

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

JOHN DOE,)	
)	
Plaintiff,)	
)	
vs.)	
)	Case No.: 2016-cv-17-S
BROWN UNIVERSITY IN PROVIDENCE)	
IN THE STATE OF RHODE ISLAND AND)	
PROVIDENCE PLANTATIONS,)	
)	
Defendant.)	

**FIRST AMENDED
VERIFIED COMPLAINT**

The Plaintiff, John Doe, is a student at Brown University and former acquaintance of student Ann Roe,¹ who once pursued John romantically, and now does so vengefully. John now finds himself suspended for at least two years. John Doe alleges as follows:

PARTIES

1. The Plaintiff, John Doe (“John”) is a domiciliary of East Brunswick, New Jersey. During the events described herein, John Doe was a student at Brown University and resided on the Brown University campus in Providence, Rhode Island.
2. The Defendant, Brown University in Providence in the State of Rhode Island and Providence Plantations (“Brown”), is a Rhode Island non-profit corporation with a principal place of operation located in Providence, Rhode Island.

¹ “Ann Roe” is a pseudonym.

JURISDICTION & VENUE

3. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because John Doe and Brown are citizens of different states and the amount in controversy exceeds \$150,000.00, exclusive of costs and interest.

4. This Court has personal jurisdiction over Brown on the grounds that it is a citizen of the State of Rhode Island.

5. Venue properly lies in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTUAL BACKGROUND

6. During high school, John was the president of his high school's mock trial team and devoted hundreds of hours to developing his advocacy skills.

7. When applying to colleges, a significant consideration in John's decision process was the mock trial programs at each college or university. John decided to pursue admission at Brown because of the quality of its mock trial program.

8. In the spring of 2013, Brown offered John admission to the Class of 2017 based on, among other things, his outstanding academic record, SAT scores, and participation in extracurricular activities, including his high school mock trial team.

9. John was accepted at other top tier universities, including the University of Chicago and Cornell, but John accepted Brown's offer with the goal of obtaining a quality liberal arts education and a competitive position to gain admission to an elite law school.

10. During his freshman year, John devoted hundreds of hours to practicing, preparing, and developing his advocacy skills, became recognized as one of the most promising freshmen on the

mock trial team, and was selected to deliver closing arguments as an attorney during the spring semester of his freshman year, a coveted mock trial position.

11. Over the summer of 2014, following his freshman year, John suffered severe depression due to a break-up with his high school sweetheart.

12. When the fall semester began, John doubled down on mock trial, and decided to purge his feelings for his ex-girlfriend through hard work and by actively dating other women.

13. Because a great deal of John's time was consumed by mock trial, the people on mock trial formed his social circle. John was flirtatious with more than one of the female members of the team.

14. John expressed interest in Ann Roe and Ann expressed interest in John.

15. John expressed interest in Kay Stiles² and Kay expressed interest in John.

16. Ann and Kay were members of the mock trial team.

17. John began texting Ann and Kay.

John and Kay

18. On October 24, 2014, John texted Kay, "thanks for coming out and looking so cute." Kay responded, "anytime [smiley face]." A casual, friendly relationship ensued.

19. John encouraged Kay to tell the mock trial team captains that she wanted to become an attorney on the team, and Kay appeared interested in pursuing a relationship with John.

20. On December 7, 2014, at a mock trial competition at UC-Irvine in California, John was sitting outside the hotel on a couch under a canopy beside the pool reviewing his mock trial documents. Kay came over and sat down next to him. She made strong eye contact with John, displayed a flirtatious demeanor and remained outside with him late into the night.

² "Kay Stiles" is also a pseudonym.

21. Back at Brown on the evening of December 14, 2014, John walked Kay to Josiah's dining hall. Kay took John's arm, interlocked it with hers as they walked, and continued to touch John and keep her arm around him. She then moved her arm up and wrapped it around John's back, where she kept it until they got their food.

22. The next day, John began texting Kay, but Kay did not reply.

23. Subsequently, Kay apologized to John, admitted to the eye contact and to being "flirty," as well as "confusing and really severely awkward." She further conceded that "there have been moments when I've felt something for you." However, the romance went no further.

John and Ann

24. Soon after John began texting Kay, he also began texting Ann, and she proved much more receptive to his attention. See Exhibit A.

25. On November 6, 2014, John wrote, "The hardest part of freshman year was watching everyone else hookup with people. I'm kinda just waiting for the right girl." Ann responded, "good for you. I'm struggling with that a lot now. I mean I love my boyfriend but part of me just wants to go fuck someone I just met like everyone else is doing xD."³

26. Ann followed up: "I know you're not supposed to fuck sleep with your friends but idk it's something Id want to try but who knows if I'll ever get that opportunity xD . . . I've just been really 'frustrated' lately because I haven't seen my boyfriend in like almost 2 months so I'm like dying for some sort of human contact haha. And I'm talking like PIV [penis in vagina] haha."

27. John followed up, "So maaaaybe you're a little less innocent than I thought . . . Still, it's just talk." Ann replied, "You think I'm all talk?" John answered, "Maybe just a little bit." Ann replied, "Well maybe you'll see, maybe you won't!"

³ "xD" is a laughing emoticon.

28. John and Ann continued texting quite nearly all day long, and their conversation became decidedly more graphic. John and Ann shared sexual fantasies, and Ann described for John what she called “the best blowjob of your life.” Similar exchanges continued over the following days.

29. After this exchange, John did not hide the fact that his interest in Ann was sexual, and though she often said she felt confused, she continued to text John and engage in sexual banter.

30. Though John offered to back off, John and Ann planned to watch a movie and “cuddle” together on November 10, 2014. John told her “maybe we shouldn't, because I know I'll be tempted to make a move.” John repeated, “maybe we shouldn't hangout until you're ready.” But, Ann wanted to get together.

31. Ann asked John, “What if you were sure there was no chance I would ever have sex with you? Where would you go from here?” John replied that they would be friends. Ann then asked, “And would you watch a movie with me?” John flatly said, “No.”

32. Around 1:20 in the morning on November 10, 2014, John and Ann met at J. Walter Wilson Hall. However, they couldn't gain access to any of the rooms because it was after hours. So, they left and went to Faunce House, where they decided to watch their movie in a storage room.

33. Within minutes of starting the movie, John told Ann that she looked pretty in her sweatpants. They began to kiss, Ann pushed John on his back and straddled him. John put his hand over her breast on top of her shirt. Ann continued to kiss John. John began to rub Ann's vagina over her sweatpants, and at some point, reached his hand into Ann's pants. She subsequently pulled her sweatpants down with John's help.

34. After John finished digitally penetrating Ann, she told John that it was her turn. She unzipped John's pants and pulled them down to John's ankles with his help. She then proceeded to give John oral sex.

35. During their encounter, the motion-activated light came on twice. Each time, Ann got up, walked approximately ten feet, turned off the lights, and came back to John.

36. As John neared ejaculation, he asked Ann if he could do so in her mouth. Ann agreed.

37. After John ejaculated, John and Ann sat down, cuddled, and started kissing again.

38. After approximately another ten minutes, John and Ann left the storage room, went out the doors under the arch, gave each other a hug, and said goodbye.

39. John and Ann texted again on November 14, 2014. The UC-Irvine mock trial event was coming up in California, and John told Ann to "[r]emember to pretend like you didn't give me a mind blowing blowjob." She replied, "[o]nly if you remember to pretend you're not imagining fucking the shit out of me" and "no one will suspect how much you want to cum inside me." Ann finished by saying "sounds like we've got a plan [winking smile]." However, John was better at pretending than Ann expected, and Ann grew impatient.

40. John's texts became short and infrequent. On November 15, 2014, Ann contacted John and asked, "whacha been up to stranger?" John responded that he was busy and couldn't talk. Ann replied, "All righty no problem, we'll catch up later. Night!"

41. The next day, Ann texted John about her mock trial performance and stated, "I wish I could see you in action."

42. The next day, November 16, Ann texted John and hinted that she would like to get together. However, John replied that he had to get some work done. Ann responded, "All righty . . . Hit me up sometime if you're bored [winking smile] see ya!"

43. On November 19, 2014, Ann told John that she was having boyfriend trouble and wanted him to cheer her up over the weekend. Upon information and belief, she had actually broken up with her boyfriend because of her feelings for John. John, however, declined.

44. Ann told John that she was “not trying to chase” him, but that he was torturing her and driving her “completely insane.” John told Ann that he had feelings for someone else – Kay, one of her best friends.

45. John asked Ann if she would put in a good word for him with Kay. Ann agreed, but upon information and belief, her conversation with Kay was not what John expected.

Aftermath

46. Ann reported her November 10th encounter with John to Kay as follows:

He literally hit play on the movie and turned my face and went to kiss me and I turned away and he was like no? And I was like I can't do that im sorry. And he was like can I kiss your cheek (as he was already doing it) and I was like I guess? So then he was like doing shit and he went to kiss me again and I was like fine and just kissed him. And then he was like I bet you wanna fuck me right now and I was like I really can't do that. And he was like ok so then how about you give me a blowjob and I was like I don't know. And he was like cmon I know you want to and I was like idkkkkkk and he like convinced me. And I guess I kind of got attached . . . Moral of the story: [John] is an asshole.

47. Kay replied “OMG STOP . . . Like he essentially assaulted U.”

48. On December 26, 2014, Kay suddenly sent John a snapchat of a woman with her middle finger up and the words “fuck you” written across the screen.

49. Subsequently, Ann enrolled John in a variety of online dating sites and began disparaging John to members of the mock trial team.

50. Ann coaxed another female friend to flirt with John and then rebuff his attention.

51. Ann's conversations with Kay and others painted a picture of her encounter with John increasingly divorced from reality as she adopted Kay's suggestion that the encounter amounted to an assault.

52. On January 22, 2015, Ann texted Kay that she had spoken to someone on mock trial about John and stated, "he can't continue to be on a team where he doesn't respect others."

53. A few days later, on January 25, 2015, John texted Ann, "I do owe you an apology for how I treated you before." Ann replied, "Thank you!! Apology accepted, I really appreciate that . . . Im sorry for making the awkwardness worse and signing you up for obscure dating sites . . . I definitely overreacted . . . im sorry, I was upset . . . Does this mean you'll add me back on snapchat now loser!" John said, "perhaps." Ann replied, "Yassss best day everrr."

54. The text message exchange progressed to a discussion of Kay. John told Ann that Kay hated him. Ann replied that he was correct, admitted that she was the reason why, and offered to help John get back in her good graces. However, again, Ann did not discuss matters with Kay quite as John expected.

55. When John apologized to Kay, she did not respond. Ann told Kay, "you don't need to answer honestly he just makes me nervous." Kay agreed, "he's gonna try to flirt with us again." Ann replied, "I completely agree he's already doing it."

56. Over the following months, Ann continued to pursue John. At times they worked together on mock trial preparation, but their relationship remained platonic. John still harbored feelings for Kay, and Ann continued to disparage John to her and others. In March, John learned of this and stopped communicating with Ann.

57. On March 31, 2015, out of the blue, Ann tried to get back on good terms with John and texted him, "Happy Birthday!!" But, John had little to say, and Ann took note.

58. When John announced that he was going to run for a position on the mock trial executive board, Ann promptly composed a letter to the captain of the team alleging that John had assaulted her. She wrote:

As you know, [John] and I had a bit of an “encounter” at the beginning of the year. I made a lot of jokes about this because it was my way of dealing with a situation I wasn’t comfortable with. I’m not sure if I ever made clear to you just how not consensual that was. I was manipulated into hanging out with him because he made me feel bad for rejecting him, but he promised we would just be hanging out as friends. He ended up kissing me and more after I repeatedly said no and turned away when he grabbed my face. I eventually let it happen after he wouldn’t give up because I figured that was the easiest way to get it over with.

- - -

but if sexual assault is punishable by expulsion from Brown, I think it should at least warrant a talk with mock trial.

59. John was not elected to the mock trial executive board, and Ann began circulating a petition to remove John from the mock trial team entirely.

60. In May of 2015, Ann approached the mock trial executive board and repeated her accusation that John assaulted her. John insisted that he did nothing wrong and refused to discuss the matter with his team mates. He lost his position as team co-captain shortly thereafter.

61. After the commencement of the fall semester, Ann complained about John to the office of student life.

62. On October 2, 2015, the office of student life summarily issued an order prohibiting John from having any contact with Ann.

63. Upon information and belief, the office of student life encouraged Ann to contact the Title IX office to pursue a sexual assault complaint against John.

64. Upon information and belief, on October 30, 2015, Ann and Kay met in the Ratty around 6:30 PM and discussed their continued desire to “get rid” of John. They wanted him off the

mock trial team, and discussed “canvassing other girls on campus” in an effort to gather incriminating evidence against him. They also discussed contacting a woman who lives in Olney House, which is where John lived, because she is known to resent the fraternity brothers who live on the second floor.

65. A few days later, on or about November 3, 2015, nearly one year after her intimate encounter with John, Ann filed a complaint with the Title IX office accusing John of sexual assault. See Exhibit B. In her complaint, Ann stated:

On November 10, 2014 I got into campus very late due to travel delays. Around 2am, I met [John] at the campus center to watch a movie in a public place. When I arrived at the campus center he brought me back to a secluded room and had his laptop up for the movie. Once he started the movie, he physically grabbed my face to kiss me. I immediately turned my head away to indicate my lack of consent and verbally told him that I don't want to kiss him. This also was meant to confirm that his sexual advances were unwanted. Rather than respecting my wishes, [John] kissed me on the cheek and then asked, "may I?" I was upset and confused, so asked, "may I what?" John then forced his fingers into my vagina to sexually assault me. I froze and did not respond. In my head, all I could think is that I wanted this to be over with, so when he kept kissing me I didn't resist. During the assault he said, "I know you want to fuck me right now." Fearing he would do more to me, I told him I really couldn't as an attempt to avoid him raping me. He replied, "well at least give me a blowjob then." I repeatedly stated that I did not want to and tried to avoid angering him by stating "I really shouldn't" and "I wasn't sure," but I never wanted to and wanted to leave as soon as possible. John kept replying, "I know you want to" and I knew I wasn't going to be able to leave unless it happened. I felt I had no choice to avoid being raped, so submitted to this coercive badgering out of fear and gave him oral sex. At one point, I stopped the oral sex and he said "put my dick back in your mouth." Around 3 a.m., I finally could leave and told him on the way out, that he was the kind of person that makes people do things they don't want to do. He again said, "I know you wanted to" as I was leaving. I then went home in shock and upset about what happened and just wanted to sleep.

66. Ann requested that John “be expelled for his ongoing pattern of sexual harassment against myself and other female members of the team, as well as for his sexual assault against me.”

Djuna Perkins' Investigation

67. Brown engaged Djuna Perkins, an attorney licensed to practice law in Massachusetts, to investigate Ann's complaint.

68. John provided Ms. Perkins with abundant evidence that Ann's charge of sexual assault was without merit. See Exhibit C.

69. During her interview with Ms. Perkins, Ann conceded that the lights came on while she was performing fellatio on John. She said that "the light came on and she asked if she should turn it off." John said yes, "so she walked over to the light switch to try to turn it off but couldn't." John then walked over and turned off the light switch, which was right next to the door.

70. Despite being next to the door as her alleged assailant was approaching with his pants around his ankles and a full erection, Ann did not run. According to Ann, she and John walked back to the middle of the room, and Ann stated, "I figured I was supposed to continue"

71. Ann also did not dispute swallowing John's semen, but explained that she did so because "she didn't want to leave a mess on the carpeted floor."

72. Ms. Perkins also interviewed a number of witnesses. One was a friend of Ann identified in Ms. Perkins' report as Witness 1. Witness 1 recounted that one night she was staying in Ann's room and was up until 4:00 am watching "New Girl" on Netflix when Ann came in and said, "Oh my God, I have to tell you something. Do you guys remember that guy [John] I've been telling you about?" When Witness 1 and Ann's roommate said they did, Witness 1 recalled her to say, "I just hooked up with him. It was like really weird because we were just in Faunce and hooked up." According to Witness 1, Ann made the whole thing sound "sexy and cool." Asked if she had sex, Ann replied, "No, but it was really hot. I mean, you know it wasn't reciprocal

because he only fingered me--he didn't eat me out - but we might hook up again, I don't know.”

Ann elaborated further and stated that she gave John a “blowjob.” Witness 1 said Ann made it sound as if she wished she and John had done more and was her typical “happy, bubbly” self.

73. At Ann's prompting, Ms. Perkins also interviewed Kay. Brown subsequently filed a Title IX complaint on Kay's behalf, though she refused to be the complainant. Brown recently suspended that proceeding, but has reserved a right to reinstitute it.

The Hearing on Ann's Complaint

74. On April 14, 2016, Brown convened an all-female Title IX panel to adjudicate Ann's complaint.

75. In the lead up to the hearing, Brown's associate general counsel advised in writing that Brown would adjudicate the complaint according to the Title IX policy in effect at the time of John's alleged misconduct, i.e., the 2014-15 Code of Student Conduct (the “2014-15 Code” attached hereto as Exhibit D), rather than the new 2015-16 Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy (the “2015-16 Title IX Policy” attached hereto as Exhibit E).

76. In her report submitted to the panel, see Exhibit F, Ms. Perkins listed a single policy section as applicable, “2014-15 Code of Student Conduct. Offenses III. Sexual Misconduct.” She did not list or refer even once in her 29 page report to the new 2015-16 Title IX Policy.

77. The day after the Title IX hearing, Brown's Title IX Program Officer, Amanda Walsh, again assured John that “The panel was provided with the 2014-2015 Code of Student Conduct and instructed to review Section III (Sexual Misconduct) of the listed Offenses when determining whether a violation of the policy occurred.”

78. Despite instructions to the contrary, the Title IX panel applied the new 2015-16 Title IX Policy.

79. In its findings, the Panel Chairwoman wrote:

Because the 2014-15 Code of Student Conduct does not explicitly define consent, the panel referred to the current [2015] Sexual and Gender-Based Harassment, Sexual Violence, Relationship and Interpersonal Violence and Stalking Policy, which codified Brown University's existing community standards with respect to "maintaining a safe learning, living, and working environment where healthy, respectful, and consensual conduct represents campus cultural norms" (II).

The current policy defines consent as "an affirmative and willing agreement to engage in specific forms of sexual contact with another" (VIIIa). Moreover, "consent cannot be obtained through (1) manipulation or (2) the use of coercion." Coercion is then defined as involving "verbal and/or physical conduct, including manipulation, intimidation, unwanted contact" (VIIIb).

See Exhibit G.

80. Seizing upon the term manipulation in the new code and a text message from John to Ann in which he stated "I'm trying to manipulate you a lot," the panel found John had manipulated Ann into sex and held him responsible for sexual misconduct with her.

81. As a sanction, Brown suspended John until Ann graduates in the spring of 2018, at which time John will have to petition for readmission for the fall 2018 semester. See Exhibit H.

82. John appealed the panel's decision, see Exhibit I, as did Ann who wished the panel to impose a harsher sanction. See Exhibit J.

83. In a sur-reply, see Exhibit K, John argued that Ann misrepresented the code in her response to his appeal because she quoted text that did not even exist in the code. John argued that the complete absence of the text indicated that Ann, a senior staff writer for the *Brown Daily Herald*, committed Offense IV, on page 4 of the current code of conduct, which is misrepresentation to an official university body or officer. The Title IX Office refused to provide John's sur-reply to the appeals panel or otherwise investigate whether Ann misrepresented the code or wrongfully sought to influence the appeals process.

84. Ultimately, Brown denied both appeals and declared that the panel's use of the 2015-16 Title IX policy was not a procedural error, and that the appeals policy does not permit review on the basis that the panel decision is "manifestly contrary to the evidence." See Exhibit L.

85. The 2014-15 Code does not support Brown's conclusion that a panel decision is not subject to review on the basis that it is arbitrary or unsupported by the evidence.

86. Despite having already invested three years and over \$150,000 in a Brown University education, John is now suspended until at least the fall of 2018 with no guarantee of readmission. See Exhibit M.

COUNT I
Breach of Contract

87. John re-avers paragraphs 1-86 as if fully set forth in this count.

88. As part of its admissions packet, Brown provided John with copies of its school policies, including the 2013-14 Code of Student Conduct at Brown University. Upon information and belief, the relevant portions of the 2013-14 version of the Code remained unchanged in the 2014-15 Code.

89. For the 2015-16 academic year, Brown adopted the 2015-16 Title IX Policy.

90. For the 2015-16 academic year, Brown amended the Code to incorporate provisions of the 2015-16 Title IX Policy.

91. As a member of the Brown University community, the codes afford John certain rights that are contractual in nature.

92. Brown breached its contract with John by applying the 2015-16 Title IX Policy to conduct that happened before Brown adopted that policy.

93. Brown breached its contract with John by applying the 2015-16 Title IX Policy after assuring John multiple times that only the 2014-15 Code would apply.

94. Brown breached its contract with John by finding that the panel's application of the 2015-16 Title IX Policy was not procedural error.

95. Brown breached its contract with John by applying a novel definition of consent without prior notice to John.

96. Brown breached its contract with John by reaching a decision on Ann's complaint that is arbitrary and capricious.

97. Brown breached its contract with John by refusing to consider whether the panel's decision is arbitrary or unsupported by the evidence.

98. Brown breached its contract with John by refusing to allow the appeals panel to consider his sur-reply.

99. Brown breached its contract with John by implementing a Title IX regime that encourages allegations of misconduct, offers accusers robust support and vigorously prosecutes complaints, while affording scant resources to the accused, little or no male perspective on adjudicatory panels, and no avenue for meaningful review of panel decisions.

100. Brown's incomplete and arbitrary actions breached the codes, the guarantees of due process and fundamental fairness, and the implied covenant of good faith and fair dealing.

101. Brown's suspension of John from the University will preclude him from completing his undergraduate degree in a timely fashion.

102. As a direct and foreseeable consequence of these breaches, John has sustained damages.

COUNT II
Injunctive Relief

103. John re-avers paragraphs 1-102 as if fully set forth in this count.

104. Brown's implementation of the current Title IX adjudicatory process is contrary to John's reasonable expectations.

105. Brown's decision to suspend John from the University on the basis of Ann's complaint is in violation of John's procedural and substantive contractual rights and reasonable expectations.

106. Brown's decision to suspend John from the University is capricious and arbitrary.

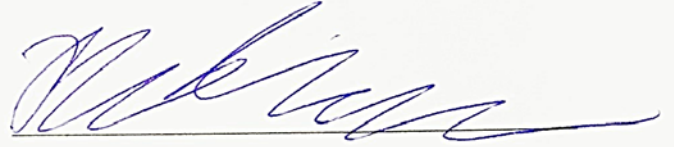
107. As a direct and proximate result of the foregoing events of breach, John faces imminent irreparable harm to his education and professional career goals, as well as emotional and reputational harm for which no adequate legal remedy exists.

WHEREFORE, the Plaintiff, John Doe, requests that the Court:

- a) Restrain and enjoin the Defendant, Brown University, from implementing John's suspension;
- b) Restrain and enjoin the Defendant, Brown University, from denying John the opportunities and benefits afforded undergraduate students;
- c) Restrain and enjoin the Defendant, Brown University, from further adjudicating Title IX complaints under the current process; and
- d) Award John damages for breach of contract in an amount exceeding \$75,000, to be proven at trial.

VERIFICATION

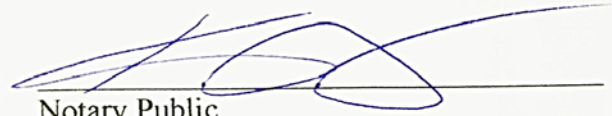
The undersigned hereby swears under pains and penalties of perjury that the facts stated herein are true and accurate to the best of his knowledge.



STATE OF NEW JERSEY
COUNTY OF MIDDLESEX

Subscribed and sworn to before me in East Brunswick, New Jersey, on May 27, 2016.

KAUSHIK PATEL
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES MAY 4, 2021



Notary Public

My Commission Expires: May 4, 2021

Dated: May 27, 2016

The Plaintiff, John Doe,
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Dated: May 31, 2016

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CERTIFICATE OF SERVICE

I, J. Richard Ratcliffe, certify that on May 31, 2016, this document was electronically filed. The following attorneys are registered with and may access these filings through the CM/ECF system:

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