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

Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	Criminal No. 1:10CR485
v.	)	
	)	Hon. Leonie M. Brinkema
JEFFREY ALEXANDER STERLING,	)	
	)	
Defendant.	)	
	)	

GOVERNMENT'S MOTION FOR *IN CAMERA* HEARINGS AND MOTION FOR AN ORDER PURSUANT TO SECTIONS 6 AND 8 OF THE CLASSIFIED INFORMATION PROCEDURES ACT

The United States of America, by and through the undersigned, respectfully moves this Court, pursuant to Sections 6(a) and (b) of the Classified Information Procedures Act (CIPA), 18 U.S.C. App. 3, and submits the following Motion for *In Camera* Hearings and a Motion for an Order Pursuant to Sections 6 and 8 of the Classified Information Procedures Act.[1] The Court has scheduled several hearings to make the necessary determinations concerning the use, relevance, and admissibility of classified information that would otherwise be made at trial. The scheduled hearings consist of a hearing on August 30, 2011 to consider the classified information to be presented in the government's case-in-chief; a hearing on September 20, 2011 to consider the classified information to be presented by the defense in its case-in-chief; and a hearing scheduled on October 11, 2011 to hear any other matters, including any CIPA-related issues that may have arisen.

This motion applies to each one of the hearings identified above, and any other hearings

[1]Of course, this Court's protective orders for classified information continue to apply to the documents and information contained therein subject to the upcoming hearings.

that the Court may deem necessary to resolve CIPA-related matters. In support of its motion that the hearings referenced above, or portions thereof, be conducted *in camera*, the Government will file a certification of the Assistant Attorney General for the National Security Division, exercising the authority of the Attorney General for this purpose pursuant to Section 14 of CIPA, prior to the hearing. A proposed order will be attached to that certification for the Court's consideration.

For the Court's consideration and convenience, the government has outlined the applicable law relating to CIPA. As discussed in more detail below, the government has agreed to disclose the classified information that it intends to use in its case-in-chief first so that the defendant's Section 5 notice can be more specific and precise, hopefully leading to a more narrowly tailored hearing on September 20, 2011.

I. Legal Background

A. General Overview

Sections 5 and 6 of CIPA "'establish[ ] a pretrial procedure for ruling upon the admissibility of classified information.'" *United States v. Moussaoui*, 591 F.3d 263, 281 (4th Cir. 2009)(quoting *United States v. Smith*, 780 F.2d 1102, 1105 (4th Cir. 1985)). CIPA is simply a procedural tool that allows a court to address the use, relevance and admissibility of classified information in a criminal case. *See United States v. Rosen*, 557 F.3d 192, 194-95 (4th Cir. 2009); *Smith*, 750 F.2d 1215, 1217 (stating CIPA "is merely a procedural tool requiring a pretrial court ruling upon the admissibility of classified information."). *See also United States v. Stewart*, 590 F.3d 93, 130 (2nd Cir. 2009). CIPA's fundamental purpose is to "harmonize a defendant's right to obtain and present exculpatory material [at] trial and the government's right to protect

classified material in the national interest." *United States v. Pappas*, 94 F.3d 795, 799 (2d Cir. 1996). It "evidence[s] Congress's intent to protect classified information from unnecessary disclosure at any stage of a criminal trial." *United States v. Apperson*, 441 F.3d 1162, 1193 n.8 (10th Cir. 2006).

Section 6(c) expressly grants a district court the authority to modify and restrict relevant evidence in order to accommodate both the legitimate interest of the defendants in defending the case and the important governmental interests in protecting national security. *United States v. Collins*, 603. F.Supp. 301, 304, 306 (S.D. Fla. 1985); *see* S. Rep. 96-823, 1980 USCCAN 4294, 4302 (substitutions are "clearly preferable to disclosing information that would do damage to the national security" so long as a defendant's right to a fair trial is not prejudiced). Section 6(c)(1) allows the district court to order substitutions in lieu of the disclosure of classified information. Ths provision must be read broadly in light of the "particular facts of each case" and because the CIPA procedures vest "district courts with wide latitude to deal with thorny problems of national security in the context of criminal proceedings."" *United States v. Abu-Ali*, 528 F.3d 210, 247 (4th Cir. 2007). *See also United States v. North*, 713 F.Supp. 1452, 1453 (D.D.C. 1988) (stating that CIPA's legislative history "shows that Congress expected trial judges to fashion creative solutions in the interests of justice for classified information problems."). A court's determination of the adequacy of a substitution or summary under Section 6(c) is a question of admissibility. *See e.g. United States v. Moussaoui*, 382 F.3d 453, 480 (4th Cir. 2004)(stating that a district court's "role in compiling the substitutions . . . is little removed from the judicial task of assessing the admissibility of evidence.").

Because CIPA is a procedural statute, CIPA never altered "the existing law governing the

admissibility of evidence." *Smith*, 780 F.2d at 1106. The Fourth Circuit as well as other "circuits that have considered the matter agree with the legislative history cited that ordinary rules of evidence determine admissibility under CIPA." *Id.* (citing *United States v. Wilson*, 750 F.2d 7 (2nd Cir. 1984); *United States v. Wilson*, 732 F.2d 404 (5th Cir. 1984). Accordingly, under CIPA, "in assessing admissibility, [a district] court must consider not just the relevance of the evidence, but also the applicability of any government privilege, such as military or state secrets." *Rosen*, 557 F.3d at 195 (citing *Smith*, 780 F.3d at 1107, 1110). In fact, even under CIPA, a district court must consider those privileges traditionally reserved for non-classified information, such as the attorney-client and marital privileges, if potentially applicable to the question of the admissibility of classified information. *Id*. at 1107 (citing attorney-client privilege, marital, state secrets, and informant's privileges as examples of potentially applicable privileges).

There are three critical pretrial steps in the handling of classified information under Sections 5 and 6 of CIPA. First, the defendant "must notify the government and the court of classified information he expects to use, and the defendant is prohibited from 'disclos[ing] any information known or believed to be classified . . . until the United States has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 6 of [CIPA].'" *Moussaoui*, 591 F.3d at 282 (quoting 18 U.S.C. app. 3, § 5).

Second, upon the defendant's notice of intent to introduce classified information and a motion of the government, the court shall hold a hearing pursuant to Section 6(a) "at which the court shall determine the 'use, relevance, or admissibility of classified information that would otherwise be made during the trial or pretrial proceeding.'" *Id*. (quoting *Smith*, 780 F.2d at 1105).

Third, following the Section 6(a) hearing and formal findings of admissibility by the Court, the government may move that, rather than disclosure of specific classified information, "the court approve the use of a substitution in the form of 'a statement admitting relevant facts that the specific classified information would tend to prove' or 'a summary of the specific classified information.'" *Moussaoui*, 591 F.3d at 282 (quoting *Smith*, 780 F.2d at 1105). Pursuant to Section 6(c)(1), "[t]he court *shall* grant such a motion of the United States if it finds that the statement or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information." *Moussaoui*, 591 F.3d at 282.

B. The Section 5(a) Notice Requirement

Section 5(a) of CIPA requires a defendant who reasonably expects to disclose or to cause the disclosure of classified information at any trial or pretrial proceeding to provide timely pretrial written notice to the attorney for the government and the Court. *United States v. Hammoud*, 381 F.3d 316, 338 (4th Cir. 2004). Section 5 specifically provides that notification shall take place "within the time specified by the court or, where no time is specified, within thirty days prior to trial."

The Section 5(a) notice must be specific because it is the central document in the procedures envisioned under CIPA. Section 5(a)'s requirement that "such notice shall include a brief description of the classified information" does not mean "a vague description." *United States v. Collins*, 720 F.2d 1195, 1199-1200 (11th Cir. 1983). Nor does it matter that "the government can locate specific data about defendant's knowledge of sensitive information in its own records." *Id*. Instead, the "Section 5(a) notice requires that the defendant state, with

particularity, which items of classified information entrusted to him he reasonably expects will be revealed by his defense in this particular case." *Id*. "The court, the government and the defendant should be able to repair to the Section 5(a) notice and determine, reliably, whether the evidence consisting of classified information was contained in it." *Id*. For a court to "countenance a Section 5(a) notice which allows a defendant to cloak his intentions and leave the government subject to surprise" would simply "require the defendant to reduce 'greymail' to writing." *Id*.

The particularization requirement applies both to documentary exhibits and to oral testimony, whether it is anticipated to be brought out on direct or cross-examination. *See id.; United States v. Wilson*, 750 F.2d 7 (2d Cir. 1984). The Section 5(a) notice, however, does not require a defendant to provide argument in support of the relevance of particular noticed documents in the notice itself.

Section 5(b) permits the court to preclude the disclosure of classified information by the defendant if he fails to provide a sufficiently detailed notice far enough in advance of trial to permit implementation of CIPA procedures. *See United States v. Badia*, 827 F.2d 1458, 1465 (11th Cir. 1987). Similarly, if a defendant attempts to disclose classified information at trial that had not been described in his Section 5(a) notice, a court may preclude disclosure of the classified information under Section 5(b). *See Smith*, 780 F.2d at 1105.

C. The Section 6(a) Hearing

Once the defendant files a notice of intent to disclose classified information under Section 5, the government may then petition the court for a hearing under Section 6(a). The purpose of the hearing under Section 6(a) of CIPA is "to make all determinations concerning the use,

relevance, or admissibility of classified information that would otherwise be made during the trial or pretrial proceedings." 18 U.S.C. App. 3, § 6(a). "CIPA does not [] alter the substantive rules of evidence, including the test for relevance: thus, it also permits the district court to exclude irrelevant, cumulative, or corroborative classified evidence." *United States v. Passaro*, 577 F.3d 207, 220 (4th Cir. 2009). *See also Smith*, 780 F.2d at 1106.

"When evaluating the governmental privilege in classified information which CIPA serves to protect, [] district courts must ultimately balance 'this public interest in protecting the information against the individual's right to prepare his defense.'" *Abu Ali*, 528 F.3d at 247 (quoting *Smith*, 780 F.2d at 1105). A "`decision on disclosure of such information must depend upon "particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the [evidence], and other relevant factors."'" *Abu Ali*, 528 F.3d at 247 (quoting *Smith*, 780 F.2d at 1107)(quoting *Roviaro v. United States*, 353 U.S. 53, 61 (1957)). However, the classified information privilege "must . . . give way when the information . . . 'is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause.'" *Rosen*, 557 F.3d at 195 n.4 (quoting *Smith*, 780 F.2d at 1107)). *See Fernandez,* 913 F.2d 148, 154(4th Cir. 1990)(stating that "*Smith* requires the admission of classified information" once the defendant has satisfied this standard).

D. Rule 403 Balancing

At the Section 6(a) hearing, the defendant has the burden of establishing that the evidence is relevant and material. *See United States v. Miller*, 874 F.2d 1255, 1276-77 (9th Cir. 1989). "To overcome the governmental privilege, the defendant 'must come forward with something more than speculation as to the usefulness of such disclosure.'" *Abu Ali,* 528 F.3d at 248

(quoting *Smith*, 780 F.2d at 1107). Upon hearing the defense's proffer and the arguments of counsel, the court must determine whether or not the classified information identified by the defense is relevant under the standards of Fed. R. Evid. 401.

Relevance "means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed.R.Evid. 401. *See also United States v. Williams*, 445 F.3d 724, 736 (4th Cir. 2006) "`[R]elevance typically presents a low barrier to admissibility.'" *United States v. Basham*, 561 F.3d 302, 332 (4th Cir. 2009)(quoting *United States v. Leftenant,* 341 F.3d 338, 346 (4th Cir. 2003)). "'Thus, evidence is relevant if it is "worth consideration by the jury" or has a "plus value."'" *Basham*, 561 F.3d at 332 (internal citations omitted).

The Court's inquiry, however, does not end there as the Court still must determine whether or not the classified information is excludable under Rule 403. *Smith*, 780 F.2d at 1106) (stating that "the ordinary rules of evidence determine admissibility under CIPA."). *See also United States v. Wilson*, 750 F.2d 7, 9 (2d Cir. 1984). A district court should exclude relevant evidence when "its probative value is 'substantially outweighed' by the potential for undue prejudice, confusion, delay or redundancy." *United States v. Queen,* 132 F.3d 991, 994 (4th Cir. 1997)(quoting Fed.R.Evid. 403). *See also Old Chief v. United States*, 519 U.S. 172, 182-186 (1997)(evidence may be excluded under Rule 403 if its probative value is substantially outweighed by certain dangers, including unfair prejudice, confusion of the issues, or misleading the jury); *United States v. Aramony,* 88 F.3d 1369, 1378 (4th Cir. 1996)(internal quotation marks omitted)(stating that evidence is unfairly prejudicial and excludable under Rule 403 "when there is a genuine risk that the emotions of a jury will be excited to irrational behavior, and ... this risk

is disproportionate to the probative value of the offered evidence."). *See also United States v. Mohamed*, 410 F. Supp.2d 913, 917-18 (S.D. Ca. 2005)(excluding evidence whose probative value may be substantially outweighed by the "distraction and confusion" of a fair determination of the issues for the jury or the creation of "side issues or mini trials resulting in undue prejudice, undue delay, and waste of time.").

The test is always one of *unfair* prejudice, and "'[t]he mere fact that the evidence will damage the defendant's case is not enough.'" *United States v. Benkahla*, 530 F.3d 300, 310 (4th Cir. 2008)(quoting *Hammoud,* 381 F.3d at 341). *See also Williams*, 445 F.3d at 730. "`[T]he evidence must be *unfairly* prejudicial, and the unfair prejudice must *substantially* outweigh the probative value of the evidence.'" *Benkahla*, 530 F.3d at 310 (quoting *Hammoud,* 381 F.3d at 341)(internal quotations omitted, emphasis in original)). *See also Williams*, 445 F.3d at 730.

"The court's determinations regarding relevance and admissibility of evidence are accorded great deference, even in the context of CIPA § 6(a), and such decisions may only be overturned 'under the most extraordinary circumstances.'" *Rosen*, 557 F.3d at 199 (quoting *Fernandez*, 913 F.2d at 155). "'The abuse of discretion standard also applies to the trial court's decision to reject a proposed substitution under [CIPA] § 6(c).'" *Rosen*, 557 F.3d at 199 (quoting *Fernandez*, 913 F.2d at 155). In order to preserve the record on appeal, at the conclusion of the hearing, the court must state in writing its determination as to each item of classified information. CIPA, 18 U.S.C. App. 3, § 6(a).

In sum, the Court "'may order disclosure only when the information is at least essential to the defense, necessary to [the] defense, and neither merely cumulative nor corroborative, nor speculative'." *Abu Ali,* 528 F.3d at 248 (quoting *Smith*, 780 F.2d at 1110). Moreover, a Section

6(a) "hearing must be conducted *in camera* if the government certifies 'that a public proceeding may result in the disclosure of classified information.'" *Moussaoui*, 591 F.3d at 282 n.16 (quoting 18 U.S.C.A. App. 3 § 6(a)). At the conclusion of the Section 6(a) hearing, CIPA requires the court to state in writing the reasons for its determinations as to each item of classified information.

E. Substitutions Pursuant to Section 6(c)

In the event that the Court rules that one or more items of classified information may be admitted, the government has the option of offering substitutions pursuant to Section 6(c) of CIPA. These include either (1) a statement admitting relevant facts that the classified information would tend to prove or (2) a summary of the classified information instead of the classified information itself. *See Rezaq*, 134 F.3d at 1142-43.

"The government must also 'provide the defendant with notice of the classified information that is at issue.'" *Moussaoui*, 591 F.3d at 282 n.16 (quoting 18 U.S.C. App. 3, § 6(b)(1)). "If the classified information has been produced to the defendant, it must be specifically identified. If it has not been made available to the defendant, it 'may be described by generic category, in such form as the court may approve.'" *Moussaoui*, 591 F.3d at 282 n.16 (quoting 18 U.S.C.A. App. 3, § 6(b)(1)). A motion for substitution shall be granted if the "statement or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information." 18 U.S.C. App. 3, § 6(c)(1).

A Section 6(c) hearing must be conducted *in camera* at the government's request, and the government may require that the court examine *in camera* and *ex parte* 'an affidavit of the Attorney General certifying that disclosure of classified information would cause identifiable

damage to the national security of the United States and explaining the basis for the classification of such information.'" *Moussaoui*, 591 F.3d at 282 n.17. (quoting 18 U.S.C.A. App. 3, § 6(c)(2)). The Court may approve the substitutions provided by the government if, after conducting a detailed *in camera* comparison of the originals with the proposed substitutions, the court determines that the substitutions protect the defendant's right to a fair trial. *Abu Ali,* 528 F.3d at 253-54. *See also Rezaq,* 134 F.3d at 1142-1143.

II. Matters to be Discussed at the Hearing on August 30, 2011

This motion seeks an order permitting the Government to redact, and in many cases redact and substitute (or stipulate to), classified information contained within the government's potential trial exhibits and any classified documents that the defense seeks to introduce into evidence. This motion also seeks an order prohibiting the parties from introducing, eliciting, releasing, or otherwise publicly commenting upon or referencing at any public proceeding information that would tend to reveal any of the redacted (or substituted) information (unless by reference to the proposed substitutions or stipulations). Finally, this motion seeks an order pertaining to the covert affiliations, personal security, and count-intelligence concerns of certain trial witnesses.

A. Redactions to Proposed Government Exhibits

The government seeks to admit, in its case-in-chief, a number of exhibits that contain classified information. These exhibits are relevant to all of the charges in the Indictment. Some of the classified information has been excised or redacted from the original documents to prevent official public disclosure in this trial in the interest of national security. *See e.g. CIA v. Sims*, 471 U.S. 159, 175 (1985)(discussing the government's "'compelling interest in protecting both the

secrecy of information to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service.'"); *Larson v. Department of State*, 565 F.3d 857, 864 (D.C. Cir. 2009) (stating that "minor details of intelligence information may reveal more information than their apparent insignificance suggests because, "'much like a piece of jigsaw puzzle, [each detail] may aid in piecing together other bits of information even when the individual piece is not of obvious importance in itself.' . . . The CIA has the right to assume that foreign intelligence agencies are zealous ferrets.")(quotations omitted).

The government does not believe that any of the excised information is helpful to the defense in any way, nor would it be considered exculpatory. The redactions that have been made include, but are not limited to, the following: (1) classified cable routing and distribution information; (2) still classified details of Classified Program No. 1; and (3) information relating to unrelated and still classified intelligence sources, methods and activities (e.g. operational tradecraft). The basis for these redactions has been set forth in the sealed declaration of Elizabeth Anne Culver ("the Culver Declaration.").[2]

Copies of these exhibits in a less-redacted form have already been made available to defense though discovery. As envisioned by Section 6(a) of CIPA, the Court will hear the

[2]The government anticipates filing this Declaration on Friday, August 12, 2011. The reason for filing the Declaration on Friday is that the government and the CIA have been working diligently to finalize the proposed redactions and substitutions in the classified documents. The government intends to produce the redacted and substituted versions of those classified documents (as they exist as of August 9, 2011) to the defense, under seal and classified pending final review, but believes that several additional days of consultation with the CIA are necessary prior to filing the final versions. The government will produce any revised versions of the classified documents along with the Declaration on Friday. The government does not currently anticipate adding any new redactions to the versions of the documents provided to the defense on August 9, 2011.

proffer of the government and arguments of counsel, and then rule whether the classified documents are admissible and whether or not the Court will admit them in their redacted and/or substituted state, provided the proper foundation is laid at trial. The Government will provide copies of the original documents, the discovery versions, and the proposed redacted and/or substituted trial exhibits to the Court, and the proposed, redacted and/or substituted trial exhibits to the defense on August 10, 2011 in anticipation of the hearing on August 30, 2011.

B. Substitutions for Certain Classified Information

The government also will seek to use unclassified substitutions in lieu of certain classified information that may appear within the proposed trial exhibits. The government believes that the substitutions will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information. Section 6(c) of CIPA directs that the court grant such motion of the government if, after a hearing, it finds that the defendant's ability to make his case is not prejudiced.

The substitutions largely have been made to: (1) certain covert facilities; (2) the names of CIA officers; (3) certain operational cable routing and distribution information; (4) cryptonyms and pseudonyms; and (5) information relating to classified intelligence sources, methods and activities. These basis for these substitutions has been set forth in the sealed Culver Declaration.

C. Stipulations

At this time, the government will be requesting one stipulation. The stipulation relates to a particular phrase that appears on Cables 1 through 43. In lieu of that phrase appearing on Cables 1 through 43, the government will move for the following stipulation:

A particular, typed phrase appeared on Exhibits through (also

> known as Cables 1 through 43) at the time of creation and thereafter upon subsequent viewing. This phrase identified for the viewer or reader that Exhibits through were subject to enhanced internal access controls within the CIA.

The basis for these redactions has been set forth in the sealed Culver Declaration.

The government reserves the right to propose additional stipulations as deemed necessary depending upon any defense objections to the government's proposed trial exhibits or additional information that the government learns about the defense theories of the case.

D. Use of "Silent Witness Rule" at Trial

As previously mentioned, Section 8(a) of CIPA allows writings containing classified information to be admitted into evidence without change in their classification status. In order to facilitate the introduction into evidence of certain information contained in the government's proposed exhibits, the government may move the court to allow the admission of certain evidence pursuant to the "silent witness rule." Under the "silent witness rule,"

> the witness would not disclose the information from the classified document in open court. Instead, the witness would have a copy of the classified document before him. The court, counsel and the jury would also have copies of the classified document. The witness would refer to specific places in the document in response to questioning. The jury would then refer to the particular part of the document as the witness answered. By this method, the classified information would not be made public at trial but the defense would be able to present that classified information to the jury.

United States v. Zettl, 835 F. 2d 1059, 1063 (4th Cir. 1987). *See Abu Ali*, 528 F.3d at 250, 255 n.22 (noting district court permitted use of silent witness rule at trial, but expressing no opinion regarding its use on appeal). *See also United States v. Ford*, Criminal No. 05-0235-PJM (using silent witness rule at trial).

At this point, if needed, the government anticipates that it will only seek to use the "silent witness rule" for only a few, if any, documents at trial. The government anticipates that the direct examination on the documents would not be more than twenty minutes, and presumably the cross-examination would be of equal length. Alternatively, the government would propose closing the courtroom for the limited time necessary to conduct direct examination and cross-examination on the document, and then publicly releasing the transcripts of that testimony after a classification review had been performed. By way of example, this technique has been statutorily approved by Congress in criminal trade secrets cases. *See United States v. Aleynikov*, 2010 WL 5158125 (S.D.N.Y. 2010). If the defendant objects to this procedure, the government is prepared to brief the issue.

E. Use of Security Procedures at Trial

The government intends to call several current, covert CIA officers and several former covert CIA officers who worked on Classified Program No. 1 as well as a number of current and former overt CIA employees. In light of national security, counter-intelligence, and personal safety concerns, the government asks that some of those witnesses be referred to throughout the public proceedings by the initial of their true last name (e.g. Mr. D. for John Doe), and that a screen be used to prevent the identities of several of those current or former officers from being revealed to the public.

The government also anticipates making this request for any CIA human assets, including, but not limited to Human Asset No. 1, who may appear at trial. (The government may also seek the court's permission for additional security measures for any human assets who may testify at trial). Naturally, the government also seeks to preclude any trial testimony that would

reveal the true identities of these officers or assets. Finally, the government seeks the Court's permission for these particular officers and assets to enter and exit the courtroom out of view of the public. These reasons for these requests are set forth in the sealed Culver Declaration.

III. Conclusion

Based upon the foregoing, the government requests that the Court enter an order permitting the government to redact, and in many cases redact and substitute (or stipulate to) classified information contained within the government's proposed trial exhibits and any classified documents that the defense seeks to introduce into evidence; prohibiting the parties from introducing, eliciting, releasing, or otherwise publicly commenting upon or referencing at any public proceeding information that would tend to reveal any of the redacted information (unless by reference to the proposed substitutions or stipulations); and protecting from public disclosure the identities of certain trial witnesses.

Respectfully submitted this 9th day of August, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2011, I electronically filed a copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to the following:

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