UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT LAUDERDALE DIVISION

Civil Action Number: 0:18-cv-60282-WPD

JUAN CARLOS GIL,

Plaintiff,

vs.

BROWARD COUNTY

Defendant

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT BROWARD COUNTY'S MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW

Plaintiff Juan Carlos Gil ("Plaintiff"), by and through his undersigned counsel, hereby respectfully files this Response in Opposition to Defendant Broward County's Motion to Dismiss and Incorporated Memorandum of Law, and in support thereof states:

1. The underlying action is an action for declaratory and injunctive relief pursuant to Title II of the American with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504").

2. Defendant Broward County ("Movant," or "Defendant") filed its Motion to Dismiss with Prejudice ("Motion") on March 5, 2018 [DE # 12], which Motion states that Plaintiff has failed to state a claim upon which relief can be granted pursuant to Fed. R.Civ.P. Rule 12(b)(6).

MEMORANDUM OF LAW – MOTION TO DISMISS

To state a claim under Title II of the ADA a plaintiff must allege (1) that he is a "qualified individual with a disability;" (2) that he was "excluded from participation in or ... denied the benefits of the services, programs, or activities of a public entity" or otherwise "discriminated

[against] by such entity;" (3) "by reason of such disability." 42 U.S.C. § 12132; *Shotz v Robert P Cates*, 256 F.3d 1077 (Ct App 11th Cir 2001). The instant complaint pleads these elements as necessary to state a claim under Title II as delineated more fully herein below.

I. FRCP Rule 8(a)(2): Plaintiff makes short and plain statement

The question before this court is whether Plaintiff's Complaint meets the minimum requirements of Rule 8(a)(2) of the FRCP to withstand the Movant's Motion to Dismiss.

With respect to Movant's Motion to Dismiss, in accordance with FRCP Rule 8(a)(2), a complaint need only contain a "short and plain statement of the claim showing that the pleader is entitled to relief." A complaint should not be dismissed unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle plaintiff to relief. *Conley v. Gibson,* 355 U.S. 41 (1957). In considering a motion to dismiss, the complaint should be construed in the light most favorable to the Plaintiff, and all facts alleged by the Plaintiff are accepted as true. *Hishon v. King & Spaulding,* 467 U.S. 69, 73 (1984).

The Complaint complies with FRCP Rule 8(a) as follows:

The instant Complaint contains a short and plain statement of the grounds for the court's jurisdiction (¶¶s 10-12 [DE #1]) and establishes that Plaintiff suffers from a qualified disability (¶¶s 13, 14 [DE #1]). The Complaint establishes that Defendant is a "public entity" subject to Title II of the ADA and, as a recipient of federal funds, is subject to Section 504 (¶ 19, 20, 50 [DE #1]), and that Defendant's www.broward.org website is a program, service, or activity within the meaning of Title II of the ADA (¶ 52 [DE #1]).

The Complaint establishes that Defendant provides a service through its online portal at http://www.broward.org/Commission/Meetings/Pages/AgendasAndMinutes.aspx ("Portal") where interested persons are able to view Broward County government's legislative history and

Broward County Commission meeting agendas (¶¶ 21, 22 [DE #1]) through it agenda documents and publications which are available through the Portal in PDF format (PDF documents") (¶¶ 23, 24 [DE #1]).

The Complaint establishes that Defendant makes thousands documents available through this Portal which the public can access, and that these documents are presented in PDF format (¶ 52 [DE #1]).

The Complaint alleges that Plaintiff visited Defendant's Portal on multiple occasions to educate himself about Broward County government in order to find out about the services and accommodations available in Broward county (¶¶ 31, 36 [DE#1]) and was unable to comprehend Defendant's PDF documents as they are solely in a PDF flat surface format which do not interface with screen reader software (¶¶ 28, 29[DE #1]). As such, Plaintiff was prevented from reading Defendant's documents in order to participate in Broward County government, which has resulted in a barrier which has impaired, obstructed, hindered, and impeded Plaintiff's ability to become an involved citizen in Broward County government (¶¶ 33-35[DE #1]). Thus, factual allegations within the Complaint clearly state that Defendant's PDF documents are not accessible to blind and visually impaired members of the public.

The Complaint establishes that Defendant may not utilize methods of administration that deny individuals with disabilities access to said public entity's services, programs, and activities or that perpetuate the discrimination of another public entity (28 C.F.R. § 35.130(b)(3)) (¶ 61[DE #1]) and that Defendant is required to make reasonable modifications in its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability[1]

[1] unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity

(28 C.F.R. § 35.130(b)(7)) (¶ 62[DE #1]). Defendant's method of administration for its document development, creation discriminates against blind persons because the documents are inaccessible.

The Complaint alleges that Defendant is aware of the availability of computer programs which allow Defendant to save PDF documents in an accessible format. Despite the ease and accessibility of providing accessible PDF documents, Defendant has failed to reasonably modify its policies, processes and procedures for the same. As such, Defendant has acted with deliberate indifference for the provisions of Section 504 and Title II of the ADA (¶ 43[DE #1]).

The Complaint exceeds the *Shotz* elements of a proper Title II the cause of action. The Complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief by establishing disability and that Defendant, as a public entity, has failed to provide access to its services and accommodations to members of the disabled community.

FRCP Rule 12(b)(6) Claim For Relief

The Movant incorrectly states that Plaintiff's Complaint must be dismissed because it fails to state a claim upon which relief may be granted. Defendant does not have scintilla of evidence to support its claim. For purposes of a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must accept as true the facts as set forth in Plaintiff's Complaint and draw all reasonable inferences in plaintiff's favor. *Nettles v. City of Leesburg – Police Department*, 415 Fed. Appx. 116, 120 (11th Cir. 2010).

The Complaint states that: (1) Plaintiff attempted to utilize Defendant's Portal with the intent of participating in Broward County government and learning of the county's stance on environmental and social issues (¶ 34 [DE #1]); (2) that Plaintiff was unable to access Defendant's PDF documents because they were provided in an inaccessible format (¶¶s 29, 33, 35 DE #1]), (3) that Plaintiff's inability to access those documents presented a barrier to access to Broward County

government (¶¶ 33-35, 39 [DE #1]); (4) that Plaintiff is barred from participating in Broward County government due to the inaccessibility of its PDF documents (¶¶ 34, 39 [DE #1]) and he has suffered as a result (¶ 34 [DE #1]); (5) that Plaintiff continues to desire to become an involved citizen in Broward county but is unable to do so because he is unable to comprehend the PDF documents (¶ 37 [DE #1]); and (6) that Plaintiff and others with vision impairments wills suffer continuous and ongoing harm from Defendant's omissions, policies, and practices regarding PDF documents as a result (¶ 40 [DE #1]);

The Complaint contains specific verbiage that, at the time of Plaintiff's attempted access of Defendant's PDF documents and continuing, Defendant lacked and continues to lack the requisite formatting necessary to allow visually impaired individuals who use screen reader software access those documents (¶ 33, 38 DE #1].

The Complaint sufficiently establishes that Defendant is statutorily required to provide full and equal participation in or be denied the benefits of the activities, services or programs of a public entity, or be subjected to discrimination by any such entity, 42 U.S.C. § 12132. Facts in evidence state that Defendant has failed to do so, therefore a controversy which should be ruled upon by this Honorable Court exists.

Plaintiff has demanded relief that Defendant update all the PDF documents within its information Portal which it has made available to the public to remove barriers in order that individuals with visual disabilities can access the PDF documents to effectively communicate with Defendant to the full extent required by Title II of the ADA and Section 504 of the Rehabilitation Act (See, Demand For Relief [DE #1]).

Based on the foregoing, Plaintiff has plead sufficient facts to base a claim upon which relief may be granted, as required by FRCP Rule 12(b)(6) and per the standard delineated within *Ashcroft*

v. Iqbal, 556 U.S. 662, 678-69, 677 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) and *First State Bank v. Goldstein*, 11-80625-CIV, 2011 WL 4943627, at *2 (S.D. Fla. Oct. 18, 2011) (citing *Iqbal*, 556 U.S. at 678).

The Complaint also contains a Demand for Relief which follows the delineation of facts presented within the Complaint. The plausibility standard is met, and the Court is easily able to draw on its judicial experience and common sense to arrive at the conclusion that the PDF documents within Defendant's information Portal are violative of the ADA; *Hon v. Kmart Corp.,* No. 9:15-CV-81060, 2015 WL 12780635, at *1 (S.D. Fla. Nov. 6, 2015) (citing *Roe v. Michelin N.A., Inc*., 613 F.3d 1058, 1062 (11th Cir. 2010)).

It is clear from the four corners of this Complaint that Plaintiff has presented concrete facts which allege with sufficiency that, at the time of filing of the Complaint, the PDF documents within Defendant's information Portal were/are not accessible for blind individuals who use screen reader software. A controversy exists; therefore, the Complaint cannot be dismissed.

(1) Plaintiff has established an injury in fact.

Plaintiff has stated that he attempted to access PDF documents within Defendant's information Portal but they did not integrate with screen reader software and that his inability to comprehend those documents resulted in his being excluded (and effectively barred) from participation in Broward County government, thus Plaintiff has suffered an injury.

Plaintiff has shown that his injury is concrete and particularized and actual or imminent (and not conjectural or hypothetical). Thus, Plaintiff's Complaint meets the standard as specified within the Summary Judgment decision rendered within *Steven Brother v. Tiger Partner, LLC*, 32 F.Supp.2d 1368, 1372 (M.D. Fla 2004).

(2) Plaintiff has established a causal connection between the injury-in-fact and the inaccessible PDF documents within Defendant's information Portal.

The Complaint states that Plaintiff's injury is directly related to the inaccessible PDF documents within its information Portal, caused by Defendant's lack of provision of those documents in accessible format which interfaces with screen reader software.

Facts in evidence are sufficient to show that Plaintiff has met the standard to establish an injury-in-fact that is concrete, particularized, actual, and imminent, thus meeting the standard delineated within *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

(3) Plaintiff has established the injury will be addressed by a favorable decision.

The Complaint has established that the Plaintiff continues to desire to become an involved citizen in Broward County's government and established that a favorable outcome can be obtained by Defendant adopting and implementing an accessibility policy and remove barriers within Defendant's providing its agenda documents in an accessible format which interfaces with screen reader software, thus providing full and equal enjoyment of its services, programs, and activities in the most integrated setting appropriate to people with disabilities (as required by 42 U.S.C. §12131, *et. seq*.; 28 C.F.R. Part 35).

Facts in evidence are sufficient to show that Plaintiff has met the standard to establish that there is sufficient likelihood that Plaintiff will suffer in the future due to the barriers within Defendant's Portal (part of its services, programs, and activities.)

II. Title II Accessibility Standards Are Not The Same as Those Under Title III

The Department of Justice ("Department") has provided guidelines for Title II entities in their provision of documents on websites in its 2008 Circular[2]. The Department has stated that

[2] U.S. Department of Justice , Civil Rights Division, Disability Rights Section (Last Updated, October 9, 2008)

government websites are important because they allow programs and services to be offered in a way that increases citizen participation, increase convenience, reduce costs[3], and expands the possibilities of reaching new sectors of the community.

The Department's 2008 Circular states that State and local governments must provide qualified individuals with disabilities equal access to their programs, services, or activities[4] and that one way to help meet these requirements is to ensure that government websites have accessible features for people with disabilities. The Department recognizes that blind people use screen readers (assistive technology) to comprehend internet content and provides guidance to website development by governmental entities that those entities develop their websites (and the content therein) to include technology that permits blind individuals to access those websites with screen reader software.

The Department's 2008 Circular addresses non-HTML content (images and documents presented as images (PDF files)) within websites. The Department recommends that State and local governments establish a policy that their web pages are accessible, ensure that content within their pages are accessible, and that if images and tables are used (including photos, graphics, scanned images, or image maps), that those elements are accessible. The Department states that, when posting documents always provide them in HTML or text-based format even if they are also provided in PDF format.

Title III Public Accommodations and not Title II Public Entities

In its Motion, the Movant has ignored the guidelines established for State and local government websites and incorrectly applied Title III Case law as subterfuge to support its Motion.

[3] of providing programs and information to the public
[4] unless doing so would fundamentally alter the nature of their programs, services, or activities or would impose an undue burden

The Movant presents *Gomez v. La Carreta Enter., Inc.*, No. 17-61195-CIV-DIMITROULEAS, 2017 U.S. Dist. LEXIS 202662 at *9, (S.D. Fla. Dec. 7, 2017) to bolster its Motion. However, the rational that the court employed in *Gomez v. La Carreta* was specific to a restaurant informational website based upon Public Accommodations being subject to Title III. This case has no bearing on the standard placed on information provided by public entities as different standards apply under Title II of the ADA. The Department of Justice has soundly set policy for content on State and local government websites which provide services and information.

The Movant's also cites *Kidwell v. Fla. Comm'n on Human Relations*, No. 2:16-CV-403-FTM-99CM, 2017 WL 176897 at *5 (M.D. Fla. Jan. 17, 2017) which is not applicable to the instant case. First, *Kidwell* involved a Title III Public Accommodation, which does not apply to Title II public entity actions. Second, the highly convoluted *Kidwell* complaint renders the Court's ruling regarding the accessibility of the *Kidwell* defendant's website unusable and the *Kidwell* court's decision cannot be relied upon as applicable case law because the Court could not (and did not) determine the issues at hand (re: website accessibility)[5].

[5] In *Kidwell* the court found the plaintiff lacked standing to seek injunctive relief as future injury from Busch Gardens' alleged discrimination was speculative. The issues related to plaintiff's lack of standing in *Kidwell* are non-existent in the instant case and the elements which lead to the Court's dismissal of the *Kidwell* action are not present in the instant action.
The court's commentary and ruling regarding the website in *Kidwell* cannot be considered as a touchstone for case law regarding accessibility of websites under the ADA due to the unique fact scenario presented by *Kidwell*. In *Kidwell,* allegations as to 'a website' were so inexplicit that the court stated it could not distinguish if the plaintiff were alleging Sea World or Bush Gardens' website was inaccessible. Kidwell's juxtaposition of websites (Busch Gardens and Sea World) hindered the court's ability to render any decision on the viability of plaintiff's website accessibility claim.
The court also stated it could not rule in *Kidwell* regarding allegations of website inaccessibility because the plaintiff had not based his argument on a standard of accessibility but on his confusion; plaintiff Kidwell sadly complained the ".. website was complex to navigate and did not provide accommodations for Plaintiff's disability." *Id*. ¶¶ 180, 182-83. In *Kidwell* the court noted the plaintiff failed to provide specificity as to the nature of the website inaccessibility nor did he apply any standard of accessibility. Due to the ill-defined nature of the *Kidwell* website claim, the court could not, and did not, address the website allegation.
In *Kidwell,* the court ruled that the plaintiff lacked standing to bring his claim and make allegations on behalf of all disabled veterans based upon plaintiff's insufficient allegations[5] such that the court denied plaintiff's claim and cited *Access Now*, *Inc*. *v*. *S*. *Fla*. *Stadium Corp*, 161 F. Supp. 2d 1357, 1364 (S.D. Fla. 2001) by stating: "[S]tanding is limited to claims for which the plaintiff is 'among the injured.'" The ramblings of a confused pro-se plaintiff in *Kidwell* and the court's determination of lack of standing therein should not be considered as dicta.

The Movant also errs in presenting *Gomez v. Bang & Olufsen Am., Inc.*, No. 1:16-CV-23801, 2017 WL 1957182, at *4 (S.D. Fla. Feb. 2, 2017) and arguing that the instant action should be dismissed because the Defendant's website is informational only and that counties are not required to have websites. The instant action is not about website accessibility, but about accessibility of Defendant's electronic documents. The Movant's reliance on cases featuring violations within Title III websites does not apply to a Title II electronic document accessibility action. If a county chooses to provide the public with an electronic document portal, that portal must provide full and equal enjoyment of its services, programs, and activities to people with disabilities under both Title II and the Rehabilitation Act; 29 U.S.C. § 794(b)(1)(A).

Defendant's providing the public with PDF documents through its website is a "program or activity". As such, the "program or activity" has to provided such a manner that a qualified handicapped person has an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others; 45 CFR 84.4 (b)(1)(ii), and that is as effective as that provided to others 45 CFR 84.4 (b)(1)(iii).

Defendant is subject to Title II, and as such is required to provide full and equal enjoyment of its services, programs, and activities in the most integrated setting appropriate to people with disabilities. 42 U.S.C.§12131 *et seq*.

The controversy at issue in the instant complaint is that Defendant failed to provide its PDF documents in accessible format for blind individuals. Therefore, it discriminated against Plaintiff (and other blind individuals) in the unequal provision of its PDF documents it provides to the public. This is markedly different than the access issues delineated within *Bang*; therefore, the Movant's citation of *Bang* should be disregarded.

As a result of the inaccessibility of Defendant's PDF documents, visually impaired individuals are denied the equal access to the participation in the government of Broward County in a manner equal to that afforded to others; in derogation of Title II of the ADA and Section 504.

The Movant's citation of *Haynes v. Genesco, Inc.*. Case No.: 0:17-cv-61641-KMM (Jan. 11, 2018, Moore, Michael, J.) has no bearing on the instant action. Again, Movant cites a Title III case which is inapplicable with respect to the Title II instant action. The *Haynes* court found that defendant's website did not impede access to its physical store locations and dismissed plaintiff's claim. *Haynes* has no application to the instant case as Broward County is subject to Title II, and Broward County public accommodation, as was Genesco, Inc.

The Movant's continued insistence on citing Title III case law in its Motion to Dismiss, a Title II matter, is an affront to the court and an outrageous display of hutzpah. The undersigned requests the court take judicial notice to the blatant attempt to mislead the court.

III. Requesting Accommodation

In arguing for dismissal, the Movant states that Title II public entities must provide an opportunity for individuals to request auxiliary aids and services. To support its position, Movant interjects an invitation within Defendant's Website which provides an email and a phone number so anyone having difficulty accessing information from the Website can call to receive the necessary information. Defendant knows that it has thousands of PDF documents within its information portal. The Defendant has a policy and practice of providing the documents in an inaccessible format. There are so many inaccessible documents that the task of requesting that each inaccessible PDF document be converted to an accessible format is onerous and time consuming that the aid, benefit, or service is not equal to that as afforded to others, nor as effective as provided to others, in derogation of 45 CFR 84.4 (b)(1)(ii) and (iii).

Defendant's inaccessible documents are a rule, not the exception. The Defendant does not need Plaintiff to tell them which documents are in accessible because every document is accessible. If a person built new grocery stores and none of the buildings had wheel chair ramps, does a disabled person need to request ramps? Of course not, as the law already requires it. The same logic should apply to the instant case. If none of your documents are accessible, does a blind person need to go document by document to request remediation? It's asking the disabled to make a statement of the obvious. Requiring Plaintiff to contact a help number or email for the entirety of agenda documents, when everything is inaccessible is onerous task, does not meet the spirit nor the letter of the law, and does not comply with Title II or Section 504.

Plaintiff's interest in the legislative history of Broward county is not limited to a single document, ten documents, or even one-hundred documents. For many agendas contain links to many supporting documents. Being required to request each separate document to a help email or phone number does not result in the same experience as an interested person without a vision disability. Plaintiff is not required to ask Defendant to change its policies, processes and procedures, especially when Defendant already knows those policies exclude persons who are blind.

Each and every PDF document on Defendant's Website is inaccessible, and Defendant has known that these thousands of documents were inaccessible to blind individuals since 2003.

To bolster its argument, the Movant has cited *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999), in which the plaintiff sued for requested reasonable accommodation under Title I (employment). The *Gaston* case citation should be disregarded due to the fact that the court's ruling was on a matter wholly dissimilar to the instant case. In *Gaston* the court suspended to allow the plaintiff to claim disability benefits under the Social Security

Administration (SSA). When the plaintiff was adjudged to be permanently disabled by the SSA, the defendant filed motion for summary judgment. The court's ruling in *Gaston* was for summary judgment in favor of the defendant, reasoning that plaintiff's representation that she was permanently disabled and awarded disability benefits estopped her from maintaining her suit against her employer, Bellingrath Gardens. The Movant's quotation from *Gaston* is out of context and without regard to notice under Title II. Movant's use of the term "reasonable accommodation" is a Title I concept and does not apply to accommodations related to systems such as the instant complaint addresses in this Title II matter.

The Movant has stretched the limits of imagination by citing *Wood v. Pres. & Trs. Of Spring Hill Coll*., 978 F.2d 1214, 1222 (11th Cir. 1992) as demonstrative of requirement to make specific request for accommodation in Title II cases. The *Wood* appellate court decision was not predicated on the student's failure to make a specific request for accommodation as presented by the Movant. The points for appeal in *Wood* were as a challenge of the jury instructions given by the district court at trial[6]. Wood appealed[7] and Movant has cherry picked the appellate court's finding of the third jury instruction as being informative in Title II cases, which it is not. Wood unsuccessfully argued that the trial court erred in instructing the jury on "reasonable accommodation" for her handicap, however the appellant court found that first the person must be and "otherwise qualified individual." In the case of *Wood*, facts in evidence proved plaintiff was

[6] The *Wood* dispute was regarding Title VII and Section 504, wherein Wood claimed that defendant (the college) had discriminated against her and treated her in a hostile manner after learning she was diagnosed with schizophrenia, and she allegedly was forced to withdraw from college. The college denied intentional discrimination, and successfully argued at trial that Wood was admitted to the college in error, but despite being not academically qualified, was given the opportunity to take remedial classes and defer her admission until she had met the college's admission standards.
[7] The four jury instructions that Wood claimed were in error are: 1) instruction that the jury must find "intentional discrimination or discriminatory animus" on the part of Spring Hill in order to find for Wood; (2) instruction that the term "solely" as used in section 504 required a verdict for Spring Hill if any factor other than handicap motivated Spring Hill's actions toward Wood; (3) that the district court should have instructed the jury on the duty of Spring Hill to afford Wood "reasonable accommodation" of her handicap; and (4) that the district court committed reversible error by failing to instruct the jury on the shifting burdens of proof in Title VII cases.

not an otherwise qualified individual (as she had not met the standards for admission) therefore, no specific request for accommodation would have changed the outcome.

The court should disregard the Movant's citation of *Magide v. Broward*, No. 0:11-cv-62742-WPD (DE #30, May 23, 2012, Dimitrouleas, J.) for the reason being that the pleading referenced as dated May 23, 2012 did not result in conclusion of this matter, as the case was only concluded after the parties filed Notice of Settlement on May 23, 2012 (DE #62). The Order for dismissal (in part) of *Magide v. Broward* related to a prisoner's alleged failure to ask for specific accommodation in the Broward county jail is dissimilar to the instant matter, related to Title II accommodation related to website as specified by the Department of Justice, 2008 Circular.

The Movant's citation of *Gaston*, *Wood*, and *Magide,* claiming said cases support its position is so far afield of the truth that it borders on making a mockery of the court. The Movant's misuse of dicta is beyond mere oversight or overzealous stretching of the imagination and borders on abuse of the law. At the minimum, the court should disregard the Movant's citations in their entirety.

CONCLUSION

WHEREFORE all the facts and points of law delineated within this response, Plaintiff and Plaintiff's counsel respectfully request the Court deny Defendant's Motion to Dismiss and in the event that this Honorable Court should rule that the Complaint fails to show on its face that it meets the jurisdictional requirements of this Court, Plaintiff requests leave of court to file an Amended Complaint to allege more specifically the facts and points of law, as Fed. R. Civ. Proc. Rule 15 grants that the Court should freely give leave when justice so requires.

Dated this 2nd day of April, 2018.

Respectfully Submitted,

s/ Scott R. Dinin
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 2nd day of April, 2018 a true and correct copy of the above has been filed with the Clerk of the Court using the CM/ECF system, which will be served to the Defendant as follows:

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