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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
TWELFTH DIVISION

MCKESSON MEDICAL-SURGICAL INC., Plaintiff, v. STATE OF ARKANSAS; ARKANSAS DEPARTMENT OF CORRECTIONS; HUTCHINSON, ASA, in his capacity as Governor of the State of Arkansas; and KELLEY, WENDY, in her capacity as Director of the Arkansas Department of Corrections; Defendants.	Case No.:

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Plaintiff McKesson Medical-Surgical Inc. ("McKesson") has filed this action for injunctive relief and the return of its property against Defendants State of Arkansas ("Arkansas"), the Arkansas Department of Corrections ("ADC"), Governor Asa B. Hutchinson ("Hutchinson"), and ADC Director Wendy Kelley ("Kelley") (collectively, "Defendants") to prevent Defendants from using McKesson's property, 100 vials of 20mg/25ml Vecuronium bromide ("Vecuronium") to execute five inmates in violation of its supplier agreement, as the State has made clear it intends to do. As testimony in the federal proceedings Wednesday made clear, ADC misled McKesson when it procured the Vecuronium. ADC personnel used an existing medical license, which is to be used only to order products with legitimate medical uses,

and an irregular ordering process to obtain the Vecuronium via phone order with a McKesson sales person. This purchase was in marked variance to how ADC ordered its prior medical and pharmaceutical products, which were all traditional supplies and products that are used in ordinary medical facilities and settings. ADC knew what it was doing when it placed its phone order - it even asked that the product be shipped to the same ADC address to which previously ordered medical supplies used for legitimate purposes had been delivered.

In federal proceedings last week, ADC personnel testified under oath that they knew that this was not a product ADC could order through traditional means. In the past twelve hours, ADC personnel have told the media that these and similar products were "donated." McKesson did not donate anything to ADC. ADC misled a McKesson employee into processing the order over the phone. This violates Arkansas law.

These tactics were in marked variance to how ADC ordered its prior medical and pharmaceutical products, which were all traditional supplies and products that are used in ordinary medical facilities and settings. ADC misled McKesson when it procured the Vecuronium. ADC personnel used an existing medical license, which is to be used only to order products for legitimate medical uses. Under the State of Arkansas's regulations for physicians, a licensed physician "may not . . . [p]rescribe or administer dangerous or controlled drugs to a person for other than legitimate medical purposes." Arkansas State Medical Board Statute, Ark. Code Ann. § 17-95-704. Without the medical license, and the associated tacit representation that the drug would only be used for a legitimate medical purpose, McKesson would not have sold the Vecuronium to ADC.

Under Arkansas and federal law, a physician who purchases drugs from a distributor for distribution to persons other than patients or consumers is acting as a wholesale distributor and

must hold a valid state wholesale distributor's license. Arkansas Pharmacy Board, Regulation 8 - Wholesale Distribution, 8-00-0001(i); FDCA § 503(e)(4). The medical license that ADC provided McKesson does not appear to be a wholesale distributor's license. And, McKesson would not knowingly sell drugs to a wholesale distributor who does not hold a valid state license for wholesale distribution. The ADC representative's conduct was therefore contrary to state law and is ultra vires and illegal.

Immediately after learning what had transpired, McKesson contacted ADC and demanded the immediate return of the products. Defendants agreed to return the products. In response, McKesson promised to refund the monies used to purchase the Vecuronium. McKesson kept its promises and refunded the money. Defendants repudiated theirs and have kept both the illegally obtained Vecuronium and the returned funds.

Now, Defendants have publicly declared their intent to use the Vecuronium in the next few days to execute inmates in ADC's custody in violation of McKesson's supplier agreement. McKesson seeks a temporary restraining order or preliminary injunction under Rule 65 of the Arkansas Rules of Civil Procedure because money damages will not adequately provide relief to protect McKesson from the irreparable harm that will result if Defendants execute inmates in the coming days using the Vecuronium that is the lawful property of McKesson. Because McKesson has a likelihood of success on the merits and will suffer irreparable harm without the issuance of a temporary restraining order or preliminary injunction, this Court should grant McKesson's motion for a temporary restraining order or preliminary injunction.

FACTS & BACKGROUND

McKesson is a leading distributor for manufacturers seeking to distribute life-saving and life-enhancing products to healthcare providers and their patients. *See* Verified Complaint ¶ 5.

One of the pharmaceutical products McKesson distributes is Vecuronium. *See* Verified Complaint ¶ 6. Vecuronium is a pharmaceutical product with a number of beneficial uses in traditional hospital settings and is listed on the World Health Organization's List of Essential Medicines as one of the safe and effective medicines used in any health system. *Id*. McKesson distributes Vecuronium on behalf of Pfizer. *Id*.

Vecuronium is also used by some states and correctional facilities to facilitate the administration of capital punishment. *See* Verified Complaint ¶ 7. McKesson has entered into an agreement with a supplier under which McKesson is restricted from selling a specific set of drugs to federal and state correctional facilities for purposes of capital punishment. *Id*. According to a sworn affidavit from 2015, Mr. Griffin discovered through internet research and speaking with various pharmaceutical companies that many companies prevent their drugs from being used in executions. *See* Rory Griffin Affidavit, at ¶ 18 (Exhibit F to the Verified Complaint).

ADC has been a longstanding McKesson customer primarily purchasing medical surgical supplies, including surgical gloves, syringes, stethoscopes, and other commonly-used medical products, presumably for use in ADC's in-house medical facilities. *See* Verified Complaint ¶ 9, 12. ADC has also purchased prescription pharmaceuticals, including lidocaine and aplisol, other commonly-used medical products. *See* Verified Complaint ¶ 12.

To facilitate its purchases, ADC maintains the license of its medical director on-file with McKesson. *See* Verified Complaint ¶ 9, 11. On or about July 11, 2016, ADC leveraged its medical director's license to purchase 10 boxes containing 10 vials of 20mg/25ml Vecuronium. *See* Verified Complaint ¶ 13. ADC's use of its medical director's license tacitly represented that the order was placed at the request of a physician and with the intent to use the products for a

legitimate medical purpose. *Id*. Under the State of Arkansas's regulations for physicians, a licensed physician "may not . . . [p]rescribe or administer dangerous or controlled drugs to a person for other than legitimate medical purposes." Arkansas State Medical Board Statute, § 17-95-704; *see also* Code Ark. R. 060.00.1-2 ("The treatment of pain with dangerous drugs and controlled substances is a legitimate medical purpose when done in the usual course of medical practice."); Verified Complaint ¶ 10. McKesson would not have sold any prescription drug without a legitimate medical license. Verified Complaint ¶ 7, 11.

ADC ordered the products to be delivered to ADC's administrative building, the address previously used for its healthcare facility's orders. *See* Verified Complaint ¶ 17. The ADC official even asked that the ordering process not be documented via e-mail. *See* Verified Complaint ¶ 16. ADC never disclosed its intent to use the Vecuronium for executions. *See* Verified Complaint ¶ 14. ADC's Deputy Director recently testified that ADC did all of this with the full knowledge that McKesson was not permitted to sell Vecuronium to ADC and that McKesson did not desire to sell Vecuronium to ADC. *See* Verified Complaint ¶ 30-31.

When McKesson discovered the issue on July 20, 2016, McKesson immediately contacted ADC to request the return of Vecuronium. *See* Verified Complaint ¶ 20. Rory Griffin, ADC Deputy Director, assured McKesson that the Vecuronium had been set aside for return. *See* Verified Complaint ¶ 21. In exchange for ADC's assurances, McKesson agreed to return ADC's funds immediately, even before receiving the product. *Id*. McKesson processed ADC's refund and provided a pre-paid shipping label with which ADC could return the Vecuronium. *See* Verified Complaint ¶ 21-22.

ADC made no further communication until, over a week later, Mr. Griffin told McKesson that Ms. Kelley would not comply with the promise of return. *See* Verified Complaint ¶ 23. For

the next month, McKesson sought in vain to persuade ADC to keep its promises, concluding with a letter from McKesson's Vice President of Prescription Category and Programs, demanding the return of the 10 boxes of Vecuronium. *See* Verified Complaint ¶ 24.

ADC has never returned the Vecuronium and has kept the monies McKesson refunded it. *See* Verified Complaint ¶ 25. Recently, ADC has announced it intends to use the Vecuronium to execute ADC inmates. *See* Verified *Complaint* ¶ 26. In the ensuing public outcry and legal battles, McKesson has been named as the party that provided ADC with the Vecuronium. *See* Verified Complaint ¶ 36.

ARGUMENT

This Court has discretion to grant a temporary restraining order or preliminary injunction pursuant to Rule 54 of the Arkansas Rules of Civil Procedure. *See Smith v. American Trucking Ass'n, Inc.*, 300 Ark. 594, 597, 781 S.W.2d 3, 5 (1989). The trial court must consider two factors: (1) whether the moving party has demonstrated a likelihood of success on the merits, and (2) whether irreparable harm will result in the absence of an injunction or restraining order. *See Baptist Health v. Murphy*, 365 Ark. 115, 121, 226 S.W.3d 800, 806 (2006). This Court should grant McKesson's motion for a temporary restraining order, because McKesson has demonstrated in the complaint and exhibits to this motion that McKesson has a likelihood of success on the merits and because McKesson will suffer irreparable harm without a restraining order.

A. Given ADC's Deceptive Conduct, McKesson Has a Strong Likelihood of Success on the Merits.

McKesson has a strong likelihood of success on the merits on its claims against Defendants. The test for determining the likelihood of success is whether there is a reasonable probability of success in the litigation. *See Three Sisters Petroleum, Inc. v. Langley*, 348 Ark.

167, 175, 72 S.W.3d 95, 101 (2002). We describe below why McKesson has at least a strong likelihood of prevailing, much less has a "reasonable probability" of success on the merits. Indeed, last week Mr. Griffin stated quite clearly in open court that he set out to acquire Vecuronium through improper means because he was fully aware that he could not obtain it otherwise. In light of these facts, McKesson has at least a "reasonable probability" of success in this litigation.

1. Rescission for Material Misrepresentation Based on Improper Use of a Medical License

The standard for making out a claim for rescission based on a material misrepresentation is well-established. To succeed, McKesson must show that "(1) that the defendant made a false representation of material fact; (2) that the defendant knew that the representation was false or that there was insufficient evidence upon which to make the representation; (3) that the defendant intended to induce action or inaction by the plaintiff in reliance upon the representation; (4) that the plaintiff justifiably relied on the representation; and (5) that the plaintiff suffered damage as a result of the false representation." *Wal-Mart Stores, Inc. v. Coughlin*, 369 Ark. 365, 375, 255 S.W.3d 424, 432 (2007).

After testimony heard over two days, it cannot be disputed that Defendants intentionally misrepresented or concealed facts from McKesson. According to Mr. Griffin's testimony, ADC knew full well that McKesson could not and did not want to sell Vecuronium to ADC. In fact, just days ago during a hearing in federal court, Mr. Griffin testified that McKesson's representative "wasn't supposed to sell [Vecuronium] to me. If he hadn't -- if he had done what he was supposed to, he wouldn't have sold it to me. I wouldn't have got it." Ex. A, Tr. 869: 5-7. Mr. Griffin went on to state that he called over the phone to "somebody I was familiar with." Ex. A, Tr. 871: 6-9. And he placed an order for a product very different from the prior traditional

medical and pharmaceutical supplies ADC had previously ordered from McKesson. He even asked that the matter not be documented through e-mail and instead insisted on submitting the order through text message.

Ms. Kelley, ADC's Director and Mr. Griffin's supervisor, also testified that she is fully aware that manufacturers prohibit suppliers from selling lethal pharmaceuticals to ADC. Ex. B, Tr. 1224:17-19 ("I know that the manufacturers have said they have contracts to prevent [distributors] from selling to us.").

According to Mr. Griffin's own testimony, he acted in a deceptive manner to obtain the Vecuronium. Indeed, after relying on a medical license on file with McKesson for purchasing products for legitimate medical procedures and developing a relationship with a McKesson sales representative, Mr. Griffin called that same person—knowing that McKesson was not supposed to sell ADC Vecuronium. *See* Verified Complaint ¶¶ 15, 30-32. In doing so, Mr. Griffin created the impression that the order in question was for a legitimate medical purpose. *See* Verified Complaint ¶¶ 9, 11, 13. The result: ADC acquired 10 boxes containing 10 vials of 20mg/25ml Vecuronium.

The third and fourth elements are also plainly satisfied based upon the undisputed facts. With an expectation that the order at issue was for a standard, legitimate medical purpose, McKesson allowed ADC to place the order for the Vecuronium. Further, McKesson justifiably relied on the long-standing relationship it had with ADC in providing medical products for legitimate purposes. *See* Verified Complaint ¶¶ 9, 12. It was only because of the tactics of Mr. Griffin--which were designed to avoid suspicion--that McKesson mistakenly sold ADC Vecuronium. As discussed in greater detail below, McKesson has suffered and continues to suffer damages as a result of ADC's misuse of the medical license. *See* section B., *infra*.

Where, as here, ADC made a material misrepresentation or material omission which "goes to [the] fundamental issue" of contract formation, *see* 26 Williston on Contracts § 69:1 (4th ed. 2003), the "very existence [of the contract] is destroyed," *see Allen v. Overturf*, 234 Ark. 612, 616, 353 S.W.2d 343, 345 (1962). As the Arkansas Supreme Court has instructed, under such circumstances, the contract's "very existence is destroyed." *Wal-Mart*, 369 Ark. at 375, 255 S.W.3d at 432 (internal quotation marks omitted). Because ADC's conduct squarely relates to the contract at issue, the agreement to sell Vecuronium, the contract is void.

2. Unilateral Mistake

McKesson also brings a claim for unilateral mistake. To establish that rescission of the agreement is warranted based on unilateral mistake, a party must show that "(1) the mistake must be of so great a consequence that to enforce the contract as actually made would be unconscionable; (2) the matter as to which the mistake was made must relate to a material feature of the contract; (3) the mistake must have occurred notwithstanding the exercise of reasonable care by the party making the mistake; and (4) the party seeking it must be able to get relief by way of rescission without serious prejudice to the other party, except for the loss of his bargain." *Bishop v. Bishop*, 60 Ark. App. 164, 171, 961 S.W.2d 770, 774 (1998). Further, "[t]here can be no rescission on account of the mistake of one party only, where the other party was not guilty of any fraud, concealment, undue influence, or bad faith, and did not induce or encourage the mistake, and will not derive any unconscionable advantage from the enforcement of the contract." *Id.* at 172, 961 S.W.2d at 775.

Although ADC knew what it was doing—purchasing Vecuronium to administer capital punishment—McKesson thought it was entering into a transaction with a longstanding customer who needed supplies for a legitimate medical purpose. McKesson had been selling traditional

medical and pharmaceutical supplies to ADC for years. ADC knew this, and relied upon the medical license on file with ADC to obtain the Vecuronium. Based on sworn testimony in federal court, it is obvious that ADC, and in particular Mr. Griffin, "encouraged the mistake" through active concealment or bad faith. *See supra* 7 (quoting Mr. Griffin hearing testimony). ADC knew that McKesson had policies that prohibited the sale of Vecuronium. *See* Verified Complaint ¶ 30. As a result, the ADC sought to mask its intent by purchasing the Vecuronium over the phone through a previously established customer service relationship. *See* Verified Complaint ¶ 32.

The other elements are easily met under the circumstances. First, enforcing the contract would be unconscionable where, as here, the contract will cause the use of a product to be used in a manner barred by the supplier and in clear contravention of a contract between McKesson and its supplier. Second, the mistake at issue, McKesson's reasonable belief that the Vecuronium was for a medical purpose, related to a material feature of the contract. Third, ADC will not be prejudiced by rescission of the agreement. ADC has not performed an execution since November 2005, and the State of Arkansas has no pressing need to immediately execute the inmates on death row, as opposed to waiting until ADC can do so with drugs which were lawfully obtained.

3. The Doctrine of Replevin Mandates the Return of McKesson's Products

ADC is in the possession of McKesson's property, 100 vials of 20mg/25ml Vecuronium. Arkansas law "authorizes a party claiming a right of possession of property in the possession of another to apply . . . for issuance of an order of delivery of the property." *Drug Task Force for Thirteenth Judicial Dist. of State v. Hoffman*, 353 Ark. 182, 186-87, 114 S.W.3d 213, 215 (2003); *see also* Ark. Code § 18–60–804. As McKesson has demonstrated, the agreement between McKesson and ADC for the purchase of Vecuronium is invalid because of ADC's

conduct. The 10 boxes of 20mg/25ml Vecuronium are not the property of ADC or the State of Arkansas. The 10 boxes of 20mg/25ml Vecuronium belong to McKesson.

McKesson is thus entitled to rescind the contract with ADC. Without any agreement for the product, ADC has no present interest or right to the 100 vials of 20mg/25ml Vecuronium, which is McKesson's property. McKesson is entitled to have its property immediately returned. Accordingly, McKesson seeks "the delivery of the property," in question, as provided under Arkansas law. *See* Ark. Code Ann. § 18-60-820.

4. Unjust Enrichment

"To find unjust enrichment, a party must have received something of value, to which he or she is not entitled and which he or she must restore." *Campbell v. Asbury Auto., Inc.*, 2011 Ark. 157, 21, 381 S.W.3d 21, 36 (2011). Moreover, unjust enrichment requires there to "be some operative act, intent, or situation to make the enrichment unjust and compensable." *Id.* After learning that ADC intended to use the Vecuronium for the administration of capital punishment, McKesson immediately requested that ADC return the drugs. *See* Verified Complaint ¶ 20. Initially, Mr. Griffin assured McKesson that the Vecuronium would be set aside for return. *See* Verified Complaint ¶ 21; *see also* Ex. A, Tr. 871:19-24. As a result, McKesson promised to refund ADC's payment. *See* Verified Complaint ¶ 21. Although McKesson returned the payment to ADC, it refused to send the Vecuronium back to McKesson. *See* Verified Complaint ¶ 23. Thus, ADC not only retained the product, it also kept its money from the transaction.

ADC has been unjustly enriched because it has retained something of value—its money and the Vecuronium—without returning to McKesson its property. This enrichment is unjust: ADC obtained the Vecuronium by leading McKesson to believe that it would be used for a legitimate medical purpose, promised to return it in exchange for repayment, received the funds

from McKesson, but refused to return the Vecuronium to McKesson. Accordingly, the Court should use its equitable power to "impose a remedy to further the ends of justice." *Campbell*, 2011 Ark. at 21, 381 S.W.3d at 36. Under these circumstances, the most equitable result would be for the Court to put the parties in the same place as before they entered the agreement and require ADC to return the Vecuronium to McKesson.

5. Unlawful Taking

"Article 2, section 22 [of the Arkansas Constitution] states that the right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor." *Gawenis v. Arkansas Oil & Gas Comm'n*, 2015 Ark. 238, 6–7, 464 S.W.3d 453, 456 (2015) (internal quotation marks and alteration marks omitted); *see also Koontz v. St. Johns River Mgmt.*, 133 S.Ct 2586, 2609 (2013) (the Takings Clause prohibits "tak[ing] a specific property interest without just compensation").

As previously explained above, ADC has taken 100 vials of 20mg/25ml Vecuronium without compensating McKesson in any way. Although McKesson refunded ADC's payment based on the representation that ADC would return the Vecuronium, ADC kept McKesson's money and its Vecuronium. *See* Complaint ¶ 26. The Vecuronium is McKesson's private property, which cannot be taken without just compensation. As explained in greater detail below, *see* section B., *infra*, financial compensation will not make McKesson whole should ADC administer the Vecuronium. Accordingly, under these unique circumstances, ADC should be required to return the Vecuronium.

B. Sovereign Immunity Does Not Shield the State's Bad Faith Conduct

"[A] suit against a state official in his or her official capacity is not a suit against that person, but rather is a suit against that official's office." *Arkansas Tech Univ. v. Link*, 341 Ark.

495, 502, 17 S.W.3d 809, 813 (2000). The state generally has sovereign immunity in its own courts "if a judgment for the plaintiff will operate to control the action of the State or subject it to liability, the suit is one against the State and is barred by the doctrine of sovereign immunity." *Id.* Here, McKesson seeks relief that will do neither so sovereign immunity is not implicated.

Even where sovereign immunity might apply, the Arkansas courts have identified a myriad of exceptions. For example, unconstitutional, ultra vires, arbitrary, capricious and bad-faith acts are not protected by sovereign immunity. *See Arkansas Lottery Comm'n v. Alpha Mktg.*, 2013 Ark. 232, 7, 428 S.W.3d 415, 420 (2013). Purely ministerial acts can also be compelled without violating sovereign immunity. *Comm'n on Judicial Discipline & Disability v. Digby*, 303 Ark. 24, 26, 792 S.W.2d 594, 595 (1990). As detailed above, the State engaged in a course of bad-faith dealings with McKesson and must answer for them in the courts. Furthermore, the relief sought is ministerial – completion of a return process to which the State had agreed.

When an exception applies, injunctive relief is the only remedy available. *Arkansas Lottery*, 2013 Ark. at 7, 428 S.W.3d at 420. And, injunctive relief is <u>all</u> that McKesson is seeking.

In *Newton v. Etoch*, 332 Ark. 325, 965 S.W.2d 96 (1998), an attorney brought an action against a state police officer and a deputy district attorney for conspiring to damage the attorney's reputation. The Arkansas Supreme Court held that the plaintiff's allegations that the officials knew that no probable cause existed and that no prosecution would ensue were enough to overcome sovereign immunity. In *Cammack v. Chalmers*, 284 Ark. 161, 680 S.W.2d 689 (1984), the Arkansas Supreme Court held that the trial court had jurisdiction to enjoin the action of the university trustees that were ultra vires, in bad faith, or arbitrary where the university trustees were parties to an agreement with a donor. Similarly, here, McKesson has demonstrated that the State's

conduct in acquiring and retaining the Vecuronium was in bad faith. Therefore, McKesson's claims present a clear exception to sovereign immunity.

C. McKesson Will Suffer Irreparable Harm Without a Temporary Restraining Order or Preliminary Injunction.

McKesson will suffer grave irreparable harm for being associated with the planned executions of the five inmates using products that the manufacturer banned for such purpose. Reputational harms will also impact McKesson's relationships with its contractual partners. Manufacturers that prohibit the sale of lethal pharmaceuticals to federal and state correctional facilities that administer capital punishment may be less likely to enter into business arrangements with McKesson if products McKesson distributed are used in state-sponsored executions. McKesson has a significant commercial interest in ensuring that its contracts are implemented correctly. Such harms cannot be adequately remedied later through a monetary judgment against ADC and Arkansas. *See Walker v. Selig*, 2015 WL 12683818, at *19 (E.D. Ark. Oct. 30, 2015) (finding "loss of intangible assets such as reputation and goodwill can constitute irreparable injury," and that "a threat of irreparable harm may exist when relief through money damages in an action at law will not fully compensate a claimant's economic loss"); *Tempur-Pedic Int'l, Inc. v. Waste To Charity, Inc.*, 2007 WL 535041, at *10 (W.D. Ark. Feb. 16, 2007) ("Although the damage to Tempur-Pedic's reputation and good will is intangible, such injuries may constitute irreparable harm.").

Because these executions may proceed immediately, with the concomitant use of products taken from McKesson by through material misrepresentations in violation of its supplier agreement, the threatened harms cannot be remedied later. In contrast, Defendants will suffer no harm whatsoever. There is no urgency in Defendants' desire to execute the inmates in their custody. Indeed, Defendants have held these inmates for decades without taking action, and

the State of Arkansas has not executed an inmate since 2005. Defendants can always pursue their desire to execute the inmates in their custody later, by other means. Defendants' legal rights in their pursuit of the targeted inmates' death will be utterly unaffected by any action taken by this Court. Consequently, this Court should enter McKesson's proposed order for a temporary restraining order so McKesson can continue to bring life-enhancing and life-saving products to the doctors and patients who need them. The Court should enter a separate order scheduling a hearing for a preliminary injunction and setting this case for a trial.

CONCLUSION

McKesson Medical-Surgical Inc. respectfully requests a temporary restraining order or preliminary injunction requiring the State of Arkansas, the Arkansas Department of Corrections, Governor Asa Hutchinson, and ADC Director Wendy Kelley to discontinue all plans to use the Vecuronium obtained from McKesson in any executions and to return to McKesson the 10 boxes each containing 10 vials of 20mg/25ml Vecuronium.

Dated: April 18, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically on April 18, 2017, causing it to be served by email on counsel listed below:

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