IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE AUTO PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiffs, v. CLASSIC DINING GROUP LLC, et al., Defendants.	Hon. Judge John Robert Blakey Case No. 1:20-cv-04434

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY

Pursuant to Rule 12(b)(1) of Federal Rules of Civil Procedure, Defendants Classic Dining[1] respectfully move to dismiss the Complaint filed by Plaintiff State Auto Property and Casualty Insurance Company (the "Motion") under the *Wilton-Brillhart* abstention doctrine. In the alternative, Classic Dining respectfully requests that the Court stay this case pending resolution of the parallel first-filed proceeding between the parties in Ohio state court.

[1] "Classic Dining" is defined as Defendants Classic Dining Group LLC; Classic Dining Castleton Inc., Classic Dining Crawfordsville Inc.; Classic Dining of Greenwood Inc.; Classic Dining Kentucky Ave. Inc.; Classic Dining Keystone Inc.; Classic Dining Michigan Road Inc.; Classic Dining of Bloomington Inc.; Classic Dining Greenwood Mall Inc.; Classic Dining of Lafayette Inc.; Classic Dining of Lebanon Inc.; Classic Dining of Portage Inc.; Classic Dining of Rockford Inc.; Classic Dining of Shelbyville Inc.; Classic Dining Post Road Inc.; PFC of Aurora Inc.; PFC of Gurnee Inc.; PFC of Michigan City Inc.; PFC of Spring Hill Inc.; Classic Dining Management Company Inc.; P.F.C. Management Company Inc.; Classic Restaurant Group LLC Beloit; Classic Restaurant Group LLC, Hebron; Classic Restaurant Group LLC, Whiteland; Classic Restaurant Group LLC Lasalle; Classic Restaurant Group LLC, Spiceland; Classic Restaurants LLC, Batavia; P.F.C. Restaurant Group LLC; Classic Restaurant Group LLC; Classic Restaurants LLC; Classic Restaurants LLC Elgin; Classic Restaurants LLC Hoffman Estates; Classic Dining LLC Avon; Classic Restaurants LLC Oak Lawn; Classic Restaurants LLC Aurora; Classic Restaurants LLC Whitestown; RT Restaurants of Southern Wisconsin LLC; RT Real Estate of Southern Wisconsin LLC.

INTRODUCTION

State Auto filed this action seeking a declaration that it owes no coverage for COVID-19 business interruption losses under insurance policies it issued to Classic Dining on the same day it moved to dismiss an earlier lawsuit filed by Classic Dining in Ohio state court. The earlier filed suit in Ohio seeks an inverse declaration that State Auto owes coverage for their COVID-19 business interruption losses under the same policies, as well as damages for breach of contract and bad faith. In support of its motion to dismiss Classic Dining's Ohio lawsuit, State Auto argued that it would be unfair for it to have to litigate in its home state of Ohio—despite the facts that: (1) State Auto's headquarters and principal place of business is in Ohio; (2) Ohio is the state in which State Auto's witnesses responsible for denying Classic Dining's claims reside; and (3) Ohio law governs at least some of the claims at issue. In other words, all of the issues raised in the instant lawsuit are already before a court in Ohio that has jurisdiction over all aspects of the dispute, notwithstanding State Auto's apparent preference to relocate the case to Illinois.

State Auto's intentions are clear: it wishes to continue to its pattern of delay and obfuscation, drive up litigation costs for Classic Dining with baseless procedural motions and duplicative actions, and avoid a familiar court (and perhaps a judge) located just two blocks away from its corporate headquarters in Downtown Columbus, Ohio. This Court should not sanction this blatant attempt to forum shop, which wastes judicial resources by forcing the parties to litigate the same case twice over.

State Auto's action in this Court should proceed no further. This case is a classic example of when a federal court should dismiss a case under the *Wilton-Brillhart* doctrine: a declaratory judgment action, filed in federal court, which raises questions of state law, and concerns the exact same insurance coverage dispute at issue in a pending state court action. At a minimum, in the interests of judicial efficiency and to avoid piecemeal litigation, this Court should stay the instant

action while the court in Ohio considers the pending, fully briefed *forum non conveniens* motion to dismiss State Auto filed there. Absent this relief, Classic Dining, a small business struggling to survive in the midst of the pandemic, would face an unfair and undue burden of having to incur costs to litigate in two different fora. For the reasons that follow, the Court should grant Classic Dining's motion.

BACKGROUND

Classic Dining owns and operates franchised Denny's and Ruby Tuesday restaurants in Indiana, Illinois, and Wisconsin. Because of the ongoing COVID-19 pandemic and various orders restricting ordinary restaurant operations (the "Executive Orders"), Classic Dining's operations have been severely disrupted due to Classic Dining's inability to serve customers in their dining rooms, resulting in millions of dollars of lost revenue for Classic Dining. *See* Exhibit A, Ohio Compl. ¶¶ 1, 4–8, 75–77.

For years, Classic Dining has paid substantial premiums to purchase broad all-risk property insurance policies from State Auto, which provide coverage for losses incurred due to a "slow down or cessation" of their "business activities," including when their ordinary business operations are interrupted due to a government order (the "Policies"). *Id*. ¶¶ 63–72. Classic Dining therefore submitted a claim for coverage under the Policies for its losses arising from the COVID-19 pandemic and the related Executive Orders (the "Claim"). Yet, when the time came for State Auto to honor its obligations under the Policies, a State Auto claims handler sent a letter to State Auto's headquarters in Downtown Columbus, Ohio denying coverage for all of Classic Dining's losses based on a "virus exclusion," ***even though there is no virus exclusion in their Policies***. *Id*. ¶ 83. When Classic Dining asked State Auto to withdraw its erroneous denial, State Auto reaffirmed its denial in another letter, this time issued by a different claims handler located in Columbus, Ohio, which contained additional mischaracterizations of the policy language and the Executive Orders

at issue. *Id.* ¶ 89. Classic Dining only filed its suit in Ohio after sending multiple letters—some of which went unanswered to State Auto's claims handlers and State Auto's general counsel located in Columbus, Ohio, requesting that State Auto honor its coverage obligations under the Policies and conduct a full and fair coverage investigation as required by the Ohio Unfair Claim Settlement Practices Act. *Id.* ¶¶ 83–92. Classic Dining initiated the Ohio litigation to seek a declaration establishing that it is entitled to receive the benefit of the insurance coverage it purchased, for indemnification of the business losses it has sustained, for breach of contract, and for bad faith denial of insurance claims under Ohio law. *Id.* ¶¶ 93–111.

On July 29, State Auto moved to dismiss Classic Dining's Ohio case on *forum non conveniens* grounds, arguing that it was impermissibly inconvenient for State Auto to have to litigate in its own state, in a courthouse located just blocks away from its headquarters and principal place of business. *See* Exhibit B, State Auto Motion to Dismiss. This is despite the fact that Ohio is the state (1) in which State Auto is domiciled; (2) where State Auto is headquartered; (3) where State Auto's claims handlers denied Classis Dining's claims; (4) where Classic Dining's policies were underwritten; (5) where most of the documents that are relevant to the parties' claims and defenses are located; and (6) where most, if not all, of State Auto's witnesses concerning the facts giving rise to this lawsuit reside. State Auto's motion is now fully briefed and the parties are awaiting a ruling from the Ohio court. *See* Exhibit C, Classic Dining August 12 Response; Exhibit D, State Auto August 19 Reply.

Meanwhile, on the very same day that State Auto filed its motion to dismiss the Ohio case, it filed this action, seeking solely a declaration from this Court that it owes no coverage for Classic Dining's claim under the Policies. State Auto Compl. ¶¶ 96(b), 98(c). State Auto's Complaint only seeks declaratory relief. *Id.*, Prayer for Relief ¶¶ 1-2. State Auto's Complaint in this case

should be dismissed under the *Wilton-Brillhart* abstention doctrine, as it invites needless interference by a federal court into issues of state law and would lead to a wasteful duplication of the first-filed Ohio case.

THE *WILTON-BRILLHART* ABSTENTION DOCTRINE

Under the *Wilton–Brillhart* abstention doctrine, "a federal court should dismiss or stay a declaratory judgment action where a closely parallel action is pending in state court and offers an appropriate and timely forum for resolving the claims and issues pending before the federal court." *State Auto. Mut. Ins. Co. v. Reed*, No. 1:06-CV-1616-DFH-WTL, 2008 WL 885881, at *1 (S.D. Ind. Mar. 28, 2008) (staying a federal declaratory judgment action brought by State Auto under *Wilton-Brillhart* doctrine).

The doctrine takes its name from two Supreme Court cases, *Brillhart v. Excess Ins. Co. of Amer.*, 316 U.S. 491 (1942), and *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995), which strongly counsel federal district courts against adjudicating declaratory judgment actions that are plainly duplicative of pending state actions. *Brillhart*, 316 U.S. at 495. The touchstone of the doctrine is "'whether the questions in controversy between the parties to the federal suit . . . can better be settled in the proceeding pending in the state court.'" *Wilton*, 515 U.S. at 282 (quoting *Brillhart*). A concern for comity underlies this doctrine, as "a district court might be indulging in gratuitous interference" if it decided a federal declaratory action while a state action on the same issues was pending. *Id.* at 283 (quotation omitted).

The Seventh Circuit has repeatedly instructed district courts to exercise their discretion not to entertain declaratory judgment actions if there are pending state court actions involving the same parties and issues. *See City of S. Bend v. S. Bend Common Council*, 865 F.3d 889, 893 (7th Cir. 2017) (vacating district court's judgment and remanding with instructions to dismiss under *Wilton–Brillhart*); *Arnold v. KJD Real Estate, LLC*, 752 F.3d 700 (7th Cir. 2014) (vacating district

court's judgment and instructing that *Wilton–Brillhart* abstention should be reconsidered on remand); *Envision Healthcare, Inc. v. Preferredone Ins. Co.*, 604 F.3d 983 (7th Cir. 2010) (affirming dismissal based on *Wilton–Brillhart*).

Further, this doctrine is frequently applied by courts in this district in dismissing declaratory judgment actions filed by insurance companies when, like here, there is a pending state court action filed by their policyholders involving the same coverage dispute. *See, e.g.*, *Ironshore Indem., Inc. v. Synergy Law Grp., LLC,* 926 F. Supp. 2d 1005, 1015 (N.D. Ill. 2013) (granting motion to dismiss and holding it does not "serve the interests of judicial economy to proceed with a federal declaratory judgment action that involves the same underlying facts, insurance policies, legal issues, and parties as a case that has already begun to develop and is likely to remain in state court"); *Indian Harbor Ins. Co. v. Republic Servs., Inc.,* No. 10 C 3310, 2010 WL 3701308, at *2 (N.D. Ill. Sept. 10, 2010) ("Both the instant action and the State Court Declaratory Action involve coverage issues regarding the defense in the Landfill Action. Thus, [the insureds] have shown that substantially the same issues are being litigated in both the instant action and the State Court Declaratory Action."); *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Soriano*, No. 18 C 3672, 2018 WL 4404659, at *2 (N.D. Ill. Sept. 17, 2018) ("The parties to the two proceedings are the same. The state court will have to determine the scope of National Union's obligations under the Policy, which this Court would also have to do to resolve National Union's declaratory-judgment claims. Therefore, the proceedings are parallel.").

Several factors guide the district court's discretion, including whether: (1) the declaratory suit presents a question distinct from the issues raised in the state court proceeding; (2) whether the parties to the two actions are identical; (3) whether going forward with the declaratory action will serve a useful purpose in clarifying the legal relationship between the parties (or will merely

amount to duplicative and piecemeal litigation); and (4) whether comparable relief is available to the plaintiff seeking a declaratory judgment in another forum. *Med. Assurance Co. v. Hellman*, 610 F.3d 371, 379–80 (7th Cir. 2010) (citing *Nationwide Ins. v. Zavalis*, 52 F.3d 689, 692 (7th Cir. 1995); *Hartford Fire Ins. Co. v. Coastal Int'l, Inc.*, No. 14-CV-6196, 2015 WL 4038905, at *5 (N.D. Ill. June 30, 2015).

ARGUMENT

Wilton-Brillhart and their progeny in the Seventh Circuit counsel in favor of dismissing (or at a minimum staying) this action in order to allow Classic Dining's Ohio lawsuit to proceed.

First, the actions are "parallel" under the *Wilton-Brillhart* doctrine. Each case involves the exact same parties, seeking an interpretation of the same insurance policies, which will govern the disposition of the same coverage dispute between the parties. The issue of whether there is coverage for the Claim under the Policies is the same in both actions, even though the Ohio case also includes Classic Dining's additional claims beyond declaratory relief, such as breach of contract and bad faith tort claims under Ohio law.

Second, the cases present the same questions of law and fact in deciding that same core issue of whether State Auto is obligated to provide coverage for Classic Dining's losses. The issues presented in State Auto's Complaint in this case are completely subsumed with those raised in Classic Dining's Ohio case.

Third, and for the foregoing reasons, allowing this case to proceed will amount to a waste of judicial resources and a duplication of the parties' efforts. In other words, proceeding with this case would amount to needless interference with a pending Ohio case involving issues of Ohio law, undermining the exact purpose of the *Wilton-Brillhart* doctrine.

Fourth, nothing prevents State Auto from obtaining comparable relief in the pending Ohio proceeding. Indeed, the outcome of the Ohio lawsuit will give both parties the same relief at stake

here—a judicial declaration of whether State Auto is obligated to provide coverage for Classic Dining's losses. *Compare* State Auto Compl., Dkt. 1 ¶¶ 95–98 (seeking declaration of coverage under the policies), *with* Classic Dining's Ohio Compl., ¶¶ 93–98 (same).

A. This case and the Ohio case are "parallel" actions.

This case is undisputedly parallel with Classic Dining's Ohio case. Both actions involve the exact same parties, litigating the very same issues—the interpretation of the same policies—which will resolve each party's grievance. *See Envision Healthcare, Inc. v. PreferredOne Ins. Co.*, 604 F.3d 983, 986 (7th Cir. 2010) ("Two actions are parallel when substantially the same parties are contemporaneously litigating substantially the same issues in two fora.").

The proper inquiry in applying the *Wilton-Brillhart* doctrine involves asking, "how real [is the] prospect that the declaratory judgment action may present factual questions that the state court has also been asked to decide." *Nationwide Ins. v. Zavalis*, 52 F.3d 689, 693 (7th Cir. 1995) (citations and internal quotation marks omitted). That prospect is undeniably real here. The Ohio state court presiding over Classic Dining's first-filed Complaint has already been asked to decide the very same issues presented here. In its Ohio Complaint, Classic Dining seeks a declaration that State Auto is obligated to provide coverage under the policies' business interruption provisions. *See* Classic Dining Compl. ¶¶ 93–98. Because the policies are "all-risk" policies, determining whether Classic Dining is entitled to coverage involves an interpretation of the exclusions set forth in the policies. *Id.* ¶ 16.

State Auto seeks the same relief in this case, requesting a declaration that it is not obligated to provide business interruption coverage to the Classic Dining Defendants because their premises (purportedly) suffered no physical loss or damage and because the shutdown orders did not prohibit access to the insured premises. *See* Dkt. 1, Compl. ¶ 96(a)-(c). State Auto also raises questions as to whether the exclusions set forth in the policies preclude coverage. *Id.* ¶ 96(c). A

side-by-side comparison of the allegations in each complaint results in the undeniable conclusion that these actions are parallel:

Classic Dining Complaint (the first-filed complaint in Ohio)	**State Auto Complaint**
"Plaintiffs … whose ordinary business operations have been interrupted—through no fault of their own—by the spread of the novel coronavirus and orders issued by the States of Indiana, Illinois, and Wisconsin as part of the State's efforts to slow the spread of the COVID-19 global pandemic … bring this action against State Auto for its failure to honor its obligations under commercial businessowners insurance policies issued to Plaintiffs … ." Classic Dining Compl., ¶ 1, 3.	"The core issue in this declaratory judgment action is whether State Auto Property is contractually obligated to provide business interruption coverage for Defendants' claimed losses due to public health orders from Illinois, Indiana and Wisconsin that restricted public gatherings across their states in order to slow the spread of the COVID-19 global pandemic." State Auto Compl., ¶ 1.
"Furthermore, there is no merit to State Auto's coverage position that the actual or alleged presence of a substance like COVID-19 does not result in 'physical loss or damage' sufficient to trigger business interruption coverage under their Policy. Because the coronavirus created invisible, dangerous conditions that rendered Plaintiffs' locations unsuitable for normal business operations, State Auto's conclusion that Plaintiffs suffered no 'physical damage' is incorrect." Classic Dining Compl., ¶ 13.	"[T]here is no direct physical loss of or damage to property at the premises of a dependent property caused by or resulting from any Covered Cause of Loss under the Business Income from Dependent Properties Additional Coverages Endorsement[.]" State Auto Compl., ¶¶ 96(b), 98(c).
"Plaintiffs seek a declaratory judgment from this Court declaring [that] Plaintiffs' losses incurred in connection with the novel coronavirus, the Business Interruption Orders and the necessary interruption of their businesses stemming from the Business	"[T]here is no Business Income and Extra Expense Coverage under either the Business Income (And Extra Expense) Coverage Form or the Coverage Extensions under Section A.5 of the Building and Personal Property Coverage Form …"

Interruption Orders and COVID-19 pandemic are insured losses under the Policies." Classic Dining Compl., ¶ 98(a).	State Auto Compl., ¶¶ 96(a), 98(a).
"Plaintiffs seek a declaration that…State Auto is obligated to pay Plaintiffs for the full amount of the losses incurred and to be incurred due to the Business Interruption Orders and the COVID-19 pandemic." Classic Dining Compl., ¶ 98(c).	"State Auto Property respectfully prays that this Court … [d]eclare and adjudicate that the Classic Dining Defendants' claims are not covered by the Classic Dining Policy." State Auto Compl., Prayer for Relief, ¶¶ 1–2.

In short, all of the issues presented in State Auto's Complaint completely mirror the issues presented in Classic Dining's Ohio Complaint. In light of Classic Dining's bad faith claim under Ohio law, which challenges State Auto's cut-and-paste denials of Classic Dining's insurance claims based upon exclusions that do not exist in Classic Dining's policies, Classic Dining's Ohio action is more comprehensive than State Auto's—further demonstrating why this case should be dismissed in favor of the first-filed case in Ohio. *See Sta–Rite Indus., Inc. v. Allstate Ins. Co.*, 96 F.3d 281, 287 (7th Cir. 1996) (holding that district court should have dismissed or stayed case under *Wilton-Brillhart* and explaining that that district courts may consider whether the pending state court case is more comprehensive).

In addition, both actions raise questions of state law, further demonstrating why this Court should abstain. *See Hyland v. Liberty Mut. Fire Ins. Co.*, 885 F.3d 482, 486 (7th Cir. 2018) ("We are reluctant to get into the dispute about the meaning of Illinois insurance law, for we lack the remit to supply an authoritative answer."); *Wright v. Westport Ins. Corp.*, No. 01 C 50367, 2003 WL 22327064, at *2 (N.D. Ill. Oct. 10, 2003) ("It is prudent to leave a question of state law to be

decided by the state courts where there seems to be equally relevant statements by the state courts on either side of the issue." (citing *Mitcheson v. Harris*, 955 F.2d 235, 240 (4th Cir. 1992)). At least some of these issues are best handled by an Ohio court, as Classic Dining's Ohio action raises issues under Ohio law, including whether State Auto's cut-and-paste invocations of non-existent exclusions to deny Classic Dining's claims were done in bad faith. *See* Classic Dining Compl. ¶¶ 104–11; *see also A.G. Edwards & Sons, Inc. v. Pub. Bldg. Comm'n of St. Clair Co., Ill.*, 921 F.2d 118, 121 (7th Cir. 1990) (stating that a district court may defer to a state court's "greater familiarity with its own law").

B. Allowing this case to proceed will merely amount to duplicative and piecemeal litigation.

Allowing this case to proceed would be needlessly duplicative and wasteful. As noted, each case presents the exact same issues involving the exact same parties.

Allowing State Auto to litigate the same coverage dispute case in another forum—essentially because it does not want to litigate in its own home state—would give in to blatant forum shopping and yield to yet another delay tactic on the part of State Auto. *See Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 431 (7th Cir. 1993) ("[A] suit for declaratory judgment aimed solely at wresting the choice of forum from the 'natural' plaintiff will normally be dismissed."); *N. Shore Gas Co. v. Salomon Inc.*, 152 F.3d 642, 647 (7th Cir. 1998) ("[D]istrict courts should decline to hear declaratory judgment actions that have been filed in an attempt to manipulate the judicial process.") (citation omitted). It also creates the potential for inconsistent judgments in two different forums—all while dozens of businesses and thousands of jobs hang in the balance. *TIG Ins. Co. v. City of Elkhart*, No. 3:17-CV-938 JD, 2018 WL 8786750, at *1 (N.D. Ind. Apr. 25, 2018) (granting motion to dismiss parallel federal case and noting that allowing both cases to proceed "could create the potential for inconsistent judgments").

Classic Dining deserves its day in court without having to expend at least twice what its legal fees would otherwise be in order to obtain the coverage they plainly deserve. *Allendale Mut. Ins. Co.*, 10 F.3d at 430–31 (labeling as "an absurd duplication of effort" having "parallel lawsuits [that are] proceeding full tilt in two tribunals 4,000 miles apart at the same time").

C. Comparable relief is available to State Auto in another forum.

The very same relief that State Auto seeks here—a declaration that it is not obligated to extend coverage—is available to State Auto in the Ohio action. The issues presented in this case are entirely duplicative of the declaratory relief action in the Ohio lawsuit and boil down to whether Classic Dining is entitled to coverage. State Auto can pursue the same remedy it seeks here through the Ohio lawsuit, perhaps on a quicker pace.[2] *See Wright*, 2003 WL 22327064, at *2 (granting motion to dismiss on *Wilton-Brillhart* grounds and explaining that "[w]hile a declaratory judgment action here will give the parties the relief they seek, so too can they obtain the same relief in state court"). Conversely, State Auto cannot obtain the same relief against all of the Classic Dining entities in this Court due to a lack of personal jurisdiction over many of the corporate entities it have sued, which State Auto has alleged are citizens of Indiana,[3] and therefore not subject to the personal jurisdiction of this Court. This is yet another reason why the Northern District of Illinois is not an appropriate forum and why State Auto's complaint should be dismissed.

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[2] *See* Franklin County, Ohio Court of Common Pleas LR 39.05(a) ("All civil cases, except Professional Tort and Product Liability, shall be placed on the primary track of 12 months."); *see also* Ohio Court of Common Pleas LR 33.02 ("It shall be the goal of the case flow rules and the overall management of the docket by the Common Pleas Court that 90 percent of all civil cases should be settled, tried, or otherwise concluded within 12 months of filing; 98 percent within 18 months of filing; and 100 percent within 24 months of filing.").

[3] State Auto Compl. ¶¶ 13-23, 25-26, 29 (alleging entities are "Indiana corporation[s] with [their] principal place of business" in various Indiana cities. State Auto has failed to allege any basis for personal jurisdiction for these 13 entities in its complaint).

D. In the alternative, the Court should stay this action pending the resolution of the Ohio action.

While dismissal is appropriate in these circumstances given the parallel nature of the actions, the Court should, at a minimum, stay this case favor of the first-filed Ohio action. If then, at the resolution of the Ohio action, there are somehow any unresolved issues of law or fact, the Court can consider whether it would be appropriate to lift the stay. Alternatively, if for some reason State Auto cannot obtain a timely resolution in the Ohio action, it may move to lift the stay here. *See St. Paul Fire & Marine Ins. Co. v. Land Title Servs., Inc.*, 483 F. Supp. 2d 745, 751 (E.D. Wis. 2007) ("If for some reason [the insurer] cannot timely obtain resolution of the duty to defend issue in state court, it may move to lift the stay."). But allowing this action to proced while the state court action is still pending would impose a significant financial hardship on Classic Dining and raise the prospect of conflicting rulings.

CONCLUSION

The Classic Dining Defendants respectfully request that the Court dismiss State Auto's Complaint or, in the alternative, stay this action until the Ohio action is resolved.

Respectfully submitted this 27th day of August 2020.

/s/ Christopher J. O'Malley

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Illinois by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

By: */s/ Christopher J. O'Malley*
Christopher J. O'Malley