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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 RESPONSE IN OPPOSITION TO EAGLE BEAR INC.'S MOTION FOR LEAVE TO CONDUCT ADDITIONAL DISCOVERY, TO FILE SUPPLEMENTAL BRIEFING ON MOTIONS FOR SUMMARY JUDGMENT, AND TO DEFER RULING ON MOTIONS FOR SUMMARY JUDGMENT**
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, and respectfully submits its Response in Opposition to Eagle Bear Inc.'s Motion for Leave to Conduct Additional Discovery, To File Supplemental Briefing on Motion for Summary Judgment, and To Defer Ruling on Motions For Summary Judgment, as follows:

INTRODUCTION

Under Fed. R. Civ. P. 56(d), an opposing party to a summary judgment motion seeking to reopen discovery, like Eagle Bear Inc., must make clear what information is sought and how it would preclude summary judgment. Eagle Bear fails to do that. Eagle Bear does not explain in its supporting affidavit what specific facts it believes it will obtain from further discovery that would preclude summary judgment.

Eagle Bear's only ground for reopening discovery is that the additional depositions of the Bureau of Indian Affairs ("BIA") staffers (Pease, Wagner, Tatsey (again) and others related to the information in the Pease Emails), "would [allegedly] reveal information material to this case and to Eagle Bear's position on summary judgment in this matter." Doc. 93-3 at 3, ¶ 8 (Rule 56(d) Affidavit of Griffin Stevens). Such speculation, without identifying any specific facts not already available to the Parties that Eagle Bear believes could preclude summary judgment, is insufficient for Rule 56(d) purposes to grant the relief requested.

And yet even if "specific facts" were included in Eagle Bear's supporting affidavit, discovery should not be reopened because nothing the BIA staffers could say could change anything. This Court has already held "[t]he BIA lacks authority to revive a cancelled lease, however, without the consent of the Blackfeet Nation." *Eagle Bear Inc. et al v. Blackfeet Nation et al.,* CV-21-88-GF-BMM, Doc 27 at 11-12 *citing Moody v. United States,* 931 F.3d 1136, 1142 (Fed. Cir. 2019) (emphasis added). That is the law of this case. Nothing the BIA staffers could say, could create an issue of material fact. *See id. citing Moody.*

While the "Pease Emails" demonstrate the fundamental dysfunction, incompetence, and negligence of the BIA in managing Blackfeet Indian Trust land and resources, they do not create any inference that additional information exists, which would assist Eagle Bear in avoiding summary judgment. They further confirm the lease cancellation by the Superintendent on June 10, 2008, and that BIA was unable to obtain any documentation from the Blackfeet Nation supporting reinstatement of the cancelled lease.

Any statements by BIA regarding what Blackfeet Land Department Director Mark Magee allegedly said, is inadmissible hearsay. More importantly, Magee already testified he does not recall any discussions with BIA or Will Brooke regarding the 2008 cancellation, and he had no authority to act on behalf of the Blackfeet Nation with regards to the leasing of Tribal Lands. Nothing Magee

could say or do could represent a decision on behalf of the governing body of the Blackfeet Nation. The bottom line here is that the Pease Emails do not say what Eagle Bear Inc. wants them to say. They are not a smoking gun and are not an indication a smoking gun can be found from reopening discovery.

Over six months ago, this Court recognized the urgency of answering the question of whether the lease was cancelled. Doc. 1 at 12. Any further delay will severely prejudice the Blackfeet Nation, in both time and expense.

Summer is fast approaching, and this Court recognized the need to issue a ruling "before the season begins." Doc. 9. Eagle Bear's former lease has been cancelled, twice. Eagle Bear has been occupying Blackfeet land and making significant profits from Blackfeet resources for over 14 years, without the legal authority to do so. All-the-while refusing to pay the Blackfeet Nation its fair share of rent, royalty, and taxes; refusing to complete annual certified audits reports, refusing to receive approval for improvements; refusing to post bond; and refusing to follow Blackfeet Nation laws. Eagle Bear has, in essence, been operating as if there was no lease, to the Blackfeet Nation's exclusive detriment.

The BIA failed in its obligations to produce discoverable information to both Parties, however, the additional emails do not suggest there is any additional information in possession of the BIA personnel, which could not have been discovered during the course of discovery. Eagle Bear does not identify specific

information in its supporting affidavit that could be discovered, let alone identify any category of information that was not previously discoverable, that could preclude summary judgment. Eagle Bear's Motion is clearly not an exercise in seeking discovery, but rather an implement of delay.

Eagle Bear has failed to set forth in affidavit form (1) the specific facts it hopes to elicit from further discovery; (2) the alleged facts sought exist; and (3) the alleged sought-after facts are essential to oppose summary judgment. Eagle Bear's failures are fatal to its motion. Eagle Bear's motion is another thinly veiled attempt to use procedure to effectuate delay, and to avoid a merits-based determination on lease cancellation. Eagle Bear's misuse of procedure should not be condoned by this Court. Eagle Bear's Motion should be denied.

STANDARD OF REVIEW

Whether to extend or reopen discovery is committed to the sound discretion of the trial court and its decision will not be overturned on appeal absent abuse of that discretion. *United States v. Reliance Insurance Co.* 799 F.2d 1382, 1387 (9th Cir. 1986).

Where a litigant believes additional discovery is required to oppose a motion for summary judgment, Federal Rule of Civil Procedure Rule 56(d) provides a "device for litigants to avoid summary judgment when they have not had sufficient time to develop affirmative evidence." *Stevens v. Corelogic, Inc.*, 899 F.3d 666,

678 (9th Cir. 2018) (internal citations and quotations omitted). A party seeking additional discovery under Rule 56(d) must explain what further discovery would reveal that is essential to justify its opposition to the motion for summary judgment. *Id.* In particular, the requesting party must show that: (1) they have set forth in affidavit form the specific facts they hope to elicit from further discovery; (2) the facts sought exist; and (3) the sought-after facts are essential to oppose summary judgment. *Id.*

For purposes of a Rule 56(d) request, the evidence sought must be more than "the object of pure speculation." *California v. Campbell*, 138 F.3d 772, 779-80 (9th Cir. 1998)(citation omitted). A party seeking to delay summary judgment for further discovery must state "what other *specific* evidence it hopes to discover [and] the relevance of that evidence to its claims." *Program Engineering, Inc. v. Triangle Publications, Inc.* 634 F.2d 1188, 1194 (9th Cir. 1980)(emphasis in original). "Failure to comply with the requirements of Rule 56[(d)] is a proper ground for denying discovery and proceeding to summary judgment." [1] *See Barona Group of the Capitan Grande Band of Mission Indians v. Management & Amusement, Inc.,* 840 F.2d 1394, 1400 (9th Cir.1987) *cert. dismissed,* 487 U.S. 1247 (1988) *citing Brae Transp., Inc. v. Coopers & Lybrand (Brae)*, 790 F.2d

[1] Subdivision (f) of Fed. R. Civ. P. 56 was amended to be subdivision (d) as part of the 2010 Amendment to the Rules of Civil Procedure. "Subdivision (d) carries forward without substantial change the provisions of former subdivision (f)."

1439, 1443 (9th Cir. 1986) *citing Foster v. Arcata Assocs., Inc.* 772 F.2d 1453, 1467 (9th Cir. 1985) *cert denied*, 475 U.S. 1048 (1986).

ARGUMENT

1. Eagle Bear fails to comply with Fed. R. Civ. P. 56(d) by failing to identify specific facts that could be obtained from additional discovery that would preclude Summary Judgment.

Eagle Bear fails to show how further discovery would preclude summary judgment. This is because no such showing can be made from the Pease Emails. This is just another fishing expedition by Eagle Bear to facilitate delay and continue its holdover tenancy. *See* Doc. 32-8 at 30, Lease § 43 (Lease section entitled, "Holding Over").

"A party requesting a continuance pursuant to [Rule 56(d)] must identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment." *Tatum v. City & Cty of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006) (citations omitted); *Continental Maritime v. Pacific Coast Metal Trades,* 817 F.2d 1391, 1395 (9th Cir. 1987) ("the party seeking a continuance bears the burden to show what specific facts it hopes to discover that will raise an issue of material fact").

Here, Eagle Bear's Rule 56(d) affiant Griffin Stevens fails to set forth any particular facts expected from further discovery that can be used to create an issue of material fact. Stevens' only stated reason for reopening discovery -- to depose

BIA staffers Pease, Wagner and Tatsey (again) and issue follow-up written discovery -- is that it "would reveal information material to this case and to Eagle Bear's position on summary judgment in this matter." Doc. 93-3 at 2 ¶ 8. This vague affirmation does not state or identify any *specific* evidence or categories of evidence that would satisfy the requirement of Rule 56(d) to reopen discovery at this late hour.

Indeed, Eagle Bear's Rule 56(d) affidavit did not enumerate any "specific facts" it hopes to elicit from further discovery. *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.,* 525 F.3d 822, 827 (9th Cir. 2008). Nor did it "provide any basis or factual support for [its] assertions that further discovery would lead" to such purported facts. *Margolis v. Ryan,* 140 F.3d 850, 854 (9th Cir. 1998). Similar to the movant in *Barona Group of the Capitan Grande Band of Mission Indians* (cited above), Eagle Bear fails to explain how additional discovery would affect the disposition of the case – nor could it. Again, nothing the BIA staffers could say could revive the cancelled lease. *See Moody,* 931 F.3d at 1142.

Because Eagle Bear's affiant has failed to set forth any purported facts in the Rule 56(d) affidavit that could be obtained from further discovery and which could allegedly preclude summary judgment, its Motion for Leave to Reopen Discovery, for further briefing, and delay, should be denied.

2. The Pease Emails are irrelevant to the issue on Summary Judgment and confirm the 2008 lease cancellation.

Opposing counsel's reliance on a few errant emails lost in the shuffle, does not rise to the level of a smoking gun, let alone an implication that additional information exists which could impact the determination to be made by this Court on Motions for Summary Judgment. Those emails are duplicative information of what this Court has already recognized, and cannot change what this Court has already held:

(1) "The BIA lacks authority to revive a cancelled lease, however, without the consent of the Blackfeet Nation. *Eagle Bear Inc. v. Blackfeet Nation et al.,* CV-22-88-GF-BMM, Doc. 27 at 11-12 *citing Moody v. United States,* 931 F.3d 1136, 1142 (Fed. Cir. 2019).

(2) only a decision by the BIA Rocky Mountain Regional Director could overturn the June 10, 2008 lease cancellation decision by the Superintendent. *Eagle Bear Inc. et al.,* CV-21-88-GF-BMM, Doc 27 at 6 *citing* 25 C.F.R. § 2.4;

(3) Eagle Bear withdrew its appeal on its own accord "pursuant to [its] discussions" with BIA realty staff. *Eagle Bear Inc. et al.,* CV-21-88-GF-BMM, Doc 27 at 11; and

(4) No lease would exist between Eagle Bear and the Blackfeet Nation under the circumstances. *Id.*

Eagle Bear is grasping at straws to avoid a foregone conclusion: the former lease was cancelled long ago and never reinstated. Testimony by more BIA staffers, and BIA staffer Tracey Tatsey for a second time, cannot provide for a written decision from the Regional Director under 25 CFR 2.4; and it cannot provide written consent of the Blackfeet Nation.

Eagle Bear's interpretation of the Pease Emails is troubling. Contrary to its position, these emails in no way demonstrate, "Mark Magee and the Nation had full knowledge of the proceedings and agreed that the Lease should not be cancelled, and that Will Brooke was correct that the Nation wished to preserve its mutually beneficial relationship with Eagle Bear rather than to cancel the Lease." Doc. 93 at 3-4 *citing* Docs 91-1 through 91-4. This is simply a stretch of Eagle Bear's imagination.

Neither Magee nor any other Blackfeet Nation employee or official is even copied on the Pease Emails. Magee's alleged hearsay statements to BIA staffer Tracey Tatsey or Magee's alleged discussion with "one of the Council" is hearsay. But even if true, which Tatsey expressly denies (Doc. 29-20, *Tatsey depo*, 42:3-25; 52:13-22), and Magee does not recall happening (Doc. 29-3 at 8, *Magee depo* 30:17-18, 31:12-32:3), the Land Department Director and one Council member cannot make decisions on behalf of the Blackfeet Nation. Decisions of the Blackfeet Nation require official action by a quorum of the Blackfeet Tribal

Business Council.

Under Article III of the Blackfeet Constitution, the Blackfeet Tribal Business Council is the governing body of the Blackfeet Nation. Exhibit 1, Constitution and By-Laws for the Blackfeet Nation. At least two-thirds of the nine-member Council must convene at a meeting within the exterior boundaries of the Blackfeet Reservation to take official action. *Id.,* By-Laws of the Blackfeet Tribal Business Council, Article V §§ 1-3 (p.10). The Council may lease tribal lands, but only with the approval of the Secretary of the Interior, for such periods of time as are permitted by law. *Id.,* Blackfeet Constitution, Article VII § 3; *see also* Blackfeet Constitution, Article VI § 1(c). Blackfeet Tribal Members and Indian cooperatives must receive preference in the leasing of Blackfeet Tribal land. *Id.,* Blackfeet Constitution, Article VII § 3. Therefore, no individual member of Tribal Council or staff person, could reinstate the cancelled lease in accordance with the governing documents of the Blackfeet Nation. There was no decision by the Blackfeet Nation regarding reinstatement of the cancelled lease in 2008 because it was unaware of it. Doc. 29-2, *Blackfeet Nation 30(b)(6) depo,* 35:22-36:9.

Moreover, Mark Magee testified, as head of the Blackfeet Land Department, he had:

- no authority to make a decision on behalf of the Council;

• no authority to make any decisions regarding the former lease; and

• no authority to reinstate a canceled BIA business lease.

Doc. 29 at 10, *Magee depo*, 38:13-39:12. Despite Eagle Bear's desperate desire to the contrary, the Blackfeet Nation operates pursuant to its established laws and policies. Following those laws and policies was necessary to reinstate the cancelled lease. That never happened.

Neither the Pease Emails nor anything the BIA staffers could say, could provide for consent of the Blackfeet Nation under the Blackfeet Constitution to create or revive an enforceable lease, and preclude summary judgment. The additional discovery requested is not warranted.

3. The Pease Emails illustrate the fundamental incompetence and negligence of the BIA, in gross violation of its Trust responsibility to the Blackfeet Nation.

The Pease emails demonstrate (1) the former lease was affirmatively cancelled in 2008; (2) that BIA acknowledged the need for an "official standing" and "documentation" from the Blackfeet Nation, to reinstate the cancelled lease; and (3) that BIA could not obtain such written documentation; but instead negligently allowed Eagle Bear to occupy Blackfeet Nation land without a valid lease.

The BIAs trust responsibility and duty is to enforce Indian leases for the benefit of the Indian lessor, not a non-Indian lessee. *See Hollywood Mobile*

Estates v. Seminole Tribe, 641 F.3d 1259, 1267-69; (11th Cir. 2015); *Candelaria v. Sacramento Area Director, BIA*, 27 IBIA 137, 139 (1995). The Pease Emails illustrate BIA negligence in failing to carry out its statutory and trust responsibility to the Blackfeet Nation, by allowing Eagle Bear to occupy Blackfeet Nation land without the written consent of the Blackfeet Nation.

Eagle Bear distorts what the Pease Emails say. Accordingly, they are set forth below in chronological order, with date, time, and BIA staff identified:

- 10/27/2008 9:01AM — From B.Pease to T.Tatsey, cc: J.Wagner:

  "Tracy, what is the status of the appeal…thanks"

- 10/27/2008 11:10AM — From T.Tatsey to B.Pease, cc: Wagner:

  "I have unofficially from the Tribe that they are currently in negotiations with Mr. Brook on another lease and the cancellation of this lease may hinder those negotiations. I will write to the B Tribe and ask for an official standing.

- 11/18/2008: 1:05PM — From B.Pease to T.Tatsey, C.Madison cc: J.Jorgenson; J.Wagner

  Tracy, please I need to know the status of this ASAP. Either send the administrative record or documentation from the tribe stating their intentions…thanks.

- 11/18/2008: 1:12PM — From T.Tatsey to B.Pease, cc: C.Madison, J.Wagner, and J.Jorgenson:

  "The administrative record was sent to RMR on August 22, 2008, the Blackfeet Tribe told me that they were in support of Eagle Bear, (through Mark Magee), but have been unsuccessful getting that in writing. Do you need me to do anything more? I will contact the Tribe once again and if I cannot get

documentation, I will let you know."

- 12/4/2008: 3:32PM — From B.Pease to T.Tatsey, J.Wagner, cc: C.Madison, and J.Jorgenson:

  "What did you find out?"

- 12/10/2008: 1:25PM — From T.Tatsey to B.Pease, cc: C.Madison, J.Wagner, and J.Jorgenson:

  "Bernadine – I called Mark Magee once again. He is going to talk to one of the Council today and get back to me."

- 12/10/2008: 1:49PM — From B.Pease to T.Tatsey:

  "Thanks…bp."

- 12/11/2008: 12:58PM — From B.Pease to T.Tatsey

  "All I need is a statement from Will Brooke indicating he has decided to cancel his appeal."

- 12/16/2008: 9:38AM — From T.Tatsey to B.Pease:

  "I just got off the telephone with Mr. Brooke, he will send in this statement, and forward it to you. Thanks."

- 12/30/2008: 9:37AM — From B.Pease to T.Tatsey:

  "Do you know if Mr. Brooke sent in his statement cancelling his appeal?"

- 1/7/2009: 3:40PM — From T.Tatsey to B.Pease:

  "I just received the correspondence today, I will get in the mail tomorrow. (Weather permitting)."

Docs. 91-1 – 91-4.

As shown above, the Pease Emails cannot, and do not, prove Blackfeet Nation consent, to reinstate the cancelled lease. Nor could testimony from any BIA recipient of the Pease Emails create Blackfeet Nation consent under the Blackfeet Constitution. Nor could any testimony from any BIA recipient of the Pease Emails reveal a decision by the Regional Director, which is required to be in writing and include appeal rights. *See* 25 CFR §§ 2.4, 2.7. Such claims are foreclosed by the law.

What the Pease Emails do prove, is there was a valid lease cancellation on June 10, 2008; and that BIA was negligent in allowing Eagle Bear to hold over on Blackfeet Nation land without a valid lease. Fortunately, Indian Nations and Indian People are not bound by BIA's negligence. *Sessions, Inc. v. Morton*, 491 F.2d 854, 857 n.5 (9th Cir. 1974)(Honorable Russell E. Smith sitting by designation); *Strom, et al. v. Northwest Regional Director*, 44 IBIA 153, 165-166 (2007)("If in fact BIA employees gave erroneous advice, that advice does not override applicable laws and regulations") *citing Flynn v. Acting Rocky Mountain Regional Director*, 42 IBIA 206, 213 (2006)(erroneous advice by BIA could not operate to grant rights not authorized by law or inconsistent with the regulations).

The former lease was cancelled on June 10, 2008 and that cancellation was never reversed, rescinded, withdrawn, modified, amended or otherwise overruled. It became a final agency action on February 5, 2009 and the statute of limitations

ran six years later. Nothing in the Pease Emails, or what any BIA staffer could say about the Pease Emails, can change this.

The IBIA has repeatedly held individuals dealing with the government are presumed to have knowledge of duly promulgated regulations. *Flynn,* 42 IBIA at 213. Eagle Bear's President, Will Brooke, is a lawyer, is a specialist in government contracts, (Doc. 29-4, *Brooke depo*, 10:8-11:5), and is presumed to know oral representations by BIA staffers does not create an enforceable lease of Blackfeet Indian Nation Trust land. The Pease Emails are irrelevant to the analysis on summary judgment and confirm lease cancellation.[2]

4. The Blackfeet Nation will suffer severe prejudice in delay and expense if discovery is reopened.

Eagle Bear has been illegally occupying Blackfeet Nation land since 2009. Any further delay will be prejudicial to the Blackfeet Nation as it will unduly postpone the disposition of this case, substantially increase expense, and prevent the Nation from exercising self-governance over its own lands.

The consideration of prejudice to the opposing party carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.

[2] Even though the Pease Emails are irrelevant to summary judgment, it is deeply disturbing to the Blackfeet Nation that BIA would disclose such emails at this late juncture, after assuring this Court and the Parties that responsive records to the Blackfeet's subpoena was the entire record. This sanctionable conduct illustrates the ongoing incompetence of the United States Bureau of Indian Affairs and its pervasive breach of its fiduciary duty to the Blackfeet Nation.

2003). A need to reopen discovery, a delay in the proceedings, or the addition of complaints or parties are indicators of prejudice. *See, e.g. Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.2002).

Eagle Bear seeks to go on another fishing expedition with BIA staffers, when the time, delay, and extraordinary expense of further depositions, written discovery and briefing is completely unnecessary. There is nothing the BIA staffers could say that could preclude summary judgment. Reopening discovery would unduly delay the disposition of the case, as scheduling/holding of multiple depositions, answering written discovery, filing additional briefs, and delaying a decision on summary judgment, would significantly extend these proceedings. Thus, extending Eagle Bear's illegal holdover tenancy of Blackfeet Indian Nation land, to the detriment to the Blackfeet People, should not be condoned.

The delay by the BIA in disclosing the Pease Emails is at no fault of the Blackfeet Nation. Eagle Bear admits this. The BIA's negligence continues to be detrimental to the Blackfeet Nation and now Eagle Bear would like to capitalize on it once again, to its unwarranted advantage, and unnecessary delay this case.

Extensive discovery has already occurred. Eagle Bear issued nine (9) deposition subpoenas, took lengthy depositions of multiple BIA officials and staffers in charge in 2008; a 30(b)(6) deposition of the Blackfeet Nation and a deposition of former Blackfeet Land Department Director, Mark Magee; and

propounded numerous interrogatories, requests for admissions and requests for production on the parties. The BIA has produced a FOIA Response, administrative record, supplemental administrative record, and subpoena response, regarding the former lease. There are no further documents. The Blackfeet Nation should not be forced to devote additional time and resources to a case that is ready for disposition, for which new evidence cannot create an issue of material fact.

The purpose of the Federal Rules of Civil Procedure is to "secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Eagle Bear's case comes down to its legally indefensible claim that BIA staff told them to withdraw its appeal because BIA had received its late payment, accepted that payment, and Eagle Bear was current on the lease. That argument has been rejected by this Court, the Federal Circuit Court of Appeals, and the IBIA. Allowing Eagle Bear to continue discovery over a failed and rejected legal argument is not in the spirit of the Rules. Such further discovery to supplement summary judgment is prejudicial and should not be allowed.

CONCLUSION

There is nothing in the Pease Emails, nor any testimony regarding the Pease emails, that could preclude summary judgment. Eagle Bear has failed to set forth in affidavit form the specific facts it hopes to elicit from further discovery; the facts sought exist; and how the sought-after facts are essential to oppose summary

judgment. Eagle Bear has not met its burden under Fed. R. Civ. P. 56(d) to reopen discovery. This is another attempt by Eagle Bear to use the procedural means of the judicial system to effectuate its interests, and further prejudice the Blackfeet Nation. Eagle Bear's Motion should be denied, and Summary Judgment should be rendered without further delay.

DATED this 17th day of April, 2023.

Respectfully Submitted,

_____/s/_Derek E. Kline_____

Attorney for Defendant
Blackfeet 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 not more than 4,000 words, excluding the Caption, and the Certificate of Compliance and Certificate of Service.

/s/ Derek E. Kline

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under the penalty of perjury that on the 17th day of April, 2023, 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