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7 *Attorneys for Defendants*

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 Jose A. Vega, on behalf of himself and all
11 those similarly situated,

12 Plaintiff,

13 v.

14 All My Sons Business Development, LLC, a
15 Delaware limited liability company; All My
16 Sons Moving & Storage of Tucson LLC, a
17 Delaware limited liability company; All My
18 Sons Moving & Storage of Phoenix LLC, a
19 Delaware limited liability company; All My
20 Sons of Mesa LLC, a Delaware limited
liability company,

Defendants.

Case No: 4:20-cv-00284-RCC

**FIRST AMENDED ANSWER OF
DEFENDANT ALL MY SONS
MOVING & STORAGE OF
TUCSON LLC**

21 For its First Amended Answer to Plaintiff's Complaint ("the Complaint"), All My
22 Sons Moving & Storage of Tucson LLC ("AMS-Tucson) admits, denies and alleges as
23 follows:

24 1. The allegations in paragraph 1 are argumentative, call for a legal
25 conclusion and require no response. To the extent factual allegations were intended,
26 AMS-Tucson denies the allegations contained in paragraph 1.
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1 2. The allegations in paragraph 2 are argumentative, call for a legal
2 conclusion, and require no response. To the extent factual allegations were intended,
3 AMS-Tucson denies the allegations contained in paragraph 2.

4 3. AMS-Tucson admits the Court has jurisdiction. The remaining allegations
5 in paragraph 3 are argumentative, call for a legal conclusion, and require no response.
6 To the extent factual allegations were intended, AMS-Tucson denies the remaining
7 allegations contained in paragraph 3.

8 4. AMS-Tucson admits this Court has supplemental jurisdiction over
9 Plaintiff Vega's state law claims, if any. The remaining allegations contained in
10 paragraph 4 are argumentative, call for a legal conclusion, and require no response. To
11 the extent factual allegations were intended, AMS-Tucson denies the remaining
12 allegations contained in paragraph 4.

13 5. AMS-Tucson denies the allegations contained in paragraph 5 except
14 admits that venue is proper as to Plaintiff Vega's claim.

15 6. AMS-Tucson denies the allegations contained in paragraph 6 except
16 admits that the Court has personal jurisdiction over AMS-Tucson.

17 7. The allegations contained in paragraph 7 are argumentative, call for a
18 legal conclusion, and require no response. To the extent factual allegations were
19 intended, AMS-Tucson denies the allegations contained in paragraph 7.

20 8. The allegations contained in paragraph 8 are argumentative, call for a
21 legal conclusion, and require no response. To the extent factual allegations were
22 intended, AMS-Tucson denies the allegations contained in paragraph 8.

23 9. The allegations contained in paragraph 9 are argumentative, call for a
24 legal conclusion, and require no response. To the extent factual allegations were
25 intended, AMS-Tucson denies the allegations contained in paragraph 9.

26 10. AMS-Tucson admits that it employed Plaintiff Vega. The remaining
27 allegations contained in paragraph 10 are argumentative, call for a legal conclusion, and
28

1 require no response. To the extent factual allegations were intended, AMS-Tucson
2 denies the remaining allegations contained in paragraph 10.

3 11. AMS-Tucson admits the allegations contained in paragraph 11.

4 12. The allegations in paragraph 12 pertain to another defendant. Therefore,
5 AMS-Tucson lacks knowledge or information sufficient to form a belief about the truth
6 of the allegations contained in paragraph 12, and therefore denies them.

7 13. AMS-Tucson admits the allegations contained in paragraph 13.

8 14. The allegations in paragraph 14 pertain to another defendant. AMS-
9 Tucson lacks knowledge or information sufficient to form a belief about the truth of the
10 allegations contained in paragraph 14, and therefore denies them.

11 15. The allegations in paragraph 15 pertain to another defendant. AMS-
12 Tucson lacks knowledge or information sufficient to form a belief about the truth of the
13 allegations contained in paragraph 15, and therefore denies them.

14 16. The allegations in paragraph 16 pertain to another defendant. Therefore,
15 AMS-Tucson lacks knowledge or information sufficient to form a belief about the truth
16 of the allegations contained in paragraph 16, and therefore denies them.

17 17. The allegations contained in paragraph 17 pertain to multiple defendants.
18 The allegations are argumentative, call for a legal conclusion, and require no response.
19 To the extent factual allegations were intended, AMS-Tucson denies the allegations
20 contained in paragraph 17.

21 18. AMS-Tucson admits the allegations contained in paragraph 18 with
22 respect to AMS-Tucson, and lacks knowledge or information to the extent the
23 allegations refer to other defendants and therefore denies them.

24 19. AMS-Tucson denies the allegations contained in paragraph 19 except
25 lacks knowledge or information regarding plaintiff's residence and therefore denies the
26 allegation.

27 20. AMS-Tucson admits that Plaintiff Vega was employed by AMS-Tucson,
28 that he performed work from approximately May 13, 2020, until approximately July 10,

1 2020, and that he has filed a consent. AMS-Tucson denies the remaining allegations
2 contained in paragraph 20.

3 21. AMS-Tucson admits that Plaintiff Vega is purporting to bring claims on
4 behalf of others. AMS-Tucson denies the remaining allegations contained in paragraph
5 21.

6 22. AMS-Tucson admits that Plaintiff Vega is purporting to bring claims on
7 behalf of others. AMS-Tucson denies the remaining allegations contained in paragraph
8 22.

9 23. AMS-Tucson denies the allegations contained in paragraph 23.

10 24. AMS-Tucson denies the allegations contained in paragraph 24.

11 25. AMS-Tucson denies the allegations contained in paragraph 25.

12 26. AMS-Tucson denies the allegations contained in paragraph 26.

13 27. AMS-Tucson denies the allegations contained in paragraph 27.

14 28. AMS-Tucson denies the allegations contained in paragraph 28.

15 29. AMS-Tucson admits that Plaintiff Vega is asserting claims, but denies
16 that there is any basis for the claims or the alleged class.

17 30. AMS-Tucson denies the allegations contained in paragraph 30.

18 31. AMS-Tucson denies the allegations contained in paragraph 31.

19 32. AMS-Tucson denies the allegations contained in paragraph 32, including
20 a-e.

21 33. AMS-Tucson denies the allegations contained in paragraph 33.

22 34. AMS-Tucson denies the allegations contained in paragraph 34.

23 35. AMS-Tucson denies the allegations contained in paragraph 35.

24 36. AMS-Tucson denies the allegations contained in paragraph 36.

25 37. AMS-Tucson admits that the Complaint refers to putative class members
26 as Movers, but denies that any are entitled to assert class claims.

1 38. The allegations contained in paragraph 38 are argumentative, call for a
2 legal conclusion, and require no response. To the extent factual allegations were
3 intended, AMS-Tucson admits that it employed Plaintiff.

4 39. AMS-Tucson admits that it hired Plaintiff Vega and he performed work
5 from approximately May 13, 2020, until approximately July 10, 2020. The remaining
6 allegations contained in paragraph 39 are argumentative, call for a legal conclusion, and
7 require no response. To the extent factual allegations were intended, AMS-Tucson
8 denies the remaining allegations contained in paragraph 39.

9 40. AMS-Tucson denies the allegations contained in paragraph 40.

10 41. AMS-Tucson denies the allegations contained in paragraph 41.

11 42. AMS-Tucson denies the allegations in paragraph 42 except admits that
12 Plaintiff Vega worked for AMS-Tucson.

13 43. AMS-Tucson denies the allegations contained in paragraph 43.

14 44. AMS-Tucson denies the allegations contained in paragraph 44.

15 45. AMS-Tucson denies the allegations contained in paragraph 45 except
16 admits it has policies and/or practices regarding compensation and trains its employees.

17 46. AMS-Tucson denies the allegations contained in paragraph 46 and
18 affirmatively alleges that Plaintiff Vega was paid in accordance with applicable law.

19 47. AMS-Tucson denies the allegations contained in paragraph 47.

20 48. AMS-Tucson lacks knowledge or information sufficient to form a belief
21 about the truth of the allegations contained in paragraph 48, and therefore denies them.

22 49. AMS-Tucson lacks knowledge or information sufficient to form a belief
23 about the truth of the allegations contained in paragraph 49, and therefore denies them.

24 50. AMS-Tucson denies the allegations contained in paragraph 50.

25 51. AMS-Tucson denies the allegations contained in paragraph 51.

26 52. AMS-Tucson denies the allegations contained in paragraph 52.

27 53. AMS-Tucson denies the allegations contained in paragraph 53.

28 54. AMS-Tucson denies the allegations contained in paragraph 54.

1 55. AMS-Tucson denies the allegations contained in paragraph 55.

2 56. AMS-Tucson denies the allegations contained in paragraph 56.

3 57. AMS-Tucson denies the allegations contained in paragraph 57.

4 58. AMS-Tucson denies the allegations contained in paragraph 58 and
5 affirmatively alleges that Plaintiff was paid in accordance with all applicable laws.

6 59. AMS-Tucson denies the allegations contained in paragraph 59 and
7 affirmatively alleges that Plaintiff was paid in accordance with all applicable laws.

8 60. AMS-Tucson denies the allegations contained in paragraph 60.

9 61. AMS-Tucson denies the allegations contained in paragraph 61.

10 62. AMS-Tucson admits the allegations contained in paragraph 62.

11 63. AMS-Tucson admits that the minimum wage in Arizona is \$12 per hour
12 for 2020 but denies the remaining allegations contained in paragraph 63.

13 64. AMS-Tucson denies the allegations contained in paragraph 64 and
14 affirmatively alleges that Plaintiff Vega was paid in accordance applicable law.

15 65. AMS-Tucson denies the allegations contained in paragraph 65.

16 66. AMS-Tucson denies the allegations contained in paragraph 66.

17 67. AMS-Tucson denies the allegations contained in paragraph 67.

18 68. The allegations contained in paragraph 68 are argumentative, call for a
19 legal conclusion, and require no response. To the extent factual allegations were
20 intended, AMS-Tucson denies the allegations contained in paragraph 68.

21 69. The allegations contained in paragraph 69 are argumentative, call for a
22 legal conclusion, and require no response. To the extent factual allegations were
23 intended, AMS-Tucson denies the allegations contained in paragraph 69.

24 70. The allegations contained in paragraph 70 are argumentative, call for a
25 legal conclusion, and require no response. To the extent factual allegations were
26 intended, AMS-Tucson denies the allegations contained in paragraph 70.

27 71. AMS-Tucson denies the allegations contained in paragraph 71.

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1 72. AMS-Tucson incorporates its previous admissions and denials in response
2 to the allegations above.

3 73. The allegations contained in paragraph 73 are argumentative, call for a
4 legal conclusion, and require no response. To the extent factual allegations were
5 intended, AMS-Tucson denies the allegations contained in paragraph 73.

6 74. The allegations contained in paragraph 74 are argumentative, call for a
7 legal conclusion, and require no response. To the extent factual allegations were
8 intended, AMS-Tucson denies the allegations contained in paragraph 74.

9 75. AMS-Tucson denies the allegations contained in paragraph 75.

10 76. The allegations contained in paragraph 76 are argumentative, call for a
11 legal conclusion, and require no response. To the extent factual allegations were
12 intended, AMS-Tucson admits that it employed Plaintiff.

13 77. AMS-Tucson denies the allegations contained in paragraph 77.

14 78. AMS-Tucson lacks knowledge or information sufficient to admit or deny
15 and therefore denies the allegations contained in paragraph 78.

16 79. AMS-Tucson denies the allegations contained in paragraph 79.

17 80. AMS-Tucson denies the allegations contained in paragraph 80.

18 81. AMS-Tucson denies the allegations contained in paragraph 81, including
19 a-f, and denies that Plaintiff is entitled to any of the relief requested in the prayer for
20 relief.

21 82. AMS-Tucson incorporates its previous admissions and denials.

22 83. The allegations contained in paragraph 83 are argumentative, call for a
23 legal conclusion, and therefore require no response. AMS-Tucson affirmatively alleges
24 that Plaintiff was paid in accordance with all applicable laws.

25 84. AMS-Tucson admits that it is covered by the FLSA and that its employees
26 are engaged in interstate commerce. AMS-Tucson denies the remaining allegations
27 contained in paragraph 84.

28 85. AMS-Tucson denies the allegations contained in paragraph 85.

1 86. AMS-Tucson admits that it was Plaintiff Vega’s employer, but denies that
2 any of the other Defendants were Plaintiff Vega’s employer. The remaining allegations
3 contained in paragraph 86 are argumentative, call for a legal conclusion, and therefore
4 require no response. To the extent factual allegations were intended, AMS-Tucson
5 denies the remaining allegations contained in paragraph 86.

6 87. AMS-Tucson denies the allegations contained in paragraph 87.

7 88. AMS-Tucson lacks knowledge or information sufficient to admit or deny
8 and therefore denies the allegations contained in paragraph 88.

9 89. AMS-Tucson denies the allegations contained in paragraph 89.

10 90. AMS-Tucson denies the allegations contained in paragraph 90.

11 91. AMS-Tucson denies the allegations contained in paragraph 91, including
12 a-e, and denies that Plaintiff is entitled to any of the relief requested in the prayer for
13 relief.

14 92. AMS-Tucson denies that Plaintiff or any other individual is entitled to any
15 of the relief requested in paragraph 92.

16 93. AMS-Tucson incorporates its admissions and denials in the previous
17 paragraphs.

18 94. AMS-Tucson admits that Plaintiff Vega was employed in the state of
19 Arizona by AMS-Tucson, but denies the allegations with respect to the other
20 Defendants. The remaining allegations contained in paragraph 94 are argumentative,
21 call for a legal conclusion, and therefore require no response. To the extent factual
22 allegations were intended, AMS-Tucson denies the remaining allegations contained in
23 paragraph 94.

24 95. The allegations contained in paragraph 95 are argumentative, call for a
25 legal conclusion, and therefore require no response. AMS-Tucson affirmatively alleges
26 that Plaintiff was paid in accordance with all applicable laws.

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1 96. The allegations contained in paragraph 96 are argumentative, call for a
2 legal conclusion, and therefore require no response. To the extent factual allegations
3 were intended, AMS-Tucson admits that it employed Plaintiff.

4 97. The allegations contained in paragraph 97 are argumentative, call for a
5 legal conclusion, and therefore require no response. AMS-Tucson affirmatively alleges
6 that Plaintiff was paid in accordance with all applicable laws.

7 98. AMS-Tucson denies the allegations contained in paragraph 98.

8 99. AMS-Tucson denies the allegations contained in paragraph 99.

9 100. AMS-Tucson denies the allegations contained in paragraph 100, including
10 a-e, and denies that Plaintiff is entitled any of the relief requested in the prayer for relief.

11 101. AMS-Tucson incorporates its previous admissions and denials to the prior
12 paragraphs.

13 102. AMS-Tucson denies the allegations contained in paragraph 102, except
14 admits that it employed Plaintiff.

15 103. The allegations contained in paragraph 103 are argumentative, call for a
16 legal conclusion, and require no response. AMS-Tucson affirmatively alleges that
17 Plaintiff was paid in accordance with all applicable laws.

18 104. The allegations contained in paragraph 104 are argumentative, call for a
19 legal conclusion, and require no response. AMS-Tucson affirmatively alleges that
20 Plaintiff was paid in accordance with all applicable laws.

21 105. AMS-Tucson denies the allegations contained in paragraph 105.

22 106. AMS-Tucson denies the allegations contained in paragraph 106.

23 107. AMS-Tucson denies the allegations contained in paragraph 107, including
24 a-e, and denies that Plaintiff is entitled to recover any of the relief requested in the
25 prayer for relief.

26 108. AMS-Tucson incorporates its previous admissions and denials to the prior
27 paragraphs.

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1 109. The allegations contained in paragraph 109 are argumentative, call for a
2 legal conclusion, and require no response. To the extent factual allegations were
3 intended, AMS-Tucson admits that it employed Plaintiff.

4 110. The allegations contained in paragraph 110 are argumentative, call for a
5 legal conclusion, and require no response.

6 111. The allegations contained in paragraph 111 are argumentative, call for a
7 legal conclusion, and require no response. To the extent factual allegations were
8 intended, AMS-Tucson denies the allegations contained in paragraph 111.

9 112. The allegations contained in paragraph 112 are argumentative, call for a
10 legal conclusion, and require no response. AMS-Tucson affirmatively alleges that
11 Plaintiff was paid in accordance with all applicable laws.

12 113. The allegations contained in paragraph 113 are argumentative, call for a
13 legal conclusion, and require no response. To the extent factual allegations were
14 intended, AMS-Tucson denies the allegations contained in paragraph 113.

15 114. AMS-Tucson denies the allegations contained in paragraph 114.

16 115. AMS-Tucson denies the allegations contained in paragraph 115, including
17 a-e, and denies that Plaintiff is entitled to recover any of the relief requested in the
18 prayer for relief.

19 116. The allegations contained in paragraph 116 do not require a response. To
20 the extent a response is required, AMS-Tucson denies the allegations contained in
21 paragraph 116.

22 **GENERAL DENIAL**

23 Defendant AMS-Tucson denies each and every allegation of the Complaint not
24 expressly admitted herein and denies that Plaintiff has been damaged as alleged in the
25 Complaint, or at all.

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AFFIRMATIVE AND OTHER DEFENSES¹

Defendant AMS-Tucson asserts the following defenses:

1. The Complaint in whole or in part, and each cause of action contained therein, fails to state a claim upon which relief can be granted.

2. There is no private right of action recognized for some or all of the claims alleged.

3. Plaintiff's request for collective treatment should be denied in that Plaintiff and the members of the putative collective are not similarly situated and therefore, Plaintiff cannot meet the requirements for collective treatment pursuant to § 216(b) of the FLSA.

4. This action may not be properly maintained as a class action because Plaintiff has failed to plead and cannot establish the necessary procedural elements for class treatment, a class action is not an appropriate method for fair and efficient adjudication of the claims described in the Complaint, common issues of fact or law do not predominate, individual issues of fact or law predominate, Plaintiff's claims are not representative or typical of the claims of the putative class, Plaintiff is not an adequate representative for the alleged putative class, and there is not a well-defined community of interest in the questions of law or fact affecting Plaintiff and the members of the alleged putative class.

5. Plaintiff's attempt to pursue his claims as a collective action fail because an independent and individual analysis of the claims of each plaintiff, opt-in plaintiff, and putative class member, and each of Defendant's defenses, is required.

6. Plaintiff's attempt to pursue his claims on a collective action violates Defendant's constitutional rights to due process because Defendant has a due process right to raise every defense applicable to Plaintiff, opt-in plaintiffs, and putative class members at every stage of this action.

¹ In asserting these defenses, Defendant does not assume the burden of proof with respect to any issue as to which applicable law places the burden of proof upon Plaintiff.

1 7. Plaintiff’s proposed class definitions are vague and overbroad.

2 8. Plaintiff and other members of the putative collective lack standing and/or
3 capacity to bring these causes of action.

4 9. Plaintiff and other members of the putative collective or classes have not
5 suffered any legally cognizable damages.

6 10. Plaintiff’s claims are barred, in whole or in part, as they are without merit
7 as to both law and fact.

8 11. Plaintiff’s claims are barred, in whole or in part, by the doctrine of full
9 payment and satisfaction.

10 12. Plaintiff’s claims are barred to the extent that Defendants’ actions have
11 been taken in good faith, in conformity with, and in reliance upon, rulings,
12 administrative regulations, interpretations, orders, opinions, practices, or enforcement
13 policies of the Department of Labor.

14 13. Plaintiff and others similarly situated were exempt from the overtime
15 requirements of the Fair Labor Standards Act, pursuant to the exemptions provided in
16 Section 13(b)(1) of the FLSA, including but not limited to the Motor Carrier Exemption.

17 14. Even if Plaintiff was a non-exempt employee (which he was not), some or
18 all of Plaintiff’s claims would be barred to the extent Plaintiff seeks compensation for
19 time that is non-compensable and/or non-working time.

20 15. Even if Plaintiff was a non-exempt employee (which he was not), some or
21 all of Plaintiff’s claims would be barred to the extent that any insubstantial or
22 insignificant periods of working time beyond the scheduled working hours of Plaintiff
23 and other members of the putative collective, which as a practical administrative matter
24 cannot be recorded precisely for payroll purposes, are *de minimus* and may be properly
25 disregarded for payroll purposes, in accordance with 29 C.F.R. § 785.47.

26 16. Even if Plaintiff was a non-exempt employee (which he was not), some or
27 all of Plaintiff’s claims would be barred to the extent that Defendant is not subject to
28 liability under the FLSA for any alleged failure to pay compensation for preliminary

1 activities (performed prior to the employee's first principal activity of the work day) or
2 post-preliminary activities (performed after the employee's last principal activity of the
3 work day), in accordance with the Portal-To-Portal Act, 29 U.S.C. § 254.

4 17. Even if Plaintiff was a non-exempt employee (which he was not), some or
5 all of Plaintiff's claims would be barred to the extent Plaintiff and other members of the
6 putative collective are able to establish that they worked an inappropriate amount of
7 non-exempt work, such activity was without the knowledge and contrary to the
8 instructions of Defendants. Plaintiff and other members of the putative collective,
9 therefore, are equitably estopped from asserting a claim that was created, if at all, by
10 their own misconduct.

11 18. Plaintiff's claims are barred in whole or in part by virtue of the fact that
12 Defendant took reasonable steps to ensure that its employees were and are paid properly,
13 and despite Defendant's open door practices, at no time prior to the filing of this lawsuit
14 did Plaintiff ever bring any concerns or complaints to Defendant similar to those alleged
15 in this lawsuit. Had such claim or concern been raised, Defendant would have
16 investigated the matter and taken whatever remedial steps necessary, if any, to remedy
17 the situation.

18 19. Plaintiff and other members of the putative collective or classes have failed
19 to mitigate or take reasonable steps to avoid their alleged damages.

20 20. To the extent that Plaintiff and other members of the putative collective or
21 classes were involved in any improper activities occurring during their employment,
22 they are estopped from recovering for their claims.

23 21. Plaintiff's claims are barred by principals of equity, including unclean
24 hands, estoppel, and laches.

25 22. Some or all of Plaintiffs' claims may be barred by the applicable statute of
26 limitations.

27 23. Any actions by Defendant AMS-Tucson were not so outrageous or
28 extreme as to warrant an award of exemplary, compensatory or other damages or relief.

1 24. Defendant is entitled to a credit or set off against amounts overpaid to
2 Plaintiff and others in the course of their employment.

3 25. This action may not be properly maintained as a class action because
4 Plaintiff cannot establish the necessary procedural elements for class treatment, a class
5 action is not an appropriate method for fair and efficient adjudication of the claims
6 described in the Complaint, common issues of fact or law do not predominate, individual
7 issues of fact or law predominate, Plaintiff's claims are not representative or typical of
8 the claims of the putative class, Plaintiff is not an adequate representative for the alleged
9 putative class, and there is not a well-defined community of interest in the questions of
10 law or fact affecting Plaintiff and the members of the alleged putative class.

11 26. Plaintiff's claims are barred, in whole or part, by the doctrines of accord,
12 satisfaction, and/or accord and satisfaction.

13 27. With respect to the claims for paid sick leave, Defendant acted in good
14 faith and complied or substantially complied with all legal requirements.

15 Discovery may reveal a factual basis for additional affirmative defense and,
16 therefore, Defendant AMS-Tucson reserves the right to add any additional affirmative
17 defenses that discovery may reveal.

18 **RELIEF REQUESTED**

19 Having fully answered Plaintiff's Complaint, Defendant AMS-Tucson respectfully
20 requests the Court take all of the following actions:

- 21 1. Dismiss Plaintiff's Complaint in its entirety with prejudice;
- 22 2. Award Defendant AMS-Tucson its costs and attorneys' fees incurred in
23 having to defend against Plaintiffs' claims;
- 24 3. Award Defendant AMS-Tucson such other and further relief as the Court
25 deems just and proper.

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DATED April 8, 2021.

JACKSON LEWIS P.C.

By: /s/ Amy J. Gittler
Amy J. Gittler
William L. Davis
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2021, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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4849-3189-8334, v. 5