UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Conservation Law Foundation, Inc., Plaintiff, v. Shell Oil Products US, Shell Oil Company, Shell Petroleum, Inc., Shell Trading (US) Company, and Motiva Enterprises LLC, Defendants.	§ § § § § § § § § § § § § § §	C.A. No. 1:17-cv-00396-WES-LDA

PLAINTIFF'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

In their Opposition to Plaintiff's Motion for Leave to file a Second Amended Complaint (hereinafter Defendants' Opposition) (Doc. 37), Defendants argue that Plaintiff CLF's February 2018 Supplemental Notice of Intent ("Supplemental Notice") (Doc. 32-1) did not provide adequate notice of alleged violations related to Shell's obligations as a Large Quantity Generator under 40 C.F.R. § 262.251 under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b)(1). In addition, Defendants' Opposition interjects various issues that are not relevant to the Motion for Leave under the procedural posture of this case.[1] However, any suggestion of surprise or prejudice simply cannot be supported on this record, as Plaintiff made

[1] For example, Defendants assert that CLF's proposed Second Amended Complaint "does not eliminate the grounds underlying the prior motion to dismiss," and as such, will somehow cause additional delay and "unnecessary time and expense and further disruption of the orderly and efficient schedule stipulated to by the parties (and now disregarded by CLF)." Defs.' Opp., at 1 (Doc. 37). These protestations are without basis. The substance of the proposed amendments, including the proposed additional claim based upon the Providence Terminal's RCRA generator status, has been known to Defendants since at least February of this year, as this was referenced first in Plaintiff's Supplemental Notice; again in the context of the briefing on the Motion to Dismiss, completed in February 2018 and argued in June; and then again in Plaintiff's August 27, 2018 report to this Court, which was consented to by Defendants.

the limited additions and changes within the proposed Second Amended Complaint known to Defendants more than ten-months ago.

Defendants' sweeping opposition boils down to one point of contention: inclusion in the Second Amended Complaint of language in proposed Count Twenty-Two regarding the Providence Terminal's status as a generator of hazardous waste under RCRA. RCRA's regulations expressly "establish standards for generators of hazardous waste." 40 C.F.R. § 262.10(a). Under this regulation, and as in the case with the Providence Terminal, a generator may be subjected to different regulatory provisions within this part month-by-month based upon the volume of hazardous waste generated. Such is a fact, and therefore, a generator's "category" is not only one that may frequently change, but is also a determination uniquely within the knowledge of the generator itself. The provisions within 40 C.F.R. § 262 that are applicable to the Providence Terminal are well known to Shell, and have been at least since it was placed on notice of Plaintiff's intent to include in its Second Amended Complaint a claim specific to the Terminal's hazardous waste generator status under RCRA in February of 2018.

Defendants' argument as to the sufficiency of notice misstates the standard used to determine the adequacy of notice under RCRA, which has been established to support Congress' purpose and goals in including the requirement in the Act. The appropriate measure of sufficiency under RCRA's pre-suit notice requirement "is whether the notice's contents place the defendant in a position *to remedy* the violations alleged." *Paolino v. JF Realty, LLC*, 710 F.3d 31, 37 (1st Cir. 2013). Because CLF has provided adequate notice to Defendants of its RCRA claim that would allow Shell to both identify and remedy the violations, the filing of Plaintiff's Second Amended Complaint is appropriate at this time. Further, as described below and as previously stated in its Motion for Leave, filing CLF's Second Amended Complaint will not

cause Defendants undue prejudice or unnecessary delay. Accordingly, Plaintiff's Motion for Leave should be granted.

BACKGROUND

In preparations to send Defendants notice prior to filing its proposed Second Amended Complaint, Plaintiff CLF disclosed the contents of its Supplemental Notice, including the new RCRA claim based on the Terminal's generator status, to counsel for Defendants in a good faith effort to efficiently manage the course of the litigation. CLF obtained opposing counsel's consent to accept service of the Supplemental Notice on behalf of all Defendants as of February 9, 2018. On February 12, 2018, Plaintiff served the Supplemental Notice on all Defendants by sending to opposing counsel by certified mail to satisfy Clean Water Act ("CWA") requirements, 40 C.F.R. § 135.2(a)(1), and by registered mail to satisfy RCRA requirements, 40 C.F.R. § 254.2(a)(1).

CLF's Supplemental Notice provided notice to Defendants of Plaintiff's intent to further amend its complaint to add and remove certain appropriate parties and to bring an additional claim under RCRA based upon the facts already included in the then-pending Amended Complaint. This additional count was based upon the Terminal's RCRA generator status under 40 C.F.R. § 262, "Standards Applicable to Generators of Hazardous Waste." In its Supplemental Notice, CLF stated:

> Shell is a generator who has contributed and is contributing to the handling, storage, treatment, transportation, or disposal of hazardous and solid waste in an area affected by precipitation and/or flooding that is exacerbated by storms and storm surge, sea level rise, and increasing sea surface temperatures—all of which are now, and will become, worse as a result of climate change. Several storage tanks at the Providence Terminal directly abut the Providence River. The first significant storm surge that makes landfall at the Providence Terminal at or near high tide is going to flush hazardous and solid waste from the Providence Terminal into

> the Providence River and through nearby communities and ecosystems; a significant rise in sea level will put the majority of the Providence Terminal, including soils, groundwater, and treatment works, under water. Public records associated with the Providence Terminal admit that the facility's stormwater drainage system cannot effectively treat large precipitation events, even as these events are increasing in frequency and duration. Shell knows all this, and yet has failed to disclose required information in its possession and has not taken appropriate steps to protect the public and the environment from this certain risk.

Supplemental Notice, at 5-6.

Due to Defendants' failures to consider and address known risks and vulnerabilities at the Terminal, in addition to contributing to conditions that present a substantial and imminent endangerment to health or the environment, the Supplemental Notice advised Defendants that "Shell has also failed to comply with its obligations as a Conditionally Exempt Small Quantity Generator of hazardous waste." *Id.* at 6. Specifically:

> Shell has failed to adapt to and address, through good engineering practices, the risks to the Providence Terminal from precipitation and/or flooding that is exacerbated by storms and storm surge, sea level rise, and increasing sea surface temperatures—all of which are now, and will become, worse as a result of climate change. As a consequence of its failure, Shell is not maintaining and operating the facility in a manner that "minimizes the possibility of . . . any unplanned spill or release of hazardous waste or hazardous waste constituents to the air, soil, or surface waters of the State." R.I. Code. R. 25-15-102:5.15(G)(1); *see also* 40 C.F.R. § 262.16(b)(8)(i).

Id. at 7-8 (citing 40 C.F.R. § 262, the section setting forth the various categories of hazardous waste generators under the provision, a determination that the generator itself is required to make). Accordingly, the Supplemental Notice stated that "CLF intends to seek a civil injunction, as provided under Section 7002 of RCRA, 42 U.S.C. § 6972, ordering Shell to make necessary disclosures, comply with applicable regulations, and abate the imminent and substantial endangerment, and restraining Shell from further violating RCRA." *Id.* at 8.

On February 21, 2018, CLF visited the offices of the Rhode Island Department of Environmental Management ("DEM") to inspect and physically obtain records from DEM in response to a RCRA-specific access to records request regarding the Terminal. Defendants tendered their final reply brief supporting their Motion to Dismiss the Amended Complaint on February 22, 2018. On that same day, the Providence Terminal's generator status under RCRA changed (within Section 262) from Conditionally Exempt Small Quantity Generator ("CESQG") to Large Quantity Generator ("LQG") consistent with an increase in volume of hazardous waste generated at the Terminal as reported by Defendants to the U.S. Environmental Protection Agency ("EPA") and DEM. Pursuant to 40 C.F.R. § 262.10(b), "[a] generator must use § 262.13 to determine which provision of this part are applicable to the generator based on the quantity of hazardous waste generated per calendar month." "A generator's category is based on the amount of hazardous waste generated each month and *may change from month to month.*" 40 C.F.R. § 262.13 (emphasis added). At no time in the proceedings before the Court have Defendants disclosed to the Court or to CLF the change in status submitted to DEM.[2] CLF became aware of this change in status through independent investigation of the facts prior to finalization of the proposed Second Amended Complaint.

Consistent with this discovery, when drafting its Motion for Leave to Amend and the accompanying proposed Second Amended Complaint, Plaintiff included language reflecting the Providence Terminal's current hazardous waste generator status as a LQG, in addition to that of

[2] Indeed, Defendants, in briefing their Motion to Dismiss, repeatedly alleged a failure to identify the Defendants as current or past generators of hazardous waste at the Terminal in the Amended Complaint despite the fact that the complaint identified Defendants' own compliance submittals with DEM and EPA in which they self-identified as a regulated waste generator under RCRA. It is that status (whether as a Large Quantity or Small Quantity generator) that subjects Defendants to the provisions included in Plaintiff's proposed new Count Twenty-Two.

a CESQG from a number of months prior, along with the regulatory provisions applicable to both of these categories under the federal and state regulations.

40 C.F.R. §262.251, which governs LQGs, provides that a LQG must:

> maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

The language in this provision matches that of 40 C.F.R. § 262.16(b)(8)(i), which provides that a CESQG must:

> maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

In no way is this an "entirely new regulatory standard." *See* Defs' Opp., at 8 (Doc. 37). While LQGs are logically subjected to heightened obligations, violations of the CESQG regulations are necessarily caused by the same types of actions and inactions as the violations of LQG regulations, and the same steps will be required to remedy those violations.[3] It is these types of failures that form the majority of the allegations within Plaintiff's Original and Amended Complaints.

Similarly, due to the generation of and presence of hazardous waste constituents at the Providence Terminal, Defendants must comply with applicable Rhode Island regulations that tier off of 40 C.F.R. § 262, specifically, R.I. Admin. Code 25-15-102:5.0, entitled "Generators." For example, R.I. Admin. Code 25-15-102:5.15(G)(1) requires that Defendants maintain and operate

[3] The violations of these provisions are based upon Defendants' failures to consider and address known risks and vulnerabilities at the Terminal. As alleged in Plaintiff's Amended Complaint, Defendants are and have been aware of these risks and vulnerabilities for years and know how to cure them, yet have failed to do so at the Providence Terminal. *See, e.g.,* Amended Complaint, ¶¶ 260-263 (Doc. 11).

the Terminal in a manner that "minimizes the possibility of . . . any unplanned spill or release of hazardous waste or hazardous waste constituents to the air, soil, or surface waters of the State."

Despite the similar application of these provisions, Defendants now argue that CLF's Supplemental Notice was not sufficient to provide adequate notice of the alleged violations related to Shell's current status as a LQG under 40 C.F.R. §262.251, because CLF did not reference that specific sub-section of 40 C.F.R. § 262 in its Supplemental Notice, and if the proposed Second Amended Complaint was filed, it would subsequently be dismissed on these grounds.

In light of the facts of this case, Defendants' attempts to attack the sufficiency of the Supplemental Notice are particularly suspect. Nevertheless, for the reasons set forth below, Plaintiff's Supplemental Notice was substantively adequate and Defendants' opposition should be rejected under the controlling law.

ARGUMENT

I. Plaintiff Met the Statutory Requirements for Amending its Complaint.

At the core of Defendants' opposition is the argument that the Supplemental Notice is inadequate to allow Plaintiff's new RCRA claim to go forward because, in its February 2018 Supplemental Notice, CLF identified the Terminal as a CESQG and listed the specific RCRA regulations applicable to it as a CESQG, but now, the Terminal is no longer a CESQG, but rather a LQG. Contrary to Defendants' assertion, and as explained below, the change in the Terminal's generator status is insignificant as it relates to the sufficiency of Plaintiff's Supplemental Notice, which was provided in full conformance with the statutory requirements.

a. Pre-Suit Notice Requirement & Standard to Determine Adequacy of Notice

Before commencing a citizen suit under RCRA, a plaintiff must provide pre-suit notice to the defendant, as well as the applicable state agencies. RCRA provides that "[n]o action may be commenced under subsection (a)(1)(A) of this section . . . prior to 60 days after the plaintiff has given notice of the violation to" the Administrator, the State of Rhode Island, and to the alleged violator. 42 U.S.C. § 6972(b)(1).

The EPA's long-standing regulations set forth the substantive requirements for pre-suit notice for citizen suits under RCRA:

> ***Violation of permit, standard, regulation, condition, requirement, or order.*** Notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under this Act shall include sufficient information *to permit the recipient to identify* the specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice.

40 C.F.R. § 254.3 (emphasis added). Consistent with this regulation and contrary to Defendants' assertion, a plaintiff's pre-suit notice need not "state the specific regulation alleged to have been violated." Defs.' Opp., at 8 (Doc. 37).[4] Rather, the First Circuit has determined that the appropriate measure of sufficiency under RCRA's pre-suit notice requirement "is whether the notice's contents place the defendant in a position *to remedy* the violations alleged." *Paolino*, 710 F.3d at 37.

[4] Numerous courts, including the First Circuit Court of Appeals, have held that pre-suit notice need not provide the specific regulation alleged to have been violated for notice to be adequate under the Act. *See, e.g., Paolino*, 710 F.3d at 37 ("The CWA does not require, however, that a citizen plaintiff 'list every specific aspect or detail of every alleged violation,' or 'describe every ramification of a violation.'") (quoting *Pub. Interest Research Grp. of N.J., Inc. v. Hercules, Inc.*, 50 F.3d 1239, 1248 (3d Cir. 1995)). "This is so because, 'in investigating one aspect' of an alleged violation, 'the other aspects of that violation . . . will of necessity come under scrutiny' by the putative defendant." *Id.* at 38.

The First Circuit underscored that "[t]he key language [in the EPA regulations] is that pre-suit notice must permit 'the recipient' to identify the listed information, i.e., the specific standard at issue, the dates on which violations of that standard are said to have occurred, and the activities and parties responsible for causing those violations." *Id.* (citing *Hercules*, 50 F.3d at 1248). Further, the First Circuit reasoned that this standard was consistent with the purposes of the pre-suit notice requirement, which is to first, "allow[] federal and state agencies to initiate their own enforcement actions against an alleged violator, obviating the need for a citizen suit," *id.* at 36 (citing *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 59-60 (1987)), and second, "give [the alleged violator] an opportunity to bring itself into complete compliance with the Act and thus likewise render unnecessary a citizen suit." *Id.* at 37.

Assessing whether RCRA's pre-suit notice requirements have been met "is a functional, fact-dependent, and case-specific inquiry." *Id.* at 34. "The adequacy of the information contained in the pre-suit notice will depend upon, inter alia, the nature of the purported violations, the prior regulatory history of the site, and the actions or inactions of the particular defendants." *Id.* at 37. Here, Plaintiff's Supplemental Notice adequately placed Defendants in a position to remedy the violations alleged, including those related to its status as a RCRA generator, thereby satisfying RCRA's pre-suit notice requirement.[5]

b. CLF has Satisfied the Standard for Pre-suit Notice under RCRA.

Plaintiff CLF provided the Supplemental Notice to Defendants in full conformance with RCRA and its regulations on February 12, 2018. The 60-day notice period for the new RCRA

[5] The case cited by Defendants in support of their argument that "[t]he First Circuit requires strict compliance with RCRA's notice and delay requirements" does not address what is required within the substance of a pre-suit notice. *See* Defs.' Opp., at 8 (Doc. 37). Rather, in *Garcia v. Cecos International, Inc.*, 761 F.2d 76 (1st Cir. 1985), plaintiff provided no pre-suit notice whatsoever. This is not what happened here, as Plaintiff provided Defendants notice of its RCRA claim in February of 2018, and therefore, *Garcia* does not support dismissal of the present case.

claim included in the proposed Second Amended Complaint ended on April 13, 2018. Neither DEM nor EPA commenced an enforcement proceeding during the 60-day notice period. Defendants have not brought themselves into compliance with the applicable regulations by operating the Terminal in a manner that minimizes the possibility of any unplanned spill or release of hazardous waste or hazardous waste constituents to the air, soil, or surface waters of the State and otherwise fully complying with the applicable regulations. Therefore, CLF's claims can proceed.

The contents of Plaintiff's Supplemental Notice were more than adequate to alert Defendants of Plaintiff's intent to assert claims related to Defendants' status as a generator of hazardous waste under RCRA, and further, to provide Defendants an opportunity to cure these RCRA violations. In the Supplemental Notice, CLF identified Shell as "a generator who has contributed and is contributing to the handling, storage, treatment, transportation, or disposal of hazardous and solid waste at the Providence Terminal." Supplemental Notice, at 5-6. Further, CLF identified specific RCRA regulations applicable to the Providence Terminal under the generator classification in effect at the time the Supplemental Notice was drafted, shared the Supplemental Notice with Defendants in advance of formal notice, and then formally sent the Supplemental Notice to Defendants on February 12, 2018. In addition, the Supplemental Notice stated that CLF would seek relief from the Court including: "ordering Shell to make necessary disclosures, *comply with applicable regulations*, and abate the imminent and substantial endangerment, and restraining Shell from further violating RCRA." *Id.* at 8. (emphasis added)

In *Paolino*, the First Circuit held that pre-suit notice was adequate even though not all of the specific standards or limitations of the CWA that were allegedly violated were listed in the pre-suit notice, because defendants were still able to identify those standards themselves and to

remedy the alleged violations based upon the information that was included in the notice. *Paolino*, 710 F.3d at 39. For example, the notice described in some detail the mechanisms through which plaintiffs alleged that the violations were occurring. In finding that defendants were capable of determining the standards that were alleged to be violated, the court noted that, "in light of the Property's extensive history of changing hands amongst the defendants, they are in a much better position than the plaintiffs to determine their respective responsibilities during the dates in question." *Id.* at 40.

In *Northern California River Watch v. Honeywell Aerospace*, 830 F. Supp. 2d 760 (N.D. Cal. 2011), the court held that plaintiff's notice of defendant's alleged RCRA violations was sufficient to allow defendant to identify the relevant statutory provisions alleged to have been violated, even though these provisions were not listed in the notice. The court reasoned that plaintiff's allegation that defendant was "guilty of open dumping, as that term is used in the RCRA . . . was enough to enable defendant to identify the open-dumping prohibition under the RCRA," and that defendant "was not required to speculate as to all possible attacks . . . that might be added to a citizen suit." *Id.* at 767 (quoting *ONRC Action v. Columbia Plywood, Inc.*, 286 F.3d 1137, 1143 (9th Cir. 2002)).

Here, just as in *Paolino* and *Northern California River Watch*, Plaintiff's Supplemental Notice allowed Defendants to identify and remedy the violations related to its new status as a LQG just as it was as it relates to its prior status as a CESQG. First, Defendants are well aware of the potential for its status as a RCRA generator to change on a monthly basis. *See* 40 CFR §§ 262.10(b), 262.13. Indeed, Defendants are in a better position than Plaintiff to determine the Terminal's current generator status and the respective regulatory obligations given the potential for frequent fluctuations in the volume of hazardous waste generated at the Terminal.

Because Defendants had notice of violations related to its status as a CESQG, even though that status changed due to what was in this instance an increase in the volume of hazardous waste generated at the Terminal, Defendants were aware that they would also be in violation of those requirements that govern the Terminal's current status.[6] Thus, Defendants were in a position to remedy the violations of requirements related to its current LQG status and prior CESQG designation, as the actions and inactions causing the violations remained the substantially the same.[7]

Congress has stated that the pre-suit notice requirement for citizen suits is not intended to place "impossible or unnecessary burdens on citizens."[8] Here, Defendants were on express notice of Plaintiff's intent to bring a RCRA claim based upon violations related to its hazardous waste generator status, whether or not that status had changed in the past months based upon a change in volume of the hazardous waste generated. As such, Defendants were sufficiently aware of the basis Plaintiff's claims related to its status as both a CESQG and a LQG (asserted within the same cause of action), and Plaintiff's proposed Second Amended Complaint may be filed immediately without further delay or threat of dismissal.

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[6] Because the category of generator status fluctuates, the Terminal may return to a CESQG by the time the Court rules on this Motion. However, such variability is anticipated by the regulations and is also within the knowledge and control of the Defendants. As such, Defendants' claim of hardship falls flat.

[7] If the Court were to determine that additional notice should issue, Plaintiff requests the opportunity to provide Defendants with an additional notice letter on this sole and particularized issue with a stay of the proceedings before the Court while the 60-day notice period elapses.

[8] The CWA notice provision and EPA implementing regulations are substantively similar to the RCRA notice requirement. As a result, it is instructive to consider the legislative history and application of the CWA notice requirement here. In the CWA's legislative history addressing its pre-suit notice requirement, which shares the same purpose as RCRA's, Congress clarified that the implementing regulations "should reflect simplicity, clarity, and standardized form. The regulations should not require notice that places impossible or unnecessary burdens on citizens but rather should be confined to requiring information necessary to give a clear indication of the citizens' intent. These regulations might require information regarding the identity and location of the alleged polluter, a brief description of the activity alleged to be in violation, and the provision of law alleged to be violated." S. Rep. No. 92-414, at 80 (1971), *as reprinted in* 1972 U.S.C.C.A.N. 3668, 3745 (emphasis added).

II. Plaintiff has Satisfied the Standard for Granting its Motion for Leave to Amend its Complaint.

Because Plaintiff's proposed Second Amended Complaint may be immediately filed, granting Plaintiff's Motion for Leave would not be futile. Further, granting Plaintiff's Motion will not cause Defendants any undue prejudice or unnecessary delay. The parties have cooperated in the past to attempt to make the motion to dismiss briefing process as efficient as possible, and they can continue to do so.[9]

The Court has denied Defendants' Motion to Dismiss Plaintiff's First Amended Complaint "without prejudice to refiling against Complaint accompanying Plaintiff's forthcoming Motion to Amend." Text Order (Sept. 20, 2018).[10] The most efficient way forward under these circumstances would be to grant Plaintiff's Motion to Amend and file the proposed Second Amended Complaint, as suggested by the Court in its Text Order, and allow the parties to proceed with briefing the narrow issues newly presented in this Complaint, as has been discussed between the parties and presented to the Court. *See* Status Report, at 2 (Doc. 32).

[9] Defendants erroneously state that "CLF has disregarded the parties' January 30, 2018 stipulation [which] contained an agreement that CLF would not seek leave to amend until after the Court ruled on the pending motion to dismiss." Defs.' Opp., at 9 n. 4 (Doc. 37). This is a blatant misrepresentation of that Stipulation, which actually states that "Defendants agree not to oppose Plaintiff seeking leave to amend to add Triton as a defendant after the required statutory notice has passed . . . and after the Court's ruling on the pending Motion to Dismiss." Stipulation, at 3 (Doc. 22) (emphasis added). Given the passage of time and in light of the letter and spirit of Local Rule 15, CLF felt the need to remind the Court of the impending amendments to its complaint through the Status Report, which was filed on August 27, 2018, without objection from Defendants, *see* Status Report, at 1 (Doc. 32); Motion for Leave, ¶ 15 (Doc. 36), which triggered the Court's denial of Defendants' Motion to Dismiss and Plaintiff's filing of the instant Motion. Because Plaintiff filed its Motion for Leave prior to a substantive ruling on the Motion to Dismiss, Defendants were able to oppose the Motion and remain faithful to the Stipulation, which they have done.

[10] Defendants' Motion to Dismiss the Amended Complaint sought dismissal of only eleven of twenty-one claims brought by Plaintiff related to the Terminal's compliance with the CWA and RCRA. Plaintiff's Motion for Leave to Amend seeks to add only one additional count that is primarily based upon facts alleged in the Amended Complaint that was the subject of Defendants' previous Motion to Dismiss.

CONCLUSION

Plaintiff has satisfied the statutory pre-suit notice requirement for its RCRA claims, and its proposed Second Amended Complaint is ready for filing. Accordingly, for the reasons stated above and as previously asserted in Plaintiff's Motion for Leave to File its Second Amended Complaint, Plaintiff respectfully requests that this Court grant its Motion and allow for the immediate filing of its Second Amended Complaint so that the parties may move forward in litigating the proper claims against all proper parties and avoid any further delay.

Respectfully submitted, Dated: October 25, 2018

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**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2018, the foregoing Reply in Further Support of Plaintiff's Motion for Leave to File its Second Amended Complaint was filed through the Court's electronic filing system ("ECF"), by which means the document is available for viewing and downloading from the ECF system and a copy of the filing will be sent electronically to all parties registered with the ECF system.

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