UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

WILLIAM THORPE, *et al.*, Plaintiffs, v. VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*, Defendants.	Civil Action No. 2:20-CV-00007-JPJ-PMS

DEFENDANTS' REPLY IN SUPPORT OF MOTION *IN LIMINE* TO EXCLUDE PLAINTIFFS' EVIDENCE OF COMPENSATORY DAMAGES

Plaintiffs' Opposition, ECF No. 580 ("Opp'n."), underscores the very problem the motion identifies. After more than seven years of litigation, Plaintiffs still cannot state the per diem rate they will ask this Court to award, the methodology for selecting it, or the evidentiary basis that supports it. Their response is not to supply the missing computation but to argue they never had to—because, they say, the Court already addressed their theory at summary judgment and because a per diem rate is "not susceptible to calculation." Neither contention changes the disclosure obligation. And neither can be reconciled with the positions Plaintiff pressed earlier in this litigation, where they promised an expert-supported computation and described their own per diem award as readily calculable.

First, Plaintiffs conflate two different questions. The summary judgment order decided that per diem compensatory damages are legally ***available*** and that their amount is a matter for trial. It did not decide whether Plaintiffs satisfied their disclosure obligations under Rule 26(a)(1)(A)(iii) — an issue no one briefed and the Court did not reach. This motion raises that distinct, unresolved question. It is not a rehash of the merits.

Second, Plaintiffs' "unquantifiable" argument is irreconcilable with the theory they have chosen. A per diem theory is arithmetic: a daily rate multiplied by a number of days. Plaintiffs concede the day-count input is calculable and concede that "once the per diem rate is determined, the amount of damages will be a straightforward calculation." Opp'n. at 6. A theory that resolves to a multiplication problem is not the kind of vague, jury-discretion emotional-distress claim that the case law excuses from computation. Having elected a formula, Plaintiffs were required to disclose its dispositive variable—the rate—and the basis for it. They never did.

Because Plaintiffs failed to make a required disclosure, Rule 37(c)(1) makes exclusion automatic unless Plaintiffs carry their burden of showing that the failure was substantially justified or harmless. *S. States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596 (4th Cir. 2003); *Wilkins v. Montgomery*, 751 F.3d 214, 222 (4th Cir. 2014). The Fourth Circuit recently reaffirmed that exclusion is "proper—indeed, ***mandated***"—when a party fails to comply with Rule 26(a)(1)(A)(iii) and cannot show substantial justification or harmlessness. *Deque Sys. Inc. v. Browserstack, Inc.*, 177 F.4th 585, 595 (4th Cir. 2026) (emphasis added).

Plaintiffs cannot meet that burden. Every *Southern States* factor favors exclusion, and no factor is carried by the notice-of-a-theory showing Plaintiffs offer in place of the computation the Rule requires.[1]

[1] Plaintiffs' failure to disclose their damages case is separately addressed, as to their response to Interrogatory No. 12, in Defendants' Reply in Support of Their Motion in Limine to Preclude Plaintiffs from Presenting Evidence or Argument Not Provided in Their Interrogatory Responses. The two motions rest on independent disclosure obligations—the Rule 26(a)(1)(A)(iii) initial-disclosure computation addressed here, and Plaintiffs' Rule 33 and Rule 26(e) interrogatory-supplementation duty addressed there.

ARGUMENT

I. The summary judgment order resolved the availability of per diem damages as a legal matter, but did not absolve Plaintiffs of their duty to disclose a computation.

Plaintiffs' lead argument—that the Court "already considered and rejected" this motion in its summary judgment order and that Defendants are improperly relitigating a settled issue, Opp'n. at 1–2—does not distinguish between the legal availability of a damages methodology and the disclosure of the facts needed to apply it. Plaintiffs point to the former, but the Motion addresses the latter.

Plaintiffs are correct that the summary judgment order recognized that per diem compensatory damages are legally ***available*** and that their amount is a matter for trial. But that order did not decide whether Plaintiffs satisfied their disclosure obligations under Rule 26(a)(1)(A)(iii)—an issue no one briefed and the Court did not reach. The summary judgment order held only that "post-PLRA courts have awarded prisoners compensatory damages on a per diem basis," and that whether Plaintiffs are entitled to such damages and "the nature of such damages, are matters for trial." Summ. J. Order, ECF No. 516, at 18–20. That is a ruling on the legal ***availability*** of a damages theory, not on whether Plaintiffs disclosed a rate, a methodology, or the evidentiary basis for either. A ruling that a theory may be pursued is not a ruling that its proponent may pursue it without complying with Rule 26.

Controlling Fourth Circuit law forecloses Plaintiffs' preclusion theory. In *Phoenix v. Amonette*, 95 F.4th 852 (4th Cir. 2024), after one judge denied summary judgment, the Fourth Circuit approved a second judge's decision to revisit that ruling based on a distinct, later development: the plaintiff's failure to timely disclose experts under Rule 26(a)(2) and their resulting exclusion. *Id.* at 855–56. The Court explained that a summary judgment denial is an interlocutory order under Rule 54(b), revisable before final judgment, and it held that acting on a

disclosure-and-exclusion issue does not amount to "a second bite at the apple," because the disclosure question "would have been premature" at the earlier stage. *Id.* at 856–57. In other words, a genuine evidentiary development is not a relitigation of the merits. If a Rule 26 disclosure failure can justify ***revisiting*** a merits ruling already entered, it plainly is not ***barred*** by one.

Law-of-the-case doctrine does not apply for the same reason. The doctrine attaches only to a decided "rule of law"; it "does not apply to interlocutory rulings" such as a summary-judgment denial, and "denial of a summary judgment motion is never law of the case because factual development of the case is ongoing." *Chaplick v. Mao*, No. TDC-13-2070, 2016 WL 4516061, at *3 (D. Md. Aug. 25, 2016). Where the prior order merely reserved an issue for trial rather than deciding a rule of law that governs it, the doctrine "would not bind the Court." *Id.* at *4. Even had the order "implicitly resolved" the disclosure question—it did not—"nothing prevents this [C]ourt from reconsidering the issue," because summary judgment denials "are interlocutory, not final, orders." *Crain v. Butler*, 419 F. Supp. 2d 785, 788 n.1 (E.D.N.C. 2005). The point holds with force here, where the reserved issue ("the ***nature*** of such damages") is precisely what Plaintiffs never disclosed.

Plaintiffs' contention that a motion in limine is the wrong vehicle warrants a distinction. *See* Opp'n. at 7 (citing *Wasica Fin. GmbH v. Schrader Int'l, Inc.*, No. C.A. 13-1353-LPS, 2020 WL 509182 (D. Del. Jan. 31, 2020), and *Johns Hopkins Univ. v. Alcon Lab'ys Inc.*, No. CV 15-525, 2018 WL 4178159 (D. Del. Aug. 30, 2018)). Those out-of-Circuit decisions concerned motions in limine directed at substantive merits issues, not a Rule 37(c)(1) motion seeking exclusion of evidence for a discovery violation. This Motion does not ask the Court to decide whether per diem damages are legally available; it asks whether Plaintiffs may use evidence they failed to disclose as Rule 26(a)(1)(A)(iii) requires. A motion in limine is the standard vehicle for

seeking that exclusion. *See, e.g.*, *Deque Systems*, 177 F.4th at 593–95 (reviewing the exclusion of nondisclosed damages evidence under Rule 37(c)(1)). Failure to challenge a matter at summary judgment "does not forfeit the right to challenge admissibility at trial." *Parker v. Four Seasons Hotels, Ltd.*, No. 12 CV 3207, 2018 WL 5024917, at *5 n.11 (N.D. Ill. Oct. 17, 2018), *aff'd,* 791 F. App'x 600 (7th Cir. 2020).

Nor can Plaintiffs shift the burden by arguing that Defendants should have raised the deficiency on a motion to compel or at summary judgment. Rule 37(c)(1) is "self-executing": its "automatic sanction" of exclusion attaches when a party fails to make a required disclosure, without any predicate motion to compel. *Southern States Rack & Fixture*, 318 F.3d at 596; *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 329–30 (4th Cir. 2011). Plaintiffs' suggestion that Defendants should have moved earlier flips that rule on its head. The obligation to disclose a damages computation rested on Plaintiffs alone; Defendants' choice of when to enforce the consequence of nondisclosure neither created the gap nor excuses it. Defendants raise the disclosure question now because the threshold for a trial-preclusion remedy is the eve of trial.

II. A per diem theory is a computation that Rule 26(a)(1)(A)(iii) required Plaintiffs to disclose; the non-economic exemption does not apply.

Rule 26(a)(1)(A)(iii) requires a party to disclose "a computation of each category of damages claimed" and to make available the evidentiary materials "on which each computation is based, including materials bearing on the nature and extent of injuries suffered." Fed. R. Civ. P. 26(a)(1)(A)(iii). The text draws no distinction between economic and non-economic damages; it applies to "each category of damages claimed," without exception. Defendants therefore do not rely solely on economic-damages cases. The rule itself supplies the governing principle regardless of the label attached to the category. Plaintiffs invoke the line of authority excusing computation

of "garden-variety" emotional-distress damages. That narrow exemption does not reach a per diem theory, for three reasons.

First, the exemption is limited to damages that are genuinely incapable of calculation—the opposite of a per diem formula**.** Courts excuse computation only for damages that are "necessarily vague and are generally considered a fact issue for the jury," precisely because no formula governs them. *Roberts v. Tim Dahle Imports, Inc.*, No. 218-cv-00288-JNP-DBP, 2022 WL 1787709, at *1 (D. Utah June 1, 2022). A per diem theory is a formula. It converts a daily rate into a total by multiplying it against a defined number of days. Plaintiffs concede that once the rate is set, "the amount of damages will be a straightforward calculation." Opp'n. at 6. More importantly, by electing a per diem formula, Plaintiffs themselves converted their non-economic claim into one that is computed. That choice places the claim outside the narrow exemption for genuinely unquantifiable emotional-distress damages. A claim that reduces to multiplication is not one that is "not susceptible to calculation"; it is a calculation missing one disclosed term. Plaintiffs said as much in seeking class certification, describing their proposed per diem award as one that would be "easily calculable by viewing the class members' housing records." ECF No. 206 at 42. Having represented that the award was readily calculable to obtain class certification, Plaintiffs cannot now disclaim the calculation to avoid disclosing it.

Indeed, this Court has itself recognized that a per diem approach to non-economic damages is a method of calculation—not an intangible, jury-discretion estimate. *See Moorehead v. State Farm Fire & Cas. Co.*, 123 F. Supp. 2d 1004, 1007–1008 (W.D. Va. 2000) (characterizing per diem emotional-harm damages as a "calculat[ion]" and granting partial summary judgment excluding them as "arbitrary estimations lacking in evidentiary support" under Virginia law). If a per diem theory is a "calculation" sufficient to warrant judicial scrutiny of its propriety, it is equally

a "computation" for purposes of Rule 26(a)(1)(A)(iii). Plaintiffs cannot recharacterize the same methodology as a formula when seeking damages and as an unquantifiable estimate when avoiding disclosure.

Second, the exemption Plaintiffs invoke is conditioned on the plaintiff's ***not*** proposing a figure or methodology—a condition Plaintiffs do not meet. The courts that excuse computation do so only where the plaintiff leaves the amount entirely to the factfinder and does not advance a specific number or method. In *Merrill v. Waffle House, Inc.*, 227 F.R.D. 467 (N.D. Tex. 2005), the court excused disclosure based expressly on the plaintiffs' representation that they would "not … ask the jury for a specific dollar amount," and warned that to the extent that Plaintiffs attempt to assign a specific dollar figure, Defendant may seek to exclude such evidence under Rule 37(c)(1). *Id.* at 470. Courts have squarely held that Rule 26(a)(1)(A)(iii) "does not exempt non-economic damages," and that a plaintiff who "intend[s] to submit evidence as to the severity of their … distress, request a specific amount …, or use expert testimony" must disclose a computation. *McCrary v. Country Mut. Ins. Co.*, No. 13-CV-507-JED-PJC, 2014 WL 1871891, at *2 (N.D. Okla. May 9, 2014). The rule exists to prevent the "incongruity of the assertion that a jury can and must calculate such non-economic damages, yet the person claiming them is excused from doing so." *Montoya v. Retiree Health Care Auth.*, No. 18-cv-578 JCH/JFR, 2019 WL 2718689, at *5 (D.N.M. June 7, 2019), *R&R adopted,* 2019 WL 2717115 (D.N.M. June 28, 2019).

The most closely analogous decision is *Stella v. Davis Cnty.*, No. 1:18-cv-00002-JNP-DBP, 2022 WL 773228 (D. Utah Mar. 14, 2022). In that § 1983 case, the court expressly held that a plaintiff who intends to use a per diem calculation must disclose that calculation under Rule 26(a)(1)(A)(iii), and that the defense "are entitled to conduct discovery related to the foundation" for it. *Stella*, 2022 WL 773228, at *2. *Stella* drew a precise line: a plaintiff may suggest a fixed

amount for general damages without computation, but a plaintiff who wishes "to seek a specific per diem amount," must "amend their disclosure to include their computation in compliance with Rule 26(a)(1)(A)(iii)." *Id.* at *3.Only a "fixed amount without any underlying calculation" is exempt. *Id.* Plaintiffs have chosen the per diem path, which is exactly the line *Stella* held triggers disclosure. Their choice therefore carries the disclosure obligation they have not satisfied.

Third, Plaintiffs are estopped from recasting their damages as non-computable. For five years—in their disclosures, interrogatory responses, and representations to the Court—Plaintiffs said the amount of damages would be established through expert testimony. *See* Defendants' Motion in Limine, ECF No. 560 ("Mot."), at 11. Notwithstanding those assurances, they designated five experts, none of whom opined on the amount of or methodology for compensatory damages. Having led Defendants to expect an expert computation, Plaintiffs cannot, on the eve of trial, relabel the same damages as intangible harms beyond calculation to excuse the disclosure they never made.

The record lays the shift bare. In their initial disclosures, Plaintiffs represented that a damages computation was "premature" and would "be provided in conformity with Fed. R. Civ. P. 26(a)(2) governing expert reports." Mot. at 2. Their response to Interrogatory No. 12 likewise tied the amount to "the number of days each class member has spent in solitary confinement," to be "determined by a jury at trial." *Id.* at 3. Yet when the Court invited authority on the point, Plaintiffs told the Court that it could set a per diem "without the aid of a damages expert," Pls.' Submission, ECF No. 460 at 1, all while insisting that their "position ha[d] remained consistent," Pls.' Reply, ECF No. 465, at 4. Now, opposing this Motion, Plaintiffs recast the same rate as "not

susceptible to calculation" and ask the Court to select it for them. Opp'n. at 2, 4. Each position was abandoned the moment it required Plaintiffs to disclose what Rule 26 demands.[2]

Plaintiffs' remaining points confirm rather than cure the deficiency. That the Molter report contains individualized rather than aggregate day-counts, Opp'n. at 5 n.2, does not matter. That day-count appears only in a supplemental expert report—not in any disclosed damages computation, and not in Plaintiffs' response to the damages interrogatory. More important, the day-count data is, at most, one input in a two-variable equation. Just like Plaintiffs' deficient Rule 26(a)(1)(A)(iii) disclosure, the report supplies no per diem rate, no methodology for selecting one, and no evidentiary basis for converting days into dollars. And pointing to comparator awards of "$100 to $212 per day" collected in a 2024 brief, Opp'n. at 6, is not a Rule 26 disclosure of Plaintiffs' own computation; it is a preview of the rate range Plaintiffs apparently intend to argue. That is precisely what the Rule required them to disclose, with its supporting materials, so Defendants could test it. *See Silicon Knights, Inc. v. Epic Games, Inc.*, No. 5:07-CV-275-D, 2012

[2] The same litigation-driven movement marks what the per diem is said to compensate. Plaintiffs sought damages "including damages for emotional pain and suffering," ECF No. 516, at 18; but because the PLRA bars recovery "for mental or emotional injury" absent a prior showing of physical injury, 42 U.S.C. § 1997e(e), they recast the harm as a non-emotional "loss of liberty," *see* ECF No. 465, at 4; ECF No. 516, at 18–19. That recharacterization only deepens the disclosure problem: a per diem award untethered from each class member's proven injury cannot rest on the abstract "value" of the constitutional right, because § 1983 damages must be grounded in "actual, demonstrable injury." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 308–10 (1986); *Carey v. Piphus*, 435 U.S. 247, 266–67 (1978) (holding that even the violation of a constitutional right yields "only nominal damages" "in the absence of proof of actual injury," because "substantial damages should be awarded only to compensate actual injury"); *Price v. City of Charlotte*, 93 F.3d 1241, 1246 (4th Cir. 1996) (applying *Carey* and *Stachura* and requiring that § 1983 damages be "grounded in determinations of plaintiffs' actual losses," with injury that "must flow from the actual constitutional violation" rather than the deprivation as such). Defendants do not ask the Court to resolve that question on this Motion; the point is narrower—Plaintiffs' shifting descriptions of the harm confirm that the newly minted "not susceptible to calculation" label reflects a moving litigation position, not an inherent feature of damages Plaintiffs were obligated to compute and disclose.

WL 1596722, at *4 (E.D.N.C. May 7, 2012) (holding that a statement that damages would be "several million dollars" lacked the precision and analysis that Rule 26(a)(1)(A)(iii) requires, and disclosing damages-related documents without a specific computation does not satisfy the Rule).

III. Plaintiffs cannot carry their burden of showing the nondisclosure was substantially justified or harmless.

Because Plaintiffs failed to disclose a required computation, Rule 37(c)(1) supplies the "automatic sanction" of exclusion unless Plaintiffs show substantial justification or harmlessness. *S. States Rack & Fixture*, 318 F.3d at 596; *see Hoyle*, 650 F.3d at 329–30. The burden "lies with the nondisclosing party"—here, Plaintiffs. *Wilkins*, 751 F.3d at 222; *Bresler v. Wilmington Tr. Co.*, 855 F.3d 178, 190 (4th Cir. 2017). No showing of bad faith is required. *Hoyle*, 650 F.3d at 330. Plaintiffs cannot carry that burden on any of the five *Southern States* factors. *S. States Rack & Fixture*, 318 F.3d at 596.

Surprise. Plaintiffs argue there can be no surprise because Defendants have known of the per diem theory since 2022 or early 2024. Opp'n. at 8. But general notice that a damages ***theory*** exists is not notice of the ***computation*** the Rule requires. Defendants do not dispute that Plaintiffs invoke a per diem theory; they dispute that Plaintiffs ever disclosed the rate, methodology, and evidentiary basis that give the theory content. Knowing that an opponent will seek damages is not the same as being able to test how those damages are calculated—which is exactly what a plaintiff's failure to provide a computation withholds. That Plaintiffs' own witnesses gave figures ranging from "I don't know" to $30 million per class member, *see* Mot. at 13, underscores that no disclosed methodology exists to be tested. *See Samsung Elecs. Co. v. Nvidia Corp.*, 314 F.R.D. 190, 198 (E.D. Va. 2016) (holding that notice in deposition testimony does not render a failure to disclose unsurprising or curable).

Ability to cure. The surprise cannot be cured. Fact and expert discovery are closed. Defendants had no opportunity to depose Plaintiffs on a specific computation, retain a rebuttal damages expert, or challenge the basis for any rate. The Fourth Circuit has held that "the ability to simply cross-examine an expert concerning a new opinion at trial is not the ability to cure," because disclosure rules exist to let an opponent "examine … opinion for flaws and … develop counter-testimony." *S. States Rack & Fixture*, 318 F.3d at 598. Plaintiffs' suggestion that Defendants could have cured the problem by deposing Mr. Molter, Opp'n. at 8, does not cure the defect: Mr. Molter opined only on one of the two variables needed for Plaintiffs' proposed computation: the number of days, not the rate. Deposing him could not have revealed a rate he never offered. Rule 37(c)(1) places the burden on the nondisclosing party, not on the opponent to anticipate and cure what was never disclosed. *See Wilkins*, 751 F.3d at 222. Plaintiffs therefore cannot shift to Defendants the consequences of not discovering an undisclosed calculation from a witness who never opined on the missing variable. *See Samsung Elecs. Co.*, 314 F.R.D. at 198 (explaining that "[a] failure to disclose in the right form, at the right time, impedes discovery at the time of nondisclosure, such that later putting the opposing party on notice does not render the nondisclosure unsurprising or curable").

Disruption. Allowing an undisclosed damages methodology into a trial after discovery has closed would expand the case beyond what discovery tested and force Defendants to respond to a theory they could not prepare to meet. That this is a bench trial does not eliminate the prejudice; the harm is the trial-management prejudice of injecting an undisclosed methodology with no defined target for cross-examination or rebuttal. Plaintiffs' proposal—that the Court itself select a rate at trial on an undisclosed basis, Opp'n. at 1—is the disruption, not an answer to it.

Importance. Plaintiffs argue that the importance of the evidence weighs against exclusion. Importance cuts both ways and does not excuse nondisclosure; if anything, the more central the computation, the more Defendants were entitled to discover and test it. The severity of the consequence Plaintiffs now face is a product of their own five-year failure to disclose, not of any overreach by Defendants.

Explanation. Plaintiffs offer no substantial justification for the failure. Their stated position—that a computation was "premature" and that the rate is for the Court—does not explain the absence of any disclosed methodology or supporting materials at any point in the past seven years. A disclosure made only after discovery closed is not substantially justified, and a party that provides "no reason whatsoever" for its failure cannot carry the fifth factor. *Wilkins*, 751 F.3d at 223.

Plaintiffs' reliance on the general proposition that late damages disclosures are sometimes excused does not help them. In *Bresler*, the Fourth Circuit found an untimely damages computation harmless only because the late disclosure "did not materially affect [the defendant's] defense" and the computation was in fact provided and could be addressed at trial. *Bresler*, 855 F.3d at 190. Here, there is no computation at all: not late, but never. A rule that forgives a tardy-but-disclosed calculation on a showing of harmlessness does not forgive the wholesale absence of one.

IV. Exclusion does not leave Plaintiffs without a remedy.

Plaintiffs characterize the requested relief as "absurdly prejudicial" and the availability of nominal damages as "frivolous." Opp'n. at 7. But a plaintiff who establishes a constitutional violation without proving compensable injury may recover nominal damages, and Plaintiffs' own complaint sought exactly that relief in the alternative. *See* Mot. at 17. The consequence Plaintiffs face is proportionate to a seven-year disclosure failure: it was Plaintiffs—not Defendants—who chose to litigate through seven years without ever supplying a computation. Any hardship therefore

flows from the nondisclosure, not from Defendants' motion. The remedy for a total failure to comply with Rule 26(a)(1)(A)(iii) is the one Rule 37(c)(1) prescribes.

CONCLUSION

For the foregoing reasons and those stated in the opening memorandum, Defendants respectfully request that the Court preclude Plaintiffs from offering at trial any evidence, testimony, or argument regarding an amount of or methodology for calculating compensatory damages—including any per diem rate not disclosed under Rule 26(a)(1)(A)(iii), any lay or expert testimony on the dollar value of compensatory damages or the methodology for selecting a rate, and any argument inviting the Court to select a per diem rate or compute a damages figure Plaintiffs never disclosed.

September 15, 2026

Respectfully submitted,

/s/ *Maya M. Eckstein*

Maya M. Eckstein (VSB #41413)
R. Dennis Fairbanks (VSB #90435)
Kevin S. Elliker (VSB #87498)
HUNTON ANDREWS KURTH LLP
951 E. Byrd St.
Richmond, VA 23219
Ph: (804) 788-8200
Fax: (804) 788-8218
meckstein@hunton.com
dfairbanks@hunton.com
kelliker@hunton.com

Lawrence K. DeMeo (*Pro Hac Vice*)
HUNTON ANDREWS KURTH LLP
60 State St., Suite 2400
Boston, MA 02109
Ph: (617) 648-2800
Fax: (617) 443-5022
ldemeo@hunton.com

Jay Jones
Attorney General of Virginia

D. Patricia Wallace (VSB #92964)
Assistant Attorney General,
Criminal Justice & Public Safety Division

OFFICE OF THE ATTORNEY GENERAL
202 North Ninth Street
Richmond, VA 23219
Ph: (804) 786-2206
Fax: (804) 786-4239
pwallace@oag.state.va.us

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2026, I caused a copy of the foregoing to be electronically filed using the CM/ECF system, which will send notification to counsel of record of such filing by operation of the Court's electronic system. Parties may access this filing via the Court's electronic system.

By: /s/ *Maya M. Eckstein*
Maya M. Eckstein