. . . . The waiver prohibition described by Subsection (a) is a public-policy limitation on *contractual and other waivers*. . . ." § 143A.003.

16. Thus, § 143A.003 broadly encompasses any waiver, purported waiver, or other waiver. There can be no serious debate that Meta's forum selection clause operates as a waiver of Plaintiffs' protections under Chapter 143A because it effectively deprives Plaintiffs of any meaningful day in court by forcing them to go into a hostile partisan forum where they have about the same chance of prevailing as Donald Trump had of winning a majority of the vote in San Francisco County—none. Like the Obama-appointed Judge Robert Pittman of the Western District of Texas, it is virtually guaranteed that the judges of the Northern District of California will come to the disingenuous conclusion that Meta is entitled to a First Amendment right to censor what Texans say. *See NetChoice, LLC v. Paxton*, 573 F. Supp. 3d 1092, 1109

(W.D. Tex. 2021), vacated and remanded sub nom. *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439 (5th Cir. 2022) ("the threat of lawsuits for violating Section 7 of HB 20 chills the social media platforms' speech rights").

17. It is obvious to anyone who is being intellectually honest that the First Amendment does not work this way. As the Fifth Circuit stated in reversing Judge Pittman, the idea that social media platforms such as Meta have a First Amendment right to censor is "a rather odd inversion of the First Amendment." *Netchoice*, 49 F.4th at 444. The Fifth Circuit went on to explain:

> That Amendment, of course, protects every person's right to "the freedom of speech." But the platforms argue that buried somewhere in the person's enumerated right to free speech lies a corporation's unenumerated right to muzzle speech.
>
> The implications of the platforms' argument are staggering. On the platforms' view, email providers, mobile phone companies, and banks could cancel the accounts of anyone who sends an email, makes a phone call, or spends money in support of a disfavored political party, candidate, or business. What's worse, the platforms argue that a business can acquire a dominant market position by holding itself out as open to everyone—as Twitter did in championing itself as "the free speech wing of the free speech party." Blue Br. at 6 & n.4. Then, having cemented itself as the monopolist of "the modern public square," *Packingham v. North Carolina*, ––– U.S. ––––, 137 S. Ct. 1730, 1737, 198 L.Ed.2d 273 (2017), Twitter unapologetically argues that it could turn around and ban all pro-LGBT speech for no other reason than its employees want to pick on members of that community, Oral Arg. at 22:39–22:52. ***Today we reject the idea that corporations have a freewheeling First Amendment right to censor what people say.***

. . .

> We reject the Platforms' efforts to reframe their censorship as speech. It is undisputed that the Platforms want to eliminate speech—not promote or protect it. And no amount of doctrinal gymnastics can turn the First Amendment's protections for free *speech* into protections for free *censoring*.

Id. at 444–45 and 455 (bold emphasis added; non-bold emphasis in original).

18. It is tragic that leftist judges, such as Judge Pittman, would be so ready and willing to give the First Amendment such a tortured interpretation to allow platforms like Meta to crush the fundamental right to free speech of Texans in the "public square" of social media simply because their political views do not conform to those of Silicon Valley billionaires. Equally as disturbing is that unelected federal judges are willing to run roughshod over the fundamental principles of federalism in thwarting the sovereignty of Texas and the will of its elected lawmakers.[7]

19. Fortunately, the Fifth Circuit still believes in federalism: "The respect owed to a sovereign State thus demands that we look particularly askance at a litigant who wants unelected federal judges to countermand the State's democratically accountable policymakers." *Id.* at 449. As the Fifth Circuit recognized, HB 20 "advances an important governmental interest" where "HB 20's legislative findings assert that Texas 'has a fundamental interest in protecting the free exchange of ideas and information in this state.'" *Id.* at 482.

20. Because Texas Supreme Court precedent holds that forum selection clauses cannot be enforced where they "contravene a strong public policy of the forum

[7] This is but one of numeroius examples as to how the federal government is depriving Texas of its right to a republican form of government and the maintenance of its free institutions.

where the suit was brought," Meta's forum selection clause is void and unenforceable. *ADM*, 304 S.W. at 373. The protections of HB 20 advance "a governmental purpose of the highest order" by "[a]ssuring that the public has access to a multiplicity of information sources." *Netchoice*, 49 F.4th at 482 (quoting *I Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 663 (1994)). The Texas Legislature has made it clear that its prohibition of waivers of the protections in HB 20 is "a public-policy limitation on contractual and other waivers *of the highest importance and interest to this state*." CPRC § 143A.003(b). Thus, this case cannot be transferred to the Northern District of California pursuant to Meta's forum selection clause.

D. Meta's Terms of Use are an adhesion contract.

21. A contract of adhesion is "a standard-form contract prepared by one party, to be signed by another party in a weaker position, usu. a consumer, who adheres to the contract with little choice about the terms." CONTRACT, Black's Law Dictionary (11th ed. 2019); *see also In re Peoples Choice Home Loan, Inc.*, 225 S.W.3d 35, 44 (Tex. App.—El Paso 2005, no pet.) ("An adhesion contract is a contract in which one party has absolutely no bargaining power or ability to change the contract terms."); *In re H.E. Butt Grocery Co.*, 17 S.W.3d 360, 371 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (same). It merits little discussion that Meta's Facebook Terms of Use are an adhesion contract. The Terms are standard for every user on Facebook. Motion, p. 3 ("Meta requires all users registering a new account to agree to its Terms of Service."). Plaintiffs are consumers with absolutely no bargaining power or ability to change the Terms of Service.

E. Meta's forum selection clause is unenforceable because it results in unfair surprise and oppression under exceptional circumstances because it is an adhesion contract that, "for all practical purposes," deprives Plaintiffs of their day in court.

22. Of course, without more, "adhesion contracts are not per se unconscionable or void." *E.g. In re Palm Harbor Homes, Inc.*, 195 S.W.3d 672, 678 (Tex. 2006). However, where there is such a disparity in bargaining power resulting in an adhesion contract, "[u]nconscionability principles are applied to prevent unfair surprise or oppression." *Id.* at 679. Where "exceptional circumstances" exist "such as a forum-selection clause in a contract of adhesion, or a controversy that the parties could never have had in mind," the Texas Supreme Court has indicated that forum selection clauses should not be enforced where the result "would be unreasonable or unjust, or seriously inconvenient."

23. Here, there can be no question that the parties could never have had HB 20 in mind when Plaintiffs accepted the Terms of Use because HB 20 did not exist prior to Plaintiffs registering their Facebook accounts. Such circumstances resulted in unfair surprise because, prior to HB 20's enactment, no cause of action existed under which Plaintiffs could sue Facebook for censorship. Indeed, prior to the advent of COVID-19, social media censorship was a non-existent issue.

24. However, during the pandemic, multiple agencies of the U.S. government began to lean heavily on Meta to censor what the government deemed to be COVID "misinformation." *See*, *e.g.*, Zachary Steiber, *Over 50 Biden Administration Employees, 12 US Agencies Involved in Social Media Censorship Push: Documents*,

THE EPOCH TIMES (Sept. 1, 2022).[8] Meta's role of doing what the government could not do directly—censor the speech of citizens—is in itself a violation of Plaintiffs' First Amendment rights.[9]

25. When independent-minded Facebook users refused to blindly trust the information coming from government agencies and mainstream media about COVID-19 used to justify draconian policies such as lockdowns, closure of small businesses (to the benefit of corporate "big box" stores) and mask and vaccine mandates, these users were shocked to find that, for the first time, the information they attempted to share in the public square of social media was being censored as "misinformation."

26. Meta, apparently drunk on its own power to "control the flow of information,"[10] soon expanded its censorship activities to influence the 2020 presidential election by, *inter alia*, suppressing the Hunter Biden laptop story at the behest of the FBI.[11] Now, Meta appears to consider policing information concerning the completely legal process of holding an election on Texas independence to be within

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[8] Available at https://www.theepochtimes.com/over-50-biden-administration-employees-12-us-agencies-involved-in-social-media-censorship-push-documents_4704349.html

[9] Now that Meta has made the grave strategical error of removing this case to federal court and raising the federal question issue of the legality of Texas independence, Plaintiffs will almost certainly add a First Amendment cause of action and seek damages since HB 20 does not provide for recovery of damages. Meta could have gotten off easy in state court with nothing more than an injunction and a nominal amount of attorneys' fees but apparently did not think through such consequences.

[10] *See* Molly Ball, *The Secret History of the Shadow Campaign That Saved the 2020 Election*, TIME, Feb. 4, 2021, available at https://time.com/5936036/secret-2020-election-campaign/ (reporting how, with regard to the 2020 election, a "well-funded cabal of powerful people . . . working together behind the scenes to . . . control the flow of information" including figures such as Meta CEO Mark Zuckerberg and the Facebook platform).

[11] *See, e.g.*, Bruce Golding, *Zuckerberg says Facebook censored The Post's Hunter Biden stories because FBI warned of Russian misinformation 'dump'*, NEW YORK POST (Aug. 26, 2022), available at https://nypost.com/2022/08/26/zuckerberg-blames-fbi-for-censoring-the-posts-hunter-biden-scoop/

its purview. It will be interesting to see, in the course of discovery, if this was also done at the behest of the federal government.

27. The unfair surprise at issue is twofold. First, at the time Plaintiffs registered their accounts,[12] they could not have anticipated being censored on Facebook for posting content about a legal democratic process because there is nothing in Facebook's Community Standards that prohibits posting about such things. Second, they could not have anticipated that the forum selection clause in the Terms of Use could be used to deprive them of the protections of a new law enacted to protect them from the unanticipated censorship.

28. The Texas Legislature properly recognized Meta as a common carrier with regard to providing a platform for free speech in the public square. HB 20, § 1(3) ("social media platforms function as common carriers, are affected with a public interest, are central public forums"). In this context, Meta is using its forum selection clause to oppress Plaintiffs by depriving them of their fundamental right to free speech in the public forum of social media. Meta leveraged the disparity in bargaining power between the parties to dictate to Plaintiffs that they can only sue Meta in a forum that is hostile to Plaintiffs' political views and sympathetic to the idea that Meta has a "right" to censor users like Plaintiffs to prevent them from sharing their viewpoints in the public square.

29. If such a situation does not present the kind of "exceptional circumstances" contemplated by the Texas Supreme Court in the above-cited opinions

[12] TNM has been a Facebook user since 2010 and Miller has been one since 2015. Motion, p. 2.

where enforcement of a forum selection cause would be "unreasonable or unjust" and would result in a plaintiff "for all practical purposes be[ing] deprived of his day in court," then these words are meaningless and without effect. If Meta is allowed to effectively force Texans to waive their protections under HB 20 with a forum selection clause, then HB 20 is useless and may as well be stricken from the Texas code. The idea of allowing courts in the state of California to effectively destroy protections conferred on Texans by the Texas Legislature should be repulsive to any true Texan.

WHEREFORE, Plaintiffs pray that the Court deny Defendant's Motion to Transfer Venue and grant Plaintiffs all other and further relief to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I served the foregoing Response on all counsel of record in this action by ECF filing on January 12, 2023.

/s/ *Paul M. Davis*
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