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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)**

Rapid Relief Team (RRT) Ltd.,

Plaintiff and Counterclaim-
Defendant,

vs.

Cheryl Bawtinheimer,

Defendant and Counterclaim-
Plaintiff,

vs.

Brown Rudnick LLP, Katy-Jade Church, and
Michael Graif,

Counterclaim-Defendants.

Case No.: 4:25-cv-10864-JST
JUDGE: Hon. Jon S. Tigar

EXPEDITED UNDER LOCAL RULE 6-3

**DEFENDANT AND COUNTERCLAIM-
PLAINTIFF CHERYL BAWINHEIMER'S
MOTION TO DEEM SERVED MICHAEL
GRAIF AND KATY-JADE CHURCH OR,
IN THE ALTERNATIVE, FOR AN ORDER
PERMITTING ALTERNATIVE SERVICE**

**DATE: July 16, 2026
TIME: 2:00 p.m.**

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EXPEDITED MOTION

TO DEEM MICHAEL GRAIF AND KATY-JADE CHURCH SERVED

OR, IN THE ALTERNATIVE, FOR ALTERNATIVE SERVICE

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant and Counterclaim-Plaintiff Cheryl Bawtinheimer will and hereby does move for an order deeming Counterclaim-Defendants Michael Graif and Katy-Jade Church served or, in the alternative, for an order permitting alternative service on them, on July 16, 2026, at 2:00 p.m., at the Ronald V. Dellums Federal Building & United States Courthouse, located at 1301 Clay Street, Oakland, CA 94612. An expedited hearing for this motion to be heard at an earlier date is hereby requested.

This Motion requests the Court to decide: (1) whether Graif and Church already have sufficient actual notice and receipt of the Counterclaim and summons to constitute service of process; and (2) whether good cause exists to permit alternative service on Graif and Church.

Under N.D. Cal. Civil L.R. 6-3 this motion should be expedited due to the upcoming hearing on the Motion on Preliminary Injunction (“MPI”) and Motion to Dismiss (“MTD”) in the above captioned matter. Counsel for Bawtinheimer has been diligently attempting to get Counterclaim-Defendants (and Plaintiff’s attorneys) Graif and Church to acknowledge service for weeks. On May 16, counsel for Bawtinheimer attempted to get Graif and Church to explain how they are not served in a case they are counsel for the Plaintiff for, and they would not do so. Declaration of Marc J. Randazza (“Randazza Dec.”) at ¶ 2. Today, May 18, counsel for Bawtinheimer again attempted to reach a reasonable resolution of the service issue with Graif and Church but they refused to acknowledge they have been served in this matter. Randazza Dec. at ¶ 3-4. Without expedited attention to this motion, not all Defendants would be required to attend the MPI and MTD hearing requiring the Court to hold the same hearing twice. Due to this upcoming hearing, Bawtinheimer requests expedited attention to this matter.

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1 Bawtinheimer seeks an order from this Court deeming Graif and Church to have been
 2 served with the Counterclaim as of May 7, 2026, for Graif and May 13, 2026, for Church or, in
 3 the alternative, to permit service via e-mail on Graif and Church.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 **1.0 INTRODUCTION**

6 This is an unusual case where Counterclaim-Defendants are attorneys for Plaintiff Rapid
 7 Relief Team (RRT) Ltd. (“RRT”). Graif and Church are upset about this, referring to the
 8 Counterclaim as “scorched earth” and “particularly nasty.” These characterizations lack self-
 9 awareness. Michael Graif and Katy-Jade Church issued fraudulent Digital Millennium Copyright
 10 Act (“DMCA”) takedown notices, making themselves necessary parties to this case. Failure to
 11 include them as Counterclaim-Defendants would not just be pulling a punch; it would be legal
 12 malpractice to fail to include them. They ultimately did the wrong complained of here. The only
 13 real question to explore is whether their client should share in the blame, or if they are solely to
 14 blame.

15 The Counterclaim is brought under 17 U.S.C. §512(f). A claim under this statute is
 16 premised on fraudulent DMCA notices. Section 512(f) imposes liability on “any person” who
 17 “knowingly materially misrepresents” that material is infringing in a DMCA notice. This includes
 18 the attorney or agent who sends and signs the notice under penalty of perjury. Michael Graif and
 19 Katy-Jade Church signed and sent those fraudulent notices, causing damage to Ms. Bawtinheimer.

20 It does not require clairvoyance to foresee RRT relying on an advice of counsel defense to
 21 the 512(f) counterclaim. Whether this is sufficient will play out in discovery.¹ If it does, the buck
 22 has to stop somewhere. Bawtinheimer has properly pled that Graif and Church engaged in
 23 subjective bad faith or willful blindness when they issued the DMCA takedown notices. If § 512(f)
 24 has any purpose at all, it should be to stand as a warning to anyone who signs a DMCA notice that
 25 they should not do so without respect for the target’s fair use rights.

26 _____
 27 ¹ It is also foreseeable that RRT was well aware that Bawtinheimer’s conduct was not infringing
 due to fair use, but chose to authorize the fraudulent takedown notices anyway.

1 Accordingly, as much as Graif and Church are upset to be Counterclaim-Defendants here,
2 they signed those fraudulent notices. As much as they understandably would rather make things
3 difficult, this obstruction is neither necessary nor proper.

4 Service of the Counterclaim upon attorneys already involved in the case should not be a
5 problem that this Court has to resolve, but here we are. RRT was clearly served under Rule 5.
6 Brown Rudnick seems to have done the reasonable thing and moved forward as served under Rule
7 5, given that they are counsel of record for RRT and receive all filing notices in this case. But
8 Michael Graif and Katy-Jade Church are playing games for the sole purpose of delay.

9 This should have been a reasonable and quick process. The summonses were issued with
10 Graif and Church, as Brown Rudnick attorneys, being served at the offices of Brown Rudnick.
11 ECF 37 & 37-1. After all, the accusation of this being “particularly nasty” would get a little more
12 support if the first try was to send a process server to their homes. The Defense sought to avoid
13 that, and thought there would be no need. However, when the summonses were issued, Attorney
14 Rozansky took the position that neither Graif nor Church was served, nor would they appear
15 without formal service. This may be their *right*, but to what end other than inefficiency and delay?

16 Counterclaim-Defendants then said that *nobody* at Brown Rudnick was authorized to
17 accept service for either Graif or Church (apparently not even Graif nor Church themselves). At
18 that point, Bawtinheimer probably should have brought this to the Court’s attention, but she
19 preferred not to waste the Court’s time with petty issues. Bawtinheimer then went through the
20 motions of formally serving Graif and Church. Returns of service: ECF 45 & 47.

21 On May 16, 2026, counsel for RRT sent a Joint Case Management Statement, in which
22 Graif and Church took the position that they have not been served. This is doubling down on the
23 wasteful gamesmanship, and this Motion seeks to put a stop to that gamesmanship.

24 Graif and Church were served, but even if this Court determines that service was not
25 perfect, it should deem them served or at least authorize alternate service in service of efficiency
26 in this case. The primary purpose of service is to place a party on notice that he is a party to a
27 lawsuit, and Graif and Church clearly know these claims have been brought against them.

2.0 LEGAL STANDARDS

2.1 The First Rule of Civil Procedure

Fed. R. Civ. P. 1 mandates that all the rules of civil procedure “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” *See, e.g., Encinas v. University of Washington*, 2022 U.S. Dist. LEXIS 179168, at *10-11 (W.D. Wash. Sept. 30, 2022) (recognizing that Fed. R. Civ. P. 1 and the flexible nature of Fed. R. Civ. P. 4 are intertwined).

2.2 The Purpose of Service and How 4 is Interpreted

The requirement that a Summons and Complaint be personally served upon a defendant is to ensure that the defendant has proper notice of, and an opportunity to defend against, an action against them. *See, e.g., International Shoe Co. v. State of Washington*, 326 U.S. 310, 324 (1945). Federal courts consistently hold that evidence of “substantial compliance” with Rule 4, coupled with evidence that the Defendant received actual notice of the suit, is valid service. The Ninth Circuit has held that “[s]o long as a party receives sufficient notice of the complaint, Rule 4 is to be ‘liberally construed’ to uphold service.” *Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009) (citing *Chan v. Soc’y Expeditions, Inc.*, 39 F.3d 1398, 1404 (9th Cir. 1994)); *see also Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (“The rules are to be applied in a manner that will best effectuate their purpose of giving the defendant adequate notice”). Similarly, because the purpose of personal service is to alert the defendant to an action so that he has the opportunity to defend the suit, it is fair, reasonable, and just to deem a defendant served when he “has received actual or constructive notice of the filing of the action.” *Nev. Direct Ins. Co. v. Fields*, 132 Nev. 1012, 2016 Nev. Unpub. LEXIS 457, *3-4 (Nev. 2016) (quoting *Franchise Holding LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 926 (9th Cir. 2004). In fact, constructive knowledge is sufficient to support a default. *Direct Mail Specialists*, 840 F.2d at 690.

In the Ninth Circuit, Fed. R. Civ. P. 4 is construed liberally so long as sufficient notice of the complaint is provided to the defendant. *Whidbee v. Pierce Cnty.*, 857 F.3d 1019, 1023 (9th

1 Cir. 2017) (citing Fed. R. Civ. P. 4, 81(c)(1)); *see also Direct Mail Specialists*, 840 F.2d at 688
2 (same). This is the same where Mr. Graif lives, in the Southern District of New York. *See Sidney*
3 *v. Wilson*, 228 F.R.D. 517, 524 (S.D.N.Y. 2005). Under New York law (where Graif resides), a
4 defendant may be served by “affixing the summons to the door of either the actual place of
5 business, dwelling place or usual place of abode” and by “mailing the summons to such person at
6 his or her last known residence.” N.Y.C.P.L.R. 308(4).

7 **2.3 Rule 5**

8 Fed R. Civ. P. 5(b)(2)(E) states that a paper is served by “sending it by electronic means if
9 the person consented in writing—in which event service is complete upon transmission.” *Cannon*
10 *v. Austal USA LLC*, 2017 U.S. Dist. LEXIS 57705, *7 (S.D. Cal. Apr. 14, 2017). All lawyers who
11 register for CM/ECF consent to electronic service of all papers

12 **2.4 Evidence of Service**

13 A properly filed affidavit of service by a plaintiff is *prima facie* evidence of service. *S.E.C.*
14 *v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007). This properly filed affidavit is
15 only overcome by “strong and convincing evidence.” *Id.* at 1166; *see also Old Republic Ins. Co.*
16 *v. Pac. Fin. Servs. of Am., Inc.*, 301 F.3d 54, 57 (2d Cir. 2002). To rebut the presumption of proper
17 service, “the defendant must swear to specific facts to rebut the statement in the process server’s
18 affidavit.” *United States v. Veeraswamy*, 765 F. Supp. 3d 168, 193 (E.D.N.Y. 2024) (citing *Old*
19 *Republic*, 301 F.3d at 57)).

20 As long as the party receives sufficient notice of the complaint and the serving party has
21 substantially complied, service is effective. *See Crowley v. Bannister*, 734 F.3d 967, 975 (9th Cir.
22 2013); *Kashyap Patel v. Stewartson*, 2026 U.S. Dist. LEXIS 85852, *7 (D. Nev. Apr. 19, 2026)
23 (upholding service and default where defendant had actual notice of the action, despite question
24 as to whether actual formal service occurred).

25 **2.5 Alternate Service**

26 Alternate service is permitted in Federal Courts. This Court permits alternative service,
27 including even service through social media accounts. *See St. Francis Assisi v. Kuwait Fin. House*,

1 2016 U.S. Dist. LEXIS 136152, *5 (N.D. Cal. Sept. 30, 2016) (granting motion for alternate
 2 service via Twitter); *WhosHere, Inc. v. Orun*, 2014 U.S. Dist. LEXIS 22084, *11-13 n.8 (E.D. Cal.
 3 Feb. 20, 2014) (permitting service via Facebook and LinkedIn); *E.L.V.H. Inc. v. Bennett*, 2018
 4 U.S. Dist. LEXIS 236021, *7 (C.D. Cal. May 2, 2018) (Facebook service).

5 As for foreign defendants, such as Ms. Church, federal courts, including this one, routinely
 6 authorize alternate service “by other means not prohibited by international agreement.” Fed. R.
 7 Civ. P. 4(f)(3). The only requirements under Rule 4(f)(3) are that service be directed by the court
 8 and not prohibited by international agreement. *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d
 9 1007, 1015 (9th Cir. 2002). “[C]ourt-directed service under Rule 4(f)(3) is as favored as service
 10 available under Rules [4(f)(1-2)]” and does not require first attempting other means. *Id*

11 **3.0 ARGUMENT**

12 **3.1 Michael Graif Has Been Served or, if Not, He Can be Alternatively Served**

13 Service on Graif is the easiest to evaluate. Graif is counsel for RRT, but is also a
 14 Counterclaim-Defendant. He was served by ECF under FRCP 5(b)(2)(E) the moment that the
 15 counterclaim was filed on the Court’s ECF system and thus had “sufficient notice.” *See Crowley*
 16 *v. Bannister*, 734 F.3d at 975. As a CM/ECF registrant, he has “consented in writing” to service
 17 by ECF. He was served. Nevertheless, Graif took the position, through Attorney Rozansky, that
 18 he had to be *personally* served. As dilatory and unnecessary as that was, Bawtinheimer played
 19 along, but then they moved the goalposts, stating that nobody at Brown Rudnick would be
 20 authorized to accept service. The plan was to be obstructionist.

21 Here’s where it crosses the line into being ridiculous. On April 30, 2026, Graif, despite
 22 maintaining that he had not been served, took lead on the Fed. R. Civ. P. 26(f) conference in this
 23 case. Randazza Dec. at ¶ 5. If he has notice of the action enough to take lead on a 26(f) conference,
 24 what explanation can he have that he is unaware of what the allegations against him might be?

25 Rather than fight about it (which in hindsight would have been a better move, but
 26 Bawtinheimer did not want to bring the Court into it), Bawtinheimer played along and had Graif
 27 served at his residence, since Brown Rudnick insisted that their office was out of bounds. Graif

1 did not come to the door of his house. ECF 45. However, Bawtinheimer was certain that the
 2 address was correct, because Graif conducted the 26(f) over Zoom from his kitchen. Randazza
 3 Dec. at ¶ 6. Counsel for Bawtinheimer observed the kitchen in the background, and after doing
 4 research in public records, found an address for Graif. *Id.* at ¶ 6-7. Double checking the address
 5 on Zillow, there was a photo of the kitchen – which was the same kitchen observed on camera
 6 during the 26(f) conference. *Id.* at ¶ 8. After the third attempt at that address, consistent with New
 7 York law, the process server affixed service to Graif’s door and mailed a copy to Graif’s address.²

8 Graif is not only *on notice* of the proceedings, he is actively participating in them. But he
 9 and his firm are trying to play games here by claiming that there are more hoops to jump through.³
 10 The court should deem Graif served. Graif was served the day the ECF notice hit his inbox. If
 11 not, Graif was served by “nail and mail” in New York. Finally, even if none of that is accepted, if
 12 Federal Courts authorize service by Facebook, LinkedIn, or Twitter, then ECF itself should be
 13 sufficient to effect service. The Court should therefore either authorize service *nunc pro tunc* to
 14 the date the Counterclaim was filed or at the very least, it should authorize alternate service by
 15 either email or CM/ECF. “Courts in the Ninth circuit have interpreted *Rio Properties* to permit
 16 email service for defendants within the United States pursuant to California Law ... where email
 17 service is reasonably calculated to give actual notice to the party to be served, particularly where
 18 there is evidence that the defendant is evading service.” *BHS Law LLP v. Worldex Indus. &*
 19 *Trading Co.*, 2025 U.S. Dist. LEXIS 124433, *4-5 (N.D. Cal. June 30, 2025) (collecting cases).⁴

20 _____
 21 ² When confirmation of the mailing was requested from the process server, they were unable to
 22 produce it. Accordingly, they were instructed to mail it *again* today.

23 ³ To be fair to Graif, he has offered to sign a waiver of service. However, this would place his
 24 response date 60 days out, which would make it impossible to harmonize the upcoming hearings
 25 on the motion for preliminary injunction and motion to dismiss the § 512(f) counterclaim with any
 26 response Graif may file. This case should not be litigated piecemeal with staggered deadlines, nor
 27 should it be litigated as if it were with a *pro se* defendant.

⁴ Bawtinheimer does not at all seek to take the position that anyone is in default. The desire for
 expedited relief and expedited service is so that this case is not to play “gotcha” with default, but
 rather so that this case can be resolved in an orderly fashion. There is no benefit to anyone for

1 And as a last resort, presumably Mr. Graif will be participating in the Case Management
2 Conference on May 26, 2026, at 2:00 P.M. Mr. Graif presumably will be in attendance, or could
3 be ordered to attend, and at that time he can explain how he is not sufficiently on notice of this
4 action to effectively defend himself.

5 **3.2 Katy-Jade Church Has Been Served, or Should be Served by Alternate Means**

6 Evaluating whether Katy-Jade Church has already been served is less clear. She is not
7 registered under CM/ECF and thus Fed. R. Civ. P. 5(b)(2)(E) would not apply. Church resides in
8 the United Kingdom, further complicating things. Bawtinheimer was unable to locate her home
9 address, so the process server, presumably consistent with UK law, went to Brown Rudnick's
10 London office, where Church joined in the hide and seek game. *See* ECF 47-1. Nevertheless, she
11 was served in accordance with what Bawtinheimer believes to be UK law. Admittedly, nobody
12 on Bawtinheimer's team is licensed in the UK, but rather than fight about whether UK law is
13 pleased with that service, we can sidestep the issue, ignore the service, and the Court can simply
14 authorize alternate service as permitted by *Rio Properties*.

15 To authorize alternate service, this court need only evaluate whether a service method is
16 "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency
17 of the action and afford them an opportunity to present their objections." *Rio Properties*, 284 F.3d
18 at 1016. Under *Rio Properties*, the Ninth Circuit has long approved of email service. There is no
19 requirement that alternate service be the last resort, nor does Bawtinheimer need to prove that
20 traditional service would be impractical. Nevertheless, she has shown that since tracking down
21 Church's home has proven difficult and Brown Rudnick would not allow the process server to
22 leave the documents for Ms. Church nor to permit the process server to access her personally. The
23 Court should be satisfied that Bawtinheimer has made a reasonable try at serving Church, and they
24 either succeeded and Church is being recalcitrant, or they failed despite good efforts, and it would
25 _____
26 piecemeal litigation. Further, the injunctive relief Bawtinheimer seeks should apply to all
27 Counterclaim-Defendants, including Graif and Church. To the extent that any decision on this
motion could be deemed to place anyone in default, Bawtinheimer waives the right to seek default
unless she files a notice of intent to seek default.

1 be far more reasonable to authorize alternate service and be done with the hide and seek game.

2 In order to authorize alternate service on a foreign defendant, we need only determine that
3 there is no international agreement prohibiting it. In *Restoration Hardware, Inc. v. Sichuan Wei*
4 *Li Tian Xia Network Tech. Co.*, 2022 U.S. Dist. LEXIS 183787, *6-8 (N.D. Cal. July 11, 2022),
5 this court dealt with a UK defendant and expedited alternate service by email. It noted “service
6 by email on defendants in UK is not barred by any international agreement.” *Id.* The *Restoration*
7 *Hardware* Court was not blazing new ground, as it cited *Jenkins v. Pooke*, 2009 U.S. Dist. LEXIS
8 18975, *2 (N.D. Cal. Feb. 17, 2009), and *Williams-Sonoma Inc. v. Friendfinder Inc.*, 2007 U.S.
9 Dist. LEXIS 31299, *2 (N.D. Cal. Apr. 17, 2007), both to support its position that there is no
10 impediment to serving UK defendants by email. The *Restoration Hardware* court then authorized
11 service by email to the UK defendants. This Court should do the same and either authorize service
12 upon her lawyer or authorize service by email to her publicly available email address:
13 kchurch@brownrudnick.com.

14 **3.3 This Matters More Than It Might Seem**

15 As noted above, Graif has offered to sign a waiver of service, but this is not an act of
16 courtesy, this is an act calculated to create staggered deadlines and confusion on the docket. A
17 waiver situation here creates actual prejudice and unnecessary inefficiencies for the court and the
18 parties. The motion for preliminary injunction is aimed at Graif and Church as much as the other
19 Counterclaim-Defendants. That hearing is on June 18, 2026. Graif and Church both submitted
20 declarations in opposition to it. ECF 31-5 & 31-7. But they wish to also avoid participating in it.
21 If Graif or Church were responding under the waiver of service rules, their date of appearance
22 would be well past the date of the preliminary injunction hearing. Presumably, at that hearing,
23 relief as against them would be appropriate, but it creates an issue if they claim a lack of due
24 process because they were not on notice of the claims against them. If they wish to disclaim that,
25 this could resolve part of the tension. But the other part of the problem is that two of the parties
26 have already filed a motion to dismiss, and *that* hearing is also to be on June 18, 2026. However,
27 if Graif and Church are served, then presumably they too will be seeking to dismiss, and that

1 should all be consolidated into the hearing on June 18. It is simply more orderly and more
2 reasonable to have everyone deal with everything at the same time.

3 The alternative of moving that date out is neither reasonable nor consistent with Fed. R.
4 Civ. P. 1. Bawtinheimer is suffering ongoing irreparable harm. She requires expedited relief. All
5 motions to dismiss *could* be advanced to a later date, but that would be yet another wasteful
6 exercise – since the issues in the motions to dismiss overlap with the motion for preliminary
7 injunction. Therefore, the only reasonable manner in which to both respect Ms. Bawtinheimer’s
8 due process rights and the urgency of her request for relief, while also respecting all defendants’
9 due process rights, is to have *everything* heard on June 18.

10 Instead, what Graif and Church are trying to do is to engage in piecemeal litigation,
11 programmed delay, and strategic inefficiency. Compare to efforts that the Defense has engaged
12 in, namely as soon as Bawtinheimer retained counsel, nobody played games about service; her
13 counsel simply appeared and started this ball rolling. That is the spirit of Rule 1, not pedantry and
14 delay and increasing expense all for perceived strategic advantage.

15 **4.0 CONCLUSION**

16 Graif and Church should have simply come into the action when Brown Rudnick did. Graif
17 was served by CM/ECF and has actively participated in the case both before and since. And as an
18 officer of *this* Court he has a duty to avoid actions that create unnecessary delay. Church is not an
19 officer of *this* Court, but having decided to take action to influence expression in this district, her
20 status as a UK lawyer does not relieve her of some duty to the tribunal. She is participating in this
21 matter -- submitting a declaration in response to Bawtinheimer’s preliminary injunction motion.

22 Mr. Graif and Ms. Church should almost be *entitled* to a *little* game playing in the
23 beginning. After all, they’re only human. However, the time has come to get things moving in an
24 orderly and efficient fashion. Fed. R. Civ. P. 1 is first for a reason, and it colors the entire federal
25 rulebook. The outcome most true to the spirit of the Rules would be to deem the two lawyers
26 served already (but not in default). In the alternative, the Court should authorize alternate service
27 upon them and deem them aware of the preliminary injunction hearing and subject to any order

1 that this court may issue at that time.

2

3 Dated: May 18, 2026.

Respectfully submitted,

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RANDAZZA LEGAL GROUP, PLLC

5

/s/ Marc J. Randazza

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Case No. 4:25-cv-10864-JST

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 18, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

Respectfully submitted,

/s/ Marc J. Randazza
Marc J. Randazza

RANDAZZA | LEGAL GROUP

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