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Attorneys for Plaintiff Russell B. Toomey

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

RUSSELL B. TOOMEY,

Plaintiff,

v.

**STATE OF ARIZONA; ARIZONA
BOARD OF REGENTS, D/B/A
UNIVERSITY OF ARIZONA,** a

governmental body of the State of Arizona;
RON SHOOPMAN, in his official capacity as
Chair of the **Arizona Board of Regents**;
LARRY PENLEY, in his official capacity as
Member of the Arizona Board of Regents;
RAM KRISHNA, in his official capacity as
Secretary of the Arizona Board of Regents;
BILL RIDENOUR, in his official capacity as
Treasurer of the Arizona Board of Regents;
LYNDEL MANSON, in her official capacity
as Member of the Arizona Board of Regents;
KARRIN TAYLOR ROBSON, in her official
capacity as Member of the Arizona Board of
Regents; **JAY HEILER**, in his official
capacity as Member of the Arizona Board of
Regents; **FRED DUVAL**, in his official
capacity as Member of the Arizona Board of
Regents; **ANDY TOBIN**, in his
official capacity as Director of the
Arizona Department of Administration; **PAUL
SHANNON**, in his official capacity as Acting
Assistant Director of the Benefits Services
Division of the Arizona Department of
Administration,

Defendants.

CV 19-0035-TUC-RM (LAB)

**PLAINTIFF AND THE CLASSES'
OBJECTIONS TO REPORT &
RECOMMENDATION**

1 Plaintiff Russell B. Toomey, Ph.D., on behalf of himself and the certified Classes,
 2 respectfully submits these Objections to the Magistrate Judge's Report and
 3 Recommendation (the "R&R") (Doc. 134) regarding his Motion for Preliminary Injunction
 4 (Doc. 115).

5 By separate motion, Plaintiff also seeks expedited consideration of these Objections.

6 **Objection 1: The R&R Erred in Concluding that Dr. Toomey and the Classes Are**
 7 **Unlikely to Succeed on the Merits**

8 Although the R&R agreed that Dr. Toomey and the Classes will suffer irreparable
 9 harm without a preliminary injunction (Doc. 134 at 10), the R&R concluded that Dr.
 10 Toomey and the Classes had not established a likelihood of success on the merits of their
 11 Title VII or equal protection claims (Doc. 134 at 4-9). In reaching that conclusion, the R&R
 12 ignored recent Supreme Court precedent and relied exclusively on a pair of Supreme Court
 13 cases from over 40 years ago about pregnancy discrimination. *See Gen. Elec. Co. v. Gilbert*,
 14 429 U.S. 125 (1976) (Title VII); *Geduldig v. Aiello*, 417 U.S. 484 (1974) (equal protection).
 15 Without the benefit of briefing from either party on the precedential force or relevance of
 16 these two cases, the R&R cited *Geduldig* and *Gilbert* for the erroneous proposition that a
 17 policy does not facially discriminate based on sex or transgender status unless the policy
 18 affects *all* women, *all* men, or *all* transgender people. The R&R's reliance on *Geduldig* and
 19 *Gilbert* conflicts with decades of Supreme Court precedent, including *Bostock v. Clayton*
 20 *Cty.* 140 S. Ct. 1731 (2020), and with this Court's prior decision in this case (Doc. 69 at 10-
 21 11).

22 **I. Plaintiff and the Class Are Likely to Succeed on Their Title VII Claim.**

23 **A. A Defendant's Motivation Is Irrelevant When an Employment Policy Is**
 24 **Discriminatory on Its Face.**

25 The R&R erred from the outset by assuming that Title VII claims for disparate
 26 treatment require proof that defendants are subjectively motivated by a discriminatory intent
 27 or animus. According to the R&R, Dr. Toomey could prevail on his Title VII claim only by
 28 producing evidence that "the Plan authors do not like gender transition and have created this

1 exclusion specifically to burden transgender individuals.” (Doc. 134 at 6).

2 That was error. “Whether an employment practice involves disparate treatment
3 through explicit facial discrimination does not depend on why the employer discriminates
4 but rather on the explicit terms of the discrimination.” *Int’l Union, United Auto., Aerospace*
5 *& Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199
6 (1991). As *Bostock* explained, the only relevant “intention” under Title VII is the intention
7 to use an employee’s sex as a “but for” cause of an employment action. “An employer who
8 discriminates against homosexual or transgender employees necessarily and intentionally
9 applies sex-based rules,” and “nothing in Title VII turns on the employer’s labels or any
10 further intentions (or motivations) for its conduct.” *Bostock*, 140 S. Ct. at 1745-46.¹

11 **B. The “Gender Reassignment Surgery” Exclusion Facially Discriminates**
12 **Based on Sex.**

13 As virtually every other court to consider the question has recognized, excluding
14 coverage for medically necessary surgery because the surgery is performed for purposes of
15 “gender reassignment” facially discriminates on the basis of “sex” in violation of Title VII
16 and other civil rights statutes. *Kadel v. Folwell*, 446 F. Supp. 3d 1 (M.D.N.C. 2020); *Fletcher*
17 *v. Alaska*, 443 F. Supp. 3d 1024 (D. Alaska 2020); *Tovar v. Essentia Health*, 342 F. Supp.
18 3d 947 (D. Minn. 2018); *Boyden v. Conlin*, 341 F. Supp. 3d 979 (W.D. Wis. 2018); *Flack v.*
19 *Wis. Dep’t of Health Servs.*, 328 F. Supp. 3d 931 (W.D. Wis. 2018).

20 *Bostock* made clear that an employment policy discriminates because of “sex”
21 whenever the policy treats an individual employee differently based on that employee’s sex.
22 Under this standard, discriminating against an employee based on transgender status violates
23 Title VII “because to discriminate on these grounds requires an employer to intentionally
24 treat individual employees differently because of their sex.” *Bostock*, 140 S. Ct. at 1742. For

25 _____
26 ¹ The R&R cited *Ricci v. DeStefano*, 557 U.S. 557 (2009) (Doc. 134 at 4), but the relevant
27 intent in that case was the intent to make an employment decision based on race, not the
28 Defendant’s motive for doing so. See *Ricci*, 557 U.S. at 579-80 (“Whatever the City’s
ultimate aim—however well intentioned or benevolent it might have seemed—the City
made its employment decision because of race.”).

1 example, “an employer who fires a transgender person who was identified as a male at birth
2 but who now identifies as a female . . . intentionally penalizes a person identified as male at
3 birth for traits or actions that it tolerates in an employee identified as female at birth.” *Id.* at
4 1741. “By discriminating against transgender persons, the employer unavoidably
5 discriminates against persons with one sex identified at birth and another today.” *Id.* at 1746.

6 The Plan’s “gender reassignment surgery” exclusion discriminates based on sex in
7 precisely the same way. On its face, the exclusion refers to “gender” reassignment. “The
8 characteristics of sex and gender are directly implicated; it is impossible to refer to the
9 Exclusion without referring to them.” *Kadel*, 446 F. Supp. 3d at 18; *cf. Bostock*, 140 S. Ct.
10 at 1746 (“[T]ry writing out instructions for” discriminating against transgender employees
11 “without using the words man, woman, or sex (or some synonym). It can’t be done.”).

12 As with the definition of “transgender” itself, the exclusion of coverage for “gender
13 reassignment surgery” inherently rests on a sex classification because “the diagnosis at
14 issue—gender dysphoria—only results from a discrepancy between assigned *sex* and *gender*
15 identity.” *Kadel*, 446 F. Supp. 3d at 18. Thus—as with the definition of transgender itself—
16 an employer who excludes coverage for medically necessary surgery because the surgery is
17 performed for the purposes of “gender reassignment” “unavoidably discriminates against
18 persons with one sex identified at birth and another today.” *Bostock*, 140 S. Ct. at 1746. For
19 example, if Dr. Toomey had been assigned a male sex at birth and had been born with a
20 uterus and fallopian tubes as a result of Persistent Mullerian Duct Syndrome (“PMDS”), the
21 Plan would cover the medically necessary surgery to align his anatomy with his identity as
22 a man. *See* (Amended Complaint; Exhibit A, Doc. 86-1 at 55) (exclusion of coverage for
23 “cosmetic surgery” does not exclude “necessary care and treatment of medically diagnosed
24 congenital defects and birth abnormalities” or “surgery required to repair bodily damage a
25 person receives from an injury”). But because Dr. Toomey was assigned a female sex at
26 birth, his surgery to align his anatomy with his identity as a man is excluded as “gender
27 reassignment.”

28 The “gender reassignment surgery” exclusion also discriminates based on gender

1 nonconformity, which—under *Bostock*—is another example of disparate treatment based on
2 sex assigned at birth. Discrimination based on gender nonconformity “penalizes a person
3 identified as male at birth for traits or actions that [the employer] tolerates in an employee
4 identified as female at birth,” and vice versa. *Bostock*, 140 S. Ct. at 1741. Thus, an employer
5 violates Title VII if it “fires a woman, . . . because she is insufficiently feminine and also
6 fires a man . . . for being insufficiently masculine.” *Id.*

7 Once again, the “gender reassignment surgery” exclusion discriminates in precisely
8 the same way. The exclusion prohibits an employee assigned a female sex at birth from
9 receiving medically necessary care that masculinizes his body in accordance with his male
10 gender identity; and the exclusion prohibits a person assigned a male sex at birth from
11 receiving medically necessary care to feminize her body in accordance with her female
12 gender identity. As this Court already explained, “[t]his narrow exclusion of coverage for
13 ‘gender reassignment surgery’ is directly connected to the incongruence between Plaintiff’s
14 natal sex and his gender identity” and, therefore, “implicates the gender stereotyping
15 prohibited by Title VII.” (Doc. 69 at 10-11). *Accord Boyden*, 341 F. Supp. 3d at 997
16 (explaining that excluding transition-related care “implicates sex stereotyping by . . .
17 requiring transgender individuals to maintain the physical characteristics of their natal sex”).

18 **C. The R&R Erred in Analogizing This Case to *Gilbert*.**

19 Instead of following the straightforward analysis set forth in *Bostock*, the R&R
20 applied a different test that it derived by analogizing this case to the disability insurance
21 policy upheld in *Gilbert*, which excluded coverage for pregnancy-related disability. (Doc.
22 134 at 5). *Gilbert* held that the pregnancy exclusion did not facially discriminate on the basis
23 of sex because “[t]he program divides potential recipients into two groups: pregnant women
24 and nonpregnant persons. While the first group is exclusively female, the second includes
25 members of both sexes.” *Gilbert*, 429 U.S. at 135.

26 From *Gilbert*, the R&R derived a general principle that a policy is not facially
27 discriminatory unless it discriminates against *all* members of a particular group. (Doc. 134
28 at 5-6, 8). The R&R then concluded that the “gender reassignment surgery” exclusion “is

1 not, on its face, discrimination on the basis of sex” because “[t]he Plan exclusion only
 2 applies to natal females who seek a hysterectomy for the purpose of gender transition. The
 3 exclusion discriminates against some natal females but not all.” (Doc. 134 at 8).

4 The R&R’s reliance on *Gilbert* was misplaced. Despite the R&R’s assumption to the
 5 contrary, the Court’s analysis in *Gilbert* is not “still controlling.” (Doc. 134 at 5 n.2). When
 6 Congress overruled *Gilbert* by passing the Pregnancy Discrimination Act, 42 U.S.C. §
 7 2000e(k), “it unambiguously expressed its disapproval of both the holding *and the reasoning*
 8 of the Court in the *Gilbert* decision.” *Newport News Shipbuilding & Dry Dock Co. v. EEOC*,
 9 462 U.S. 669, 678-79 (1983) (emphasis added). “The House Report stated, ‘It is the
 10 Committee’s view that the dissenting Justices correctly interpreted the Act.’ Similarly, the
 11 Senate Report quoted passages from the two dissenting opinions, stating that they ‘correctly
 12 express both the principle and the meaning of [T]itle VII.’” *Id.* at 679 (footnotes omitted).²

13 Far from adhering to *Gilbert*, Supreme Court decisions before and after *Gilbert* have
 14 recognized that the critical question under Title VII is not whether a policy discriminates
 15 against *all* women or *all* men. Rather, the focus of the statutory text is on discrimination
 16 against “individuals, not groups.” *Bostock*, 140 S. Ct. at 1741. Thus, an employer violates
 17 Title VII when it discriminates against just the subset of women with young children. *See*
 18 *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (per curiam). An employer violates
 19

20 ² None of the decisions cited by the R&R supports the assertion that *Gilbert*’s reasoning is
 21 still controlling. *Lange v. Houston Cty., Georgia*, 2020 WL 6372702, at *11 (M.D. Ga.
 22 Oct. 30, 2020), was referring to the Supreme Court’s interpretation of the Equal Protection
 23 Clause in *Geduldig*, not to the statutory interpretation in *Gilbert*. *In re Union Pac. R.R.*
 24 *Employment Practices Litig.*, 479 F.3d 936, 944 (8th Cir. 2007), held that an exclusion of
 25 contraception services was facially neutral because it excluded coverage for all forms of
 26 contraception for both men and women, including vasectomies. And *Coleman v. Bobby*
 27 *Dodd Inst., Inc.*, 2017 WL 2486080, at *2 (M.D. Ga. June 8, 2017), dismissed a complaint
 28 because it failed to allege that the employer “treat[ed] a uniquely feminine condition, such
 as excessive menstruation, less favorably than similar conditions affecting both sexes, such
 as incontinence.” Neither case purported to hold that an exclusion is not facially
 discriminatory if it does not affect all members of a group.

1 Title VII when it discriminates against just the subset of women who act macho. *See Price*
 2 *Waterhouse v. Hopkins*, 490 U.S. 228 (1989). And an employer violates Title VII when it
 3 discriminates against just the subset of women who are lesbians or transgender. *See Bostock*,
 4 140 S. Ct. 1731; *accord EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560,
 5 578 (6th Cir. 2018), *aff'd sub nom. Bostock*, 140 S. Ct. 1731 (“[A]n employer need not
 6 discriminate based on a trait common to all men or women to violate Title VII.”).

7 The “controlling” standard for identifying a facially discriminatory policy is the
 8 standard employed in *Phillips*, *Price Waterhouse*, and *Bostock*. The R&R erred by ignoring
 9 all these decisions and focusing exclusively on an anomalous and abrogated decision from
 10 over 40 years ago.

11 **II. Plaintiff and the Class Are Likely to Succeed on the Equal Protection Claim.**

12 **A. The Exclusion Facially Discriminates Based on Sex and Transgender Status.**

13 The “gender reassignment surgery” exclusion facially discriminates against people
 14 who are transgender.³ Discrimination based on gender “transition clearly discriminates on
 15 the basis of transgender identity.” *Stone v. Trump*, 356 F. Supp. 3d 505, 513 (D. Md. 2018).
 16 By providing medically necessary surgery for other medical conditions but excluding
 17 medically necessary gender-affirming surgery for transgender patients, Defendants’ policy
 18 “creates a different rule governing the medical treatment of transgender people.” *Flack*, 328
 19 F. Supp. 3d at 950. As this Court already explained in its prior decision in this case:

20 Plaintiff’s alleged harm occurred because his natal sex does not match his gender
 21 identity. The Plan at issue covers cisgender individuals requiring medically
 22 necessary hysterectomies but does not cover transgender individuals requiring
 23 medically necessary hysterectomies for the purpose of gender reassignment. Had
 24 Plaintiff required a hysterectomy for any medically necessary purpose other than
 25 gender reassignment, the Plan would have covered the procedure. This narrow
 26 exclusion of coverage for “gender reassignment surgery” is directly connected
 to the incongruence between Plaintiff’s natal sex and his gender identity . . .
 .which transgender individuals by definition experience and display.

27 ³ For the same reasons that the “gender reassignment surgery” exclusion discriminates
 28 based on sex under Title VII, the exclusion also discriminates based on sex under the
 Equal Protection Clause. *See Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011).

1 (Doc. 69 at 10-11). This Court also explicitly rejected the argument that the exclusion
2 merely “targets a ‘service’ rather than transgender individuals”: “[T]ransgender individuals
3 are the only people who would ever seek gender reassignment surgery. No cisgender person
4 would seek, or medically require, gender reassignment. Therefore, as a practical matter, the
5 exclusion singles out transgender individuals for different treatment.” (Doc. 69 at 11).

6
7 The R&R reached a different conclusion by repeating the same errors it made when
8 analyzing the Title VII claim. According to the R&R, “while all persons seeking gender
9 transition surgery are transgender, not all transgender persons seek gender transition
10 surgery.” (Doc. 134 at 5). As a result, according to the R&R, “the Plan exclusion is not
11 facially discriminatory against all transgender individuals,” and “if [Dr.] Toomey cannot
12 prove that the exclusion discriminates against transgender individuals as a class, the court
13 will not apply heightened scrutiny.” (Doc. 134 at 9).

14 The R&R adopted this unusual standard by, once again, relying on a Supreme Court
15 decision from over 40 years ago that distinguished between discrimination based on sex and
16 discrimination based on pregnancy. *Geduldig*, 417 U.S. 484. As with the Supreme Court’s
17 Title VII decision in *Gilbert*, the Supreme Court’s equal protection decision in *Geduldig* is
18 neither controlling nor relevant here. *Geduldig* predates the Court’s modern equal protection
19 jurisprudence and has not been cited by a majority opinion in an equal protection case since
20 the mid-70s. See generally Reva B. Siegel, *The Pregnant Citizen, from Suffrage to the*
21 *Present*, 108 Georgetown L.J. 167, 208 n.229 (2020). And even if *Geduldig* were still
22 controlling in the context of pregnancy, there is no basis to extend its reasoning to
23 discrimination against transgender people in the face of more recent precedent.

24 There is no rule that a facially discriminatory policy must affect every member of a
25 particular group in order to trigger heightened scrutiny. Supreme Court precedent says the
26 opposite. See *Rice v. Cayetano*, 528 U.S. 495, 516-17 (2000) (“Simply because a class . . .
27 does not include all members of [a] race does not suffice to make the classification race
28 neutral.”); *Nyquist v. Mauclet*, 432 U.S. 1, 8 (1977) (rejecting argument that law was facially

neutral with respect to alienage because it discriminated against only a subset of resident aliens, and explaining that “[t]he important points are that [the statute] is directed at aliens and that only aliens are harmed by it”). Modern precedents from the Ninth Circuit and the Supreme Court also recognize that when a “defendant discriminates against individuals on the basis of criteria that are almost exclusively indicators of membership in the disfavored group,” the discrimination is treated as a facial classification. *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1160 n.23 (9th Cir. 2013). Thus, discrimination based on the conduct of having relationships with a same-sex partner is discrimination based on sexual orientation, even though some gay people may choose to be celibate. *See Christian Legal Soc. Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 689 (2010); *Lawrence v. Texas*, 539 U.S. 558, 583 (2003) (O’Connor, J., concurring in judgment) (“While it is true that the law applies only to conduct, the conduct targeted by this law is conduct that is closely correlated with being homosexual. Under such circumstances, [the] law is targeted at more than conduct. It is instead directed toward gay persons as a class.”).

This Court’s prior reasoning adheres to these precedents. The “narrow exclusion of coverage for ‘gender reassignment surgery’ is directly connected to the incongruence between Plaintiff’s natal sex and his gender identity.” (Doc. 69 at 10). The exclusion thus discriminates based on “criteria that are so closely associated with the disfavored group that discrimination on the basis of such criteria is, constructively, facial discrimination.” *Pac. Shores Properties*, 730 F.3d at 1160 n.23. The R&R erred by disregarding this Court’s previous reasoning and replacing it with a strained analogy to *Geduldig*.

B. The Exclusion Fails Heightened Scrutiny.

In the Ninth Circuit, discrimination based on sex and transgender status is subject to heightened scrutiny. *See Karnoski v. Trump*, 926 F.3d 1180, 1201 (9th Cir. 2019); *Morris v. Pompeo*, 2020 WL 6875208, at *7 (D. Nev. Nov. 23, 2020); *Hecox v. Little*, 2020 WL 4760138, at *26 (D. Idaho Aug. 17, 2020); *Vuz v. Dcss III, Inc.*, 2020 WL 4366023, at *11 (S.D. Cal. July 30, 2020). In light of these precedents, it is not clear why the R&R merely

1 “assume[d] that [Dr.] Toomey is correct about the court’s scrutiny.” (Doc. 134 at 9)

2 Under heightened scrutiny, Defendants must demonstrate that the exclusion serves
3 an important governmental interest and “that the discriminatory means employed” “are
4 substantially related to the achievement of those objectives.” *Sessions v. Morales-Santana*,
5 137 S. Ct. 1678, 1690 (2017). “The burden of justification is demanding and it rests entirely
6 on the [government].” *United States v. Virginia*, 518 U.S. 515 533 (1996).

7 The R&R turned heightened scrutiny on its head. Instead of placing the burden on
8 Defendants to establish that the “gender reassignment surgery” was substantially related to
9 an important governmental interest, the R&R stated that “[a]t this stage of the litigation,
10 it would be premature to address reasons that the State might raise in the future after
11 discovery.” (Doc. 134 at 7). But Defendants do not need discovery to identify *their own*
12 *reasons* for adopting and maintaining the “gender reassignment surgery” exclusion.
13 Defendants already have that information, and Defendants bear the burden of proof.

14 In opposing the motion for preliminary injunction, Defendants failed to present *any*
15 evidence to carry their burden under heightened scrutiny. The only justification that
16 Defendants have provided is that the categorical exclusion serves a governmental interest in
17 reducing costs, but this Court has already concluded—as a matter of law—that cost savings
18 is not a constitutionally sufficient justification for treating similarly situated groups
19 differently under *any* standard of scrutiny. (Doc. 69 at 16.) Defendants therefore are unlikely
20 to carry their burden under heightened scrutiny, and Dr. Toomey and the Class are likely to
21 prevail on the merits of their equal protection claim.

22 **Objection 2: The R&R Erred in Balancing the Equities and the Public Interest**

23 Because Dr. Toomey and the Classes are likely to succeed on the merits of their
24 claims, the balance of hardships and the public interest tip in their favor. (Doc. 115 at 9).

25 In analyzing the balance of hardships, the R&R stated that “there is presently no
26 evidence before the court as to how much ‘human suffering’ would be alleviated should be
27 motion be granted,” while conceding it may not be “possible to offer meaningful evidence
28 on such an issue.” (Doc. 134 at 10). It is impossible to identify the range of negative

consequences for every current or future class member, but the Ninth Circuit has already held that the suffering can be great enough to violate the Eighth Amendment. *See Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019), *cert. denied sub nom. ID DOC v. Edmo*, No. 19-1280, 2020 WL 6037411 (U.S. Oct. 13, 2020). That should be enough.

The R&R also faulted Plaintiffs for failing to provide information about what the financial impact on the Plan would be if the exclusion of coverage for “gender reassignment surgery” were removed. (Doc. 134 at 10). But, once again, Defendants are the ones in possession of that information. The absence of information in the record simply reflects Defendants’ own failure to carry their burden of proof.

Objection 3: The R&R Erred in Applying the Standard for “Mandatory Injunctions”

Although the preliminary injunction should be granted under any standard, the R&R erred when it applied the heightened standard for “mandatory” injunctions. The R&R defined mandatory injunctions as injunctions that change the status quo. (Doc. 134 at 3). But, as explained in Dr. Toomey’s reply brief (Doc. 126 at 1-2), the Ninth Circuit held in *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017), that an injunction to “prevent[] future constitutional violations” is “a classic form of “prohibitory injunction,” and should not be subjected to the heightened “mandatory injunction” standard. The R&R acknowledged that its reasoning conflicted with *Hernandez* with a “but see” citation (Doc. 134 at 3), but gave no explanation for relying on decisions from 1979 and 1994 over the Ninth Circuit’s more recent binding precedent.

Respectfully submitted this 4th day of December, 2020.

ACLU FOUNDATION OF ARIZONA

By /s/ Christine K. Wee

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2020, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system.

/s/Christine K. Wee
Christine K. Wee