IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA NORFOLK DIVISION

Latasha Holloway, *et al*., *Plaintiffs,* v. City of Virginia Beach, *et al*., *Defendants.*	Civil Action No. 2:18-cv-0069

REPLY TO DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO EXCLUDE 20 WITNESSES DEFENDANTS FAILED TO DISCLOSE UNTIL AFTER THE CLOSE OF DISCOVERY

In the 20 months since Plaintiffs filed their amended complaint, Defendants spent their time filing six motions this Court has rejected, rather than seeking to identify individuals who may support their claims or defenses. Now, more than 41 weeks after the discovery deadline, and just 10 weeks before trial, Defendants seek to saddle Plaintiffs with the consequences of this lack of diligence by disclosing 20 new witnesses. "No harm, no foul," Defendants claim, because they will consent to reopening discovery so that Plaintiffs can depose these new witnesses. And in any event, Defendants say, it is Plaintiffs who are derelict, because the names of these witnesses came up in depositions and documents. Both these points are fallacious. Plaintiffs should not have to upend their legal strategy and trial preparation by deposing 20 new individuals—not to mention locating additional rebuttal witnesses—right before trial, just because Defendants chose to neglect their discovery obligations. And it counts for nothing that other witnesses mentioned some of these individuals during discovery. Defendants' obligation under Fed. R. Civ. P. 26(a)(1)(A)(i) is to disclose individuals with discoverable information *"that the disclosing party may use to support*

its claims or defenses." (Emphasis added). Defendants' disclosure of that information comes far too late, and Plaintiffs should not have to suffer the consequences of this neglect.

BACKGROUND

In November 2018, approximately 20 months ago, Plaintiffs Latasha Holloway and Georgia Allen filed their amended complaint. ECF No. 62. Defendants filed an answer in January 2019. ECF No. 67. Since then, Defendants sought to avoid or limit discovery and evade or postpone trial with *six* unsuccessful motions. Defendants filed two motions to bifurcate the trial into separate phases on the *Gingles* preconditions and the totality of the circumstances, ECF Nos. 79, 132; two motions to postpone discovery on the totality of the circumstances, ECF Nos. 75, 90; and a motion for summary judgment seeking to resolve a disagreement among the expert witnesses. ECF No. 114. After this Court denied their motion for summary judgment, Defendants then moved for a certificate of appealability. ECF No. 127. The Court has denied all six of Defendants' motions thus far. ECF Nos. 93, 95, 126, 134, 145.[1]

Accordingly, on May 15, this Court set trial to begin on October 6, 2020. ECF No. 142. No party objected to that date. ECF No. 129-1.

Only at this point, it appears, did Defendants begin focusing on the evidence they would have to adduce at trial. On May 29, 2020, eight months after the September 3, 2019 discovery cutoff, Defendants served Plaintiffs with a third supplement to their initial disclosures identifying 20 new witnesses they may rely on at trial. Through several meet and confer letters, ECF Nos. 154-2, 154-4, Plaintiffs informed Defendants that the designation of these new witnesses was untimely. Defendants claim in response that the supplemental disclosure is not late, in part, because

[1] Defendants' separate motions to dismiss and exclude supplemental expert reports are currently pending before the Court. ECF Nos. 149, 160.

they only recently discovered this mix of community leaders, politicians, business owners and residents of the Virginia Beach community—coincidentally right after this Court set a trial date.

Because this untimely disclosure imposes an untenable and incurable burden on Plaintiffs, they moved on July 22, 2020 to exclude the 20 new individuals from testifying at trial.

ARGUMENT

I. Defendants' supplement is untimely because Defendants' recent disclosure that they may rely on the 20 individuals to support their defenses at trial came many months late, after the close of discovery and on the verge of trial.

Defendants misunderstand the federal rules. Simply put, Defendants' supplemental disclosure is more than *eight months* late. The timeliness of the supplement does not depend on whether Plaintiffs learned about the existence of these individuals during discovery.[2] What Plaintiffs needed to know, and what Defendants waited until May 2020 to disclose, is that they "may use [these 20 individuals] to support [their] claims or defenses." Fed. R. Civ. P. 26(a)(1)(A)(i).

At no point during depositions or in discovery did Defendants state that they may rely on these individuals in any way. For example, Defendants claim that deposition testimony from Defendant Councilmember Wooten gave Plaintiffs notice of Petula Moy, one of the 20 new witnesses. Yet, Defendant Wooten merely stated that she attended meetings Petula Moy organized. ECF No. 118-34 (Wooten Dep) at 54:11-22. Excluding experts, the parties held 11 depositions in this case before the close of discovery, and countless individuals were mentioned during those depositions. *See, e.g.*, ECF No. 118-34 (Wooten Dep.) (mentioning over 30 individuals); ECF No.

[2] Despite Defendants claims, as discussed below, the 20 new witnesses listed in defendants third supplemental disclosure were largely unknown to Plaintiffs. Ms. Ross-Hammond is the exception, as she was also listed on Plaintiffs 26(a) disclosures.

118-7 (Moss Dep.) (mentioning over 13 individuals); ECF No. 118-11 (Dyer Dep.) (mentioning over 11 individuals); ECF No. 118-17 (Rouse Dep.) (mentioning over 14 individuals).[3] The mere mention of an individual alone is not enough. Indeed, the fact that the names of these individuals came up in depositions makes it even less excusable that Defendants failed then, before the discovery cutoff, to amend their supplemental disclosures and indicate that they may rely on testimony from Petula Moy as well as other individuals referred to in depositions. At no point during the discovery period did Defendants communicate that any of these individuals would be part of, much less important to, their defense. Instead, Defendants waited until four months before trial to make this disclosure.

Furthermore, Defendants have previously boasted that they produced a "voluminous" set of documents to Plaintiffs that "amounts to hundreds of thousands of pages." ECF No. 133 at 13. Yet, now they claim that these documents not only served as responses to Plaintiffs' discovery requests, but also as notice for Rule 26(a) purposes that the people mentioned in the documents may be witnesses in this case. This makes no sense. "[D]iscovery must not be allowed to degenerate into a game of cat and mouse." *Thibeault v. Square D Co.*, 960 F.2d 239, 244 (1st Cir. 1992). That an individual's name appears in the hundreds of thousands of pages produced by the Defendants, that name hundreds of individuals, provides no notice at all that Defendant intended to call any particular individual to support their claims at trial.

Other courts have rejected such efforts to make opponents search for needles in massive haystacks. For example, in *Reich v. Am. Family Mut. Ins. Co*., No. 14-cv-01482-KLM, 2015 WL 3619862, at *2 (D. Colo. June 9, 2015), the defendants moved to strike plaintiffs' two fact witnesses because plaintiffs disclosed them after the close of discovery. The court rejected

[3] Current city council members were not included in this count.

plaintiffs' justification that the two witnesses "were identified as people with knowledge in discovery responses." *Id.* at 1. If a "party could call everyone at trial who it previously listed in response to discovery requests," the court found, "the purpose of Rule 26's requirement for disclosures would be diluted." *Id*; *see also Gallegos v. Swift & Co.*, No. 04–cv–01295–LTB–CBS, 2007 WL 214416, at *3 (D. Colo. Jan. 25, 2007) (rejecting plaintiff's argument that defendant was on notice of certain witnesses identified in an untimely disclosure because the names of the witnesses appeared in defendant's document production); *Jama v. City & Cty. of Denver*, 280 F.R.D. 581, 584 (D. Colo. 2012) (relying, in part, on a delay in the supplemental disclosure and the significant number of witnesses disclosed to find a Rule 26(e) violation).

Defendants can get no comfort from Rule 26(a) because Rule 26(e) imposes an obligation to supplement Rule 26(a) disclosures when new information or omissions come to light. That duty to supplement with additional information does not excuse the failure to provide the information when it was due. Rule 26(e) "is not a safe harbor for dilatory conduct." *Shatsky v. Syrian Arab Republic*, 312 F.R.D. 219, 225 (D.D.C. 2015). It "does *not* sanction late disclosure for late disclosure's sake . . . Simply stated, Rule 26(e) is not, nor has it ever been, carte blanche to ignore Court-imposed deadlines." *Id.* (emphasis in original).

Defendants argue that they just "learned of the more complete and/or accurate names and spellings and contact information for these individuals." ECF No. 162 at 8. But that is an issue of diligence. "Rule 26(e) provides no safe harbor for a party's lack of diligence." *3M Innovative Props. Co. v. Dupont Dow Elastomers, LLC*, No. 03-3364MJDJGL, 2005 WL 6007042, at *4 (D. Minn. Aug. 29, 2005). Furthermore, Defendants contradict themselves. For example, Defendants claim they always knew of Petula Moy, ECF No. 162 at 7, yet also say that they did not have her "name[], spelling[], contact information, and/or other information" until they spoke with Mr.

Cabacoy in May 2020—the same month that this Court set a trial date. *Id.* at 9. Defendant Wooten, a member of the City Council, stated in her deposition last year that she attended meetings Petula Moy organized, yet Defendants were somehow unable to contact her or disclose her until eight months later. Defendants never say why they did not contact Mr. Cabacoy earlier or ask Councilwoman Wooten for the information. Adding 20 new witnesses is not a minor correction to a previous disclosure.

Defendants contend that the Court should overlook their lack of diligence and allow Mr. Cabacoy and Dr. Montero to testify because Plaintiff Georgia Allen did not disclose a conversation that she allegedly had with Mr. Cabacoy prior to her joining this lawsuit. To begin with, whatever conversation Ms. Allen had with Mr. Cabacoy is irrelevant to Defendants' obligation under Rule 26. Second, assuming Defendants' claim is accurate—which we do not concede—they assert only that Ms. Allen talked to Mr. Cabacoy about "his support for the specific remedy she seeks in this litigation: a ward system of voting for the City of Virginia Beach." *Id.* at 10. But that's not what Mr. Cabacoy says in his Declaration. He states merely that he spoke with Ms. Allen "in regard to whether I would support her efforts to impose a ward system[.]" There is no mention of the litigation or any remedy in the litigation. ECF No. 162, Ex. 7 at 4. Ms. Allen was asked in her deposition about conversations specifically relating to this lawsuit. Ms. Allen has been seeking to change the electoral system in Virginia Beach for decades, well before this lawsuit, and the ward system is one of the political options for which Ms. Allen solicited support well before it became a remedy in this case. *See, e.g.*, ECF No. 118-21 (2001 Redistricting Public Hearing Testimony). A conversation with Mr. Cabacoy about support for ward elections in Virginia Beach in no way relieves Defendants of their duty to disclose whether they intend to use him as a witness in this case. Nor did Plaintiffs have any obligation under Rule 26(a) to disclose Mr. Cabacoy, as he was

not an individual with information that Plaintiffs may use to support their claims. This issue is simply a diversion. What matters is that Defendants played 'hide the ball' by failing to timely disclose Mr. Cabacoy as a person with knowledge.

As for Jay Bernas, Defendants point to Plaintiffs' fifth supplement to their initial disclosure which referred to the independent review of the May 31, 2019 mass shooting in Virginia Beach. Plaintiffs provided the supplementation on November 19, 2019, after the close of discovery, but less than a week after the release of that independent review on November 13, 2019.[4] In other words, it was new information that came into existence after the close of discovery, precisely the type of supplementation that Rule 26(e) contemplates. Further, in contrast to Plaintiffs' disclosure of their planned potential reliance on that report promptly after it came out, Defendants waited six months to ask their own employees if anyone had information related to that report. Furthermore, this disclosure just highlights Defendants' continued failure to understand, or to comply with, the federal rules. In other words, Plaintiffs had to disclose a document to Defendants that was in *their* possession.

Finally, Defendants contend that they are not violating Rule 26(e) by failing to disclose Ben Loyola, Honorable Jason Miyares, and Honorable Tina Sinnen until eight months after the close of discovery because they are public figures. This argument fails. There is no public figure exception under the federal rules. If Defendants thought they might rely on these individuals to

[4] The City of Virginia Beach: An Independent Review of the Tragic Events of May 31,2019, Hillard Heintze, released on November 13, 2019, https://www.vbgov.com/government/departments/city-auditors-office/Documents/Hillard%20Heintze%20Final%20Report%20for%20Virginia%20Beach%2011-13-2019.pdf.

support their defenses, they were required to disclose them to Plaintiffs and we would have deposed them.[5] They did not do so until May 29, 2020.

II. Defendants have failed to justify their lack of diligence and untimely supplemental disclosures.

Now that it is clear that Defendants' supplement is untimely, the only question that remains is whether Defendants' failure is substantially justified or harmless pursuant to Rule 37. The Fourth Circuit analyzes Rule 37 violations through five factors:

> (1) the surprise to the party against whom the witness was to have testified; (2) the ability of the party to cure that surprise; (3) the extent to which allowing the testimony would disrupt the trial; (4) the explanation for the party's failure to name the witness before trial; and (5) the importance of the testimony.

Hoyle v. Freightliner, LLC, 650 F.3d 321, 329 (4th Cir. 2011) (citing *S. States Rack And Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596 (4th Cir. 2003)).

As an initial matter, Defendants' reliance on immaterial facts in the cases cited by Plaintiffs fail to provide sufficient reason to deny the motion. For example, for *EQT Gathering, LLC v. Marker*, No. 2:13-cv-08059, 2015 WL 9165960 (S.D. W. Va. Dec. 16, 2015), Defendants note that the party whose disclosure was deemed untimely provided evidence to support a new theory after discovery had closed and the opposing party had already filed a motion for summary judgment related to that issue. *Id*. at *7. The court in that case highlighted that the plaintiff's earlier production demonstrated awareness of the relevant issue, but they previously "failed to attach any supporting documentation." *Id.* The plaintiff advanced the issue, and "then conducted additional

[5] Defendants claim that they identified more than a hundred witnesses and Plaintiffs never indicated any desire to depose any non-party witness. However, Defendants disclosures indicate the overwhelming majority of the individuals they previously disclosed are city employees. *See* ECF No. 154, Ex. 1. In fact, of the previous 105 witnesses Defendants disclosed, only three appear to be not affiliated with the city in some manner—the two plaintiffs in this case and Kimball Brace, one of Defendants' experts.

research and served Defendant with the Supplemental Disclosures, but only after the close of fact discovery and Defendant moving for summary judgment based, in part, on the [relevant] issue." *Id*. Try as Defendants might to distinguish that case, the timeline and facts are clearly analogous to those in this case—here, Defendants knew during discovery about the Plaintiffs' claim regarding a coalition of minority voters. Further, Defendants knew or failed diligently to find the newly disclosed individuals, and Defendants failed to produce this evidence on that claim until long after the close of discovery and after they moved for summary judgment based in part on that issue.

Finally, Defendants seek to distinguish cases cited by Plaintiffs where the time between disclosures and trial was less than the time available here. For example, in *Quesenberry v. Volvo Group N. Am., Inc.*, 267 F.R.D. 475 (W.D. Va. 2010), the court's exclusion of 29 undisclosed witnesses 28 days before trial does not mean that the court would have given the party a pass three months before trial. Plaintiffs rightfully rely on the reasoning from such cases as applied to the situation at hand.

A. Plaintiffs were unfairly surprised by the 20 witnesses.

As previously discussed, the mere mention of a name in "hundreds of thousands" of pages of documents or thousands of pages of depositions does not mitigate the surprise to Plaintiffs when Defendants put their names forward as individuals whom they may use to support their claims or defenses. *See, e.g., Gallegos*, 2007 WL 214416, at *3. Defendants argue that the inclusion of Mr. Bernas should not have surprised Plaintiffs because "it is unsurprising Defendants would seek to introduce such evidence to rebut or otherwise respond to Plaintiffs' disclosure of November 19, 2019." ECF No. 162 at 15. Defendants state they disclosed Mr. Bernas because he is "someone with a minority background who worked where the [May 31, 2019] mass shooting [on municipal property] occurred and can speak from personal knowledge as to historical working conditions for

minority employees of the City of Virginia Beach in response to the Hillard Heintze report and Plaintiffs' claims and statements of Plaintiffs' identified witnesses relating to it."[6] ECF No. 162 at 11. Hillard Heintze, an internal investigation firm, submitted a report discussing the events leading up to a mass shooting on municipal property to the Virginia Beach City Council on November 13, 2019. Defendants' failure to disclose that report to Plaintiffs does not then grant Defendants the benefit of surprising Plaintiffs more than six months after Plaintiffs' disclosure.

Defendants' arguments regarding public figures such as Ben Loyola, Hon. Jason Miyares, and Hon. Tina Sinnen are also unavailing. There are a myriad of such public figures in Virginia Beach, ranging from community leaders to Pharrell Williams. Governor Northam was named as a supporter of Aaron Rouse at Rouse's deposition. ECF No. 118-17 (Rouse Dep.) at 46:2-22. Plaintiffs cannot have been expected to be on effective notice that any of these individuals listed eight months after the close of discovery may be used to support Defendants' claims or defenses more than eight months after the close of discovery.

Finally, Defendants argue that the final four witnesses, Ms. Holadia, Mr. Estaris, Mr. Mah, and Mr. Kumar, should not surprise Plaintiffs because they have relevant testimony and belong to a minority group Plaintiffs claim are injured by Virginia Beach's method of election. The surprise to Plaintiffs is not based on the subject matter of their testimony; instead, the surprise is due to Defendants' lack of diligence in determining whether these witnesses were ones they may rely on at trial. Defendants waited until this Court set a trial date to actually investigate the facts related to their case; Plaintiffs have had no opportunity to take discovery from these individuals, account for

[6] This is news to Plaintiffs. In their supplemental disclosure, Defendants claimed that Mr. Bernas only had "[k]nowledge as [a] former Planning Commissioner and former City employee of [the] City's development, planning and zoning actions and of City's minority outreach and support efforts." ECF No. 154-1 at 20.

their testimony, or seek alternative fact witnesses. Defendants' theory here suggests that Plaintiffs should have no surprise if Defendants listed *any* Hispanic, Black, or Asian person in Virginia Beach as a witness for this trial. This theory refutes itself.

B. Plaintiffs are unable to cure the surprise.

Defendants supposed remedial proposals are insufficient. Defendants claim that they have offered Plaintiffs two opportunities to cure the surprise of these disclosures. These offers, however, are wholly ineffective at curing the surprise, particularly within the time available.

First, Defendants essentially admit that they used Plaintiffs' objection to this untimely disclosure to make a lame attempt at tit-for-tat negotiation, offering not to object to Plaintiffs' entirely appropriate supplementation of expert reports, if Plaintiffs would drop their objection to Defendants' untimely disclosure of 20 new witnesses. ECF No. 162 at 16. Plaintiffs' counsel refused to make this trade, which hardly qualified as an earnest opportunity to cure surprise, as it would do nothing to remedy Plaintiffs' lack of information or lack of time to gain information about these new witnesses or the interference with Plaintiff's trial preparation. Further, as will be demonstrated in response to Defendants' motion to exclude the supplemental reports, the supplement accounted for new information and corrected a single oversight, and to avoid any prejudice, Plaintiffs offered and Defendants took supplemental depositions of the experts. Only when Plaintiffs objected to being saddled with 20 new witnesses did Defendants find fault with the expert process. Second, Defendants proposed reopening discovery to allow Plaintiffs to depose the 20 witnesses, to counter-designate fact witnesses, and to permit Defendants to take depositions of those witnesses. However, as Plaintiffs stated in their Memorandum in Support of their Motion to Exclude the 20 witnesses, ECF No. 161, scheduling 20 depositions, preparing to depose 20 witnesses, conducting the depositions, and then reopening discovery to find additional fact

witnesses to deal with the new testimony is an unreasonable and unfair burden 10 weeks before trial. *See also* Ex. 1 (Proposed schedule outlining multiple deadlines prior to the beginning of trial). Even if it were possible, this unnecessary and untimely exercise would leave Plaintiffs' unable to prepare for the trial that begins in October.[7]

Defendants point out that "[t]he Court can and should consider the ability (and willingness) of the Plaintiffs to cure the alleged surprise of these witnesses." ECF No. 162 at 17. However, no matter how willing Plaintiffs are to cure the surprise, there is no real ability to do so in this case, unlike in the cases cited by Defendants. For example, the opportunity to depose the witness was an appropriate cure in *Fullen v. 3M Co.*, because in that case there was only a single newly identified witness and no threat of disruption to trial because no trial date had been set yet. No. GJH-17-207, 2019 WL 5190692 at *3 (D. Md. Oct. 15, 2019). The deposition of newly identified witnesses was likewise an available and feasible cure in *United States v. Whiterock*, where there were only two newly-identified witnesses to depose in the more than two months before the hearing. No. 5:09-HC-2163-FL, 2012 WL 1825702 at *3 (E.D.N.C. May 18, 2012). Neither of these cases, however, are at all commensurate to the situation presented by Defendants' disclosure here of *20* new witnesses less than four months before trial.

Finally, Defendants' counsel claim that there is no real harm to be cured because "counsel for Plaintiffs advised they did not intend to depose any of these fact witnesses, even with a reservation of rights in the event the Court denies their motion to exclude the witnesses." ECF No. 162 at 3. This is incorrect. Plaintiffs' counsel merely stated that they would not depose any of the

[7] Plaintiffs here also reassert their concerns that another impediment to deposing 20 witnesses is that the parties agreed that Plaintiffs may not exceed the fourteen depositions they already conducted. *See* ECF No. 113. And, even if the parties agreed to further depositions, the addition of 20 new witnesses could also potentially impact the length of trial.

untimely disclosed individuals while the motion was pending before the Court. Preparing to depose individuals who should be struck would be a waste of resources.

C. Allowing Defendants' supplement would negatively impact trial.

Defendants claim that "Plaintiffs assume incorrectly that Defendants intend to call every one of these witnesses at trial." ECF No. 162 at 17. Defendants misinterpret the issue here. Without knowing which witnesses Defendants will call, Plaintiffs will have to *prepare* as though Defendants will call all of them, including identifying responsive testimony and evidence, and Plaintiffs will have to do so without the benefit of proper notice. *See also Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 863 (9th Cir. 2014) (late disclosure was not harmless where all discovery had closed, the time for the filing of dispositive law and motion had passed, and the final pretrial conference was less than six weeks away).

D. The supposed importance of the evidence does not overshadow Plaintiffs' inability to meet their testimony with evidence of their own prior to trial.

As Plaintiffs explained in their original filing, the Court must consider Plaintiffs' ability to meet the evidence presented by Defendants. Mem. in Supp. of Mot. to Exclude, ECF No. 154 at 8. Defendants' failure to timely conduct discovery does not justify burdening Plaintiffs by requiring them to conduct discovery relating to 20 newly disclosed individuals this close to trial. This factor, accordingly, favors the Plaintiffs.

Furthermore, if the evidence is as important as Defendants claim, that is further reason to exclude the 20 individuals. First, it makes it less excusable that Defendants did not exercise the diligence to identify these witnesses previously. And second, Defendants should have conducted this discovery when discovery was actually open rather than using that time to bombard the Court with meritless motions.

E. Defendants have no good explanation for failing to disclose these individuals.

Defendants claim that Plaintiffs "rely upon their own inaction to bolster their arguments," ECF No. 162 at 19, is ironic, as that is precisely what Defendants are doing here. Despite the reasons proffered by Defendants (and refuted above and in the original Memorandum in Support of the Motion to Exclude), the explanation for Defendants' failure to disclose earlier is Defendants' inertia. These 20 witnesses were all available to Defendants during the discovery period, but Defendants failed to undertake the normal diligence expected of counsel in litigation to identify them. Indeed, many of the very reasons Defendants put forward to defend their late disclosure—that these witnesses are mentioned in documents *they* produced, that they are public figures in Virginia Beach, that they are employees of Virginia Beach related to Plaintiffs' production—demonstrate just how available these witnesses were to Defendants if they had only sought them out in a timely manner.

Defendants boldly contend that the late production of these witnesses can be explained away by the "domino effect" resulting from Ms. Allen failing to remember and relay her singular conversation with Mr. Cabacoy. ECF No. 162 at 20. This is an after-the-fact invention to justify the previous inertia. Even if that conversation related to this case—and, as explained above, there is no basis to believe that it did —at most two of the *20* witnesses on the list could somehow be connected to that alleged conversation. And nothing prevented Defendants from contacting Mr. Cabacoy during the discovery period.

CONCLUSION

Defendants fail to justify their disclosure of 20 additional witnesses eight months after discovery closed as a supplemental disclosure. Likewise, they fall far short of justifying their

disclosure using this Circuit's factors. This Court should accordingly exclude the 20 new witnesses for failure to timely disclose them as required by Fed. R. Civ. P. 26(a).

Respectfully submitted,

/s/ J. Gerald Hebert

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CERTIFICATE OF SERVICE

I hereby certify that on the July 29, 2020, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the following:

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