

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT**

<p>JUAN F., <i>et al.</i>,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">vs.</p> <p>DANNEL P. MALLOY, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendant</i></p>	<p>)</p>	<p>CIVIL ACTION NO. 2:89cv859 (SRU)</p> <p>May 1, 2017</p>
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FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF COURT MONITOR

I. INTRODUCTION:

At the request of the Court, and with the consent of the parties, the Court Monitor herewith submits his Findings of Fact, Conclusions and Recommendations.

II. FINDINGS OF FACT:

1. This lawsuit was filed December 19, 1989 by the Plaintiffs. The then putative class alleged that they had been deprived of their constitutional rights because of Connecticut’s Department of Children and Families (“DCF”) failure to fund and provide them with necessary services.
2. As the case proceeded, the parties eventually entered into a Consent Decree on January 7, 1991, compliance with which, per the Monitoring Order of December 1, 1992, was to be overseen by a Court Monitor (Dkt. # 166). See Juan F. v. Weicker, 37 F.3d 874 (2d Cir. 1994).
3. On July 24, 2003, the Court Monitor filed the Monitor’s Certification of Findings and Recommendations Report (Dkt. # 440). Summarily stated, the Court Monitor found that DCF was not in compliance with the Stipulations set forth in (Dkt. #s 413 and 422) because it had failed to maintain the required staffing levels ordered

by the Court on February 19, 2002, and the caseload standards ordered by the Court on May 30, 2002. The Court Monitor recommended, *inter alia*, immediate recruitment and hiring of social workers and supervisor positions and the assurance that future vacancies would be immediately filled, while the parties continued to craft a proposed Exit Plan.

4. On December 23, 2003, in furtherance of the Court Monitor's Findings and Recommendations, a Final Exit Plan was submitted by the Court Monitor and thereafter Ordered by the Court. (Dkt. # 454). That Final Exit Plan envisioned a process by which the Defendants could transition from the extensive listing of deliverables required by the Consent Decree Manuals to a set of more clearly defined outcome measures as agreed to after considerable negotiations of the parties.
5. Consistent with that Final Exit Plan, a Revised Monitoring Order was signed by the Court on December 31, 2003. (Dkt. # 455). The Revised Monitoring Order was later revised on October 12, 2005 (Dkt. # 501, "2005 Revised Monitoring Order"). The 2005 Revised Monitoring Order has been in effect ever since.
6. A Revised Exit Plan was filed on July 1, 2004 (Dkt. # 569).
7. On July 10, 2006, a Stipulated Modification to the Revised Exit Plan of July 1, 2004 was filed and ordered by the Court on July 12, 2006 (Dkt. # 523, "2006 Revised Exit Plan"). That 2006 Revised Exit Plan has been in effect ever since.
8. According to its express terms, the 2006 Revised Exit Plan requires that "The Defendants shall provide funding and other resources necessary to fully implement the Exit Plan." 2006 Revised Exit Plan.

9. The 2006 Revised Exit Plan “delineates the specific outcome measures whose achievement are a prerequisite for termination of the Court’s jurisdiction over this action” and requires that the “Defendants must be in compliance with all of the 22 Outcome Measures, and in sustained compliance with all of the Outcome Measures for at least two quarters (six months)” after which “the Court Monitor shall conduct a review of a statistically significant valid sample at 96% confidence level, and other such measurements as are necessary, to determine whether the Defendants are in compliance.” Id. at 3.
10. The 22 Outcome Measures track fundamental performance outcomes agreed to by the parties as they relate to the assessment and provision of services to secure the safety, permanency and well-being of the children and families they serve. They were designed, by consent, to address known areas of deficiencies as identified through the prior Consent Decree, monitoring activities, needs assessments, and stakeholder reports.
11. A Stipulation Regarding Outcome Measures 3 and 15 was filed on July 17, 2008 (Dkt. # 562). The Stipulation represented an effort by the parties to address the then asserted non-compliance with respect to Outcome Measures 3 and 15. The Stipulation was Approved and Ordered (Dkt. # 563; # 572).
12. In 2010, the Court held that the Defendants were in continued noncompliance with the 2006 Revised Exit Plan. It denied the Defendants’ motions to terminate jurisdiction and dismiss this action. (Dkt. # 640).
13. In 2011, in an effort to streamline the process for final exit, the parties agreed to a modified “Pre-Certification” process. Instead of waiting for all 22 Outcome

Measures to be simultaneously in sustained compliance, the process allows the Court Monitor to conduct its quantitative/qualitative compliance determination upon a showing of DCF's sustained compliance for at least 2 quarters (6 months) and their request for such a review for any specific Outcome Measure.

14. The current status of the Pre-Certification Process as outlined in the most recent Quarterly Status Report of March 1, 2017 (Dkt. # 722) is as follows:

Juan F. Pre-Certification Review		
Outcome Measure	Statement of Outcome	Status
OM 4: Search for Relatives	If a child(ren) must be removed from his or her home, DCF shall conduct and document a search for maternal and paternal relatives, extended formal or informal networks, friends of the child or family, former foster parents, or other persons known to the child. The search period shall extend through the first six (6) months following removal from home. The search shall be conducted and documented in at least 85.0% of the cases.	Pre-Certified October 2013
OM 5: Repeat Maltreatment of Children	No more than 7% of the children who are victims of substantiated maltreatment during any six-month period shall be the substantiated victims of additional maltreatment during any subsequent six-month period. This outcome shall begin to be measured within the six-month period beginning January 1, 2004.	Pre-Certified* July 2014
OM6: Maltreatment of Children in Out-of-Home Care	No more than 2% of the children in out of home care on or after January 1, 2004 shall be the victims of substantiated maltreatment by substitute caregivers while in out of home care.	Pre-Certified October 2014
OM 7: Reunification	At least 60% of the children, who are reunified with their parents or guardians, shall be reunified within 12 months of their most recent removal from home.	Pre-Certified April 2015
OM 8: Adoption	At least 32% of the children who are adopted shall have their adoptions finalized within 24 months of the child's most recent removal from his/her home.	Pre-Certified January 2013
OM 9: Transfer of Guardianship	At least 70% of all children whose custody is legally transferred shall have their guardianship transferred within 24 months of the child's most recent removal from his/her home.	Pre-Certified January 2013
OM 10: Sibling Placement	At least 95% of siblings currently in or entering out-of-home placement shall be placed together unless there are documented clinical reasons for separate placements. Excludes voluntary cases and children for whom TPR has been granted.	Pre-Certified April 2015

* Pre-Certification granted subject to verification of correction to ROM system reporting - release delayed to June 2014.

OM 11: Re-Entry into DCF Care	Of the children who enter DCF custody, seven (7%) percent or fewer shall have re-entered care within 12 months of the prior out-of-home placement.	Pre-Certified January 2016
OM 12: Multiple Placements	Beginning on January 1, 2004, at least 85% of the children in DCF custody shall experience no more than three (3) placements during any twelve month period.	Pre-Certified April 2012
OM 14: Placement within Licensed Capacity	At least 96% of all children placed in foster homes shall be in foster homes operating within their licensed capacity, except when necessary to accommodate sibling groups.	Pre-Certified April 2012

Outcome Measure	Statement of Outcome	Status
OM 16: Worker/ Child Visitation (Child in Placement)	DCF shall visit at least 85% of all out-of-home children at least once a month, except for probate, interstate, or voluntary cases. All children must be seen by their DCF Social Worker at least quarterly.	Pre-Certified April 2012
OM 17: Worker-Child Visitation (In-Home)	DCF shall visit at least 85% of all in-home family cases at least twice a month, except for probate, interstate or voluntary cases. Definitions and Clarifications: 1. Twice monthly visitation must be documented with each active child participant in the case. Visitation occurring in the home, school or other community setting will be considered for Outcome Measure 17.	Not Pre-Certified January 2012
OM 19: Reduction in the Number of Children Placed in Residential Care	The number of children placed in privately operated residential treatment care shall not exceed 11% of the total number of children in DCF out-of-home care. The circumstances of all children in-state and out-of-state residential facilities shall be assessed after the Court's approval of this Exit Plan on a child specific basis to determine if their needs can be met in a less restrictive setting.	Pre-Certified December 2014
OM 20: Discharge Measures	At least 85.0% of all children age 18 or older shall have achieved one or more of the following prior to discharge from DCF custody: (a) Graduation from High School; (b) Acquisition of GED; (c) Enrollment in or completion of college or other post-secondary training program full-time; (d) Enrollment in college or other post-secondary training program part-time with part-time employment; (e) Full-time employment; (f) Enlistment full-time member of the military.	Pre-Certified September 2011
OM 21: Discharge of Mentally Ill or Developmentally Disabled Youth	DCF shall submit a written discharge plan to either/or DMHAS or DDS for all children who are mentally ill or developmentally delayed and require adult services.	Pre-Certified September 2011
OM 22: Multi-disciplinary Exams	At least 85% of the children entering the custody of DCF for the first time shall have an MDE conducted within 30 days of placement.	Pre-Certified January 2013

15. On September 28, 2016, the parties submitted a proposed 2016 Revised Exit Plan for the Court's consideration with a request for a hearing date. (Dkt. # 710). The Court held a hearing on September 29, 2016 and expressed support for the proposed 2016 Revised Exit Plan. However, the Defendants requested the Court's formal approval be delayed until the 2016 Revised Exit Plan could be submitted for approval by the Connecticut General Assembly pursuant to

Connecticut General Statute Section 3-125a. The agreement was rejected by the General Assembly on February 1, 2017.

16. On February 1, 2017, acting under the 2005 Revised Monitoring Order, the Plaintiffs provided notice of actual or likely non-compliance with the Juan F. 2006 Revised Exit Plan. Under the terms of the 2005 Revised Monitoring Order, the parties were to confer for 30 days to see if they could resolve the issues of noncompliance. On February 10, 2017, a status conference with the Court was held. The parties indicated to the Court that they would attempt to mediate the issues of noncompliance with the assistance of the Court Monitor.
17. On March 23, 2017, the parties determined that they could not reach an agreement on the issues related to the alleged noncompliance and that the Court Monitor should and could propose its own Findings, Conclusions and Recommendations to the Court for modification of the 2006 Revised Exit Plan. The parties expressly consented to and waived any objections to the Court Monitor serving in this capacity and further agreed that his doing so would not be raised as an objection to any role he is presently performing or may in the future perform with respect to the litigation.
18. In furtherance of this undertaking, the parties agreed that the Court Monitor should and could conduct joint and/or *ex parte* discussions with the parties as the Court Monitor deemed necessary in formulating such recommendations to the Court, which the Court Monitor has done. The parties expressly consented to and waived any objections to the Court Monitor serving in this capacity and further agreed that

his doing so would not be raised as an objection to any role he is presently performing or may in the future perform with respect to the litigation.

19. The parties reserved their right to comment on and object to the Findings, Conclusions and Recommendations proposed by the Court Monitor and submitted to the Court for its consideration and to challenge any ruling entered by the Court thereon by appeal or as otherwise permitted under the Federal Rules of Civil Procedure.
20. The Quarterly Status Reports filed with the Court, including the most recent Status Report of March 1, 2011 (Dkt. #727), reveals that DCF is in non-compliance with Outcome Measures 1, 2, 3, 13, 15, 17 and 18, as follows:

2006 Outcome Measures in Non-Compliance		
2006 Measure	Definition	Status
OM: 1 ¹	<p>Commencement of Investigation: DCF shall assure that at least 90% of all reports of children alleged to be abused, or neglected, shall be prioritized, assigned and the investigation shall commence² within the timeframes specified below.</p> <p>If the report of child abuse or neglect is determined by the DCF Careline to be</p> <ul style="list-style-type: none"> A. A situation in which failure to respond immediately could result in the death of, or serious injury to a child, then the response time for commencing an investigation is the same calendar day Careline accepts the report. B. A non-life threatening situation that is severe enough to warrant a 24-hour response to secure the safety of the child and to access the appropriate and available witnesses, then the response time for commencing an investigation is 24 hours. C. A non-life threatening situation, that because of the age or condition of the child, the response time for commencing an 	Quantitatively reported as met Statewide since benchmark identified. Qualitative concerns acknowledged. Not Pre-Certified to Date.

¹ The findings for Outcome Measure 1 and 13 indicate compliance with the quantitative standard but DCF has never asserted nor been in compliance with either Outcome Measure due to ongoing concerns with qualitative issues related to these measures. Recent review activity conducted by the Court Monitor confirm multiple deficiencies with the quality of the Investigation/Family Assessment Response (FAR) practice of DCF which impacts Outcome Measures 1 and 2.

² The “commencement of an investigation” occurs when the DCF investigator attempts to make face-to-face contact with the parent or person responsible for the child’s care, and/or with the child(ren). An “attempt” at face-to-face contact is made when the investigator visits the home, school or other setting in an effort to interview the child(ren) and family members regarding the allegations of abuse or neglect.

	investigation is 72 hours.	
2006 Measure	Definition	Status
OM: 2	Completion of the Investigation: At least 85% of all reports of alleged child maltreatment accepted by the DCF Careline shall have their investigations completed ³ within 45 calendar days of acceptance by Careline.	Sporadic Compliance with Quantitative requirement. Have not met Qualitative requirements. Not Pre-Certified to Date.
OM: 3	<p>Treatment Plans (Case Plan): In at least 90% of the cases, except probate, interstate and subsidy only cases, clinically appropriate individualized family and child specific treatment plans shall be developed in conjunction with parents, children, providers and others involved with the case and approved by a DCF supervisor within 60 days of case opening in a treatment unit, or a child's placement out-of-home, whichever comes sooner, and for each six (6) month period thereafter.</p> <p>"Approved by the DCF supervisor," means the DCF supervisor verifies and confirms that the functions of a written treatment plan are developed and used to:</p> <ul style="list-style-type: none"> A. Identify in a time limited and goal oriented format the problem areas, needs and proposed services to be provided to all children, parents, relatives and caretakers who are active participants in the case. B. Document and describe reasonable efforts to prevent out-of-home placement of children. C. Define mutual responsibilities and expectations of children, parents, caretakers and service providers toward reaching identified case goals. D. Document and describe reasonable efforts to reunify children with their families in a timely manner. E. Determine sibling and parental visitation schedule if siblings are not placed together. <p>The individualized family and child specific treatment plans are the written working agreement between the child, family, caretakers if any, service provider(s) and DCF. The agreement describes and documents the child and/or family's service needs as well as what DCF, the family, and/or the child is required to do to achieve the goals of the plan. This includes all in-home and out-of-home cases except probate, interstate and subsidy only cases.</p> <p>Treatment plans shall be written in the primary language of the family and/or child. Treatment planning conferences shall be conducted in the primary language of the family and/or child.</p>	Non-Compliance

³ The completion of the investigation occurs when the investigator has interviewed each family member, including the parents, other adults and all children in the home as well as necessary collateral contacts and the investigator's DCF supervisor verifies the investigator's determination of substantiation or non-substantiation and the determination is entered in DCF's data system -- LINK.

2006 Measure	Definition	Status
OM:13	Foster Parent Training: Licensed DCF foster or pre-adoptive parents shall be offered 45 hours of post-licensing training within 18 months of initial licensure and at least 9 hours each subsequent year. ⁴ This measure does not apply to relative, special study or independently licensed foster parents for whom 9 hours of pre-service training are required.	Qualitative Non-Compliance. Issues with notification, scheduling, language and accessibility. Foster parents are routinely relicensed without required training. Not Pre-Certified to Date.
OM: 15	Children's Needs Met: At least 80% of all families and children shall have all their medical, dental, mental health and other service needs provided as specified in their most recently approved clinically appropriate treatment plan.	Non-Compliance
OM: 17	Worker-Child Visitation (In Home Visitation): DCF shall visit at least 85% of all in-home family cases at least twice a month, except for probate, interstate or voluntary cases.	Non-Compliance <i>Failed to be Pre-Certified in 2012</i>
OM: 18	Outcome Measure 18: Caseload Standards By July 1, 2004 the caseload of no DCF social worker shall exceed the following caseload standards, with exceptions for emergency reasons on caseloads, lasting no more than 30 days: A. Investigators shall have no more than 17 investigative cases at any time. B. In-Home treatment workers shall have no more than 15 cases at any time. C. Out-of-Home treatment workers shall have no more than 20 individual children assigned to them at any time. This includes voluntary placements. D. Adoption and adolescent specialty workers shall have no more than 20 cases at any time. E. Probate workers shall have no more than 35 cases at any time. When the probate or interstate worker is also assigned to provide services to the family, those families shall be counted as in-home treatment cases with a ratio of 1:20 cases. F. Social workers with in-home voluntary and interstate compact cases shall have no more than 49 cases at any time. G. A worker with a mixed caseload shall not exceed the maximum weighted caseload derived from the caseload standards in A through F above. H. These standards supersede those of Order No. 441 dated July 29, 2003.	Non-Compliance Appropriate staffing standards have not been maintained. A series of hiring freezes and the negative impact on staffing and workload are detailed in the Quarterly Reports.

⁴ Per OM 13 definitions: 1) DCF will ensure that all modules requiring Social Worker attendance are attended by Social Workers. DCF will also hold training sessions near foster parents, offer daycare, night and weekend training sessions, and other inducements to make it likely that foster parents can attend the training. Attendance at training will be a factor considered in licensure or re-licensure of foster parents. 2) Training shall be offered in the primary language of the foster parents.

21. The Defendants have never asserted compliance with Outcome Measures 1, 2, 3, 13, 15, or 18.
22. The Defendants did assert compliance with Outcome Measure 17, but in January 2012, the Court Monitor filed his quarterly report to the Court including the results of a Pre-Certification Review of Outcome Measure 17 which found DCF to be in non-compliance. [Juan F. v. Malloy Exit Plan Quarterly Report; July 1, 2011 -- September 30, 2011 -- Civil Action No. 2:89 CV 859 (CFD)].
23. There are insufficient community resources to offset the inadequacy in the State's provision of services to the Juan F. Class. Waitlist and shortages in community services exist for both specific services and in certain parts of the state.
24. The recent Court Monitor report "Time Study of DCF Social Work Staff During March 2016 as Requested by the Department of Children and Families' Administration and AFSCME Local 2663" found, in relevant part, that:
 - Social Workers cannot comply with all fundamental and key DCF policies and federal and state requirements within the 40 hour work week or even when including significant amounts of overtime.
 - When Social Worker caseloads are higher than 75%-80% of the existing standard the quality of their case management is compromised.
25. DCF is in non-compliance with the requirement that "The Defendants shall provide funding and other resources necessary to fully implement the Exit Plan." 2006 Revised Exit Plan.
26. As part of the discussions that give rise to the proposed 2017 Revised Exit Plan, the parties concluded that DCF's budget must be funded at a minimum of \$794,261,319 to hire the necessary staff and provide the necessary services to make progress in addressing the deficiencies revealed by Outcome Measures 1, 2,

3, 13, 15, 17 and 18, and more if DCF was to fully succeed at satisfying those measures.

27. The Governor's proposed budget for DCF for fiscal year 2017-2018 recognized that additional funds were necessary to hire the required staff and provide the necessary services. The Governor set the proposed budget for FY18 at \$807,819,400 and FY19 at \$811,700,124.

III. CONCLUSIONS:

1. The Juan F. Class is:
 - A. All children who are now, or will be, in the care, custody, or supervision of the Commissioner of the Department of Children and Families as a result of being abused, neglected or abandoned or being found at risk of such maltreatment; and
 - B. All children whom DCF knows, or should know by virtue of a report to DCF, who are now, or will be, abused, neglected or abandoned, or who are now, or will be, at serious risk of such maltreatment.
2. The State is in non-compliance with the 2006 Revised Exit Plan. While progress has been made and sustained on some individual Outcome Measures, others have not improved and the harm caused to the Juan F. Class is serious. Children who are deprived appropriate assessments, services and interventions both initially and on an ongoing basis, are at greater risk for repeat maltreatment, additional trauma, and lengthened exposure to ineffectual institutional interference in their lives.
3. Based on the data and review activities conducted by the Court Monitor's Office and its discussions with key stakeholders statewide, it is clear that inconsistency in case practices continues to exist. While there are examples of strong case management and service provision evident in some case reviews, there are far too many examples where the Juan F. Class is not assessed properly or afforded

services in an adequate manner or timeframe to sufficiently address the safety, risk or well-being needs that have been identified. Over the last decade, the status reports to the Court have detailed the lack of consistency in many fundamental areas of case practice including but not limited to: formal assessment, purposeful visitation, supervisory oversight, family engagement (especially with fathers and paternal relatives), case planning, coordination and collaboration with providers/stakeholders, case documentation, ongoing training and mentoring, and foster parent recruitment/training/support.

4. The four principal reasons for this failure are: A) inconsistent and unpredictable provision of case management and treatment services to children and families statewide, B) inadequate levels of statewide social work staffing, C) insufficient service resources to provide the services necessary to maintain children in their homes, avoid placement, achieve permanency, address the safety and risk exposure and provide for their well-being (e.g., educational/medical/dental/mental/behavioral/substance abuse treatment), and D) DCF staff are hampered by an antiquated technological system, deprived of mobile technology and an intuitive statewide computer system. Each of these deficits have been extremely harmful to DCF's ability to achieve the level of quality service to the Juan F. Class envisioned by the Outcome Measures.
5. The current caseloads overwhelm an individual social worker and do not allow them to meet the fundamental requirements of their jobs. Staffing problems are compounded by extended hiring freezes for other DCF staff including foster care, clerical, case aides and various managerial staff all of whom would otherwise

help the social workers to consistently provide quality case management services. There has been a failure to consistently adhere to State statutes, regulations and agency policy.

6. Each of the 22 Outcome Measures reflect important fundamental standards agreed upon by the parties to protect and serve the Juan F. Class. Neither party has repudiated their importance or relevancy to this date. All available data and analysis makes it clear that these are achievable standards if the will and the funds exist to do so. In fact, several Outcome Measures that were deemed unachievable when the Exit Plan was approved by the Court have been met and sustained. The primary issue to date has been the inconsistency with which the State has approached the effort to achieve and maintain the standards set forth in the 2006 Revised Exit Plan, a result borne of inadequate funding of the necessary staff and resources.
7. To be clear, additional staff and funding will not ensure quality practice. For DCF to improve and sustain quality service, they must continually examine the strengths, weaknesses, and efficiencies of its key practice issues, develop and implement specific strategies to address each one, conduct ongoing quality assurance efforts to inform and confirm progress, and be provided with a stable and adequate level of staffing and sufficient, readily available services to meet the needs of families and children. Without a renewed and increased focus and clarity of purpose regarding identified strengths and weaknesses in DCF's practice, and adequate funding to address the weaknesses, DCF will not succeed

in meeting the Outcome Measures, meaning it will not succeed at delivering the requisite services it is obligated to provide.

8. Going forward, Outcome Measures that have been pre-certified, consistently maintained, and where current concerns of erosion in quality or quantity do not exist, should be removed from monitoring consideration, at the Court Monitor's discretion. These are identified in the 2006 Revised Exit Plan as follows:

- 4) Search For Relatives
- 7) Reunification
- 8) Adoption
- 9) Transfer of Guardianship
- 10) Sibling Placement
- 12) Multiple Placements
- 19) Reduction in Number of Children Placed in Residential Care
- 20) Discharge Measures
- 21) Discharge of Mentally Ill or Developmentally Disabled Children
- 22) Multi-Disciplinary Exams

9. Outcome Measures that have been previously pre-certified, but where they have not been consistently maintained or where current concerns of erosion in quality or quantity have been noted since such time of initial pre-certification, will continue to be a focus of monitoring per the Court Monitor's discretion. These are identified in the 2006 Revised Exit Plan as follows:

- 5) Repeat Maltreatment of Children
- 6) Maltreatment of Children in Out of Home Care
- 11) Re-Entry into DCF Custody
- 16) Worker Child Visitation (Out of Home)
- 14) Placement within Licensed Capacity

IV. RECOMMENDATIONS:

After considerable review of available data and discussion with both parties, I offer my recommendations to address the current non-compliance in the form of a proposed modification of the DCF 2006 Revised Exit Plan entitled “DCF Court Monitor Recommended 2017 Revised Exit Plan.”

Raymond Mancuso,
Court Monitor

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CERTIFICATION

I hereby certify that on May 1, 2017, a copy of the foregoing Findings, Conclusions and Recommendations of Court Monitor was filed electronically. Notice of this filing will be sent by regular mail and e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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