UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

D.M., a minor, by BAO XIONG, the mother, legal guardian, and next friend of D.M.; and Z.G., a minor, by JOEL GREENWALD, the father, legal guardian, and next friend of Z.G., Plaintiffs, v. MINNESOTA STATE HIGH SCHOOL LEAGUE; BONNIE SPOHN-SCHMALTZ in her official capacity as President of the Board of Directors for the MINNESOTA STATE HIGH SCHOOL LEAGUE; ERICH MARTENS in his official capacity as Executive Director of the MINNESOTA STATE HIGH SCHOOL LEAGUE; CRAIG PERRY in his official capacity as an Associate Director of the MINNESOTA STATE HIGH SCHOOL LEAGUE; and BOB MADISON in his official capacity as an Associate Director of the MINNESOTA STATE HIGH SCHOOL LEAGUE, Defendants.	**JURY TRIAL DEMANDED** Case No. 18-cv-02140-PAM-CER **PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

Unless the Court grants preliminary relief, DM. and Z.G. will be forced to sit on the sidelines while their teammates and friends participate in competitive Dance Team this school year. It is a year that D.M. and Z.G. will never get back.

In opposition to D.M.'s and Z.G.'s Motion for Preliminary Injunction, MSHSL fails to present any evidence that could justify its discriminatory rule that prohibits boys from trying out for the Dance Team. Indeed, despite having the evidentiary burden, MSHSL presents no evidence at all. Instead, MSHSL defends its discriminatory decision by misdirecting the Court to a state statute that D.M. and Z.G. do not challenge, presenting a parade of horribles that are not supported by evidence, dismissing the harm suffered by D.M. and Z.G., and relying on the nonbinding opinion of the Office for Civil Rights. As a result, D.M. and Z.G. have satisfied the requirements for preliminary relief, and this Court should grant their Motion for Preliminary Injunction.

ARGUMENT

I

ABSENT PRELIMINARY RELIEF, D.M. AND Z.G. WILL CONTINUE TO SUFFER IRREPARABLE HARM

D.M. and Z.G. are fighting for the opportunity to try out for their schools' competitive Dance Teams, and to finish their high school years competing in the activity they love. For the past two years they have been denied that opportunity solely because of their sex. Absent preliminary relief by the Court, D.M. and Z.G. will also be barred from participating for their final two years as well. Thus, those first two years of exclusion are irreparable, just as any additional future exclusion based solely on D.M.'s and Z.G.'s sex would also be. Even if they

are ultimately successful in their lawsuit, D.M. and Z.G. cannot get that opportunity back. That other activities and sports are available is irrelevant to assessing D.M.'s and Z.G.'s injuries here. *See* Defs.' Oppo. at 21. The proper inquiry is whether D.M. and Z.G. have been denied the opportunity to participate in their "sport of choice." *Portz v. St. Cloud State Univ.*, 196 F. Supp. 3d 963, 972 (D. Minn. 2016). They unquestionably have. For D.M. and Z.G., their "sport of choice" is Dance Team.[1] Therefore, MSHSL's prohibition of D.M. and Z.G. from participating in Dance Team because of their sex causes them irreparable harm as a matter of law.

Because D.M.'s and Z.G.'s rights to equal protection and freedom from sex discrimination in violation of Title IX are harmed, a finding by the Court of irreparable harm is "mandate[d]." *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (deprivation of constitutional rights "for even minimal periods of time, unquestionably constitutes irreparable harm"); *Planned Parenthood of Minn., Inc. v. Citizens for Cmty. Action*, 558 F.2d 861, 867 (8th Cir. 1977) (violation of Fourteenth Amendment rights singlehandedly "supports a finding of irreparable injury"); *Portz*, 196 F. Supp. 3d at 972 (losing opportunity to participate in school athletics constitutes irreparable harm). The Court should hold that D.M. and Z.G. suffer irreparable harm as a result of MSHSL's girls-only Dance Team rule.

[1] Dance Team is properly classified as an extracurricular activity rather than a sport. *See infra.* In any event, whatever the classification of Dance Team, MSHSL's sex-based discrimination constitutes irreparable harm under *Portz*.

II

D.M. AND Z.G. ARE LIKELY TO SUCCEED ON THE MERITS

A. Plaintiffs' Equal Protection Claim Is Likely To Succeed

MSHSL agrees that intermediate scrutiny applies to its decision to discriminate against D.M. and Z.G. on the basis of their sex. *See* Defs.' Oppo. at 3-4. Accordingly, MSHSL has the burden of showing that it has an "exceedingly persuasive justification" for limiting Dance Team to girls. *See Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982) (citing *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981)); *United States v. Virginia*, 518 U.S. 515, 533 (1996) (burden of justifying official policies that discriminate on sex is "demanding and it rests entirely on the State"). MSHSL cannot satisfy that high bar here.

MSHSL argues that its sex-based discrimination furthers four important governmental objectives: increasing athletic opportunities for girls; addressing past discrimination against girls in high school athletics; promoting safety; and preserving "interscholastic athletic competition for both boys and girls." Defs.' Oppo. at 4-7. Yet, MSHSL has provided no evidence that any of those interests are furthered by restricting Dance Team to girls. The lack of evidence is fatal to MSHSL's defense. Hypotheticals cannot justify overt discrimination on the basis of sex. *See Virginia*, 518 U.S. at 533 (citing *Weinberger v. Wiesenfeld*, 420 U.S. 636, 643 (1975)) (justifications "must be genuine, not hypothesized or invented *post hoc* in response to litigation").

First, because Dance Team is properly classified as an extracurricular activity rather than a sport, Plaints.' Memo. at 13, MSHSL's discrimination cannot further any interest tied to athletics.

Second, even if Dance Team is a sport,[2] MSHSL has failed to provide any evidence that it intentionally chose to limit Dance Team to girls in order to "increase athletic opportunities for girls as a consequence of the historic underrepresentation of girls in high school sports." *See* Defs.' Oppo. at 4. Instead of providing evidence, MSHSL repeatedly cites to Minn. Stat. § 121A.04, subd. 3(a) as justification for its discrimination. But that statute is not at issue in this case, and D.M. and Z.G. have not challenged it. *See* Complaint, Prayer for Relief.

By arguing the statute satisfies its burden, MSHSL begs the question. A state statute that allows MSHSL to undertake sex discrimination when certain factors and circumstances are present does not mean that MSHSL is justified for discriminating on the basis of sex whenever it chooses to restrict sports to one sex. MSHSL's specific decision to restrict Dance Team to girls must be justified by an "exceedingly persuasive justification," and nodding toward Minn. Stat. § 121A.04, subd. 3(a) does not suffice.[3] More likely, then, the rationale is an impermissible *post hoc* justification articulated in response to litigation. *See Virginia*, 518 U.S. at 533.

Third, the Office for Civil Rights found evidence of minor sex-disparities in athletics, Defs.' Oppo. at 6 and Defs.' Ex. C at 5-6, but more recent information tells a different story. *But see Equity in Athletics, Inc. v. Dep't of Educ.*, 675 F. Supp. 2d 660, 682-83 (W.D. Va. 2009), *aff'd*, 639 F.3d 91 (4th Cir. 2011) (disparities of less than 2.0% do not give rise to actionable

[2] To be sure, the question of whether Dance Team is a sport falls under the Title IX analysis.
[3] Furthermore, the statute was first enacted in 1975, thus using the statute to justify MSHSL's decision to establish Dance Team as girls-only in 1996 is attenuated at best. It is particularly attenuated due to MSHSL's admission that Dance Team has been a competitive activity in Minnesota since the mid-1970s. *See* Defs.' Oppo. at 9.

sex discrimination). When accounting for data for the 2017-18 school year, the four-year-average of female underrepresentation in Minnesota high school athletics fell from 0.9% to 0.39%.[4] [5] Furthermore, the data show a trend of *increasing* underrepresentation for *males* in Minnesota high school athletics. Specifically, a 0.3% underrepresentation of males in Minnesota in the 2016-17 school year has grown to a 0.35% underrepresentation for the 2017-18 school year. Plaintiffs' Ex. 6. Therefore, even if MSHSL had produced evidence showing it excluded males from Dance Team when it was officially sanctioned in 1996 in order to redress past discrimination against females (it has not), current data cannot justify continued discrimination against boys in Dance Team.

Fourth, MSHSL's own actions and admissions undercut any interest in the promotion of safety by prohibiting boys from participating in Dance Team. MSHSL admits that Dance Team is not a contact sport, Defs.' Ex. C at 4, so interests in safety are significantly lessened. And even if Dance Team were a contact sport, MSHSL already allows girls to participate with boys in recognized contact sports such as football and wrestling even though it is not required to do so under Title IX. *See*, *e.g.*, John Lauritsen, *Football Player, Weight Lifter, Track & Field Star,*

[4] OCR and MSHSL state that the former number was 1.0%. D.M. and Z.G. assume that is a rounded number. The data in Defs.' Ex. C at 6 show that average girls enrollment was 48.7% and the average number of girl athletes was 47.8%. The difference between the two is 0.9%, not 1.0%.

[5] To arrive at this result, Plaintiffs used the data included by MSHSL in its Ex. C at 6 and, using the same original source as OCR, added in the updated data for league athletes by gender for 2017-18. *Available at* http://www.nfhs.org/ParticipationStatics/ParticipationStatics.aspx/, and included as Plaintiffs' Ex. 4. Then, Plaintiffs pulled total Minnesota high school enrollment numbers from the Minnesota Department of Education. *Available at* https://w20.education.state.mn.us/MDEAnalytics/DataTopic.jsp?TOPICID=2, and included as Plaintiffs' Ex. 5. For simplicity, Plaintiffs include as Plaintiffs' Ex. 6 an updated version of the table in Defs.' Ex. C at 6.

Ukulele Singer: Brainerd Girl Inspires, CBS Minnesota (Oct. 24, 2017);[6] Jim Paulsen, *Minnesota's Best Girls' Wrestler Just Wants to be a Wrestler*, Star Tribune (Feb. 4, 2018).[7] Thus, it is dubious that MSHSL has a genuine concern that the safety of female dancers would suffer should two boys be allowed to participate. In any event, other than conclusory statements, MSHSL has not produced any evidence—or even hinted that such evidence exists—that prohibiting boys from participating in Dance Team promotes safety.

Fifth, MSHSL cites *Kleczek v. Rhode Island Interscholastic League, Inc.*, 612 A.2d 734, 739 (R.I. 1992) to argue that "preserving competition" is furthered by the girls-only dance rule. But *Kleczek* is premised on "long-standing" traditions that physical differences between boys and girls necessitated separate teams in order to ensure fair competition in certain sports. *See id.* ("The tradition of having separate teams is based on a realization that high school boys are substantially taller, heavier and stronger than their girl counterparts.") (internal quotations omitted). That is not the case with Dance Team. Scoring in Dance Team is not improved by taller and stronger competitors.[8] And in any event, MSHSL has produced no evidence that girl dancers are at a physical disadvantage in team competition with boys.

In sum, MSHSL has produced no evidence to show that any of the articulated important governmental objectives justify restricting Dance Team to girls. As a result, D.M. and Z.G. are likely to prevail on the merits of their Equal Protection claim.

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[6] *Available at* https://minnesota.cbslocal.com/2017/10/24/brainerd-female-football-player/.
[7] *Available at* http://www.startribune.com/minnesota-s-best-girls-wrestler-just-wants-to-be-a-wrestler/472661353/.
[8] Scoring criteria in Dance Team is based on categories such as choreography, execution, and difficulty. *See* Plaints.' Ex. 7.

But even if the purported interests were held to be important and furthered by the girls-only Dance Team rule, MSHSL has also failed to provide any evidence that limiting Dance Team to girls substantially advances those interests. *Craig v. Boren*, 429 U.S. 190, 197 (1976); *Hogan*, 458 U.S. at 725 (intermediate scrutiny requires a "direct, substantial relationship between objective and means"). For example, even if MSHSL provided evidence that Dance Team was created in order to increase opportunities for girls and to address past discrimination, MSHSL has provided no evidence showing that it was necessary to make Dance Team a girls-only activity rather than mixed-sex. Stated differently, there is no evidence that single-sex Dance Team advances those interests substantially more than having mixed-sex Dance Team.

It was the creation of Dance Team as an official activity that increased opportunity for girls, not the restriction of the activity to girls. After all, MSHSL admits that it knows of only three boys (D.M., Z.G., and one boy who no longer competes in Minnesota) who have ever expressed interest in joining Dance Team. Defs.' Oppo. at 19-20. Thus, MSHSL has provided the Court with no evidence that allowing boys to participate in Dance Team prevents MSHSL from increasing opportunities for girls or addressing past discrimination. Allowing two boys to simply try out for Dance Team does not risk displacing girls by any meaningful measure. *See Equity in Athletics, Inc.*, 675 F. Supp. 2d at 682-83.

Further, interests in safety and ensuring fair competition are not substantially advanced by prohibiting two boys from trying out for Dance Team, and MSHSL has presented no evidence to the contrary. Thus, the lack of evidence presented by MSHSL more likely suggests that establishing Dance Team as a girls-only activity is the result of the "mechanical application

of traditional, often inaccurate, assumptions about the proper roles of men and women," *Hogan*, 458 U.S. at 725-26, and reliance on "overbroad generalizations about the different talents, capacities, or preferences of males and females." *Virginia*, 518 U.S. at 533. As a result, MSHSL's discriminatory rule is not substantially related to furthering an important governmental interest, and D.M. and Z.G. are likely to succeed on the merits of their claim.

B. Plaintiffs Are Likely To Succeed on Their Title IX Claim

D.M. and Z.G. do not argue that Dance Team's primary purpose as an extracurricular activity "is to support 'traditional' athletes." *See* Defs.' Oppo. at 8. To the contrary, D.M. and Z.G. simply point the Court to OCR's own determinations and that of the Second Circuit holding that there is a presumption that activities similar to competitive Dance Team, like *competitive* cheerleading, are not sports for Title IX purposes. *See* Plaints.' Memo. at 13 (emphasis added).

In *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 94 (2d Cir. 2012), the court noted that OCR made no distinction between competitive cheerleading and sideline cheerleading in establishing a presumption that neither are sports.[9] Indeed, in *Quinnipiac* there was no "record evidence of any competitive cheerleading program being recognized by [the U.S. Department of Education] as a sport." *Id.* at 103. Here, MSHSL provides no evidence that OCR categorically determined Dance Team is a sport. The opposite is true. MSHSL acknowledges that Dance Team is not a sport for Title IX purposes. *See* Plaints.' Memo. Ex. 1 ("Girls' Dance

[9] Should the Court hold that Dance Team is an extracurricular activity rather than a sport like the Second Circuit did in *Quinnipiac*, MSHSL has waived any argument that girls-only Dance Team is allowed under 34 C.F.R. § 106.34(b)(1)(i)(A)-(B), § 106.34(b)(1)(iv), or § 106.34(b)(4). Therefore, D.M. and Z.G. are likely to succeed on their Title IX claim.

Team, in its current form, may not rise to the level of a gender equity activity for the purpose of Title IX.").

MSHSL has not overcome the presumption that Dance Team is not a sport. But even if the Court moves past that presumption and considers the factors in *Quinnipiac*, it should not rely on MSHSL's conclusory assertion that Dance Team is a sport because MSHSL has classified it as such. *See* Defs.' Oppo. at 9. Again, MSHSL begs the question. MSHSL has rules and regulations governing extracurricular activities just like it does for sports. MSHSL governs extracurricular activities like one-act play, robotics, speech, debate, music, and visual arts—none of which MSHSL considers sports. And, just like sports, MSHSL's rules for one-act play include participation limits (20 students), contest rules, dates for tournaments, and eligibility rules. *See* Plaints.' Ex. 3. MSHSL even puts on an annual state tournament for one-act play.

Nevertheless, if the Court holds that Dance Team satisfies the necessary factors to be considered a sport for Title IX purposes, D.M. and Z.G. are still likely to succeed on their Title IX claim. MSHSL has made no attempt to justify Dance Team as a girls-only sport under the two available exemptions of 34 C.F.R. § 106.41(b) that allow for single-sex sports in certain circumstances. Sex-based discrimination is only permissible where the sport is a "contact sport," or where the selection to the sport's teams is based on "competitive skill." 34 C.F.R. § 106.41(b). Neither exemption applies here. MSHSL concedes that Dance Team is not a contact sport, Plaints.' Memo. at 15 and Defs.' Ex. C at 4, and MSHSL makes no argument whatsoever that the selection of dancers to the team is based on the "competitive" skill of the dancers.

Even though MSHSL has made no claim that Dance Team participants are selected based on "competitive skill," the Court may find further discussion of the term helpful. An example of permissible non-contact, single-sex sports where team selection is based on competitive skill is baseball and softball. Physical characteristics and talents such as size, speed, strength, and reaction time are directly related to one's ability to compete directly against other players. The same is not true for Dance Team. While there is an athletic component to dance, team selection is primarily based on artistic performance ability, and performances do not primarily pit dancers against other dancers in a contest of size, speed, or strength.[10] Quite simply, there is no evidence that allowing boys to participate in dance would give them a competitive advantage over girls. MSHSL, in any event, has failed to provide any evidence—or argument—to the contrary.

Therefore, whether the Court agrees that MSHSL has not overcome the presumption against Dance Team being a sport, or because MSHSL has failed to satisfy the "competitive skill" exemption, Title IX's general prohibition on single-sex sports applies, *see* 34 C.F.R. § 106.41(a), and D.M. and Z.G. are likely to succeed on the merits of their Title IX claim.

[10] There must be some limiting principle in the interpretation of the term "competitive skill." Plaintiffs offer a reasonable interpretation, but MSHSL has offered none. Without a focus on the applicable physical differences between boys and girls in a given sport, there is nothing to stop MSHSL from discriminating on the basis of sex in any sport where there is competition. For example, the Clay Target league is currently mixed-sex, *see* Plaints.' Ex. 8 at 3, but if Dance Team is classified as a sport for which team selection is based on "competitive skill," then Clay Target league could also be so limited.

III

THE PUBLIC INTEREST IS SERVED BY PRELIMINARY RELIEF AND THE BALANCE OF HARMS FAVORS D.M. AND Z.G.

A. Preliminary Relief Is in the Public Interest

Despite MSHSL's claims to the contrary, *see* Defs.' Oppo. at 20, a preliminary injunction "affirmatively serves" the public interest in this case. *See McLaughlin by McLaughlin v. Boston Sch. Comm.*, 938 F. Supp. 1001, 1017 (D. Mass. 1996) (issuance of preliminary injunction to allow one eighth-grade student to transfer schools "affirmatively serve[d]" the public interest because student avoided being kept on "pins-and-needles about her educational future" during potentially lengthy litigation). Rather than serving "purely private interests," Defs.' Oppo. at 20, preliminary relief that vindicates constitutional rights is "always in the public interest." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994). Indeed, this Court has held that "eradicating sex discrimination" is in the public interest. *Portz*, 196 F. Supp. 3d at 978.

Furthermore, concerns about a potential floodgate of future litigation should the Court grant preliminary relief in this case also lack merit. *See* Defs.' Oppo. at 20. Failure to enjoin MSHSL's discriminatory Dance Team rule as unlawful out of fear of hypothetical future litigation "would be an abdication of the judiciary's role of final arbiter of the validity of all laws." *Breen v. Kahl*, 419 F.2d 1034, 1038 (7th Cir. 1969). Worse still, MSHSL's concern has no limiting principle. Instead, it seeks to immunize its discriminatory and unconstitutional rules from preliminary relief through a parade of horribles.[11] The Court should reject MSHSL's

[11] While the "open the floodgates" trope is an archaic one, it has particularly little purchase here. Dance team is unique. Dance Team is a relatively new activity that has little interest from

fearmongering and decline to deny preliminary relief out of fear that MSHSL may be called to answer for other hypothetical violations of students' rights in the future.

B. The Balance of Harms Weigh in Favor of Plaintiffs

D.M. and Z.G. suffer ongoing, irreparable harm as a result of MSHSL's discriminatory Dance Team eligibility rule. Rather than acknowledge the harm caused by its rule, MSHSL attempts to dismiss those harms, and erroneously presents the Court with a number of unlikely hypothetical harms that could inure to MSHSL should the Court grant a preliminary injunction in this case. *See* Defs.' Oppo. at 21-22. In any event, on balance the harms favor a grant of preliminary relief.

MSHSL makes much over D.M. and Z.G. seeking preliminary relief that would alter the status quo. *See* Defs.' Oppo. at 21-22. But such relief is common and necessary in instances where the government impermissibly discriminates. *See*, *e.g.*, *Bednar v. Nebraska Sch. Activities Ass'n*, 531 F.2d 922, 923 (8th Cir. 1976); *Canal Authority of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974) ("if the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury."); *Ferry-Morse Seed Co. v. Food Corn, Inc.*, 729 F.2d 589, 593 (8th Cir. 1984) (acknowledging preliminary injunctions have been granted without regard to the status quo); *see also S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771, 775 n.7 (8th Cir. 2012) (no Eighth Circuit authority

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boys, where team selection is not based on the strength or size of the competitors, and where there is no corresponding boys team. There is no evidence that allowing boys to compete in Dance Team would displace girls, as it may, for example, in volleyball. In any event, that MSHSL may be called to court for discriminating against others in violation of their constitutional rights is no reason to deny relief to the two boys whose rights are currently being violated.

for proposition that motions for preliminary injunctions altering status quo are subject to higher standard of proof). To the contrary, in *Bednar*, the Eighth Circuit affirmed a grant of preliminary relief where the mother of a tenth-grade girl sought an injunction to alter the status quo and allow her daughter to join the boys' cross-country team. 531 F.2d at 923. Limited to the question of whether there was irreparable harm, the Eighth Circuit affirmed the lower court and granted the injunction to allow the girl to join the boys' team, thus altering the status quo. *Id.* The Court should do the same in this case and preliminarily enjoin MSHSL from continuing to ban D.M. and Z.G. from Dance Team because the status quo is causing them irreparable harm.

Nor would a preliminary injunction in this case "fundamentally alter" MSHSL rules or state law, or disrupt MSHSL's administrative duties. *See* Defs.' Oppo. at 21-22. D.M. and Z.G. seek preliminary relief to allow them the opportunity to participate on their schools' competitive Dance Teams. No other activity and no other students would be affected, and the only rule altered by an injunction would be the rule that restricts Dance Team eligibility to girls. All other MSHSL rules and procedures would remain in place.

Indeed, MSHSL itself admits that it knows of only three boys that have ever expressed interest in participating in Dance Team. Defs.' Oppo. at 19-20. Thus, claims that allowing two boys to have the opportunity to try out for Dance Team would have far-reaching statewide effects on MSHSL operations miss the mark. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) ("[T]he interest in avoiding the bureaucratic effort necessary to tailor remedial relief" does not justify discriminatory rules or policies.). Further, should the Court grant a preliminary injunction and later rule against D.M. and Z.G. on the merits, their eligibility to

compete during the period in which the preliminary injunction was in place could not be called into doubt. Rather, D.M. and Z.G. would simply be ineligible going forward, and MSHSL would not be required to strip titles awarded to teams during the period they were eligible. Therefore, on balance, the harms weigh in favor of granting a preliminary injunction in this case.

CONCLUSION

For the above-mentioned reasons, the Court should grant D.M.'s and Z.G.'s motion for a preliminary injunction and enjoin MSHSL from prohibiting them from participating in Dance Team because of their sex.

DATED: September 12, 2018.

Respectfully submitted,

s/ Caleb R. Trotter
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CERTIFICATE OF COMPLIANCE

As required by Local Rule 7.1(f)(2), I certify that the PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION complies with the type-size limit of Local Rule 7.1(h) and contains 4,016 words (including all text, headings, footnotes, and quotations, but excluding the portions of the document exempted by Local Rule 7.1(f)(1)(C)), according to the word count function of the Microsoft Word 2013 word-processing program used to prepare it.

DATED: September 12, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2018, I filed the foregoing document with the Clerk of Court via the CM/ECF system and a copy has been served via email to all counsel.

DATED: September 12, 2018.

Respectfully submitted,

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