

CERTIFICATE OF SERVICE

I hereby certify that on this May 15th, 2025 a true and correct copy of the foregoing document was served as follows:

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Alexander Law, PLLC
2502 La Branch St
Houston, Texas 77004
Via E-Service

/s/ Michael F. Hord Jr.
Michael F. Hord Jr.

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EVELYN A. OLOWONIRA AND DAVID A. §
OLOWONIRA §
Plaintiffs §

VS. §

C.A. 4:25-cv-2214

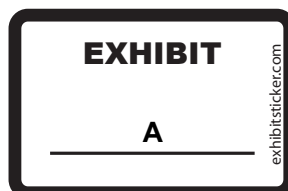
CITIBANK, N.A., NOT IN ITS INDIVIDUAL §
CAPACITY BUT SOLELY AS OWNER §
TRUSTEE OF NEW RESIDENTIAL §
MORTGAGE LOAN TRUST 2019-RPL2 §
AND FAY SERVICING, LLC §
Defendants §

DEFENDANTS' NOTICE OF REMOVAL

Defendants, Citibank, N.A., Not in its Individual Capacity, But Solely as Owner Trustee of New Residential Mortgage Loan Trust 2019-RPL2 (“**Trust**”) and Fay Servicing, LLC (“**Fay**”) (“collectively, “**Defendants**”) hereby file this Notice of Removal and remove this case from the 125th District Court, Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division. Defendants deny the claims and damages alleged in Plaintiffs’ Original Petition and file this Notice without waiving any claims, defenses, exceptions, or obligations that may exist in their favor in state or federal court.

I. INTRODUCTION

1. On or about May 5, 2025, Plaintiffs, Evelyn and David Olowonira (“**Plaintiffs**”) commenced this action by filing Plaintiffs’ Original Petition and Application for Temporary Restraining Order and Injunctive Relief (the “**Complaint**”); Cause No. 2025-31477; in the 125th District Court, Harris County, Texas (the “**State Court Action**”). See Exhibit “C-1”. The State Court Action was filed for purposes of preventing a foreclosure sale on real property that serves



as collateral for a loan for which the Trust is the mortgagee.¹ Plaintiffs also obtained an ex parte temporary restraining order in the State Court Action on May 5, 2025. See Exhibit “C-4”.

2. Defendants filed their Answer in the State Court Action on May 15, 2025. See Exhibit “C-7”.

3. Pursuant to 28 U.S.C. §1446(b) of the Federal Rules of Civil Procedure, the Notice of Removal was timely filed within thirty (30) days of Defendants’ first receipt of the initial state court pleading.²

II. PLEADINGS AND NOTICE TO STATE COURT

4. True and correct copies of all pleadings, process, orders, and other filings in the State Court Action are being filed and are attached hereto. Pursuant to 28 U.S.C. §1446(d), written notice of the removal has been served on Plaintiff and filed in the State Court Action.

III. BASIS FOR REMOVAL

5. This action is within the original jurisdiction of the United States District Court based on diversity jurisdiction. Furthermore, venue is proper in the Southern District of Texas, Houston Division, under 28 U.S.C. §1441(a) because the state court where the State Court Action has been pending is located in this district.

IV. DIVERSITY JURISDICTION

A. Citizenship of the Parties.

6. This civil action involves a controversy between citizens of different states. Plaintiffs reside in and are domiciled in of the State of Texas and are therefore citizens of Texas for diversity purposes.³

¹ See Complaint generally and at ¶¶21-25 requesting injunctive relief.

² *Bd. of Regents of Univ. of Texas Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

³ See Complaint at ¶ 2-3; *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 555-56 (5th Cir. 1985).

7. The mortgagee for the subject loan is the Trust, which is not a citizen of Texas for diversity purposes. When determining citizenship of a trust for purposes of diversity jurisdiction, it is the citizenship of the trustee which controls, not the citizenship of the beneficiaries of the trust.⁴ Citibank, N.A. is the trustee of a traditional trust and is a national banking association with its main office, as designated by its articles of association, in Sioux Falls, South Dakota.

8. A national bank, for diversity purposes, “is a citizen of the State in which its main office as set forth in its articles of association is located.”⁵ Accordingly, Citibank N.A. and thus the Trust are both citizens of South Dakota for diversity purposes.⁶

9. Plaintiff has also named Fay as a defendant in its capacity as mortgage servicer for the Trust. Fay is a Delaware Limited Liability Company. The citizenship of a limited liability company for diversity purposes is determined by the citizenship of all of its members.⁷ Upon information and belief there is a member in the chain of ownership of Fay who is a Texas resident, therefore Fay does not contend that it is diverse in citizenship from Plaintiffs for diversity purposes. However, Fay is a nominal party and/or has been improperly joined as discussed below and therefore its citizenship is not counted for diversity purposes.

10. Fay is not alleged to be and is not the actual mortgagee for the subject loan and is either a nominal party or was improperly joined, therefore its citizenship is not counted for purposes of diversity jurisdiction.⁸ Fay as mortgage servicer is not alleged to be the mortgagee for the subject loan and is in fact not the mortgagee for the subject loan and therefore is not relevant to the disposition of this case based on Plaintiffs’ allegations which seek to stop a

⁴ *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 464, 100 S. Ct. 1779, 64 L. Ed. 2d 425 (1980).

⁵ *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006).

⁶ 28 U.S.C. § 1348; *Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006).

⁷ *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

⁸ *See Larroquette v. Cardinal Health 200, Inc.*, 466 F.3d 373, 376 (5th Cir. 2006); *Ekundayo v. PNC Bank, Nat. Ass’n*, No. A-14-CA-142-SS, 2014 WL 5092625 (W.D. Tex. Oct. 9, 2014) citing *Cantor v. Wachovia Mortg., FSB*, 641 F. Supp. 2d 602, 606 (N.D. Tex. 2009).

foreclosure sale by the Trust based on notice allegations. At most Fay is a nominal party whose citizenship does not count for diversity purposes.⁹

11. Plaintiffs' claim for wrongful foreclose, although legally flawed, could only even potentially succeed against the Trust as the current mortgagee, as it is based on pre-foreclosure notice. Such a claim, while legally precluded since no sale has occurred, is by necessity against the mortgagee for the subject loan, which is the Trust since the Trust is the mortgagee that noticed the subject sale. Plaintiffs also allege a breach of contract claim. This claim could only even potentially be alleged against Trust, as mortgagee from foreclosure since Fay is not a party to the Deed of Trust. Plaintiffs have not and cannot truthfully allege that Fay is the mortgagee under the subject loan or that they have any contract with Fay. Their contract is with the Trust which is the mortgagee under the Deed of Trust. As such, Fay's inclusion in this case as a nominal party is irrelevant to diversity jurisdiction. In this context, Fay as mortgage servicer is at most a nominal party.

12. If necessary, Fay was also improperly joined. To establish an improper joinder a party must show either: "(1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court."¹⁰

13. In applying the test for improper joinder, the court conducts "a Rule 12(b)(6)-type analysis, looking initially at the allegations of the complaint to determine whether, under state law, the complaint states a claim against the in-state defendant."¹¹ However, unlike a 12(b)(6) analysis, the Court retains discretion to pierce the pleadings and review evidence on whether

⁹ *Powell v. Nationstar Mortgage LLC*, No. 4:16-cv-251, 2017 WL 191261, at *2 (E.D. Tex. Jan. 18, 2017) (holding that a mortgage servicer is a nominal party and that the true party is the mortgagee where the relief requested is available against the actual mortgagee); *Schmelzer v. Nationstar Mortg., LLC*, No. 4:16-CV-389, 2016 WL 4368735, *1 (E.D. Tex. August 16, 2016); *Byrd v. Lakeview Loan Servicing, LLC*, 1:17-CV-620-LY-ML, 2018 WL 1858235, at *3 (W.D. Tex. Jan. 11, 2018) holding that non-parties to the subject contract in a breach of contract suit were improperly joined by the plaintiff for diversity jurisdiction purposes because there were no possible legally viable claims asserted against them).

¹⁰ *Smallwood v. Illinois Central Railroad Company*, 385 F.3d 568, 573 (5th Cir. 2004).

¹¹ *Smallwood v. Illinois Cent. R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004)

plaintiff has a viable cause of action under state law.¹² A mere theoretical possibility of recovery under local law will not preclude a finding of improper joinder.¹³

14. In the context of a motion to dismiss, factual allegations in a complaint must be sufficient to raise the right to relief above a speculative level.¹⁴ Reciting naked assertions devoid of “further factual enhancement” does not suffice.¹⁵ Where the facts do not permit the court to infer more than the mere possibility of misconduct, the Complaint has stopped short of showing that the pleader is plausibly entitled to relief.¹⁶

15. Plaintiffs’ claims against Fay are non-existent or fail to state any legally viable cause of action. Fay is not a party to the subject Note or Deed of Trust and is not the foreclosing party. Plaintiffs have not and cannot assert any legally valid claim for wrongful foreclosure against Fay as Fay is not the mortgagee for the subject loan under any foreclosure notice. Additionally, the wrongful foreclosure claim fails because no foreclosure sale has occurred. The same holds true with Plaintiffs attempted claim for breach of contract and injunctive relief.

16. Plaintiffs’ claims relating to notice or any contractual rights under the Note or Deed of Trust are not, or should not be directed at Fay as mortgage servicer. As stated, it is the Trust that Plaintiff concedes is the mortgagee for the subject loan and the Trust has been named as a party herein. It is also the Trust that claims to be and is the mortgagee and is attempting to foreclose and Fay is merely the mortgage servicer for the Trust.

17. Diversity cases are only removable when “[none] of the parties in interest are *properly joined* and served as defendants are citizens of the State in which [the] action is

¹² *Id.*

¹³ *Smallwood*, 385 F.3d at 573, n.9.

¹⁴ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

¹⁵ *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009).

¹⁶ *Bell Atl. Corp.* 550 U.S. at 557.

brought.”¹⁷ While complete diversity is required for diversity jurisdiction, such diversity cannot be destroyed by a plaintiff improperly joining a non-diverse defendant.¹⁸ Removal is proper if there is a “diversity of citizenship among the parties in interest properly joined. ‘Parties in interest’ do not include formal or unnecessary parties, thus a plaintiff’s joinder of such parties...cannot prevent the removal of an action to federal court.”¹⁹ “Whether a party is ‘nominal’ for removal purposes depends on ‘whether, in the absence of the [defendant], the Court can enter a final judgment consistent with equity and good conscience which would not be in any way unfair or inequitable to the plaintiff.’”²⁰ Improper joinder may be established in one of two ways: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court.²¹

18. As stated, Plaintiffs seek to halt a foreclosure sale on a loan in default based on whether the Trust provided proper notice prior to an attempted foreclosure sale and seeks to enjoin the Trust from foreclosing on the subject property. Fay, as mortgage servicer, has been improperly joined or is merely a nominal party in this context.

19. From the face of the Complaint, it is evident that Plaintiff has not stated a legally viable cause of action against Fay.²² A removing party may establish improper joinder by showing that the plaintiff is unable to establish a cause of action against the non-diverse

¹⁷ 28 U.S.C. § 1441(b) (2006) (emphasis added); see *Cantor v. Wachovia Mortg. Corp.*, 641 F. Supp.2d 602, 606 (N.D. Tex. 2009).

¹⁸ See, e.g., *Cuevas v. BAC Home Loans Servicing, LP*, 648 F.3d 242, 249 (5th Cir. 2011); *Smallwood v. Illinois Central R. Co.*, 385 F.3d 568, 572 (5th Cir. 2004).

¹⁹ *Pesch v. First City Bank of Dallas*, 637 F. Supp. 1530, 1536-37 (N.D. Tex. 1986) (citing *Nunn v. Feltinton*, 294 F.2d 450, 453 (5th Cir. 1961)).

²⁰ *Acosta v. Master Maint. & Constr. Inc.*, 452 F.3d 373, 379 (5th Cir. 2006).

²¹ *Smallwood*, 385 F.3d at 573.

²² *Larroquette*, 466 F.3d at 375 (holding that standard for establishing improper joinder is “whether the defendant has demonstrated that there is no possibility of recovery by the plaintiff against an in-state defendant, which stated differently means that there is no reasonable basis of the district court to predict that the plaintiff might be able to recover against an in-state defendant.”) (quoting *Smallwood v. Illinois Cent. R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004)) (internal quotation marks omitted).

defendant under state law.²³ A “mere theoretical possibility” of recovery under state law does not suffice to preclude removal.²⁴ To the extent necessary since Fay is otherwise merely a nominal party, Defendants have established that Fay has been improperly joined.²⁵

20. Accordingly, because complete diversity exists between Plaintiffs and the Trust, the actual mortgagee for the subject loan, and because Fay is either a nominal party or has been improperly joined, complete diversity exists between all relevant parties.

B. Amount in Controversy.

21. This case places an amount in controversy that exceeds the \$75,000 threshold. A party may remove an action from state court to federal court if the action is one over which the federal court possesses subject matter jurisdiction.²⁶ Such jurisdiction exists as long as the parties are completely diverse and the amount in controversy exceeds \$75,000.00.²⁷

22. When ascertaining the amount in controversy in the context of a motion to remand, district courts query whether a plaintiff's state court petition, as it existed at the time of removal, alleged damages in excess of the statutory minimum.²⁸ If the petition does not allege a specific amount of damages, the removing party must prove by a preponderance of the evidence that the amount in controversy requirement is satisfied.²⁹ The removing party satisfies this burden if the court finds it “facially apparent” that the plaintiff's claimed damages likely exceed

²³ *Id.* (citing *Smallwood*, 385 F.3d at 573).

²⁴ *Badon v. RJR Nabisco Inc.*, 236 F.3d 282, 286 n.4 (5th Cir. 2000).

²⁵ *Sanchez v. Wells Fargo Bank, N.A., et al.*, 2020 WL 2086549 (W.D. Tex. April 30, 2020) (Rodriguez, J.) (holding that the nondiverse defendant was improperly joined and should be dismissed with prejudice because the plaintiff had no reasonable basis of recovery and the nondiverse defendant's “alleged conduct was part of discharging its duties in representing” the diverse defendant); See *Rojas v. Wells Fargo Bank, N.A.*, Case No. A–13–CA–291–SS, 2013 WL 12086780, at *1 (Aug. 30, 2013) (finding various defendants were improperly joined because the Plaintiff borrower could not prevail on any cause of action alleged against the improperly joined defendants).

²⁶ See 28 U.S.C.A. § 1441(a).

²⁷ See 28 U.S.C.A. § 1332(a).

²⁸ See *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996).

²⁹ See *Lewis v. State Farm Lloyds*, 205 F. Supp. 2d 706, 708 (S.D. Tex. 2002) citing *De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993); see also *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) (explaining that the removing party bears the burden of showing that federal jurisdiction exists and that removal is proper).

\$75,000.00.³⁰

23. Here, Plaintiffs explicitly contend that they are seeking monetary relief in excess of \$250,000.00.³¹

24. Additionally, Plaintiffs' Complaint otherwise makes it apparent that the Plaintiffs claimed damages exceed \$75,000.00 given that Plaintiffs seeks to stop the Trust from foreclosing on property located at 13014 Skymeadow Drive Houston, Texas 77082 (the "Property").³² The value of the Property exceeds \$75,000.00. See Exhibit D. The value of the Property according to the Harris County Appraisal District is no less than \$274,127.00 for the tax year of 2025. See Exhibit D.

25. Federal jurisdiction can be established by facts alleged in the petition for removal that support a conclusion that the amount in controversy requirement is satisfied.³³ "In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation."³⁴ Plaintiffs seek relief which if successful would preclude enforcement of the contractual loan obligations and the Trust's right to foreclose on the Property.³⁵

26. "[W]hen the validity of a contract or a right to property is called into question in its entirety, the value of the property controls the amount in controversy."³⁶ "[T]he amount in controversy, in an action for declaratory or injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented."³⁷ Also, where a party seeks to quiet title or undo a

³⁰ *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

³¹ See Complaint at ¶7.

³² See Complaint at pp. 6-7 identifying property address and seeking injunctive relief.

³³ *Menendez v. Wal-Mart Stores, Inc.*, 364 F. App'x 62, 66 (5th Cir. 2010) (unpublished) (citing *Garcia v. Koch Oil Co. of Texas Inc.*, 351 F.3d 636, 638–39 (5th Cir. 2003)).

³⁴ *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 347, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (U.S. 1977).

³⁵ See Complaint generally, and Prayer.

³⁶ *Waller v. Prof'l Ins. Corp.*, 296 F.2d 545, 547–48 (5th Cir. 1961).

³⁷ *Webb v. Investacorp, Inc.*, 89 F.3d 252 (5th Cir. 1996), citing *Leininger v. Leininger*, 705 F.2d 727 (5th Cir. 1983).

foreclosure, the object of the litigation is the property at issue and the amount in controversy is measured by the value of the property.³⁸ The value of the subject property in this instance for diversity purposes is no less than \$274,127.00 per the records of the Harris County Appraisal District for 2025. See Exhibit D. The value of the Property in this instance satisfies the jurisdictional amount of \$75,000.00 for diversity purposes.

27. Because Plaintiffs are citizens of Texas, the Trust is a citizen of South Dakota and Fay was improperly joined, or is a nominal party, and the amount in controversy requirement is satisfied, diversity jurisdiction has been satisfied.³⁹

V. JURY DEMAND

28. Plaintiffs have made a jury demand in the State Court Action.

VI. CONCLUSION

29. For the foregoing reasons, Defendants ask the Court to remove this suit to the United States District Court, Southern District of Texas, Houston Division.

Respectfully submitted,

By: /s/ Michael F. Hord Jr.

Michael F. Hord Jr.

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³⁸ See *Berry v. Chase Home Fin., LLC*, No. CIV.A. C-09-116, 2009 WL 2868224, at *2 (S.D. Tex. Aug. 27, 2009).

³⁹ See 28 U.S.C.A. § 332(c)(1) (West).

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2025, a true and correct copy of Defendants' Notice of Removal was forwarded as follows:

Brandy M. Alexander
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2502 La Branch St
Houston, Texas 77004
Via ECF and E-Mail

/s/ Michael F. Hord Jr.
Michael F. Hord Jr.

Unofficial Copy Office of Marilyn Burgess District Clerk

CAUSE NO. 202531477

EVELYN A. OLOWONIRA AND DAVID A. OLOWONIRA
Plaintiffs,

v.

CITIBANK, N.A., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE OF NEW RESIDENTIAL MORTGAGE LOAN TRUST 2019-RPL2 AND FAY SERVICING, LLC
Defendants.

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

125TH JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL ANSWER

Defendants, Citibank, N.A., Not in its Individual Capacity, But Solely as Owner Trustee of New Residential Mortgage Loan Trust 2019-RPL2 (“**Trust**”) and Fay Servicing, LLC (“**Fay**”) (“collectively, “**Defendants**”) file this Original Answer to Plaintiffs, Evelyn and David Olowonira’s (“**Plaintiffs**”) Original Verified Petition and Application for Temporary Restraining Order and Temporary Injunction and would respectfully show unto the Court as follows:

GENERAL DENIAL

Defendants, pursuant to Rule 92 of the Texas Rules of Civil Procedure, generally deny all of the claims as alleged by Plaintiffs and respectfully pray that Plaintiffs be required to prove their claims as alleged by a preponderance of the evidence or such higher standard as may be applicable.

AFFIRMATIVE DEFENSES

1. Plaintiffs failed to state a claim upon which relief may be granted and therefore each of Plaintiffs’ claims should be dismissed.
2. Defendants plead that Plaintiffs have failed to plead and prove conditions precedent to recovery herein.
3. Defendants plead the statute of frauds.
4. Defendants plead waiver, estoppel, and ratification.

5. Defendants plead a failure of consideration for any breach of contract claim, if any.
6. Defendants plead that Plaintiffs lack standing.
7. Defendants plead the statute of limitations.
8. Defendants plead *res judicata* and collateral estoppel.
9. Defendants plead judicial estoppel and all forms of estoppel.
10. Defendants plead that the “economic loss rule” precludes any and all tort claims by Plaintiff.
11. Plaintiffs’ claims are precluded, in whole or part, because any alleged acts and/or omissions of Defendants were not the cause of Plaintiffs’ alleged damages. Rather, Plaintiffs’ damages, if any, were proximately caused by the act, omissions or breaches of other persons and/or entities, including Plaintiffs, and the acts, omissions or breaches were intervening and superseding causes of Plaintiffs’ damages, if any.
12. Plaintiffs’ damages, if any, were proximately caused by the acts, omissions, or breaches of other persons and entities, including Plaintiffs, and the acts, omissions, or breaches were intervening and superseding causes of Plaintiffs’ damages, if any. Defendants plead the doctrine of comparative responsibility as provided in Chapter 33 of the TEX. CIV. PRAC. & REM. CODE, and its application to any tort claim (intentional or otherwise) of the Plaintiffs that may be alleged against Defendants.
13. Plaintiffs have failed to mitigate their damages, if any.
14. Defendants are not liable for the act, omissions, or conduct of other persons or entities not authorized to act on behalf of them and Defendants are not liable for the act or omissions of its agents, if any, who exceeded the scope of their authority.

15. Any claim for punitive or exemplary damages is subject to the limitations and constraints of Due Process found in the Fifth and Fourteenth Amendments to the United States Constitution.

16. To the extent Plaintiffs have alleged the statute of limitations, Defendants plead bankruptcy tolling, common law tolling, equitable tolling, abandonment of any alleged acceleration of the subject loan obligations, and all tolling of the statute of limitations available at law or in equity, including but not limited to tolling under §16.063 of the Texas Civil Practice and Remedies Code.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that Plaintiffs take nothing by reason of the claims alleged against them, that Defendants recover its taxable court costs, and that Defendants recover such other and further relief to which this Court deems them to be justly entitled.

Respectfully submitted,

HIRSCH & WESTHEIMER, P.C.

By: /s/ Michael F. Hord Jr.

Michael F. Hord Jr.

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ATTORNEYS FOR DEFENDANTS

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I hereby certify that on this 15th day of May, 2025, a true and correct copy of the foregoing Original Answer was forwarded as follows:

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Erick Escamilla on behalf of Michael Hord

Bar No. 784294

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