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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

EAGLE BEAR, INC. Plaintiff, v. THE BLACKFEET INDIAN NATION, and DARRYL LaCOUNTE, DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS Defendant.	Cause No. 4:22-cv-00093-BMM **BLACKFEET NATION'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS COUNT 2 OF INTERVENOR INDEPENDENCE BANK'S COMPLAINT IN INTERVENTION**

INDEPENDENCE BANK, Intervenor-Plaintiff, v. EAGLE BEAR, INC., BLACKFEET INDIAN NATION, and DARRYL LaCOUNTE in his capacity as the Director of the BUREAU OF INDIAN AFFAIRS, Intervention-Defendants.	

COMES NOW the Defendant Blackfeet Indian Nation, by and through counsel, and hereby respectfully submit its Brief in Support of its Motion To Dismiss Count 2 of Independence Bank's Complaint-in-Intervention for Lack of Jurisdiction and Failure to Exhaust Blackfeet Tribal Court remedies, and for Failure to State a Claim, as follows:

INTRODUCTION

This matter arises out of a former lease between the Blackfeet Nation and the Plaintiffs, which was cancelled by the Bureau of Indian Affairs (BIA) in 2008.

The Blackfeet Nation and Eagle Bear, Inc. entered into a lease in 1997 which allowed Plaintiff to operate approximately 54 acres of Blackfeet Nation trust land as a campground. While the BIA approved and administered the lease, the BIA was not a party to the lease. A provision in the lease allowed Eagle Bear to

encumber its leasehold interest with the approval of the BIA and the Blackfeet Nation. In June of 2007 Intervenor Independence Bank (hereinafter the "Bank"), loaned Eagle Bear funds to make improvements to the campground. The Blackfeet Nation and BIA approved that mortgage for the purpose stated in the request. No other loans or loan modifications from the Bank to Eagle Bear have been approved by either the Blackfeet Nation or the BIA.

In 2008, BIA cancelled the former lease for nonpayment of the 2007 minimum annual rental payment. Eagle Bear initially appealed the cancellation, then withdrew that appeal. Under applicable law, the lease cancellation became final on or about February 5, 2009. However due to BIA's negligence, Eagle Bear was allowed to remain illegally on Blackfeet Nation land ostensibly under the former lease. As a result of Eagle Bear's continued violations of the former lease, BIA cancelled the lease again in 2017.

This matter is a derivative of extensive proceedings regarding BIA's 2008 cancellation of the former lease which includes a matter pending in the Blackfeet Nation Court, prior proceedings in this Court, a detour to the Bankruptcy Court and then back to this Court. The principal issue was then and is now, the finality of BIA's 2008 lease cancellation.

The Bank filed a motion to intervene in the bankruptcy proceeding which that Court granted, and subsequently filed a similar motion to intervene in this

proceeding removed from Bankruptcy. The Court granted the Bank's motion, and the Bank has filed its Complaint in Intervention raising two (2) counts. In Count 1, the Bank raises the same issues as Eagle Bear regarding lack of notice in a failed attempt to overturn the lease cancellation 14 years ago. Count 2 of the Bank's complaint is entitled "BREACH OF CONTRACT" and asserts that the Blackfeet Nation breached some contractual duty to the Bank for which the Blackfeet Nation is supposedly liable in damages to the Bank.

Based on established Federal Indian law principles, on the facts of this case, the Blackfeet Nation has actual and plausible jurisdiction over the breach of contract claim made in Count 2 of the Bank's Complaint in Intervention and over the Bank itself. Because the Blackfeet Tribal Court has both actual and plausible adjudicatory jurisdiction over the Bank's claims, the Bank must exhaust its remedies in the Blackfeet Nation Court. No exceptions to the exhaustion requirement exist here.

The Bank was not a party to the former lease. The Blackfeet Nation had no contractual duty to the Bank. Consequently, the Bank's breach of contract count fails to state a claim against the Blackfeet Nation. Nor has the Blackfeet Nation waived its sovereign immunity to Independence Bank for any breach of contract claim.

JURISDICTIONAL FACTS

1. The Defendant Blackfeet Indian Nation is a government organized pursuant to the Indian Reorganization Act of 1935, 25 U.S.C. Sec. 476 and 477.

2 The Blackfeet Indian Nation is the owner of trust land within the Blackfeet Indian Reservation.

3. Plaintiff Eagle Bear, Inc. is a non-Indian and non-resident of the Blackfeet Indian Reservation who was and is engaged in activity on Blackfeet Nation trust land within the Reservation.

4. In 1997 the parties, the Blackfeet Nation and Eagle Bear, Inc., entered into a lease of approximately 54 acres of Blackfeet Nation owned trust land on St. Mary Lake, Blackfeet Reservation, for the purpose of operating a for-profit recreational campground business. Doc. 32-8, *Lease*.

5. Intervenor Independence Bank was not a party to the former lease. *Id.*

6. Pursuant to applicable Federal law and regulations, the lease was approved by the BIA. While the BIA was also responsible for lease administration and enforcement, it was not a party to the lease. Doc. 32-8, *Lease*. Only the BIA could cancel the lease.

7. Pursuant to Section 18 of the former lease agreement and 25 CFR § 162.610(c), on May 1, 2007 Independence Bank loaned Eagle Bear funds for the purpose of making improvements to the campground. Doc. 46-1, ¶ 5. The loan was secured by a leasehold mortgage on Eagle Bear's lease and by various

removable personal property of Eagle Bear's which was/is located on the former leasehold premises. Doc. 33-7, *Mortgage of Leasehold Interest*. As required by the lease, the mortgage had to be approved by the Blackfeet Nation and the BIA; both approved that mortgage. Doc. 32-8 at 16, *Lease § 18*; Doc. 33-6, *Blackfeet Nation mortgage approval*; Doc. 33-8, *BIA mortgage approval*.

8. This mortgage was limited to the specific purposes of building a swimming pool and related improvements. Doc. 33-6, *Blackfeet Nation mortgage approval.* No other loan from Independence Bank to Eagle Bear which purported to be collateralized by Eagle Bear's leasehold interest was approved by either the BIA or the Blackfeet Nation.

9. Upon approval by the Blackfeet Nation and the BIA, Independence Bank became the holder of an approved encumbrancer pursuant to Section 18 of the former lease, with rights pursuant to Sections 18 and Section 21 of the former lease. *See also* 25 CFR § 162.610(c). Those rights included the right to foreclose pursuant to the terms of the encumbrance for default of the borrower/lessee, and the opportunity, in the event of termination of the lease by BIA, after due notice to cure any default and assume the obligations of the lessee under the lease. *Id.*

10. Independence Bank was not Eagle Bear's surety. Independence Bank did not guarantee Eagle Bear's performance under the former lease. 25 CFR § 162.101 (2008 ed.)(Surety means one who guarantees the performance of another).

11. The Blackfeet Nation has no contractual obligation to Independence Bank arising out of the former Lease between the Blackfeet Nation and Eagle Bear. The Blackfeet Nation did not waive its sovereign immunity to Independence Bank in any manner or for any purpose.

12. On June 10, 2008 the BIA Blackfeet Agency cancelled the lease for non-payment of the required 2007 annual rental payment due on November 30, 2007. Doc. 34.

13. Eagle Bear, Inc. initially made a timely appeal of the cancellation, but withdrew its appeal on January 5, 2009 before any decision was made on the appeal by the BIA Rocky Mountain Regional Office or the Blackfeet Agency. Doc. 34-13.

14. The BIA Blackfeet Agency's June 10, 2008 cancellation decision was never withdrawn, reversed, set aside, amended, modified, suspended or otherwise overturned by the BIA.

15. The Blackfeet Agency's June 10, 2008 decision cancelling the Eagle Bear, Inc. lease became final 31 days after Eagle Bear, Inc. withdrew its appeal, and then became final for the agency (Department of the Interior).

16. There is no lease today and there has been no lease for 14 years.

17. After the effective date of the cancellation of the Eagle Bear, Inc. lease, Eagle Bear acting through William Brooke, illegally held over and continued operating the campground on Blackfeet Nation trust land.

18. Eagle Bear, Inc. and William Brooke have been in illegal trespass on Blackfeet Nation land since approximately February 5, 2009 and have been operating a campground on Blackfeet Nation land without authorization from the Blackfeet Nation.

19. No loan or loan modification given by Independence Bank to Eagle Bear, Inc. after the loan approved by BIA on May 24, 2007 and by the Blackfeet Nation on April 16, 2007, has been approved by the BIA or the Blackfeet Nation.

LAW AND ARGUMENT

While no longer possessing the full attributes of a sovereign, Indian nations retain sovereignty over their members and their territory. Included in the inherent sovereign powers of Indian nations is the power to exclude individuals, including non-Indians, from land owned by the Indian nation. Pursuant to the inherent power to exclude, the Blackfeet Nation has both regulatory jurisdiction over the activities of non-Indians engaged in conduct on Indian nation trust lands within the Blackfeet Indian Reservation, and it has adjudicatory authority in the Blackfeet Nation courts over disputes involving non-Indians and the Blackfeet Nation arising out of non-Indian conduct on Indian nation trust land within the Reservation.

On the facts of this case, the Blackfeet Nation has both actual and plausible regulatory and adjudicatory jurisdiction over the Bank's breach of contract claim against the Blackfeet Nation. Count 2 of Plaintiff/Intervenor Independence Bank's COMPLAINT must be dismissed for lack of jurisdiction and because the Bank failed to exhaust its tribal court remedies.

As a sovereign nation, the Blackfeet Nation enjoys sovereign immunity from suit which can only be waived by express action. *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 782 (2014) *citing Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). The Blackfeet Nation has never waived its sovereign immunity to Independence Bank. Because Independence Bank was not a party to the former lease agreement, Count 2 of the Bank's Complaint in Intervention, fails to state a claim against the Blackfeet Nation.

A. Inherent Sovereignty of Indian Nations.

As was most recently recognized by the United States Supreme Court in *United States v. Cooley*, decided June 1, 2021, the Court has long:

> described Indian tribes as "distinct, independent political communities" exercising sovereign authority. *Worcester v. Georgia*, 6 Pet. 515, 559 (1832). Due to their incorporation into the United States, however, the "sovereignty that the Indian tribes retain is of a unique and limited character." *United States v. Wheeler*, 435 U. S. 313, 323 (1978). Indian tribes may, for example, determine tribal membership, regulate domestic affairs among tribal members, **and exclude others from entering tribal land**. See, e.g., *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U. S. 316, 327–328 (2008). On the other hand, owing to their

> "dependent status," tribes lack any "freedom independently to determine their external relations" and cannot, for instance, "enter into direct commercial or governmental relations with foreign nations." *Wheeler*, 435 U. S., at 326.

United States v. Cooley, 141 S. Ct. 1638, 1642-43 (2021) (Emphasis supplied).

In *Montana v. United States*, 450 U.S. 544 (1981), the Unites States Supreme Court announced the general rule that the inherent sovereign powers of an Indian Nation do not extend to the activities of non-Indians. *Montana,* 450 U.S. at 565. However, that rule does not apply where the non-Indian conduct occurs on Indian trust land owned by the Indian Nation.

When the conduct of a non-Indian occurs on Indian trust land within a reservation and that land has not been "alienated" (that the Indian Nation retains the right to exclude), then the Indian Nation retains considerable control over the activities of non-Indians on Indian Nation trust land. *See Strate v. A-1 Contractors*, 520 U.S. 438, 454 (1997). An Indian Nation's inherent power to exclude people from its own land has consistently been held to be a basis of jurisdiction over the activities of non-Indians on Indian trust land within an Indian Reservation. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144-145 (1982); *Strate v. A-1 Contractors*, 520 U.S. 438, 454 (1997); *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 335 (2008); *Water Wheel Camp Recreation Area v. LaRance*, 642 F.3d 802, 808-809 (9th Cir. 2011); *Grand Canyon*

Skywalk Development LLC v. Sa Nyu Wa Incorporated, 715 F.3d 1196 (9th Cir. 2013); *Takeda Pharmaceuticals America, Inc. v. Connelly*, 2015 WL 10985374 *4-5 (D. Mont. 2015); *Big Horn Cnty. Elec. Coop., Inc. v. Big Man*, 526 F. Supp. 3d 756, 761-62 (D. Mont. 2021), *aff'd*, No. 21-35223, 2022 WL 738623 (9th Cir. Mar. 11, 2022), *cert. denied sub nom. Big Horn Cty. Elec. v. Big Man*, No. 22-62, 2022 WL 17573474 (U.S. Dec. 12, 2022).

When an Indian Nation retains inherent sovereign authority to regulate the conduct of non-Indians on Indian trust land within a reservation, civil jurisdiction presumptively lies in the Indian Nation courts unless affirmatively limited by a specific treaty or federal statute. *Strate*, 520 U.S. at 453; *Iowa Mutual Ins. Co. v. LaPlant,* 480 U.S. 9, 18 (1987). "Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty. *See Montana,* 450 U.S. at 565-566; *Washington v. Confederated Tribes of Colville Indian Reservation,* 447 U.S. 134, 152-153 (1980); *Fisher v. District Court,* 424 U.S. 382, 387-389 (1976).

Here, the Bank has brought a claim against the Blackfeet Nation arising out of a lease of Blackfeet Nation trust land. Under applicable Federal Indian law principles, the Blackfeet Nation Court clearly has jurisdiction over the Bank's breach of contract claim. *Williams v. Lee*, 358 U.S. 217, 220 (1959); *Kennerly v. District Court*, 400 U.S. 423, 429 (1972). The Blackfeet Nation's jurisdiction

over the Banks's breach of contract claim is based on the inherent power to exclude. *Water Wheel Camp Recreation Area,* 642 F.3d at 808-809; *accord Becker v. Ute Indian Tribe of the Uintah and Ouray Reservations, et al.*, Nos. 18-4030 & 18-4072 (10th Cir. 2021); *Grand Canyon Skywalk Development LLC*, 715 F.3d at 1204-05; *Takeda Pharmaceuticals America, Inc*, 2015 WL 10985374 at *4-5; *Big Man*, 526 F. Supp. at 761-62.

Applying United States Supreme Court and Ninth Circuit Court of Appeals precedent compels the finding that the Blackfeet Nation and its Court has jurisdiction over Independence Bank's breach of contract claim in the Nation's court. Any other finding would "would improperly limit tribal sovereignty without clear direction from Congress", and "any other conclusion would impermissibly interfere with the tribe's inherent sovereignty, contradict long-standing principles the Supreme Court has repeatedly recognized, and conflict with Congress's interest in promoting tribal self-government." *Water Wheel Camp,* 642 F.3d at 816.

Pursuant to the controlling principles of Federal Indian law, considering the ownership status of the land as Blackfeet Nation trust land, based upon the Blackfeet Nation's inherent power to exclude, the Blackfeet Nation has jurisdiction over Independence Bank and the claims in Count 2 of the Bank's Complaint in the Blackfeet Nation court. Count 2 of the Bank's Complaint must therefore be dismissed.

B. Exhaustion of Tribal Court Remedies.

Non-Indians may bring a federal common law cause of action to challenge a tribal court's jurisdiction. *Elliot v. White Mountain Apache Tribal Court*, 566 F.3d 842, 846 (9th Cir. 2008); *National Farmers Union Ins. Co. v. Crow Tribe of Indians,* 471 U.S. 845, 852 (1985); *Iowa Mutual Ins. Co. v. LaPlant,* 480 U.S. 9, 15-16 (1987). It is also well-established law that, with limited exceptions, the non-Indian must first exhaust tribal court remedies. *National Farmers*, 471 U.S. at 856; *Crawford v. Genuine Parts Co. Inc.*, 947 F.2d. 1405, 1415 (9th Cir. 1991); *Grand Canyon Skywalk Development LLC*, 715 F.3d at 1204-05. The requirement of exhaustion of tribal remedies is not discretionary, it is mandatory. *Crawford*, 947 F.2d at 1407.

One of the recognized exceptions to this general rule, is that exhaustion of tribal court remedies is not mandatory where tribal court jurisdiction is plainly lacking. *National Farmers Union*, 471 U.S at 856; *Crawford*, 947 F.2d at 1415; *Grand Canyon Skywalk Development LLC*, 715 F.3d at 1200. However, the activities of non-Indians on Indian lands presumptively lies in the tribal courts, unless "it has been affirmatively limited by a specific treaty or federal statute." *Strate*, 520 U.S. at 453; *Iowa Mutual Ins. Co. v. LaPlant,* 480 U.S. 9, 18 (1987).

It must be first noted that Independence Bank's breach of contract claim is not being brought in this Court as challenge to Blackfeet Nation jurisdiction.

Rather the Bank is trying to bring a breach of contract claim in the Federal Court as a direct action against the Blackfeet Nation. Not only is the Bank required to exhaust its tribal court remedies, but there is also no basis for federal court jurisdiction over the Bank's claims.

As this Court recognized in *Takeda v. Connelly*, at this very early stage of the proceedings, the court only need determine whether tribal court jurisdiction is plainly lacking, to require exhaustion of tribal court remedies. *Takeda*, 2015 WL 10985374 *2, 5. Applying the Federal Indian law principles set forth above (See Section A., supra.), where the non-Indian activity is occurring on Blackfeet Nation owned trust land, the Blackfeet Nation court has plausible jurisdiction, and the Blackfeet Nation court's jurisdiction is not plainly lacking.

Because Independence Bank's breach of contract claim arises out of a former lease of Blackfeet Nation trust land and the Blackfeet Nation is the Defendant, the Blackfeet Nation has plausible jurisdiction. *Nevada v. Hicks*, 533 U.S. 353, 360 (2001); *Strate*, 520 U.S. at 456; and *Montana*, 450 U.S. at 557 (status of the land is important determinative factor in jurisdiction). The land which was subject to the former lease is Blackfeet Nation trust land over which the Blackfeet Nation maintains a landowner's right to regulate entry and exclude, there are no competing state interests (the Bank has alleged none), and Blackfeet Nation court has plausible jurisdiction. *McDonald v. Means*, 309 F.3d 530, 538 (9th Cir.

2002), *Water Wheel Camp Recreation Area,* 642 F.3d at 808-809, and *Grand Canyon Skywalk Development, LLC*, 715 F.3d. at 1204-05.

The Bank has incorrectly asserted in other pleadings that the Blackfeet Nation's jurisdiction is plainly lacking and that exhaustion of tribal court remedies would be futile because provisions of the former lease related to dispute resolution somehow deprive the Blackfeet Nation of jurisdiction. The Bank also incorrectly asserts that only this Court has jurisdiction over the claim in Count 2 of its Complaint. Both arguments are wrong.

1. There Is No Federal Jurisdiction Over The Claim Set Forth In Count 2 Of Independence Bank's Complaint.

Federal Court are courts of limited jurisdiction. While the Bank asserts that this Court has jurisdiction over the claim brought in Count 2 of its Complaint, the Bank offers no statutory authority for Federal Court jurisdiction. Count 2 of the Bank's Complaint is a garden variety breach of contract claim. It is not based on the Constitution, laws or treaties of the United States. 28 U.S.C. § 1331. There is no federal jurisdiction over Count 2 of the Bank's Complaint. The Bank's reliance on the alternative dispute resolution provisions of the former lease does not remedy this fatal problem.

2. The Bank Is Not Entitled to Enforce the Alternate Dispute Resolution Provisions of the Former Lease.

The Bank makes the conclusory assertion that it is a third-party beneficiary under the contract and is entitled to enforce the dispute resolution provisions of the former lease. Doc. 21 at 11, 13-14; Doc. 44 at 6-14. The Bank was not a party to the former lease and is not entitled to enforce the dispute resolution provisions. "In order for one not privy to a contract to maintain an action thereon as a 'third party beneficiary,' it must appear that the contract was made and intended for his benefit. * * * And the benefit must be one that is not merely incidental, but must be immediate in such a sense and degree as to indicate the assumption of a duty to make reparation if the benefit is lost." *Gillette v. Navajo Area Director*, 14 IBIA 71, 74-76, nt. 9(1986)(quoting Blacks Law Dictionary); *Plumage v. Billings Area Director*, 19 IBIA 133, 141(A third-party beneficiary is a person for whose benefit a lease or contract is made by two or more other persons). The former lease was made for the benefit of the Blackfeet Nation, not the Bank. The Bank's status was the holder of an approved mortgage under former lease. Doc. 32-8, at 16 (Lease § 18).

Applying the Interior Board of Indian Appeals test, the Bank's status as the holder of an approved encumbrance did not rise to the level of a third-party beneficiary. The former lease was clearly not made and intended for the benefit of the Bank. The Bank's status under the former lease did not create any "benefit", as the lease was not entered for the benefit of the Bank. Rather the Bank's status as

an approved encumbrancer was incidental and gave it rights under Sections 18 or 21 of the former lease to foreclose on its mortgage, if Eagle Bear defaulted to the Bank (Sec. 18), and an opportunity to cure any default by Eagle Bear under the former lease by curing the default. The Bank's opportunity to assume Eagle Bear's obligations thereunder (Lease § 21) were merely incidental to the main benefit and intent of the lease. There is nothing in either section that the Blackfeet Nation indicated the assumption of a duty to make reparation to the Bank if it lost any benefit.

The Bank was not a party to or a third-party beneficiary of the former lease that was entitled to enforce the remedies provision of the lease. The Bank's rights are governed by the former lease. Those rights did not include the right to enforce the arbitration provision of the former lease.

3. The Blackfeet Nation Has Not Waived Its Sovereign To Independence Bank for Any Purpose.

Assuming for the sake of argument that this Court had jurisdiction over the Claim brought in Count 2 of Independence Bank's Complaint, the Blackfeet Nation's sovereign immunity precludes any action against it by the Bank. Again, the Bank mistakenly relies on the former lease agreement's provision on sovereign immunity and its claim to be a third-party beneficiary, to assert that the Blackfeet Nation waived its immunity to the Bank. As set forth above, the Bank is not a

third-party beneficiary of the former lease agreement. It is not entitled to assert the right to enforce the waiver of immunity contained in the former lease.

Importantly and as a threshold matter, because the Blackfeet Nation court has jurisdiction over the Bank's claim in Count 2 of its complaint, it is up to the Blackfeet Nation Court to determine whether the Bank is entitled to enforce the very limited waiver of sovereign immunity contained in Sec. 26 of the former lease.

4. Count 2 of the Bank's Complaint Fails To State A Basis For Federal Court Jurisdiction, And Therefore Fails to State a Claim Against the Blackfeet Nation.

As noted above, Count 2 of the Bank's Complaint fails to state any claim against the Blackfeet Nation arising under the Constitution, laws or treaties of the United States. 28 U.S.C. § 1331. The Bank is also not a party to the former lease and is not a third-party beneficiary of the former lease.

Therefore, the claims made by the Bank in Count 2 of its Complaint fail to state a claim against the Blackfeet Nation for which relief can be granted by this Court. *See, Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

CONCLUSION

As set forth herein, Count 2 of Independence Bank's Complaint against the Blackfeet Nation must be dismissed. On these facts, the Blackfeet Nation has both actual and plausible jurisdiction over the claim made in Count 2 of the Bank's

Complaint and that jurisdiction is not plainly lacking. The Blackfeet Nation has not waived its sovereign immunity to Independence Bank for any purpose related to the former lease. The Bank's Complaint fails to state a claim against the Blackfeet Nation.

DATED this 20th day of December, 2022.

Respectfully Submitted,

_____/s/_Joseph J. McKay_____

_____/s/_Derek E. Kline_____

Attorneys for the Defendant
Blackfeet Indian Nation

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(d)(2), I hereby certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 point; is double-spaced; and the word count, calculated by Microsoft Office Word, is less than 4,000 words, excluding the Caption, Table of Contents, Table of Authorities, Exhibit Index and the Certificate of Compliance.

/s/ Joseph J. McKay

/s/ Derek E. Kline

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under the penalty of perjury that on the 20th day of December, 2022, a copy of the foregoing was served by electronic means to the parties noted in the Court's ECF transmission facilities.

/s/ Derek E. Kline