IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

WISSAM ABDULLATEFF SA'EED AL-QURAISHI, et al.,	)	
Plaintiffs,	)	**Civil Action No. 8:08-cv-01696-PJM**
v.	)	
ADEL NAKHLA, et al.,	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT ADEL NAKHLA'S MOTION TO DISMISS

Defendant Adel Nakhla, an Arab-American resident of Maryland hired as a civilian interpreter to assist United States forces in Iraq, submits this memorandum of points and authorities in support of his motion to dismiss the Second Amended Complaint (the "Complaint" or "SAC"). This lawsuit marks the second time that the same lawyers have attempted to sue Mr. Nakhla for alleged abuses in Iraq. Their claims against him were dismissed on jurisdictional grounds two years ago by Judge Robertson of the United States District Court for the District of Columbia.

The present lawsuit should be dismissed in its entirety as well for the reasons set forth in the motion and memorandum in support filed by Defendant L-3 Services, Inc. ("L-3 Services"), which Mr. Nakhla joins and incorporates by reference. Mr. Nakhla also seeks dismissal on the additional grounds discussed below.

First, while the Complaint asserts claims against Mr. Nakhla on behalf of 72 plaintiffs, it is devoid of any allegation that Mr. Nakhla mistreated, harmed, or even came

into contact with 71 of them. Indeed, it fails to describe a single act Mr. Nakhla committed against any of these individuals, much less one that subjects him to liability. And for good reason. No less than 52 of the plaintiffs base their claims on alleged mistreatment that, according to the face of the Complaint, took place *after* Mr. Nakhla left Iraq and that, accordingly, could not possibly have been committed by him. Having failed to perform the most basic function of an initial pleading – that is, to describe what Mr. Nakhla allegedly did (or even could have possibly done) to these 71 plaintiffs – the claims that these 71 plaintiffs purport to assert against Mr. Nakhla must be dismissed.[1]

Second, in an attempt to overcome this basic flaw – while at the same time seeking to hold Mr. Nakhla vicariously liable for the conduct of others, including for a period of time of nearly four years when Mr. Nakhla was not in Iraq and at military facilities he is not alleged ever to have visited – the Complaint alleges that Mr. Nakhla was a member of a wide-ranging, and far-fetched, conspiracy to abuse prisoners at Abu Ghraib and at least 25 other military facilities in Iraq over nearly five years from July 2003 through May 2008. But it does so in purely conclusory fashion, alleging no facts to support the bald allegation that there was an actual *agreement* among Mr. Nakhla and his alleged co-conspirators. As the United States Supreme Court recently held, this is insufficient under Rule 12(b)(6). If a plaintiff seeks to plead and reap the benefits of conspiracy, he must plead facts establishing a basis for the claim, including most importantly facts that suggest there was a conspiratorial agreement. Because all 72 plaintiffs have failed to do so here, all conspiracy counts must be dismissed.

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[1] The Complaint contains allegations that Mr. Nakhla mistreated *one* plaintiff and unnamed individuals. These allegations are false and will be vigorously contested at the appropriate stage in the pleadings, should that be necessary. Nevertheless, Mr. Nakhla accepts as true the allegations of the Complaint for the purposes of his motion to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6) only.

FACTUAL BACKGROUND

Born in Egypt in 1955, Mr. Nakhla emigrated to the United States in 1979, when he was 24-years old, joining his sister and her family. Six years later, in 1985, he became a naturalized citizen, and four years after that, in 1989, his wife joined him in the United States. Prior to accepting a position in 2003 as a civilian translator for Titan Corporation – a corporate predecessor of L-3 – he worked in computers and sales. Mr. Nakhla presently lives in Maryland, where he works as a bathroom design consultant. Mr. Nakhla has never been in the military.[2]

In the Spring of 2003, Mr. Nakhla learned that Titan Corporation was hiring translators to assist the United States military in its war on terrorism, and he applied for a position. Fluent in Arabic from his upbringing in Egypt, he was offered and accepted the position of Arabic linguist. He then was assigned to Iraq, where, under the exclusive direction and control of the United States military, he translated military interrogations. *See* SAC ¶ 6 (alleging that Mr. Nakhla was employed as a translator in Iraq from June 2003 to May 2004).

In June of 2004, a putative class action was filed in the United States District Court for the Southern District of California – by the same counsel who represent plaintiffs here – alleging that Titan Corporation, CACI, the United States, Mr. Nakhla and other individuals had conspired to torture detainees held by the United States at Abu Ghraib and elsewhere in Iraq. The case initially was transferred to the Eastern District of Virginia, *see Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152 (S.D. Cal. 2005), and then to the District of Columbia, where it was consolidated with a related, earlier-filed action

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[2] This information is provided as background only. Much of it is set forth in the declaration of Adel L. Nakhla submitted with Defendant L-3 Services, Inc.'s Motion to Transfer Venue [Dkt. No. 36].

pending in that district. Judge Robertson dismissed all of the claims that had been asserted against Mr. Nakhla on jurisdictional grounds, dismissed all of the federal claims against Titan and CACI, and then granted summary judgment to Titan on the remaining claims then-pending against it. *See Ibrahim v. Titan Corp.*, 391 F. Supp. 2d 10 (D.D.C. 2005); *Saleh v. Titan Corp.*, 436 F. Supp. 2d 55 (D.D.C. 2006); *Ibrahim v. Titan Corp.*, 556 F. Supp. 2d 1 (D.D.C. 2007).

Approximately two years later, on June 30, 2008, this action was filed on behalf of one plaintiff, Wissam Abdullateef Sa'eed Al-Quraishi, against L-3, two CACI entities, and Mr. Nakhla. The original complaint asserted that Mr. Al-Quraishi had been mistreated while detained at Abu Ghraib and elsewhere, beginning on November 12, 2003. The complaint purported to state a variety of claims on behalf of Mr. Al-Quraishi, including common law tort claims and civil conspiracy.

On September 5, 2008, the First Amended Complaint was filed, purporting to add 71 plaintiffs to this case. On November 12, 2008, the Court granted plaintiffs' motion to file the Second Amended Complaint – which plaintiffs sought to file, in part, to add more detailed allegations of fact. *See* Plaintiffs' Memorandum of Law in Support of Their Motion for Leave to Amend [Dkt. No. 45], at 1. Like the First Amended Complaint, the 20-count, 560-paragraph Second Amended Complaint purports to state, on behalf of 72 individually named plaintiffs, the same claims against L-3 and Mr. Nakhla that Mr. Al-Quraishi asserted in the original complaint.[3] Plaintiffs collectively allege abuses at

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[3] As noted in the Memorandum of Points and Authorities in Support of Defendant L-3 Services, Inc.'s Motion to Transfer Venue [Dkt. No. 36], at 5-6, on August 11, 2008, prior to the filing of the First Amended Complaint, Mr. Al-Quraishi voluntarily dismissed the CACI defendants from this case. While many of the previous references to the CACI entities have been removed, the Second Amended Complaint continues to allege that CACI employees were co-conspirators and joint tortfeasors.

approximately 26 U.S. military detention facilities throughout Iraq during a period spanning nearly five years.[4] Remarkably, however, the Second Amended Complaint does not identify a single act of abuse by Mr. Nakhla against any of the 71 new plaintiffs. Even more remarkable, it positively asserts that Mr. Nakhla was no longer working as a translator in Iraq at the time when 52 of the plaintiffs were detained and abused. Regarding the alleged conspiracy, the Second Amended Complaint rests on a bald assertion, unsupported by any factual allegations, that "[d]efendants agreed with each other and others to participate in a series of unlawful acts." SAC ¶¶ 473, 487, 502, 517, 532, 545.

ARGUMENT

In considering a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court must consider all well-pled allegations in a complaint as true, construing the factual allegations in the light most favorable to the plaintiff. *See Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 783 (4th Cir. 1999). The court, however, need not accept conclusory factual allegations devoid of any reference to actual events, unsupported legal allegations, or legal conclusions couched as factual allegations. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Revene v. Charles County Comm'rs*, 882 F.2d 870, 873 (4th Cir. 1989); *United Black Firefighters v. Hirst*, 604 F.2d 844, 847 (4th Cir. 1979).

As the Supreme Court recently has explained, a "plaintiff's obligation to provide 'grounds' for his 'entitle[ment]' to relief requires more than labels and conclusions, and formulistic recitation of the elements of a cause of action will not do." *Bell Atlantic*

[4] The earliest alleged capture is July 13, 2003, *see* SAC ¶ 319, and the last alleged release is May 27, 2008, *see* SAC ¶ 88.

Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1964-65 (2007). Accordingly, to survive a Rule 12(b)(6) motion, a complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level" and have "enough facts to state a claim to relief that is plausible on its face." *Id.* at 1965, 1974. "To put it another way, a court should not be required to use a divining rod to ascertain the necessary facts to state a cause of action." *Qwest Commc'ns Corp. v. Md.-Nat'l Capital Park & Planning Comm'n,* 553 F. Supp. 2d 572, 574 (D. Md. 2008).

A. The Complaint Fails To State a Claim Against Mr. Nakhla by 71 of the 72 Individually Named Plaintiffs.

Consistent with the general principles set forth above, it is a "basic pleading requirement that [each] plaintiff set forth facts sufficient to allege each element of his claim." *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002). It is no less fundamental that individual plaintiffs cannot evade this requirement by positing allegations against multiple defendants collectively. To the contrary, a complaint must allege facts that show "how a particular plaintiff was [harmed] by a particular defendant." *Major v. Plumbers Local Union No. 5*, 370 F. Supp. 2d 118, 129 (D.D.C. 2005) (dismissing discrimination allegation against "Defendant Union and all of the Defendant contractors" for failing to allege "how a particular plaintiff was discriminated against by a particular defendant"); *see also Miller v. Pac. Shore Funding*, 224 F. Supp. 2d 977, 996 (D. Md. 2002) ("In a multi-defendant action . . . the named plaintiffs must establish that they have been harmed by each of the defendants."); *Dash v. Firstplus Home Loan Trust*, 248 F. Supp. 2d 489, 504 (M.D.N.C. 2003) (same); *Herlihy v. Ply-Gem Indus., Inc.*, 752 F. Supp. 1282, 1291 (D. Md. 1990) (dismissing complaint because "each plaintiff has not and cannot allege an injury arising from the conduct of each and every defendant").

The claims against Mr. Nakhla asserted by 71 of the 72 named plaintiffs fail to meet this basic pleading standard. While the Complaint specifically alleges conduct by Mr. Nakhla against Mr. Al-Quraishi, it does not allege *any* conduct by Mr. Nakhla in relation to the other 71 named plaintiffs. Thus, by definition, it does not satisfy the "requirement that [each] plaintiff set forth facts sufficient to allege each element of his claim." *Dickson*, 309 F.3d at 213. None of the 71 new plaintiffs identify any specific acts by Mr. Nakhla. And none identify Mr. Nakhla as his assailant. *See* Appendix A (listing these 71 plaintiffs and identifying pertinent paragraphs from the Complaint).

To the contrary, 68 of the plaintiffs attribute their alleged mistreatment to no one in particular, resting instead on the blanket assertion that they were "tortured and otherwise mistreated by L-3 and its co-conspirators." *See* SAC ¶¶ 47-412. Two plaintiffs allege that they were mistreated by, or in the presence of, an unnamed "L-3 translator."[5] And the one remaining plaintiff alleges he was mistreated by an unnamed "interrogator."[6] Mr. Nakhla is identified nowhere in the claims of these 71 plaintiffs.

With respect to 52 of these plaintiffs, one of the reasons for the absence of any direct factual allegation against Mr. Nakhla is patently clear from the face of the Complaint. While it asserts that Mr. Nakhla was employed as a translator in Iraq from June 2003 to May 2004 only, *see* SAC ¶ 6, the Complaint alleges that 52 of the plaintiffs were not detained and mistreated until *after* May 2004. In other words, although the Complaint purports to assert tort claims against Mr. Nakhla on behalf of all 72 plaintiffs,

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[5] *See* SAC ¶¶ 24, 26 (allegations by Plaintiff Emad Khudayir Shahuth Al-Janabi that he was mistreated by an unnamed interrogator, speaking through an unnamed "L-3 translator"), ¶¶ 38, 45 (allegations by Plaintiff Sa'Adoon Ali Hameed Al-Ogaidi that he was mistreated by an unnamed "L-3 translator").

[6] *See* SAC ¶ 329 (allegations by Plaintiff Sabah Daham Rasheed Al-Dulaimi that he was mistreated by an unnamed "interrogator").

it expressly alleges that 52 of them were not even detained, let alone abused, until *after* Mr. Nakhla left Iraq. *See* Appendix B (listing these 52 plaintiffs and identifying pertinent paragraphs of the Complaint chronologically according to the alleged dates of their first detention by the U.S. military).

Because the 71 plaintiffs identified in paragraphs 21 through 412 fail to allege that Mr. Nakhla did anything to them, all claims that they attempt to assert against Mr. Nakhla must be dismissed.

B. The Complaint Fails To State a Claim for Civil Conspiracy.

In an apparent effort to evade the fundamental pleading requirement that each plaintiff set forth facts showing how he was harmed by Mr. Nakhla in particular, the Complaint attempts, in the alternative, to assert six causes of action for civil conspiracy.[7] These counts are premised on nothing more than cursory allegations that Mr. Nakhla "conspired with others," SAC ¶ 421, and that he "agreed to . . . work in concert with the co-conspirators," *id.* ¶ 446. Nevertheless, through these counts, plaintiffs seek to hold him vicariously liable for the conduct of other individuals, who are unnamed, but who are alleged to have abused plaintiffs as Mr. Nakhla's co-conspirators. Under established pleading standards, however, the Complaint fails to plead sufficient facts to state a claim for civil conspiracy.

An agreement among the alleged conspirators is an essential element of a civil conspiracy claim in those jurisdictions that recognize such a cause of action.[8] *See, e.g.*,

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[7] *See* SAC, Counts 2 (Civil Conspiracy to Torture), 5 (Civil Conspiracy to Treat Plaintiff in a Cruel, Inhuman or Degrading Manner), 8 (Civil Conspiracy to Commit War Crimes), 11 (Civil Conspiracy to Assault and Batter), 14 (Civil Conspiracy to Sexually Assault and Batter), and 17 (Civil Conspiracy to Inflict Emotional Distress).

[8] As set forth fully in L-3 Services' memorandum in support of its motion to dismiss, which is incorporated here by reference, conspiracy liability is not recognized under Iraq law.

Jennings v. Emry, 910 F.2d 1434, 1441 (7th Cir. 1990) (recognizing that "the hallmark of [a] conspiracy is [an] agreement"); *Hill v. Brush Engineered Materials, Inc.*, 383 F. Supp. 2d 814, 821 (D. Md. 2005) ("A clear agreement to conspire is necessary because the '[i]ndependent acts of two wrongdoers do not make a conspiracy.'") (quoting *Murdaugh Volkswagen, Inc. v. First Nat'l Bank of S.C.*, 639 F.2d 1073, 1076 (4th Cir. 1981)); *Marrs v. Marriott Corp.*, 830 F. Supp. 274, 283 (D. Md. 1992) ("To state a claim for civil conspiracy, [plaintiff] must present evidence of an agreement or combination of two or more actors."); *Electronics Store, Inc. v. Cellco P'ship*, 732 A.2d 980, 993 (Md. Ct. Spec. App. 1999) ("There can be no conspiracy where there is no agreement.").[9]

To state a claim for civil conspiracy, however, a complaint must do more than simply invoke the term "agreement." It must set forth supporting facts. Just last year, the Supreme Court held as much in *Twombly*. There, the Court addressed a conspiracy claim brought under section 1 of the Sherman Act and made clear that to state such a claim, a complaint must contain "enough factual matter (taken as true) to suggest that an agreement was made." 127 S. Ct. at 1965. The Court explained that "an allegation of parallel conduct and a bare assertion of conspiracy will not suffice. Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality." *Id.* at 1966. The Court concluded that the conspiracy claim had been properly dismissed because the

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[9] Generally speaking – with subtle permutations among the jurisdictions that recognize the claim – in order to recover on a civil conspiracy theory, a plaintiff must establish (1) an agreement between two or more persons, (2) either to do something unlawful or accomplish something legitimate with unlawful means, and (3) an act in furtherance of the agreement that results in harm to the plaintiff. *See, e.g.*, *Mackey v. Compass Marketing, Inc.*, 892 A.2d 479, 485 (Md. 2007) ("A civil conspiracy has been defined in Maryland as a combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal, with the further requirement that the act or the means employed must result in damages to the plaintiff.") (internal quotation marks omitted).

defendants' alleged conduct was not "placed in a context that raises a suggestion of a preceding agreement" and "could just as well be independent action." *Id.*

This holding is not limited to antitrust cases. In *Ruttenberg v. Jones*, No. 07-1037, 2008 WL 2436157, at *8 (4th Cir. June 17, 2008), the Fourth Circuit applied *Twombly* to affirm the district court's dismissal of plaintiffs' civil conspiracy claim under 42 U.S.C. § 1983. The complaint at issue made "the bare, conclusory allegation that the defendants conspired to violate [plaintiffs'] constitutional rights and that the conspiracy culminated in the [violation]. No common purpose [was] alleged and nothing beyond conclusory allegations of conspiracy [was] made." *Id.* According to the court, the complaint did not contain "'a plausible suggestion of conspiracy,'" *id.* (quoting *Twombly*, 127 S. Ct. at 1971), because the plaintiffs had failed to "plead facts that would 'reasonably lead to the inference that [defendants] positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan,'" *id.* (quoting *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996)); *see also, e.g.*, *Bass v. E.I. Dupont Nemours & Co.*, 324 F.3d 761, 765-66 (4th Cir. 2003) (affirming dismissal of conspiracy claims where plaintiff merely alleged that defendants had "conspired together" without facts "giv[ing] rise to a reasonable inference of conspiracy"); *Beydoun v. Clark Constr. Int'l, LLC*, No. 02-2154, 2003 WL 21729966, at *8 (4th Cir. July 25, 2003) (affirming dismissal of conspiracy claim because "[m]ere conclusions that fail to offer direct or circumstantial evidence of an unlawful agreement between the alleged conspirators are insufficient.") (internal quotation marks omitted) *Morse v. Lewis*, 54 F.2d 1027, 1030 (4th Cir. 1932) ("A conspiracy should be alleged with such particularity as to show an unlawful agreement between the parties charged."); *Rodriguez v. Editor in Chief*, No. 07-

5234, 2008 WL 2661993, at *2 (D.C. Cir. July 2, 2008) (affirming dismissal of conspiracy claims because plaintiff's "allegations include no facts suggesting unity of purpose or a meeting of the minds among the defendants, a necessary element of a conspiracy") (internal quotation marks omitted); *Bay Tobacco, LLC v. Bell Quality Tobacco Prods., LLC*, 261 F. Supp. 2d at 499 (E.D. Va. 2003) ("[I]n order to survive a motion to dismiss, Plaintiff must at least plead the requisite concert of action and unity of purpose in more than mere conclusory language.") (internal quotation marks omitted).

Here, the Complaint attempts to state six conspiracy counts in the very fashion that the Supreme Court explicitly rejected in *Twombly*. Plaintiffs allege no facts to support the conclusory assertion, repeated in each count, that "[d]efendants agreed with each other and others to participate in a series of unlawful acts." SAC ¶¶ 473, 487, 502, 517, 532, 545. Resting on this boilerplate assertion alone, the Complaint alleges no facts to suggest that the alleged co-conspirators ever even met, much less any facts to suggest that they discussed the subject of the alleged conspiracy or that they reached agreement on a common object. It alleges no facts to suggest when an agreement was reached, where one was reached, how one was reached, or offer any other allegations regarding the formation of an agreement. And other than the general assertion that the object of the conspiracy was "to participate in a series of unlawful acts," the Complaint offers no description of what Mr. Nakhla and others agreed to do or how they agreed to do it. *See, e.g.*, *Ryan v. Mary Immaculate Queen Center*, 188 F.3d 857, 860 (7th Cir. 1999) (affirming dismissal of conspiracy claim asserted without any description of the "form[ation] and scope" of an agreement).

Indeed, the membership of the alleged conspiracy is suggested in the most conclusory fashion possible: every (unnamed) person (military and civilian) who allegedly mistreated detainees over a five-year period in 26 military detention facilities across Iraq allegedly did so in furtherance of a common agreement; however, not a single fact is alleged to support this wholly unsupported assertion. This is precisely what *Twombly* rejected. *See* 127 S. Ct. at 1964-66. To state a conspiracy claim, *facts* must be alleged to suggest an agreement was made. Yet no such facts – none – are alleged here.

The Complaint's repeated use of the term "conspiracy" and its bare assertions that Mr. Nakhla "conspired" with others are insufficient to overcome this shortcoming. *See Bass*, 324 F.3d at 766 (bare allegation that defendants had "conspired together" insufficient to state a claim); *Buetow v. A.L.S. Enters., Inc.*, 564 F. Supp. 2d 1038, 1041 (D. Minn. 2008) (dismissing conspiracy claim and stating that "a plaintiff cannot simply incant the magic words 'conspiracy' or 'agreement' in order to adequately plead a conspiracy claim"); *Parker v. Learn Skills Corp.*, 530 F. Supp. 2d 661, 675-76 (D. De. 2008) ("[S]imply pleading a 'general allegation of conspiracy' or that defendants engaged in concerted action . . . are insufficient to survive a motion to dismiss."); *Whittle v. Proctor & Gamble*, No. 06-744, 2007 WL 4224360, at *10 (S.D. Ohio Nov. 27, 2007) (dismissing civil conspiracy claim and stating that "merely identifying an underlying unlawful act and employing the term 'conspiracy' fails to comply with even the most basic requirements of Rule 8(a)(2)."). What is required are allegations of fact, not labels. The Complaint's repeated use of the terms "conspiracy" and "agreement," in the absence of any supporting factual allegations, does not negate the reasonable inference that the

challenged conduct, even if taken as true, was merely "independent action." *Twombly*, 127 S. Ct. at 1965.

Plaintiffs have pled no facts in support of their assertion of conspiratorial agreement and thus no facts that suggest they have a basis for such a claim. Accordingly, they have failed to state a claim for civil conspiracy, and all of the Complaint's civil conspiracy counts – Counts 2, 5, 8, 11, 14 and 17 – must be dismissed in their entirety.

CONCLUSION

For the foregoing reasons, and for those set forth in the memorandum filed this date by Defendant L-3 Services, Inc., Mr. Nakhla respectfully requests that the Court grant his motion to dismiss.

Dated: November 26, 2008

Respectfully submitted,

/s/ Eric R. Delinsky

Eric R. Delinsky (Bar No. 17466)
edelinsky@zuckerman.com
R. Miles Clark (Bar No. 17465)
mclark@zuckerman.com
ZUCKERMAN SPAEDER LLP
1800 M Street, N.W.
Washington, D.C. 20036
(202) 778-1800 (phone)
(202) 822-8106 (facsimile)

Attorneys for Defendant Adel Nakhla

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November 2008, I filed the foregoing with the Clerk of Court via the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system, in accordance with Fed. R. Civ. P. 5(a) and Local Rule 101(1)(c).

/s/ Miles Clark
Miles Clark