

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAMES SCOTT HARRINGTON)	
and)	
JOSHUA A. KELLERMAN;)	
Plaintiffs,)	
)	
v.)	5:20-CV-04081-HLT-KGG
)	
STATE OF KANSAS,)	
)	
HERMAN JONES, in his individual)	
capacity;)	
and)	
JASON DE VORE, in his individual)	
capacity;)	
)	
Defendants.)	

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION TO DISMISS
COUNTS VI AND VII OF THE AMENDED COMPLAINT**

COME NOW, Plaintiffs James Scott Harrington and Joshua A. Kellerman, through their counsel, Kelly J. Trussell of the law firm of SLOAN, EISENBARTH, GLASSMAN, MCENTIRE & JARBOE, L.L.C., and for their Response to the Defendants’ Motion to Dismiss Counts VI and VII of the Amended Complaint, the Plaintiffs offer as follows:

Summary of Response

As set forth in the *Bruce v. Kelly, et al.* Case No. 20-4077-DDC-GEB, Order (Doc. 22), the classified or unclassified status of a KHP Major is unclear within K.S.A. 74-2113. (See *Bruce v. Kelly* Doc 22, p. 46-47). If the Kansas Supreme Court concludes that the rank of major is a member of the classified service, then the Plaintiffs have a property interest and a right to due process regarding their terminations. The Plaintiffs were employed in the rank of major and K.S.A. 74-2113 was in effect at the time their employments ended. Because there is ambiguity within the

statute, requiring the Kansas Supreme Court to interpret the language, it is appropriate for the Plaintiffs to assert their due process claims now and proceed with the litigation while awaiting the answers to the certified questions from the Court. The status of the law is pending and this Court should deny the Defendants' Motion to Dismiss Counts VI and VII, without prejudice, to allow the Kansas Supreme Court to provide guidance on this issue of Kansas law.

I. Plaintiffs' had a property interest in continued employment with the KHP; therefore, dismissal of their due process claims is not appropriate

Plaintiffs agree with the Defendants' recitation of the law that to prove a violation of the Due Process Clause of the Fourteenth Amendment, the Plaintiffs must demonstrate that they possess a property interest through a state law conveying a legitimate expectation of their continued employment. *See* Doc. 46, p. 2. As set forth below, the Plaintiffs have a property interest, through K.S.A. 74-2113(a), because their ranks of major placed them within the classified service.

A. The KHP rank of major is within the classified service

The current version of K.S.A. 74-2113 is the result of an amendment to the statute by the legislature in 2018. On February 5, 2018, Senate Bill 369 was introduced in the Senate and sought to amend K.S.A. 74-2113 in relevant part as follows:

Section 1. K.S.A. 2017 Supp. 74-2113 is hereby amended to read as follows: 74-2113. (a) There is hereby created a Kansas highway patrol. The patrol shall consist of: (1) A superintendent, who shall have the rank of colonel and who shall have special training and qualifications for ~~such~~ *the* position; (2) an assistant superintendent, who shall have the rank of lieutenant colonel; and (3) officers and troopers who are appointed in accordance with appropriations acts and as provided in this section. The superintendent and assistant superintendent shall be within the unclassified service under the Kansas civil service act. ~~The assistant superintendent serving on the effective date of this act shall be appointed to such position by the superintendent. Thereafter,~~ The assistant superintendent shall be

appointed by the superintendent from among the members of the patrol, and shall serve at the pleasure of the superintendent. If a person appointed as superintendent ~~or~~, assistant superintendent *or major* is a member of the patrol when appointed, ~~such~~ *the* person in each case, upon termination of the term as superintendent ~~or~~, assistant superintendent *or major*, respectively, shall be returned to a rank not lower than the rank ~~such~~ *the* person held when appointed as superintendent ~~or~~, assistant superintendent *or major*. If ~~such~~ *the* rank is filled at that time, a temporary additional position shall be created in ~~such~~ *the* rank until a vacancy occurs in such rank. All other officers, troopers and employees shall be within the classified service under the Kansas civil service act.

2018 Session Laws, Chapter 18.

On February 12, 2018, then-Superintendent Bruce presented the following testimony to the Senate Committee on Federal and State Affairs:

Good morning Mr. Chairman and members of the committee. I am Colonel Mark Bruce, Superintendent of the Kansas Highway Patrol. I appreciate the opportunity to appear before you today on behalf of the KHP in support of Senate Bill 369.

The purpose of this bill is to restore civil service protection to the 4 majors within the KHP that lost it as an unintended consequence of our Career Progression Plan that was implemented in 2016. This plan accomplished two things for the Patrol. First, it increased pay for the purposes of increasing the number of applicants applying to become new troopers. Second, it corrected a compaction issue regarding the pay of our supervisors.

Development of the Career Progression Plan (CPP) unintentionally required the highest ranking classified members of the Patrol, our majors, to become unclassified employees, in order to be placed at the appropriate spot on the CPP.

Moving the majors to the unclassified service made them the only at-will uniformed members in the trooper ranks. They can be transferred, demoted or fired without cause. These individuals are career members of the Patrol who were hired on as troopers and earned promotions through the ranks and to their current position.

Leaving the majors in the unclassified service will have a negative impact on the Patrol's ability to attract the most qualified people to apply for this position. Eligibility for promotion to major, by KHP policy is limited to captains. We generally have 18-20 members serving at that level. They are several years into their career and many won't apply for a major's vacancy because they don't want to move. The remaining number of potential candidates will be reduced by the requirement to leave classified service in order to be promoted.

The assistant superintendent and myself are in the unclassified service. However, at the end of our appointments, state law requires that we go back no further in rank than the last permanent position we held. In fairness to our majors and in the best interests of the Patrol, I am requesting that their position be afforded the same, earned protection.

Again, I appreciate the opportunity to appear before you today. When Senate Bill 369 is put to a vote, I hope you will favorably consider its passage. With that, Mr. Chairman, I would stand for questions.

(Doc. 46-1).

On February 13, 2018, the Senate Committee on Federal and State Affairs voted that Senate Bill 369 "be passed, and because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar." (Senate Journal for 2018 at p. 1578) Thereafter, Senate Bill 369 was passed by the Senate, then by the House, and finally approved by the Governor on March 26, 2018. (Senate Journal for 2018 at p. 2556)

Three key points emerge from the legislative history of K.S.A.74-2113. First, the KHP's Career Progression Plan, which was implemented in 2016, allowed the persons who held the rank of major to voluntarily transfer from the classified service to the unclassified service, in order to obtain increased pay. As then-Superintendent Bruce explained in his testimony before the Senate Committee:

Development of the Career Progression Plan (CPP) unintentionally required the highest ranking classified members of the Patrol, our

majors, to become unclassified employees, in order to be placed at the appropriate spot on the CPP.

(Doc. 46-1)

Second, the rank of major itself was never declassified by the legislature; the legislature could not constitutionally declassify the rank of major without appropriate procedural safeguards. *See Darling v. Kansas Water Office*, 245 Kan. 45, Syl. 1, 774 P.2d 241 (1989) (“While the Kansas Legislature may elect not to confer a property interest in public employment through enactment of a civil service act, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards.”) (quoting *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985)).

Third, the legislature amended K.S.A. 74-2113 in 2018 for the purpose of providing appropriate procedural safeguards to persons who held the rank of major, and who voluntarily transferred from the classified service to the unclassified service, in order to obtain increased pay under the Career Progression Plan. As then-Superintendent Bruce explained in his testimony before the Senate Committee:

The assistant superintendent and myself are in the unclassified service. However, at the end of our appointments, state law requires that we go back no further in rank than the last permanent position we held. In fairness to our majors and in the best interests of the Patrol, I am requesting that their positions be afforded the same, earned protection.

(Doc. 46-1).

The key points which emerge from the legislative history of K.S.A. 74-2113 are confirmed by the plain language of the statute. First, the rank of major itself was never declassified by the legislature. Accordingly, the statute states in relevant part:

The superintendent and assistant superintendent shall be within the unclassified service. . . . All other officers, troopers and employees

shall be within the classified service under the Kansas civil service act.

Second, the legislature amended K.S.A. 74-2113 in 2018 with the intent of providing appropriate procedural safeguards to persons who held the rank of major, and who voluntarily transferred from the classified service to the unclassified service, in order to obtain increased pay under the Career Progression Plan. Thus, the statute states in relevant part:

If a person appointed as . . . major is a member of the patrol when appointed, the person in each case, upon termination of the term as . . . major . . . shall be returned to a rank no lower than the rank the person held when appointed as . . . major.

In summary, both the legislative history and the plain language of K.S.A. 74-2113 compel the conclusion that the statute defines the rank of major in the KHP as a member of the classified service under the Kansas Civil Service Act.

B. The Defendants’ assertion that leave of absences were required to protect the Plaintiffs’ property interests conveyed by the amended K.S.A. 74-2113 is without support.

Prior to the 2018 amendments to K.S.A. 74-2113, promoted majors completed yearly leave of absence forms from their classified positions. Plaintiff Harrington did so yearly through 2018 and Plaintiff Kellerman did not do so because he was promoted to major just before the 2018 amendment to K.S.A. 74-2113.¹ As set forth below, the leave of absence requirements were rendered unnecessary when K.S.A. 74-2113 was amended; therefore the Defendants’ assertion that the Plaintiffs failed to complete leave of absences, and therefore, have no property interests in their continued employment is unsupported. The Plaintiffs’ property interests asserted in Counts VI

¹ Plaintiffs did not allege those facts within the Amended Complaint, though the evidentiary support for those facts are within the Defendants’ Rule 26 initial disclosure documents. Plaintiffs do not offer these facts to the Court as support for their claims but are instead responsive as to *why* the Defendants’ raised argument that leave of absences were necessary to protect their interests is irrelevant in determining this motion.

and VII were conveyed within the 2018 amendment, any actions or requirements prior to the amended K.S.A. 74-2113 are irrelevant to their claims.

Prior to the 2018 amendment to K.S.A. 74-2113, unless the leave of absence forms were completed, it is arguable that the Plaintiffs would not have a property interest in continued KHP employment, with classified employee due process protections. However, the amendment to K.S.A. 74-2113 rendered those leave of absence forms unnecessary, as the amendment conveyed, or at least clarified, the property interest in continued KHP employment to the Plaintiffs, as majors. Therefore, the leave of absence forms lend no persuasive support to the Defendants' arguments that the Plaintiffs did not have a property interest in their employments when their employments ended.

II. Plaintiffs' claims for money damages under § 1983 for deprivation of due process are not precluded by the Kansas Civil Service Act

To bring a claim under § 1983, the Plaintiffs are not required to first appeal from their dismissals or constructive discharges under the Kansas Civil Service Act. The case law that the Defendants rely upon for this argument bears no authority on the Plaintiffs' § 1983 due process claims in this case.

The Defendants assert that because there is a statutory administrative remedy provided under the Kansas Civil Service Act, "exhaustion of that remedy is required before a litigant can resort to the courts." Doc. 46, p. 10 (citing *Pecenka v. Alquest*, 232 Kan. 97, 100 (1982)). However, *Pecenka* reached such conclusion because the plaintiffs filed an action to test the propriety of their discharge directly in the state district court without first obtaining a final order from an administrative hearing; no § 1983 claim was asserted in that case. *Pecenka*, 232 Kan. at 100-101. The Defendants also rely upon *Prager v. State* to correctly recite the available remedy under the

Kansas Civil Service Board. However, the *Prager* court specifically set forth a detailed recitation of the repeated and long-standing U.S. Supreme Court conclusions that “the dominant characteristic of a § 1983 civil rights action is that they belong in court independent of any other legal or administrative relief that may be available under state or federal law.” *Prager*, 271 Kan at 13-19 (reversing the trial court’s decision dismissing *Prager*’s § 1983 claims for failure to exhaust administrative remedies) (discussing *Patsy v. Board of Regents of Florida*, 457 U.S. 496 (1982), *Felder v. Casey*, 487 U.S. 131 (1988), and *Howlett v. Rose*, 496 U.S. 356 (1990)).

Patsy v. Board of Regents of Florida unequivocally makes it clear that the Plaintiffs in this case did not have to request a hearing with the Civil Service Board prior to asserting their § 1983 civil rights claims in this matter:

Beginning with *McNeese v. Board of Education*, 373 U.S. 668, 671-673 (1963), we have on numerous occasions rejected the argument that a § 1983 action should be dismissed where the plaintiff has not exhausted state administrative remedies. See *Barry v. Barchi*, 443 U.S. 55, 63, n. 10 (1979); *Gibson v. Berryhill*, 411 U.S. 564, 574 (1973); *Carter v. Stanton*, 405 U.S. 669, 671 (1972); *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971); *Houghton v. Shafer*, 392 U.S. 639, 640 (1968); *King v. Smith*, 392 U.S. 309, 312, n. 4 (1968); *Damico v. California*, 389 U.S. 416 (1967). Cf. *Steffel v. Thompson*, 415 U.S. 452, 472-473 (1974) (“When federal claims are premised on [§ 1983] -- as they are here -- we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights”) . . . this Court has stated categorically that exhaustion is not a prerequisite to an action under § 1983, and we have not deviated from that position in the 19 years since *McNeese*.

457 U.S. 496, 500-01 (1982).

III. Plaintiffs have properly stated plausible claims under 42 U.S.C. § 1983 for the violations of their right of due process

The Plaintiffs’ due process claims are appropriate if they “contain[] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Doe v. School District No. 1, Denver, Colorado*, 970 F.3d 1300, 1309 (10th Cir. 2020) (quoting *Ashcroft v. Iqbal*,

556 U.S. 662, 678 (2009)). To be plausible on its face, the complaint’s “factual allegations [must] allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Doe*, 970 F.3d at 1309. In determining the plausibility of a claim, the court must “look to the elements of the particular cause of action, keeping in mind that the Rule 12(b)(6) standard [does not] require a plaintiff to ‘set forth a prima case of each element.’” *George v. Urban Settlement Services*, 833 F.3d 1242, 1247 (10th Cir. 2016).

Counts VI and VII allege that Defendant Jones violated the Fourteenth Amendment by depriving Plaintiffs of their property interests in their continued employment, without due process of law. (Doc. 43 ¶¶ 354-361 & 365-372). To “‘assess whether an individual was denied procedural due process, courts must engage in a two-step inquiry: (1) did the individual possess a protected interest such that the due process protections were applicable; and, if so, then (2) was the individual afforded an appropriate level of process.’” *Riggins v. Goodman*, 572 F.3d 1101, 1108 (10th Cir. 2009) (quoting *Montgomery v. City of Ardmore*, 365 F.3d 926, 935 (10th Cir. 2004)).

1. The Plaintiffs possessed a constitutionally protected interest

The first step of the due process analysis is to determine whether the Plaintiffs possessed protected interests in their continued employment with KHP. This same analysis was addressed in *Bruce v. Kelly*, No. 20-4077-DDC-GEB, 2021 U.S. Dist. LEXIS 179379, at *36 (D. Kan. Sep. 21, 2021):

[W]hen ‘a plaintiff claims a property interest in [his] job,’ the court must determine whether plaintiff had ‘a legitimate expectation of continued employment,’ as defined by some independent source such as a contract for a fixed term or state law.” *Eisenhour v. Weber Cnty.*, 744 F.3d 1220, 1232 (10th Cir. 2014) (quoting *Hennigh v. City of Shawnee*, 155 F.3d 1249, 1253 (10th Cir. 1998)); *see also McDonald v. Wise*, 769 F.3d 1202, 1210 (10th Cir. 2014) (“A public employee has a property interest in his continued employment where ‘state or local law creates a sufficient expectancy of continued employment.’” (quoting *Driggins v. City of Okla. City, Okla.*, 954 F.2d 1511, 1513 (10th Cir. 1992))). Thus, “[s]tate law

determines whether a claim of entitlement to employment is sufficient.” *McDonald*, 769 F.3d at 1210 (citing *Driggins*, 954 F.2d at 1513).

As set forth above, the Plaintiffs each have alleged a property interest, through K.S.A. 74-2113(a), because their ranks of major placed them within the classified service. If the courts determine that K.S.A. 74-2113 did not place protected interests in the Plaintiffs’ ranks of major, then the Plaintiffs cannot set forth viable due process claims within Counts VI and VII. The very question of whether Kansas statutes have provided these Plaintiffs a protected interest in continued employment with the KHP is currently before the Kansas Supreme Court to interpret the relevant laws and decide this issue. Until guidance from the Kansas Supreme Court is provided to determine the Plaintiffs’ property interests, the Defendants’ motion to dismiss Counts VI and VII should be denied without prejudice.

2. The Plaintiffs were deprived of an adequate process to protect those interests

The second step of the due process analysis is to determine whether the Plaintiffs were provided adequate due process protections for their interests in their continued employment with KHP.

The facts alleged in the Amended Complaint (Doc 43) to support Plaintiff Harrington’s claim of his due process violation:

194. On July 23, 2020, Harrington was asked by Lt. Col. De Vore to go into Col. Jones’s office.

195. Harrington went into Col. Jones’s office with Lt. Col. De Vore; others present in the room were Col. Jones, Luther Ganieany, General Counsel for KHP, and Craig Kibbe, from Kansas Department of Administration.

196. Col. Jones told Harrington that he was “tasked with cleaning up the Patrol.”

197. Col. Jones told Harrington that he was relieving him of his duties and asked him to sign a prepared letter of resignation.
198. Harrington asked Col. Jones why his employment was ending, to which Jones told Harrington, “You know why.”
199. Harrington asked Col. Jones what the alternative was to him resigning and Col. Jones told him, “You are fired.”
200. Ultimately, Harrington accepted the option to resign his employment, in lieu of termination.
201. Harrington’s resignation amounts to a constructive discharge by his employer.
355. Harrington, as a permanent employee in the classified service had a protected property interest in his continued employment by the KHP.
356. The classified service of the State of Kansas is governed by the Kansas Civil Service Act (“KCSA”), K.S.A. 75-2925, *et seq.*
357. Pursuant to K.S.A. 75-2949d, a permanent employee in the classified service may be dismissed only for cause, specifically, “because of deficiencies in work performance,” and/or “because of personal conduct detrimental to the state service.”
358. Pursuant to K.S.A. 75-2949(b), a permanent employee in the classified service is entitled to certain notices of the proposed dismissal or demotion and an opportunity to be heard regarding the proposed dismissal or demotion, prior to such dismissal or demotion occurring.
359. Defendant Jones, acting under color of state law, caused Harrington to be

deprived of a property interest without due process of law on July 23, 2020, when he caused Harrington, through duress or coercion, to involuntarily resign from the KHP.

360. Specifically, under the totality of the circumstances, Defendant Jones's conduct on July 23, 2020, effectively deprived Harrington of free choice, and caused Harrington to reasonably believe that he had no choice but to resign from the KHP.

361. Consequently, Harrington's resignation amounted to a constructive dismissal from employment.

The facts alleged in the Amended Complaint (Doc 43) to support Plaintiff Kellerman's claim of his due process violation:

283. On July 23, 2020, Kellerman was asked to go into Col. Jones's office.

284. Kellerman went into Col. Jones's office; others present in the room were Col. Jones, Lt. Col. De Vore, Luther Ganieany, General Counsel for KHP, and Craig Kibbe, from Kansas Department of Administration.

285. Col. Jones told Kellerman that he was "tasked with cleaning up the Patrol."

286. Col. Jones handed Kellerman a prepared written resignation for him to sign.

287. Kellerman asked Col. Jones why his employment was ending, to which Jones smiled and told Kellerman, "You know why."

288. Kellerman asked whether he was resigning from his position as major or from the KHP.

289. Craig Kibbe told Kellerman it was from the KHP.

290. Kellerman asked what his options were, to which Kibbe responded that

Kellerman could be demoted back to Captain and terminated with civil service protection.

291. Kellerman asked if he could discuss the options with an attorney, to which he was told no.
292. Kellerman then stated he would choose the demotion option.
293. Col. Jones handed him a different prepared written letter for him to sign, allowing his demotion to Captain and termination.
294. Kellerman signed the termination and his employment with KHP ended.
366. Kellerman, as a permanent employee in the classified service had a protected property interest in his continued employment by the KHP.
367. The classified service of the State of Kansas is governed by the Kansas Civil Service Act (“KCSA”), K.S.A. 75-2925, *et seq.*
368. Pursuant to K.S.A. 75-2949d, a permanent employee in the classified service may be dismissed only for cause, specifically, “because of deficiencies in work performance,” and/or “because of personal conduct detrimental to the state service.”
369. Pursuant to K.S.A. 75-2949(b), a permanent employee in the classified service is entitled to certain notices of the proposed dismissal or demotion and an opportunity to be heard regarding the proposed dismissal or demotion, prior to such dismissal or demotion occurring.
370. Defendant Jones, acting under color of state law, caused Kellerman to be deprived of a property interest without due process of law on July 23, 2020, when he caused Kellerman, through duress or coercion, to involuntarily

accept demotion in rank and be terminated from the KHP.

371. Specifically, under the totality of the circumstances, Defendant Jones's conduct on July 23, 2020, effectively deprived Kellerman of free choice, and caused Kellerman to reasonably believe that he had no choice but to accept demotion in rank and be terminated from the KHP.

372. Consequently, Kellerman's acceptance of a demotion in rank and termination amounted to a constructive dismissal from employment at the rank of Major.

The analysis to determine whether these facts set forth a plausible due process violation for the Plaintiffs' constructive discharges, which deprived them of their protected property interests, was also addressed in *Bruce v. Kelly*, No. 20-4077-DDC-GEB, 2021 U.S. Dist. LEXIS 179379, at *43-44 (D. Kan. Sep. 21, 2021):

Our Circuit has explained that if an employee's resignation 'was so involuntary it amounted to a constructive discharge, defendants did deprive [him] of [his] property interest without due process.' *Parker v. Bd. of Regents of Tulsa Junior Coll.*, 981 F.2d 1159, 1162 (10th Cir. 1992) (citing *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 173 (4th Cir. 1988)). 'A resignation will be involuntary and coerced when the totality of the circumstances indicate the employee did not have the opportunity to make a free choice.' *Id.* (citing *Stone*, 855 F.2d at 174 (further citation omitted)). The Circuit has articulated four factors that a court should consider when deciding whether a resignation was an involuntary constructive discharge:

(1) whether the employee was given some alternative to resignation; (2) whether the employee understood the nature of the choice he was given; (3) whether the employee was given a reasonable time in which to choose; and (4) whether he was permitted to select the effective date of resignation.

Id. (citing *Stone*, 855 F.2d at 174 (further citation omitted)). 'Although these four factors are not necessarily determinative when there is no explicit forced choice between resignation and termination, they are nonetheless informative.' *Narotzky v. Natrona Cnty. Mem'l Hosp. Bd. of Trs.*, 610 F.3d 558, 566 (10th Cir. 2010) (citation omitted).

Under the *Parker* factors, the Plaintiffs in this case have set forth sufficient facts to make their due process claims plausible: (1) the only alternative to resignation for either Plaintiff was termination; (2) neither Plaintiff understood the nature of the choice he was given and Kellerman's specific request to confer with an attorney to discuss the options given was denied; (3) while the Amended Complaint does not allege the exact amount of time that passed during the meeting to end the Plaintiffs' employments, it is proper to infer that little time passed and the Plaintiffs were not provided any reasonable time to decide which options to select; and (4) the resignation and termination letters were pre-prepared by Defendant Jones and did not allow for the Plaintiffs to make any choices other than whether they would resign or be terminated.

These allegations can allow a factfinder to determine that the Plaintiffs were constructively discharged from their positions at the rank of major. These allegations demonstrate that the Plaintiffs were not afforded any of the due process protections provided within K.S.A. 75-2949. Therefore, dismissal of the Plaintiffs' § 1983 due process claims is not appropriate.

Conclusion

For all of the reasons set forth above, the Plaintiffs have alleged plausible § 1983 claims for Fourteenth Amendment due process violations. Therefore, the Plaintiffs respectfully request that the Defendants' motion to dismiss be denied.

Respectfully submitted,

/s/ Kelly J. Trussell
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2021, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following parties:

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I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

None

/s/ Kelly J. Trussell
Kelly J. Trussell, #23161