

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 99 - 1435 (GAG/MEL)
)	
THE COMMONWEALTH OF PUERTO RICO,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

**UNITED STATES' SUBMISSION ON THE MOTIONS OF THE COMMONWEALTH,
THE PUERTO RICO OFFICE OF MANAGEMENT AND BUDGET, AND THE
FINANCIAL OVERSIGHT AND MANAGEMENT BOARD REGARDING
THE RECENT UTILIZATION OF THE DSPDI BUDGET**

Over the past three months, the Court has directed the parties to file a series of submissions to address the Commonwealth's failure to utilize millions of dollars in funding allocated in recent years to DSPDI (Division de Servicios a las Personas con Discapacidad Intelectual de Puerto Rico). The United States files this submission in compliance with the Court's order at ECF No. 2640.

As discussed below, the Commonwealth has repeatedly ignored the Court's many budget orders, issued to protect and maintain the DSPDI budget, instead improperly sweeping about \$20M out of the DSPDI budget to the General Fund in recent years. This diversion of millions of dollars from DSPDI was done without notifying the Court or the United States, and it has had an undisputed negative impact on vulnerable participants.

I. Recent Procedural History

On August 8, 2019, the Court ordered the Commonwealth to file with the Court a statement under penalty of perjury explaining why the allocated budget for DSPDI had not been used in its entirety in each of the last four fiscal years contrary to the orders of the Court. Order, ECF No. 2562, at 2. In its order, the Court noted that the Commonwealth had reported to the office of the Joint Compliance Coordinator (JCC) that a cumulative total of more than eight million dollars in DSPDI-allocated funds were not spent on services and supports for people with developmental disabilities, including our participants, during this time period. *Id.* at 1. The Court ordered the Commonwealth to explain why it failed to inform the Court, the office of the JCC, and the United States of all this and to explain where the DSPDI funds went. *Id.* at 2. The Court also directed the Commonwealth to provide a reason why the Court should not take additional measures, including the possible appointment of a receiver or Special Master, to ensure that DSPDI funds are utilized fully going forward. *Id.*

On September 9, 2019, in response to the Court's order, the Commonwealth filed a brief motion, an unsworn declaration from the DSPDI Director, and a budget report. Commonwealth's Submission, ECF No. 2585.

The Court then ordered the United States to file a response by October 10, 2019. Order, Sept. 16, 2019, ECF No. 2586. In response, the United States' Submission on the Recent Utilization of the DSPDI Budget, Oct. 9, 2019, ECF No. 2601, summarized the Court's multiple orders, for more than a decade, directing the Commonwealth to maintain the DSPDI budget in order to sustain services to vulnerable participants with developmental disabilities. The submission further noted that, over the past four fiscal years, the Commonwealth, without properly notifying the Court or the United States, had taken almost \$20M from budgeted funds

that the Legislature had allocated to DSPDI to serve this population. *Id.* at 2, 11-14. The United States also noted that the Commonwealth admitted that these fiscal maneuvers have had “disastrous” effects on the Commonwealth’s ability to fulfill its commitments to participants and on its ability to comply with Court orders in this case. *Id.* at 2, 12. The United States also stressed that the Commonwealth took these actions even though senior Commonwealth officials were aware of this case and of the Court’s budget orders. *Id.* at 7-11.

The next day, the Court ordered the Commonwealth to reply to the United States’ submission by October 18, 2019. Order, Oct. 10, 2019, ECF No. 2602. The Commonwealth filed a timely response. Commonwealth’s Reply to United States’ Submission, Oct. 18, 2019, ECF No. 2605.¹ The Commonwealth repeated the substance of many of the assertions set out in the budget report attached to its initial submission on September 9, 2019. *Id.* The Commonwealth also provided a few additional details about its yearly budget process and recent fiscal control measures. *Id.* The Commonwealth agreed with the United States that the Commonwealth and its agencies – DSPDI, the Commonwealth Department of Health (DOH), and the Commonwealth’s Office of Management and Budget (OMB) – are “one and the same” and that neither DSPDI nor DOH could shift blame for any compliance failures to its sister agency, OMB. *Id.* at 5. The Commonwealth pledged to work with “all of its executive agencies in order to reduce, as much as possible, the bureaucratic and fiscal processes that impact the capacity of the DSPDI to provide direct services to its participants.” *Id.*

On October 21, 2019, the Court ordered the Commonwealth to show cause on or before November 1, 2019, as to why it should not be held in contempt of Court for systemically, and in

¹ Several weeks later, the Commonwealth filed translations of the five exhibits appended to this response. Commonwealth’s Mot. Submitting Certified Translations, Nov. 5, 2019, ECF No. 2626.

violation of repeated federal orders, diverting about \$20M from the DSPDI program rather than using it for the benefit of participants with developmental disabilities. Order, ECF No. 2608.

The Court directed the Commonwealth to explain why it never informed the Court that DSPDI monies were swept to the General Fund, especially since those funds were needed to implement actions to comply with substantive court orders in this case where there was evidence of non-compliance. *Id.* The Court ordered the Commonwealth to show cause why the Court should not order that the total diverted amount be made available to DSPDI no later than July 1, 2020. *Id.*

Shortly thereafter, the Court ordered OMB and the Financial Oversight and Management Board (FOMB) each to file, by November 8, 2019, a memorandum stating their respective positions on the sweeping of the allocated DSPDI funding to the General Fund in recent years, as well as on the assertions set out in the various Commonwealth filings and in the United States' budget submission. Order, Oct. 21, 2019, ECF No. 2609; Am. Order *Nunc Pro Tunc*, Oct. 24, 2019, ECF No. 2611. Both orders directed that all of the recent budget submissions be "provided to the President[s] of the Commonwealth Senate and House." *Id.*²

In a separate order, the Court expressed "its deep frustration" with the Commonwealth's "clandestine sweeping" of about \$20M from the DSPDI budget "just during the past four fiscal years, in violation of federal law. Had these assigned monies been adequately used ... DSPDI participants would have not been unconscionably deprived of their sacrosanct rights and benefits under the Constitution and Laws of the United States." Order, Oct. 24, 2019, ECF No. 2612.

In a further order issued the next day, the Court concluded that it is "obvious that the

² On October 28, 2019, to better enable a unified response from the Commonwealth on these budget matters, the Commonwealth asked for additional time – until the Court's deadline of November 8, 2019 for OMB and FOMB – to respond to the Court's show cause order (ECF No. 2608). Commonwealth Motion Requesting Leave, ECF No. 2619, at 3. The Court granted the motion the next day. Order, Oct. 29, 2019, ECF No. 2620.

sweeping of said funds has caused progress to remain stagnant in many important areas of the JCAP ... it is highly recommended that the Commonwealth, rather than offering excuses or explanations for past actions, place its foot on the JCAP accelerator and move forward.” Supp. Order, Oct. 25, 2019, ECF No. 2613. The Court was interested in how full utilization of the \$20M in diverted funding for its “intended purpose” could enable DSPDI to come into greater compliance with the JCAP. *Id.*

At the deadline, the Commonwealth filed a motion in response to the Court’s show cause order (ECF No. 2608). Commonwealth Mot. in Compliance, Nov. 8, 2019, ECF No. 2633. The OMB response is contained within the broader Commonwealth response, towards the end of the document. That same day, FOMB filed a motion in response to the Court’s order at ECF No. 2609. FOMB Mot. in Compliance, Nov. 8, 2019, ECF No. 2634.³

Finally, on November 14, 2019, the Court ordered the United States, by December 3, 2019, to respond to the motions of the Commonwealth/OMB and FOMB. Order, ECF No. 2640. The United States’ response is set forth below.

II. United States’ Response to the Commonwealth/OMB and FOMB Submissions

A. The Diversion of DSPDI Funds to the General Fund and Away from Participant Services Has Had a Negative Impact on Participants

The reduction of DSPDI funding, which was done contrary to the Court’s orders, has had a negative impact on participants, just as the Court feared. There is no dispute about this. In its recent show cause response, the Commonwealth makes a number of important admissions that participants with developmental disabilities were disadvantaged as a direct result of the Commonwealth diverting allocated funds from DSPDI to the General Fund in recent years. In its

³ FOMB later filed supporting exhibits. FOMB Mot. Submitting Exhs., Nov. 9, 2019, ECF No. 2635.

show cause response, the Commonwealth admits, for example, that there were “several projects that were planned but did not take place” because of its “inability to allocate expenses” to serve participants, including that: the Casa Patricia and Mekaddesh community homes could not open; expansion of CTS Vega Baja did not occur; rollout of the “electronic system,” which appears to mean Therap, was postponed until the next fiscal year; and personnel recruitment and retention was not carried out. Commonwealth’s Mot. in Compliance at 12-13.⁴

In its October budget submission, the United States listed some additional examples, with the Commonwealth admitting that: the “creating of reserves and [the] freezing of surpluses” were “*disastrous* for the fulfillment of the commitments of the DSPDI and compliance with the Court Orders” (emphasis added); because \$5.3M was not utilized in FY15-16, the Commonwealth could not implement several projects to support participants including telemedicine, digitization of records, recruitment of personnel, and “continuation with the deinstitutionalization of the participants”; and the unutilized funds in FY17-18 caused the “postponement of the deinstitutionalization of participants” and impaired “staff recruitment.” United States’ Budget Submission at 12, 13.

The Commonwealth’s admissions do not even touch on how the diverted money could have been used to comply with its obligations in this case to expand and enhance community services to meet unmet participant needs throughout the system. The Commonwealth could have used the money to: open up new community homes, transfer participants from the private institutions to the community, develop and implement supports and services that could have

⁴ See similar acknowledgements in the Commonwealth’s initial budget filing, Commonwealth’s Mot. in Compliance, Sept. 9, 2019, ECF No. 2585, at 11-12 (admitting DSPDI failed to open at least two community homes, failed to expand a day program, and failed to recruit needed personnel due to the diversion of DSPDI funds out of the Program).

enabled more participants to work in integrated community settings, and enhance clinical services to make them more proactive and better able to meet the needs of participants with complex conditions to minimize or eliminate crises and preventable causes of illness and death.

B. The Commonwealth Continues to Ignore the Federal Court's Binding Orders

As referenced, the Court ordered the Commonwealth to show cause as to why it should not be held in contempt of Court for systemically, and in violation of repeated federal orders, diverting about \$20M from the DSPDI program, rather than using it for the benefit of participants with developmental disabilities. Order, ECF No. 2608.

As noted, the Court has issued many orders over the years to protect and maintain the DSPDI budget from arbitrary reductions that could imperil the health, safety, and welfare of vulnerable participants in this case.⁵ Unfortunately, the Commonwealth continues to ignore these federal Court orders. The Commonwealth failed to reference any of these orders in its filings in September and October in this matter, and, in spite of the United States' October 2019 submission reminding the Commonwealth of the Court's orders, it yet again failed to reference even one of them in its show cause response on November 8, 2019.

⁵ See, e.g., Mins. of Proceedings and Order, May 21, 2007, ECF No. 615 (emphasizing that the Court expected the Commonwealth to use “all FY 2007 Commonwealth funds assigned to this case”); Mins. of Proceedings and Order, May 25, 2007, ECF No. 617, at 2 (emphasizing that the Commonwealth “should make efforts to utilize the[s]e [\$6M unspent] monies for the programs in this case, so as to avoid having to return these monies to the Treasury Department, or the same being used for another purpose” (emphasis in original); Mins. of Proceedings and Order, Jan. 19, 2012, ECF No. 1212 (directing that the Commonwealth is to “maintain the same budget currently assigned to the program for the fiscal year 2012-2103”); Order Re: Fiscal Year 2013-14 Budget, Apr. 30, 2013, ECF No. 1368 (ordering the Commonwealth to maintain the Program budget of \$39.05M for the next fiscal year, stressing that any “reduction in the [Program] budget could cause the interruption of critical services that would imperil the health, safety, and welfare of vulnerable persons with disabilities”); Order, Apr. 22, 2019, ECF No. 2443 (using virtually identical language to the 2013 order); and Order, Aug. 8, 2019, ECF No. 2562 (stressing that the DSPDI budget cannot be reduced or curtailed in any manner, ordering the Commonwealth to explain why it may not have used millions of dollars allocated to DSPDI for participant services and supports over the past four fiscal years).

As initial justification for its imposition of fiscal controls and the reduction of budget expenditures, OMB references a local law enacted in 2014 and an internal circular letter issued in 2015. Commonwealth's Mot. in Compliance at 17-18. There is no reference by OMB to any of the Court's orders that were issued to protect the DSPDI budget during the fiscal crisis. OMB then proceeds to discuss, in some detail, each of the four fiscal years and what it considered in making budget adjustments:

- For FY15-16, OMB reveals it considered a Commonwealth circular letter when making budget adjustments. *Id.* at 18. OMB could have listed, but did not, the many Court orders in this case that were issued to protect DSPDI funds from arbitrary cuts.
- For FY16-17, OMB reveals that it considered a local law, several Commonwealth executive orders, and Commonwealth circular letters when mandating additional fiscal controls. *Id.* at 19. Again, OMB could have listed, but did not, the many Court orders in this case that were issued to protect the DSPDI budget from arbitrary cuts.
- For FY17-18, OMB reveals that it considered a local law, three Commonwealth memoranda, and a Commonwealth executive order when it imposed funding and other restrictions. *Id.* at 19. OMB admits that these measures "could have affected DSPDI." *Id.* at 20. Once again, OMB could have listed, but did not, the many Court orders in this case that were issued to protect the DSPDI budget from arbitrary cuts.
- For FY18-19, OMB reveals that it considered a local law, a Commonwealth memorandum, and a Commonwealth executive order when it imposed funding and other restrictions. *Id.* at 20. Yet again, OMB could have listed, but did not, the many Court orders in this case that were issued to protect DSPDI funds from arbitrary cuts.

In short, only by ignoring the Court's budget orders does the Commonwealth conclude in its show cause response that "monies were not unlawfully swept to the General Fund." *Id.* at 15.

C. The Commonwealth Failed to Inform the Court that DSPDI Funds Were Being Swept to the General Fund

In its show cause order, the Court directed the Commonwealth to explain why the Court was never informed that DSPDI funds were swept to the General Fund and utilized for non-participant services, especially when these funds were needed to address outstanding compliance

issue of long standing in this case. Order, ECF No. 2608.

In its show cause response, the Commonwealth asserts baldly that because it was complying with local law, it “did not see the need to inform” the Court that it had swept DSPDI funds to the General Fund. Commonwealth’s Mot. in Compliance at 16. This lays bare that the Commonwealth entirely disregarded the federal Court’s orders.

If the Commonwealth believed there was a tension between the federal Court’s budget orders and the local law associated with any prospective diversion of DSPDI funds, then the Commonwealth should have raised the issue with the Court and/or sought guidance from the FOMB *before* any funds were diverted out of DSPDI. The Commonwealth did neither.

Instead, the Commonwealth kept the Court and the United States in the dark, leading us to believe that the Commonwealth was fully utilizing the funds allocated to DSPDI to pay for services and supports for participants. In reality though, the Commonwealth was quietly diverting millions of dollars from DSPDI to the General Fund towards the end of each fiscal year without alerting the Court or the United States that it was doing so. *See, e.g.*, Order, Oct. 21, 2019, ECF No. 2608 (noting the Court was “always informed that assigned funding for the DSPDI program was all utilized consistent with the Court’s mandates”); Order, Oct. 24, 2019, ECF No. 2612 (noting this was a “clandestine sweeping” of funds.)

D. The FOMB Submission Undercuts Many Commonwealth Representations

1. *FOMB Was Not Mandating Budget Restrictions in FY15-16 or FY 16-17*

As noted above, the Commonwealth makes multiple references in its show cause response to local laws, regulations, executive orders, internal memoranda, and circular letters issued by the Commonwealth government that restricted the use of DSPDI budgeted funds during the most recent four fiscal years. Commonwealth’s Mot. in Compliance at 10, 14, 15.

The Commonwealth often makes reference to FOMB oversight as the overt or implied reason that the Commonwealth has imposed local fiscal and other controls on DSPDI. *See, e.g., Id.* at 18 (“These reductions answer, in part, to the implementation of measures for the reduction of expenses established by the Oversight Board”). However, FOMB asserts that it was not even operating with active board members at any time during FY15-16 – the first of the four years at issue in the present matter. FOMB Mot. in Compliance, Nov. 8, 2019, ECF No. 2634, at 2.

FOMB also reports that it did not certify a Commonwealth budget until FY18 and clarifies that the “Oversight Board had no participation in the appropriations or management of the Commonwealth’s budget for Fiscal Years 2016 and 2017.” *Id.* This raises the question whether the actions of the Commonwealth or its OMB in FY16 or FY17 to impose budgetary restrictions on DSPDI, ostensibly to address FOMB concerns, were even warranted.

2. *The Commonwealth, Not FOMB, Has Imposed Budgetary Restrictions on DSPDI*

The FOMB submission makes clear that FOMB, even when it was up and running, was not mandating reductions to the DSPDI budget; instead, it was the Commonwealth, on its own initiative, while ignoring the Court’s many orders, that swept millions of dollars from DSPDI to the General Fund.

As a preliminary matter, FOMB reports that the “certified budgets for Fiscal Years 2018, 2019, and 2020, did not include an individualized line item for the DSPDI Program. Rather, the DSPDI Program expenditures were imbedded within the DOH budget.” *Id.* at 7.

The FOMB then informs us that it has not imposed any reductions or constraints on the Commonwealth’s proposed DOH budget. *Id.* at 2 (the “budgets certified by the Oversight Board for Fiscal Years 2018, 2019 and 2010 appropriated the *full amount requested* by [OMB] for the Puerto Rico Department of Health”) (emphasis added). FOMB reports that this means that it, in

essence, certified the “*full amount requested* by OMB for the DSPDI Program,” as it was included in the comprehensive DOH budget submitted to FOMB for review and certification. *Id.* (emphasis added). FOMB later clarifies that it merely certified the overall DOH budget and that it did not certify the DSPDI or any other sub-line item budget “on a program-by-program basis,” as the “certified budgets do not include itemized subset allotments specific to the DSPDI Program or other DOH programs.” *Id.* at 2.

FOMB further clarifies that the FOMB-certified budgets “do not specify the funding level for individual DOH programs” like DSPDI and that once a budget is certified by FOMB, “the OMB and DOH allocate the amounts for the DSPDI Program from the DOH budget.” *Id.* at 3. This is important as it means that it was the Commonwealth, and not FOMB, that decided to reduce DSPDI funding through diversion to the General Fund.

In the end, FOMB concludes that the Commonwealth did not allow DSPDI to utilize all of the funding for DSPDI as allocated by the Legislature and as certified by FOMB: “The information made available to the Oversight Board to date suggests that the DSPDI Program underspent the full amounts that were appropriated for its benefit for Fiscal Years 2018 and 2019.” *Id.* at 3. Later, FOMB concludes that “information provided by DOH to the Oversight Board suggests that from Fiscal Years 2015-2019, approximately \$13.4 million originally allotted for the DSPDI Program were reprogrammed by the OMB or the DOH for other purposes.” *Id.* at 8. Commonwealth documents reveal that the diverted total is about \$20M; the United States has not been able to ascertain how FOMB reached the \$13.4M total.

3. *PROMESA, the Foundational Law for FOMB, Limits FOMB’s Authority*

In the first paragraph of its filing, the Commonwealth makes a summary reference to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C.

§§ 2101 *et seq.*, a federal law that created the FOMB. But, neither the Commonwealth in its show cause response, nor FOMB in its submission, note that FOMB does not have authority to impede Commonwealth actions to comply with federal court orders like the ones in this case. *See* Section 204(d)(1) of PROMESA, 48 U.S.C. § 2144(d) (2016) (“Implementation of Federal Programs.—In taking actions under this ACT, the Oversight Board shall not exercise applicable authorities to impede territorial actions taken to – (1) comply with a court-issued consent decree or injunction, or an administrative order or settlement with a Federal agency, with respect to Federal programs”).

The United States referenced this PROMESA provision in its October budget submission. United States’ Budget Submission at 18-19. In addition, the United States referenced a 2018 order in this case: the “Court notes – and the Commonwealth shall so inform the fiscal board – that the constitutional rights of the participants in this case must be safeguarded at all costs. More so, the obligations of the Commonwealth in this case are based on federal law, and the Court is not bound by actions taken by the board.” Order, Apr. 17, 2018, ECF No. 2244.

In their recent submissions, neither the Commonwealth nor FOMB took exception with this PROMESA reference or with the Court’s order related to FOMB. Indeed, FOMB declares that it is “supportive of this Court’s efforts and it intends to cooperate with this Court in advancing the interests of the intellectually disabled population of Puerto Rico in every manner” consistent with its Congressional mandate. FOMB Mot. in Compliance at 2.

E. FOMB Offers Several Helpful Commitments Going Forward

In its submission, FOMB suggests several actions that may better enable DSPDI to utilize its full allocated budget in the future: “the Oversight Board is sensitive of the DSPDI Program’s needs and has determined to implement certain measures to provide the DSPDI Program’s

budget a measure of independence from the DOH budget to facilitate the management of its appropriations.” *Id.* at 3. FOMB added that the “measures that the Oversight Board has agreed to implement for the benefit of the DSPDI Program are intended to grant the DSPDI Program greater flexibility and independence in the management of its budget.” *Id.* at 3, 11.

It appears that FOMB has taken or will take three primary actions to help address outstanding issues:

- FOMB reports that it has already exempted DOH and DSPDI from any budget holdback⁶ requirements which other Commonwealth components are required to follow. FOMB explains that this gives agencies greater budget flexibility and it means that the entire DSPDI budget becomes immediately available upon FOMB certification of the DOH budget. *Id.* at 3-4, 6, 7.
- To “mitigate any delays” resulting from “bureaucratic entanglements” of the DOH and DSPDI budgets, next fiscal year, FOMB pledges to certify a budget that includes “an independent line item appropriation for the DSPDI Program that is separate from the DOH’s appropriations.” FOMB reports that this is the same method used for the budget allotment in the Puerto Rico police reform case. FOMB believes that “[c]ertification of a budget with a segregated line item for the DSPDI Program will eliminate the need for reprogramming requests resulting from the inclusion of the DSPDI Program’s allotments within the DOH’s budget.” *Id.* at 8.
- FOMB reports that on November 1, 2019, it requested that DSPDI evaluate its funding requirements for next fiscal year to determine if it requires increased levels of appropriations to fund specific projects. If so, FOMB invited DSPDI to formulate a proposal to FOMB to increase the current level of appropriations to fund investment in the development and expansion of DSPDI services. If DSPDI submits such a proposal, FOMB pledges that it is “prepared to evaluate and, if appropriate, recommend an increased level of appropriations for the DSPDI Program in future budgets.” Towards the end of its submission, FOMB reiterated that “the Oversight Board has invited the DSPDI Program to submit any proposal for funding in excess of the current level of appropriations, for the investment in the development and expansion of services for the DSPDI Program, and to serve the vulnerable population that the DSPDI Program is bound to protect.” *Id.* at 4, 10, 11.

The United States recognizes the FOMB’s helpful suggestions here and its good faith

⁶ FOMB reports that it requires a holdback of a portion of each appropriation until the end of the third quarter of each fiscal year (currently 2.5 percent of each appropriation). FOMB Mot. in Compliance at 6.

efforts at trying to address existing problems associated with full use of DSPDI's budget. The elimination of the holdback may provide greater flexibility to enable DSPDI to use all of its allocated funds whenever they are needed throughout the fiscal year. The United States also agrees with FOMB that a separate line item for DSPDI may provide it with greater independence and flexibility by eliminating bureaucratic entanglements and the need to request unnecessary approvals for certain spending requests.

The United States notes FOMB's invitation to DSPDI to submit a proposal for enhanced funding to meet the needs of vulnerable participants. Although the federal Court has already issued pertinent budget orders, FOMB's willingness to cooperate with the Court in minimizing or eliminating any logistical hurdles within FOMB's sphere should help facilitate implementation of the Court's directives.

With regard to next steps, in addition to endorsing the FOMB proposals, the Court may want to consider the additional measures the United States set out in its October filing, such as enhanced monthly reporting by the Commonwealth or the possible use of a dedicated account for Program funds. United States' Budget Submission, Oct. 9, 2019, ECF No. 2601 § VII, at 19-20.

III. Conclusion

The United States respectfully requests that the Court take note of the foregoing.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Richard J. Farano
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