

THE HONORABLE JAMES L. ROBART

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

Gustavo VARGAS RAMIREZ,  
Plaintiff,

v.

UNITED STATES OF AMERICA,  
Defendant.

) Case No. 13-cv-02325-JLR  
) **PLAINTIFF’S REPLY IN SUPPORT OF**  
) **HIS MOTION FOR PARTIAL**  
) **SUMMARY JUDGMENT**  
) **UNDER RULE 56**  
) **NOTE ON MOTION CALENDAR:**  
) **February 6, 2015**  
) **Oral Argument Requested**

1 Plaintiff Gustavo Vargas Ramirez (“Mr. Vargas”) filed a motion for partial summary  
 2 judgment on January 15, 2015 on his claims of false arrest, false imprisonment, and abuse of  
 3 process against Defendant United States. *See* Dkt. 35. Defendant has filed a motion for summary  
 4 judgment on all of Mr. Vargas’s claims. *See* Dkt. 37. As both motions raise similar arguments,  
 5 Mr. Vargas herein incorporates the arguments he made in opposition to Defendant’s Motion. *See*  
 6 Dkt. 39. Below, he addresses the arguments specifically raised by Defendant in opposition to his  
 7 motion for summary judgment. *See* Dkt. 38.

## 9 I. ARGUMENT

### 10 A. **USBP’s request that Mr. Vargas be seized for further investigation was an arrest 11 requiring probable cause.**

12 Defendant does not contest that Mr. Vargas’s initial seizure was an arrest. *See* Dkt. 39 at  
 13 2. Nor does Defendant contest that United States Border Patrol (“USBP”) lacked probable cause  
 14 at the moment USBP Agent Hafstad made the determination to seize Mr. Vargas. *Id.* at 3.<sup>1</sup> But  
 15 Defendant asserts that, because Anacortes Police Department (“APD”) Officer Leetz was the  
 16 person who physically seized Mr. Vargas, Defendant cannot be held liable for the arrest since  
 17 Agent Hafstad was careful to use the word “detain” when asking Officer Leetz to seize Mr.  
 18 Vargas. *See* Dkt. 38 at 1-2. Defendant’s attempt to skirt liability simply because its agent  
 19 conscripted a local law enforcement officer to make the unlawful arrest fails for various reasons.  
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#### 22 i. USBP instigated and procured Mr. Vargas’s arrest.

23 But for Agent Hafstad’s instructions, Officer Leetz would have released Mr. Vargas after  
 24 issuing him a traffic citation. Ex. 1 at 9:9-15, 10:12-14.<sup>2</sup> The officer only seized Mr. Vargas  
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26 <sup>1</sup> The totality of the circumstances demonstrates that, at that point, Agent Hafstad even lacked reasonable  
 27 suspicion to briefly detain Mr. Vargas. *See* Dkt. 39 at II.A.ii.

28 <sup>2</sup> Unless otherwise indicated, all references to exhibits are to those accompanying the Declaration of Glenda  
 M. Aldana Madrid In Support of Plaintiff’s Motion for Partial Summary Judgment. *See* Dkt. 36.

1 because Agent Hafstad asked that he do so on USBP’s behalf. *See* Dkt. 39 at 2. As USBP  
2 instigated Mr. Vargas’s seizure, its actions rendered Defendant liable for false arrest and false  
3 imprisonment under Washington tort law. *See id.* at II.A.i.

4  
5 That unlawful seizure, moreover, was distinguished by features characteristic of an arrest,  
6 not a temporary investigative detention. *See id.*; Dkt. 35 at IV.A.i; Dkt 19 at III.b. None of the  
7 methods Officer Leetz used in seizing Mr. Vargas for USBP—handcuffing him, transporting him  
8 in his patrol car, locking him up in a holding cell until Agent Orr showed up to further question  
9 him—deviated from the standard operating procedures for transferring and holding an individual  
10 in custody. *See* Dkt. 39 at 3. These methods were not foreign to USBP agents either, as Agent  
11 Orr, for example, testified that handcuffing an individual when transferring him or her from one  
12 place to another while in custody was “standard practice” “for officer safety.” Ex. 4 at 32:17-25.  
13 Agent Hafstad, then, should have known that when he directed Officer Leetz to seize Mr. Vargas  
14 and take him to the APD station, that Officer Leetz would handcuff Mr. Vargas, transport him in  
15 his patrol car, and place him a holding cell—all of which are indicators of an arrest, not a brief  
16 detention. Agent Hafstad should also have known that the period Mr. Vargas would be detained  
17 for would be significant, as it required Mr. Vargas’s transfer to APD as well as Agent Orr to  
18 travel from Bellingham to Anacortes. *See* Ex. 1 at USAO288. Accordingly, Defendant’s attempt  
19 to avoid liability by pointing to the fact that USBP did not explicitly instruct the manner in which  
20 Officer Leetz should take Mr. Vargas into custody should be rejected. *See* Dkt. 38 at 2-3. Mr.  
21 Vargas is denouncing the fact that he was arrested without probable cause, not challenging the  
22 manner in which a law enforcement officer executed an arrest warrant. USBP procured his arrest  
23 and Washington law makes Defendant liable for it.  
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1 Mr. Vargas's involuntary transfer from the scene of the traffic stop to APD is particularly  
 2 indicative of an arrest, for the Supreme Court has repeatedly held that "[s]uch involuntary  
 3 transport to a police station for questioning is 'sufficiently like arrest to invoke the traditional  
 4 rule that arrests may constitutionally be made only on probable cause.'" *Kaupp v. Texas*, 538  
 5 U.S. 626, 630 (2003) (citing *Hayes v. Florida*, 470 U.S. 811, 816 (1985)). Indeed, the Court in  
 6 *Hayes* declared unequivocally that

8 There is no doubt that at some point in the investigative process, police  
 9 procedures can qualitatively and quantitatively be so intrusive with respect to a  
 10 suspect's freedom of movement and privacy interests as to trigger the full  
 11 protection of the Fourth and Fourteenth Amendments. And our view continues to  
 12 be that the line is crossed when the police, without probable cause or a warrant,  
 13 forcibly remove a person from his home or other place in which he is entitled to  
 14 be and transport him to the police station, where he is detained, although briefly,  
 15 for investigative purposes.

16 *Hayes*, 470 U.S. at 815-16 (citations omitted). It is undisputed that Agent Hafstad, *not* Officer  
 17 Leetz, directed the officer to meet USBP at APD. *See* Dkt. 37 at 14; Dkt. 35 at 11. In so doing,  
 18 Agent Hafstad *knew* he was dictating Mr. Vargas's physical transfer from the site of the traffic  
 19 stop to the police station. He necessarily knew that Mr. Vargas would be taken to the city jail.  
 20 And he knew he would be held there for a considerable period of time, for Agent Orr was not  
 21 patrolling in Anacortes and had to drive quite a distance to get there.<sup>3</sup> Thus, even if this Court  
 22 disregarded the other factors that characterized Mr. Vargas's seizure, the very fact that USBP  
 23 directed Mr. Vargas's transfer to the APD is sufficient to make USBP responsible for the arrest.<sup>4</sup>

24 <sup>3</sup> Agent Orr drove for about 30-40 minutes to get to APD, Ex. 4 at 17:13-14; Ex. 1 at 67:10-14, and about an  
 25 hour transpired from Mr. Vargas's initial stop to his transfer to the Bellingham USBP station. *Id.* at USAO288.

26 <sup>4</sup> For these reasons, Defendant's allegation that Mr. Vargas's settlement with APD means that Mr. Vargas is  
 27 seeking "double recovery" is wrong. *See* Dkt. 38 at 1-2. Mr. Vargas seeks recovery from Defendant *not* for Officer  
 28 Leetz's actions, but for the actions taken by Defendant's own agents, who instigated and procured his unlawful  
 arrest. Moreover, Defendant assumes that the only grounds upon which APD could have incurred liability were for  
 Officer Leetz's actions at USBP's urging; it fails to recognize that APD could be independently liable for other  
 actions, such as extending the initial traffic stop to contact USBP and help facilitate Mr. Vargas's interrogation.

1           ii. The language used to refer to the seizure is not dispositive on the question of  
2           whether Mr. Vargas was arrested.

3           Defendant’s assertion that Agent Hafstad’s use of the word “detain” should be dispositive  
4 as to whether the seizure constituted an arrest or a detention is without merit. *See* Dkt. 38 at 2.  
5           The Ninth Circuit has clarified that the determination whether a seizure is an arrest or a detention  
6 turns “not on the subjective belief of the agents” but, rather, on “the perspective of the person  
7 seized.” *United States v. Delgadillo-Velasquez*, 856 F.2d 1292, 1295-96 (9th Cir. 1988)  
8 (concluding that “a reasonable innocent person in these circumstances would not have felt free to  
9 leave after brief questioning”) (citations omitted). Whatever Agent Hafstad’s subjective intent,  
10 Mr. Vargas certainly did not feel free to leave, nor would any reasonable person in his situation:  
11 he was in physical custody, having been removed from his car, handcuffed, placed in a police  
12 car, driven to the police station, and locked up in a holding cell until Agent Orr arrived to further  
13 question him. *See* Dkt. 35 at IV.A.i; *see also* Dkt. 19 at 8-9.  
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16           Moreover, no magic words exist to turn an arrest into a detention when the evidence  
17 makes clear that what transpired was in fact an arrest. *See, e.g., United States v. Bravo*, 295 F.3d  
18 1002, 1011 (9th Cir. 2002) (“Certainly an officer cannot negate a custodial situation simply by  
19 telling a suspect that he is not under arrest.”) (citations omitted); *United States v. Lee*, 699 F.2d  
20 466, 467-68 (9th Cir. 1982) (holding that, under the totality of the circumstances, defendant  
21 could have reasonably concluded that he was not free to leave, despite the fact that the agents  
22 expressly told him that he was free to leave at any time); *Cf. Dunaway v. New York*, 442 U.S.  
23 200, 212-13 (1979) (“The mere facts that petitioner was not told he was under arrest, was not  
24 ‘booked,’ and would not have had an arrest record if the interrogation had proved fruitless, while  
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1 not insignificant for all purposes, obviously do not make petitioner’s seizure even roughly  
2 analogous to the narrowly defined intrusions involved in *Terry*.”) (citation omitted).<sup>5</sup>

3 Similarly, that a seizure was effectuated for an investigative purpose does not govern the  
4 analysis as to the type of seizure it is. *See* Dkt. 19 at 9-10 (citing *Gonzales v. City of Peoria*, 722  
5 F.2d 468, 477 (9th Cir. 1983) and *United States v. Zavala*, 541 F.3d 562, 579-80 (5th Cir. 2008)).  
6 Indeed, the danger in relying on a USBP agent’s words or intent to determine this question is  
7 apparent from the following exchange:  
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9 A [Agent Orr]. [T]echnically we don’t arrest anybody. We detain.

10 Q [Counsel for Plaintiff]. Technically, you detain, generally?

11 A. Detain for investigation, and then we just set them up for a court hearing.

12 Q. And how do you—so you never arrest anybody?

13 A. No.

14 Q. And how do you draw the line between arresting and detaining?

15 A. Border Patrol does not arrest. ... We do not arrest individuals.

16 Q. And how do you differentiate an arrest from a detention?

17 A. That’s above my paygrade. Our detentions are for investigative purposes. And  
18 we set them up for deportation, and we set them up to see an immigration judge.

19 Ex. 4 at 6:17-7:11; *see also id.* at 7:12-8:6.<sup>6</sup> Agent Orr’s emphatic testimony that USBP does not,  
20 as a rule, arrest individuals—its agents merely detain them to investigate them—makes clear  
21 that, were his words or intent determinative of the issue, any seizure effectuated by him would  
22 *always* constitute a temporary investigative detention, no matter the circumstances.

23 Accordingly, regardless of the language the USBP agents used to label the seizure,  
24 controlling case law makes plain that Mr. Vargas was, indeed, arrested, as opposed to simply  
25 being subjected to a “Terry” stop.

26 iii. USBP lacked the authority to direct Officer Leetz to arrest Mr. Vargas.

27 <sup>5</sup> Additionally, although statements made by an officer to an individual being seized *may* be a factor in  
28 determining whether the individual should have felt free to go or should understand the stop would be momentary,  
Officer Leetz said nothing relevant to those considerations. *Bravo*, 295 F.3d at 1011.

<sup>6</sup> Agent Orr did not know the legal standard that was required in order to effectuate an arrest, replying that  
“[i]t’s hard to answer [that question] considering that we don’t arrest people.” Ex. 4 at 31:18-19.

1 Defendant's assertion that Agent Hafstad's request was authorized under 8 U.S.C. §  
 2 1357(a)(1) and 8 C.F.R. § 287.8(b)(2) is also incorrect. *See* Dkt. 38 at 3. Those authorities allow  
 3 *USBP agents* to make detentions if they have reasonable suspicion that an individual is in the  
 4 United States unlawfully—they do not authorize USBP to direct a local law enforcement agent to  
 5 do so. Indeed, local law enforcement agents are not generally authorized to arrest individuals for  
 6 suspected immigration violations. *See* 8 C.F.R. §§ 287.8(b)(2) (“If the immigration officer has a  
 7 reasonable suspicion . . . *the immigration officer* may briefly detain the person for questioning.”),  
 8 (b)(3) (“Information obtained from [brief detentions for] questioning may provide the basis for a  
 9 subsequent arrest, which *must be effected only by a designated immigration officer.*”), (c)(1)  
 10 (“*Only designated immigration officers are authorized to make an arrest.*”); 8 U.S.C. § 1357(a)  
 11 (“Any officer or employee of the Service *authorized under regulations prescribed by the*  
 12 *Attorney General* shall have the power” to perform certain functions, including to interrogate or  
 13 question certain individuals) (emphasis added). Thus, Agent Hafstad violated the law by  
 14 instructing Officer Leetz to detain Mr. Vargas.<sup>7</sup>

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 18 The Supreme Court has reaffirmed that where state and local officers “[d]etain[]  
 19 individuals solely to verify their immigration status,” such actions “raise constitutional  
 20 concerns.” *Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012) (citations omitted); *see also*  
 21 *Melendres v. Arpaio*, PHX-CV-07-02513-GMS, 2013 WL 2297173, at \*61 (D. Ariz. May 24,  
 22 2013) (“In the absence, then, of any reasonable suspicion of a possible crime, there is no basis on  
 23 which the [local law enforcement agency] can make an investigative detention—let alone an  
 24 arrest—based only on the belief that someone is in the country without authorization.”) (citation  
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 27 <sup>7</sup> USBP's liability for false arrest and imprisonment turns on the fact that USBP *instigated* and *procured* Mr.  
 28 Vargas's arrest—it is not premised on a theory that Officer Leetz was Agent Hafstad's agent and his actions are thus  
 directly attributed to him. Washington law makes USBP liable for the role it played in directing Mr. Vargas's arrest.

1 omitted). The Supreme Court has recognized that “[f]ederal law specifies *limited* circumstances  
2 in which state officers may perform the functions of an immigration officer.” *Arizona*, 132 S. Ct.  
3 at 2506 (emphasis added). With exceptions that are inapplicable here, state officers may only  
4 perform such functions pursuant to a formal agreement with the Attorney General, subject to the  
5 Attorney General’s “direction and supervision,” and contingent on the Attorney General’s  
6 determination that they are “qualified to perform a function of an immigration officer in relation  
7 to the investigation, apprehension, or detention” of immigrants in the United States and the  
8 provision of a “written certification” that such local agents have received special immigration  
9 training. 8 U.S.C. §1357(g)(1)-(3); *accord Arizona*, 132 S. Ct. at 2506.  
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12 In this case, APD was not trained and certified under § 1357(g) to perform immigration  
13 enforcement, and USBP lacked the power to deputize volunteer local law enforcement agents to  
14 perform immigration enforcement actions. Mr. Vargas’s seizure was thus unlawful.  
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16 **B. A legal process *had* been instituted when the I-213 was completed.**

17 Defendant alleges that no legal proceeding had been initiated at the time Agent Reyes  
18 completed the Form I-213 and so no abuse of process claim may be premised on that action. *See*  
19 Dkt. 38 at 3-4.<sup>8</sup> But by the time Agent Reyes issued Mr. Vargas’s I-213, USBP had already  
20 initiated the immigration legal process—the removal process—against Mr. Vargas. He had  
21 already been interrogated and arrested, and the determination as to his immigration status had  
22 already been made; Agent Reyes was simply preparing Mr. Vargas for transfer to the Northwest  
23 Detention Center for removal proceedings. *See* Ex. 6 at 16:9-14; 18:4-9. The I-213 was part of  
24 the “process of presenting [Mr. Vargas] for removal proceedings.” Dkt. 38 at 4. Such an act is  
25 plainly part of the immigration legal process, even when it precedes the commencement of  
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27 <sup>8</sup> Defendant admits that immigration court proceedings are the types of legal processes that can give rise to a  
28 claim for abuse of process. Dkt. 38 at 4 (“[N]o legal process was initiated until July 1, 2011.”).

1 formal court proceedings. *See Gibson v. City of Kirkland*, C08-0937-JCC, 2009 WL 973360, at  
2 \*5 (W.D. Wash. Apr. 9, 2009) (declining to dismiss abuse of process claim since “a reasonable  
3 jury could conclude that the [police] officers initiated the *arrest* for [the] ulterior purpose” of  
4 covering up their earlier use of excessive force) (emphasis added). Issuance of the I-213 may  
5 thus constitute the type of “process” upon which an abuse of process claim may be premised.  
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7 **C. The falsehoods in the I-213 were intentional.**

8 Defendant admits that the I-213 contains inaccurate statements, but argues that the false  
9 information was “unintentional.” Dkt. 38 at 4. It bases its arguments on the fact that Agent  
10 Reyes, who completed the form, testified that “he believed that the facts he put in the I-213 were  
11 true at the time he wrote them and he never intentionally misrepresented the facts.” *Id.*

12 Defendant cannot escape liability by noting that one of the agents may not be responsible for the  
13 false information placed in the I-213. It is of no import whether the false information originated  
14 with agents Reyes, Orr, Wynn, Hafstad, or another agent. What matters for this analysis is that  
15 (1) USBP seized Mr. Vargas without the requisite legal justification and (2) the I-213 contains  
16 false information as to the legal justification that motivated the seizure. From these facts, it is  
17 readily inferred that the false information was intentionally placed because USBP sought to  
18 cover up their unlawful arrest. *See Gibson*, 2009 WL 973360 at \*5 (“The ulterior motive or  
19 purpose may be inferred from what is said or done about the process.”) (internal quotation marks  
20 and citation omitted).

21 Defendant also mischaracterizes the certainty with which Agent Reyes spoke when  
22 noting that he stated “the information he put in the narrative was either passed down to him from  
23 a supervisor, another agent, Agent Orr, or he obtained it from a copy of the traffic citation he  
24 had.” Dkt. 38 at 4. Agent Reyes was not clear as to where the information on the I-213 came  
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1 from. *See, e.g.*, Ex. 6 at 24:22-25:1 (affirming that he was “*assuming, based on your mode of*  
2 *operating generally*, that the information that you did not get from Agent Orr, you received from  
3 one of the two supervisors”) (emphasis added); *id.* at 26:7-35:20, 36:20-38:11. He did not  
4 remember the case well, clarifying that “I don’t remember much of it,” *id.* at 7:4, and qualifying  
5 many of his statements on that basis. *Id.* at 24:11-13 (“I can’t remember specifics of it. ...at this  
6 point I can’t remember much of it.”). For instance, when asked where he had obtained the false  
7 information that Agent Orr had been patrolling in Anacortes prior to meeting Mr. Vargas, he first  
8 replied that the information came from his supervisors. *Id.* at 28:25. But then he vacillated:  
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11 Q [Counsel for Plaintiff]. So Agent Wynn would have been the person who told  
12 you?

13 A [Agent Reyes]. It would have been either him or Mr. Hafstad.

14 Q. It was either one of them?

15 A. One or the other would have told me that, *or any of the other agents with*  
16 *access to the schedule.*

17 Q. So is it either one of the supervisory agents, or any agent?

18 A. Any agent.

19 Q. Do you remember speaking to any agent about this case, other than the  
20 supervisor?

21 A. I don’t remember this night, let alone any agents.

22 *Id.* 29:4-14 (emphasis added). Similar ambivalence accompanied most of his answers regarding  
23 where he had obtained specific information on the I-213. *See, e.g., id.* at 32:8-17 (responding that  
24 information “must have been something, again, passed by either a supervisor or maybe Orr  
25 himself; I don’t remember”). In responding to questions as to what could explain the false  
26 information, he was simply trying to reconstruct what *could* have happened that could *possibly*  
27 explain it. It is understandable that Agent Reyes would not recall what happened over three years  
28 ago. But this does not demonstrate that the false information in the I-213 was not intentional.

Even if Agent Reyes was not responsible for intentionally misrepresenting the legal basis  
for Mr. Vargas’s arrest, this simply implicates the agents who gave him the information as to

1 what happened. It is undisputed that Agent Reyes relied on second-hand accounts of the incident  
2 to write the narrative. *See* Dkt. 38 at 4. Further, he was not “involved” in determining whether  
3 Mr. Vargas was in the United States unlawfully. Ex. 6 at 18:4-6. That determination was made  
4 before Agent Reyes came into contact with him. *Id.* at 18:7-9. Rather, the agents responsible for  
5 that determination were the ones in a position to provide Agent Reyes the information that he  
6 used to fill out the I-213. Agent Reyes’s own intentions are not dispositive in this inquiry.

8 It is also noteworthy that Defendant now seeks to defend false information provided in  
9 the I-213: Defendant attempts to explain that the use of “translation assistance,” despite the plain  
10 meaning of the language and the objective facts on the record, was not incorrect. *See* Dkt. 38 at  
11 5. Defendant argues that it was customary for USBP agents to use the term “very broadly,” such  
12 that the term could encompass “a request to USBP to help try to determine who the person was,  
13 or it could be for general assistance.” *Id.* Defendant points to the dubious statements provided by  
14 Agent Reyes during his deposition, which took place during the second day of depositions.  
15 However, neither Agent Hafstad nor Agent Orr made any such claim during their depositions,  
16 which took place during the first day. Agent Hafstad replied that “[a] translation assistance is  
17 when an officer of another agency is having trouble communicating.” Ex. 3 at 39:6-7. When  
18 asked whether his “understanding of what happened” corresponded with what was stated in the I-  
19 213 about translation assistance, the agent responded in the negative, stating that his  
20 understanding was that “there was some suspicion that Mr. Vargas was in the country illegally,  
21 and Agent Orr was responding to that.” *Id.* at 40:3-12. Agent Orr, for his part, categorically  
22 denied that he had been sent to Anacortes due to a “translation assistance request,” confirming  
23 instead that he had been “notified by Hafstad that I needed to talk to an individual there about his  
24 status.” Ex. 4 at 39:8-20. If “translation assistance” had been a term that was broadly used at the  
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**CERTIFICATE OF SERVICE**

I, Matt Adams, hereby certify that on February 6, 2015, I electronically filed Plaintiff's Reply In Support of His Motion for Partial Summary Judgment, for case 13-cv-02325-JLR, with the Clerk of the Court using the CM/ECF system, which automatically sends notification of such filing to the following CM/ECF participant:

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