IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-1608-REB

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

DOUG MAYES[1], in his official capacity
as Field Manager for the U.S. Bureau of Land
Management's Royal Gorge Field Office, and
BUREAU OF LAND MANAGEMENT,

Respondents.

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS (ECF 9)

INTRODUCTION

Petitioner Center for Biological Diversity ("Center") respectfully opposes the Motion to Dismiss brought by Federal Respondents Doug Mayes and Bureau of Land Management (hereinafter "BLM") (filed 9/6/2024). BLM moves to dismiss for lack of standing and for failure to state a claim. The first argument fails as the detailed standing allegations in the Center's Petition far exceed its burden at the pleading stage. The second argument fails as BLM misconstrues the Petition and offers no sufficient legal basis to dismiss the claims it sets forth. Because BLM's actions rested on legal error, the Administrative Procedure Act ("APA") requires their reversal by this Court. Accordingly, the Court should deny BLM's motion to dismiss.

[1] Automatically substituted pursuant to Fed. R. Civ. P. 25(d)

BACKGROUND

This case concerns the scope of BLM's authority over oil and gas development from "Fee/Fee/Fed" wells, which are wells that extract federally owned oil and gas deposits from surface facilities on neighboring private or state surface lands. The use of Fee/Fee/Fed wells has surged over the past decade due to advances in directional drilling technologies. *See* Petition for Review ¶ 3 (ECF 1) (hereinafter "Pet."). Whereas federal oil and gas leases were traditionally developed from the lease surface, developers can now use directional drilling to tap federal minerals from well pads sited on adjacent non-federal lands. *Id.* Most operators in Colorado today develop their federal mineral leases from Fee/Fee/Fed wells. *Id.*

The Mineral Leasing Act ("MLA") authorizes the Secretary of Interior, through BLM, to lease the right to extract oil and gas from federal mineral estate. 30 U.S.C. § 226(a). It provides that the Secretary "shall regulate all surface-disturbing activities conducted pursuant to any" federal oil and gas lease. *Id.* § 226(g). Under that mandate, BLM must approve an Application for Permit to Drill ("APD") before the leaseholder may conduct any "drilling operations" or "surface disturbance preliminary thereto." 43 C.F.R. § 3162.3-1(c). BLM may attach conditions to that drilling permit, such as to ensure that the leaseholder conducts its operations "in a manner that minimizes adverse impacts to the land, air, and water." Ex. A at 4[2]; *see also, e.g.*, 43 C.F.R. § 3162.5-1; *id.* § 3101.12.

[2] In reviewing a 12(b)(6) motion, a court may consider documents referenced in the complaint and "matters of which a court may take judicial notice." *Clinton v. Sec. Benefit Life Ins. Co.*, 63 F.4th 1264, 1275 (10th Cir. 2023) (citation omitted). Exhibit A is a copy of BLM's oil and gas lease form, referenced at Pet. ¶ 69-72, and Exhibit B is a copy of PIM 2018-014.

These conditions may require modifications to the project's siting, design, timing, and reclamation. 43 C.F.R. § 3101.12; Ex. A at 4.

However, BLM claims that these authorities do not extend to Fee/Fee/Fed wells. On June 12, 2018, BLM issued Permanent Instruction Memorandum 2018-014 ("PIM 2018-014"), entitled "Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations." PIM 2018-014 confirms that an APD is required for a Fee/Fee/Fed well. Ex. B at 8–9. Yet without any supporting legal analysis, the PIM asserts that BLM's jurisdiction over Fee/Fee/Fed surface facilities extends "solely to the extent of assuring production accountability for royalties from Federal and Indian oil and gas (including prevention of theft, loss, waste, and assuring proper measurement)." *Id*. at 3. It further asserts that BLM "does not have authority" to impose various mitigation, reclamation, or bonding requirements for Fee/Fee/Fed wells. *Id.* at 8–11, 15. As a result of this directive, a substantial fraction of federal minerals today are developed without routine federal safeguards for wildlife, air, water, and neighboring communities.

The legal positions staked out in PIM 2018-014 are wrong, and its consequences are damaging to people and the environment. Accordingly, the Center filed this lawsuit to challenge PIM 2018-014 and three APD decisions made in reliance on PIM 2018-014. The Petition asserts that BLM misconstrued the scope of its legal authority and duties as to Fee/Fee/Fed wells. Pet. ¶¶ 31–72. Because the challenged decisions are based on a legal error, they must be set aside as "arbitrary, capricious, . . . or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) (agency action "may not stand if the agency has misconceived the law").

LEGAL STANDARDS

I. Motion to Dismiss for Lack of Jurisdiction – Fed. R. Civ. P. 12(b)(1)

In evaluating a motion to dismiss for lack of standing under Rule 12(b)(1), the court "must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." *Waller v. City & Cty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019) (citation omitted). At the Rule 12(b)(1) stage, "general factual allegations of injury resulting from the defendant's conduct may suffice," and courts must "presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)).

II. Motion to Dismiss for Failure to State a Claim – Fed. R. Civ. P. 12(b)(6)

A motion to dismiss pursuant to Rule 12(b)(6) may not be granted if a complaint "state[s] a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In reviewing a 12(b)(6) motion, a court must "accept a complaint's well-pleaded allegations as true . . . and liberally construe the pleadings." *Lucas v. Turn Key Health Clinics, LLC*, 58 F.4th 1127, 1136 (10th Cir. 2023).

ARGUMENT

I. THE CENTER HAS STANDING.

BLM's challenge to the Center's standing fundamentally misunderstands the requirements at the pleadings stage. A basic premise in federal civil procedure is that a pleading should assert only a "short and plain statement" regarding the Court's jurisdiction. Fed. R. Civ. P. 8(a)(1). BLM protests that the Petition's allegations are too "general[]," BLM Br. at 9–11, but "general factual allegations of injury" suffice at this stage and the Court must "presume . . . [they] embrace those specific facts that are necessary to support the claim." *Lujan*, 504 U.S. at 561; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (pleading need not contain "detailed factual allegations"). The Center may later present specific facts by "affidavit[s] or other evidence" at summary judgement, *Lujan*, 504 U.S. at 561, but at the pleading stage, the "burden in establishing standing is lightened considerably." *Petrella v. Brownback*, 697 F.3d 1285, 1292 (10th Cir. 2012).

Beyond confusing the legal standard, BLM also downplays or outright ignores the ample detail throughout the Petition. For example, BLM complains that the Petition alleges injury in "some unidentified way." BLM Br. at 11. This ignores the Petition's numerous identified harms to members who live, work, and recreate near the challenged APDs and other areas PIM 2018-014 is implemented, including health and aesthetic impacts from ozone pollution, Pet. ¶¶ 4, 18, 27, 74–76; diminished ability to view birds and wildlife, Pet. ¶¶ 18, 21–24, 80; and decreased recreational enjoyment from scenic intrusions, noise, odors, light, dust, and truck traffic, Pet. ¶¶ 21–26, 80. Such aesthetic and environmental injuries are well-established bases for demonstrating injury in fact. *See Diné Citizens Against Ruining our Env't v. Bernhardt*, 923 F.3d 831, 841 (10th Cir. 2019) (holding risk of impacts to the "visual landscape, night sky, solitude and quiet, [and] public health and safety," as well as from "truck traffic, drilling rigs . . . , smells, dust, and more industrialization" to sufficiently establish injury from APDs).[3]

[3] BLM's attempt to distinguish *Diné Citizens* misrepresents that case. *See* BLM Br. at 12. The members there did not allege use of the public lands on which the APDs were sited but rather use of areas up to twenty miles away that, as here, would be harmed from the noise, light, dust, and traffic impacts from each APD. 923 F.3d at 843. That case remains good law and is binding here.

BLM's confusion about the type of detail required in a pleading continues into its argument about the "geographic nexus" requirement. Here, BLM concocts its own novel standard: that a pleading must precisely delineate the "scope of the area affected" by a decision—such as with an "anticipated range" of pollution—before alleging injury within it. BLM Br. at 10. BLM cites no case demanding such detail, much less in a *pleading*. A plaintiff need only allege a "geographical nexus to . . . land the BLM has exposed to an increased risk of environmental harm." *Diné Citizens*, 923 F.3d at 841–43 (finding member affidavits adequately established a geographic nexus *at the merits stage* where they simply alleged risk of visual, noise, traffic, and pollution intrusions in areas they used—without proof of impact distances). The Petition adequately alleges a geographic nexus by stating that members use "areas in proximity to" the APD decisions that "will be adversely affected" by these decisions. Pet. ¶¶ 23–24. It further specifies how they will be impacted. Pet. ¶¶ 24–27. BLM in effect asks the Court to *disbelieve* these allegations because it thinks more facts are needed to prove them. But at the pleading stage, the Court must accept all allegations in the Petition as true and presume they embrace any more specific facts that might become necessary to substantiate them. *Lujan*, 504 U.S. at 561. The Petition's allegations thus more than suffice.

Moreover, although BLM wrongly believes a pleading must contain detailed allegations in the form of "visual sight lines" and "relevant airsheds" (backing neither demand with legal authority), BLM Br. at 10, the Petition plainly states that oil and gas noise "can be heard for miles" and that oil and gas operations are "visible for great distances around each well pad." Pet. ¶ 25. The Petition also identifies the relevant airshed: the Denver metro/northern Front Range ozone nonattainment area, where the APDs are located and Center members live. Pet. ¶¶ 4, 73–76. This factor alone—contribution to members' health and aesthetic injuries from ozone pollution—is sufficient to establish standing. *See Utah Physicians for a Healthy Env't, Inc. v. Diesel Power Gear, LLC*, 21 F.4th 1229, 1246–49 (10th Cir. 2021) (holding that residents of a non-attainment area can trace injuries they suffer from polluted air to any "defendant that emits the injurious pollutant" in the non-attainment area).

The Petition also adequately alleges injuries traceable to PIM 2018-014. BLM seems to believe that the Center's standing to challenge the PIM hinges on its standing to challenge the APD decisions. BLM Br. at 12. That is wrong because the PIM has a far broader reach: it applies to every Fee/Fee/Fed well nationwide. The Petition alleges that the Center's members "live, work, and recreate on lands impacted or threatened by Fee/Fee/Fed well development." Pet. ¶ 16; *see also id.* ¶¶ 3–5, 16–19 (describing the intensifying prevalence of Fee/Fee/Fed wells in Colorado and other places where Center members are harmed by the PIM's effects). "As a result of PIM 2018-014, BLM has approved and will continue approving Fee/Fee/Fed wells in these areas without ordinary mitigation measures to avoid harm to viewsheds, air quality, water, wildlife, native vegetation, and other natural resources." *Id.* ¶ 17 (listing examples). This harms members by increasing their exposure to harmful air pollutants; depleting wildlife populations they enjoy viewing; and decreasing their scenic and recreational enjoyment in areas they recreate, among other harms. *Id.* ¶ 18. This geographic nexus to areas the PIM adversely affects establishes standing. *See Diné Citizens*, 923 F.3d at 840–42.

Finally, the Petition makes sufficient allegations regarding redressability. Redressability requires only that "*an* injury" would likely be "reduced to *some extent*." *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 902 (10th Cir. 2012) (emphases in original) (citations omitted). BLM speculates that drilling for private or state minerals could continue at these locations even in the absence of the federal APDs. BLM Br. at 12. However, even if true, vacatur of the federal approvals would still redress the harms attributable to the federal wellbores (less drilling disturbance, less temporal presence, less flaring, fewer emissions). *See Consumer Data Indus. Ass'n*, 678 F.3d at 902 (redressability satisfied if a favorable ruling would "alleviate the injury to some extent").

Vacatur of PIM 2018-014 would also redress the Center's injuries. Disabusing BLM of its misapprehension of authority would require BLM to subject future Fee/Fee/Fed APDs to stronger reclamation and bonding requirements and allow BLM to impose additional environmental mitigation measures to reduce harm to Petitioner's members. *See infra* 9–13; Pet. ¶¶ 17–19, 28 (describing measures BLM would likely impose upon a favorable ruling). Moreover, simply forcing BLM to properly consider its authority will redress the Center's injuries, even if it does not cause BLM to reach a different result. *See FEC v. Akins*, 524 U.S. 11, 25 (1998) (confirming that to establish redressability in a case asserting an agency "misinterpreted the law," a plaintiff need not establish that the agency will reach a different result on remand).

II. THE PETITION STATES VALID CLAIMS FOR RELIEF

The Petition asserts that PIM 2018-014 and the challenged APD decisions are based on a misinterpretation of BLM's authority and duties for Fee/Fee/Fed wells and are therefore "arbitrary, capricious, . . . or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A). *See* Pet. ¶¶ 108–19. An agency action based on an erroneous legal premise must be set aside under the APA. *See* 5 U.S.C. § 706(2)(A); *Chenery*, 318 U.S. at 94 (agency action "may not stand if the agency has misconceived the law"); *Sea-Land Serv., Inc. v. Dep't of Transp.*, 137 F.3d 640, 646 (D.C. Cir. 1998) ("An agency action, however permissible as an exercise of discretion, cannot be sustained where it is based not on the agency's own judgment but on an erroneous view of the law.") (cleaned up). The Petition here plausibly alleges that the challenged decisions were premised on legal errors, Pet. ¶¶ 33–72, 85–119, which include the following:

Authority to Regulate Surface Operations. PIM 2018-014 claims that BLM lacks authority to regulate the surface operations for Fee/Fee/Fed wells except to ensure "production accountability for royalties." Ex. B at 3. It thus claims that BLM lacks authority to require environmental mitigation measures for such operations. *Id.* at 11. This position contravenes the plain text of the MLA, which provides that BLM "<u>shall regulate all surface-disturbing activities conducted pursuant to any lease</u> issued under this chapter, and <u>shall determine reclamation and other actions as required in the interest of conservation of surface resources</u>." 30 U.S.C. § 226(g) (underscore added).

BLM does not dispute that § 226(g) conveys broad authority to regulate federal mineral development, including to avoid environmental harm. Rather, BLM seems to believe that this clause of § 226(g) applies only to operations on federal surface. That view contravenes the plain text. Section 226(g) applies to Fee/Fee/Fed surface operations because they are conducted "pursuant to" the federal lease. *See Pursuant To*, *Black's Law Dictionary* (11th ed. 2019) ("[a]s authorized by" or "[i]n carrying out"). Fee/Fee/Fed surface operations are "authorized by" the federal lease because an operator cannot develop federal minerals, even from private or state surface, absent the lease. Although a private contract with the surface owner is also required, the lease is still an indispensable authorization for Fee/Fee/Fed facilities to drill, handle, store, and process federal minerals. The surface operations also "carry[] out" the lease, as they constitute performance of the lessee's contractual lease obligations. *See* Ex. A at 4 (lessee must "exercise reasonable diligence in developing . . . leased resources").

Moreover, unlike other provisions in this same subsection, Congress did not limit this authority to the "lease area" or operations "on [the] lease." 30 U.S.C. § 226(g). An interpretation limiting this provision to activities on the federal lease would thus violate both the "meaningful-variation" and "absent provision" canons of construction. *See Allina Health Servs. v. Price*, 863 F.3d 937, 944 (D.C. Cir. 2017) ("[A] material variation in terms suggests a variation in meaning.") (citation omitted); *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (absent provisions should not be supplied by courts, especially where "Congress has shown that it knows how to adopt the omitted language").

BLM's disclaimer of authority over Fee/Fee/Fed surface operations also ignores its mandate under FLPMA to "<u>regulate</u> . . . <u>the</u> . . . <u>development</u> of the public lands." 43 U.S.C. § 1732(b) (underscore added). The term "public lands" includes any interest in land, such as mineral estate. *Id.* § 1702(e). By its plain terms, this provision thus broadly authorizes BLM to "regulate" surface operations for Fee/Fee/Fed wells because they "develop[]" federal minerals. *Id.* § 1732(b). FLPMA also requires BLM to "take any action necessary to prevent unnecessary or undue degradation of the lands." *Id*. The term "any action" admits of no exceptions and, at a minimum, would allow BLM to regulate Fee/Fee/Fed surface operations to mitigate their harm to offsite public lands.

BLM's position is also inconsistent with its own regulations and lease terms. 43 C.F.R. § 3101.1-2 permits BLM to subject any APD to "reasonable measures . . . to minimize adverse impacts to other resource values, land uses or users[.]" BLM asserts similar authority under its standard oil and gas lease. *See* Ex. A at 4 (BLM may require measures to "minimize[] adverse impacts to the land, air, and water."). Unlike neighboring provisions, these authorities are not limited to federal surface, which counsels against implying such a limitation. *Compare* 43 C.F.R. §§ 3163.1, 3162(g), 3162.6(a)–(b), 3104.10(a); Ex. A at 4 (expressly limiting other provisions to activity on federal surface or "the leased lands"); *see Allina Health*, 863 F.3d at 944; *Rotkiske*, 140 S. Ct. at 361. In short, BLM's authority to regulate the surface operations for Fee/Fee/Fed wells is not limited to "assuring production accountability for royalties."

Reclamation. PIM 2018-014 asserts that "[a]ctual reclamation of the surface is a matter to be settled by the surface owner" and prohibits BLM from imposing reclamation requirements on Fee/Fee/Fed wells. Ex. B at 15. This directly contravenes 43 C.F.R. § 3162.3-4, which provides that "the <u>surface of the lands disturbed in connection with the conduct of operations must be reclaimed</u> in accordance with a plan first approved or prescribed by [BLM]" (underscore added). *See also id.* § 3162.5-1(b); 30 U.S.C. § 226(g) (requiring bond sufficient to ensure "reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations"). These laws require BLM itself to approve a reclamation plan covering all disturbed lands, not simply federal surface.

Bonding. PIM 2018-014 claims that "bonds for Fee/Fee/Fed wells should be used to address downhole concerns only" and that "BLM does not have authority to require a bond to protect non-Federal surface owner interests." Ex. B at 9. This contravenes BLM's statutory duty to collect a bond sufficient to ensure "reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations." 30 U.S.C. § 226(g) (underscore added). It also contravenes BLM's own regulation confirming that, in determining the bond amount, BLM "may consider impacts of activities on . . . non-Federal lands required to develop the lease that impact lands, waters, and other resources off the lease." 43 C.F.R § 3171.9(a)(3) (underscore added). Thus, PIM 2018-014 was also wrong about BLM's bonding authority.

Application Requirements. PIM 2018-014 states that a Surface Use Plan of Operations need not be filed with the APD for a Fee/Fee/Fed well. Ex. B at 8–9. This contravenes 43 C.F.R. § 3162.3-1(d)(2), which requires a Surface Use Plan of Operations with every APD. The PIM further claims that "BLM has no jurisdiction to require an APD before an operator may begin pad and road construction or drilling on the non-Federal land." Ex. B at 9. This is in direct conflict with 43 C.F.R. § 3162.3-1(c), which provides that "[n]o drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the permit."

BLM's brief fails to grapple with these authorities. Instead, BLM attacks a straw man by misconstruing the Center's claims as asserting that BLM must "regulate non-federal lands in the same manner BLM regulates federal lands." BLM Br. at 13–14. That is doubly wrong. First, the Petition asserts only that BLM may regulate an operator's conduct in developing federal minerals—which is federal property—regardless of where it occurs. Regulating such conduct does not regulate non-federal land. To understand why, consider that if the surface owner disagreed with BLM rules for Fee/Fee/Fed wells, it could simply prohibit them from being drilled from its land. The surface owner itself would also remain free to engage in the conduct BLM prohibited of the Fee/Fee/Fed operator, so long as it does not extract federal minerals. Neither does the Petition ask the Court to find that BLM must regulate Fee/Fee/Fed wells "in the same way" as other wells. *Id.* Rather, it asserts that the applicable statutes *permit* BLM to impose mitigation, bonding, and reclamation requirements on Fee/Fee/Fed wells and that BLM's assertion to the contrary was a legal error. *See* Pet. ¶¶ 111, 118. That legal error requires reversal even if BLM has discretion to regulate Fee/Fee/Fed wells in a different fashion than other federal wells. *See Sea-Land Serv., Inc.*, 137 F.3d at 646 ("An agency action, however permissible as an exercise of discretion, cannot be sustained where it is based not on the agency's own judgment but on an erroneous view of the law.").

BLM also confuses the Court's statutory interpretation task. In determining whether BLM misinterpreted the relevant laws, the Court must decide the best interpretation, based on the plain text, context, and traditional interpretive tools. *See*

Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2261–62 (2024). BLM suggests that the Court must also find "clear and manifest" evidence that Congress intended to delegate BLM authority over Fee/Fee/Fed wells, citing *Utah Native Plant Soc'y v. U.S. Forest Serv.*, 923 F.3d 860 (10th Cir. 2019). That is wrong.

The "clear and manifest" language from *Utah Native Plant Society* refers to the presumption against preemption—a special canon of construction for assessing whether a state law in an area traditionally reserved to the states has been preempted. *See id.* at 868.[4] It has no place here. First, this is not a preemption dispute. A case like this which simply addresses the scope of federal agency power to act in an area of pre-existing state regulation does not trigger the presumption. *See New York v. FERC*, 535 U.S. 1 (2002). Second, the presumption is inapplicable to areas with a "significant federal presence." *United States v. Locke*, 529 U.S. 89, 108 (2000). Congress has pervasively regulated federal mineral development for over a century under laws such as the MLA—including on state and private land. *See* 72 Fed. Reg. 10,308 (Mar. 7, 2007) (BLM regulates split-estate wells in "essentially the same manner" as wells on federal surface); Pet. ¶ 84, Figure 1 (illustrating that both Fee/Fee/Fed and split-estate wells extract federal minerals from state or private surface). BLM regulation of Fee/Fee/Fed wells would be no more intrusive on state authority. For both reasons, this canon is inapplicable.

[4] *Utah Native Plant Society* triggered the presumption because it asked whether the U.S. Forest Service could prohibit Utah from releasing goats onto state land—i.e., preempt Utah in the wildlife management field traditionally left to states. 923 F.3d at 867–69. In contrast here, the question is not whether BLM can regulate Fee/Fee/Fed wells in ways that preempt state law, but whether it can regulate them at all. Merely allowing BLM to regulate Fee/Fee/Fed wells would not preempt any state regulations. Rather, just as for every other BLM-approved well, federal rules would complement those of the state.

As for the Center's actual claim, BLM has no real argument. Its brief does not cite the relevant statutes and regulations, much less offer any construction of them that forecloses the Center's claims. In fact, BLM appears to *concede* error in acknowledging that its authority over Fee/Fee/Fed wells extends beyond production accountability. *See* BLM Br. at 14 (agreeing that BLM has authority to "regulate impacts arising from conduct on non-federal lands that may be injurious to federal lands"). In short, BLM has not met its burden to dismiss this case at the outset.

CONCLUSION

For these reasons, the Court should deny BLM's Motion to Dismiss (ECF 9) or, if the Court determines that the Center has not sufficiently pled standing or stated a cause of action, should grant the Center leave to amend its Petition.

Respectfully submitted this 27th day of September 2024.

/s/ Sarah Stellberg
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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2024, a copy of this filing, with attachments, was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Sarah Stellberg
Sarah Stellberg