UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN SHIFLETT,

Plaintiff,

v. CASE NO.: 8:20-cv-1880-JSM-AAS

VIAGOGO ENTERTAINMENT INC.,

Defendant.
_____/

OPPOSITION TO MOTION FOR CLASS CERTIFICATION
WITH INCORPORATED MEMORANDUM OF LAW

This Court must perform a "rigorous analysis" to determine whether Plaintiff met her evidentiary burden in demonstrating that class treatment is appropriate. Plaintiff fails this rigorous analysis.

First, Plaintiff's proposed class definitions are not adequately defined or ascertainable. To determine whether a buyer is in the class or not, Plaintiff's proposal requires individual inquiry into each buyer's subjective preference related to receipt of a voucher or retention of valid tickets in lieu of a cash refund. The Court also has to determine whether and how any buyer "affirmatively indicated" a preference to receive a voucher. This requires discerning what each buyer signaled by silence, redemption of the voucher, or other behavior. Not only that, but Plaintiff bases her class definitions on arbitrary criteria that have no legal or factual ties to the case. Further complicating matters, her classes include uninjured individuals. All told, Plaintiff's proposed class definitions fail.

Second, Plaintiff is inadequate because she has fundamental conflicts with putative class members – she seeks to force them to give up something of value (a 125% voucher or tickets to a valid event) without regard to their preferences or desires. [redacted]

Third, individual questions will predominate. The most glaring individual question is that of damages. Plaintiff's theory is that the 125% voucher itself and that holding tickets to postponed events are inherently worth nothing and all class members should be refunded. But that is not the case. [redacted] And buyers likely find intrinsic value in holding tickets to postponed events in lieu of a refund [redacted]. Yet Plaintiff's damages "model" accounts for none of this. Individual questions will predominate on liability as well. The liability determination under Plaintiff's theory of the case will require individualized inquiry into the facts and circumstances surrounding each buyer and each event.

Fourth, Plaintiff has no standing to pursue claims for events for which she did not purchase tickets because she suffered no injury for those events.

Finally, Plaintiff cannot pursue a nationwide class because she has provided zero analysis related to any conflict of laws issues.

Accordingly, Plaintiff's Motion should be denied.

BACKGROUND

viagogo connects sellers and buyers with tickets for live events. (Descamps Dep. 21:2-8, attached as Ex. 1.) Sellers list tickets for sale, buyers agree to purchase those tickets, buyers pay the listed price plus fees, and viagogo compensates the

sellers. (*See id.* 29:19-30:6.)

To use viagogo's services, buyers agree to Terms & Conditions ("T&C"). (*See* T&C Preamble, attached as Ex. 2.) [redacted] (Descamps Dep. 33:6-10), and it is clear: "[a]ll sales . . . are final," (T&C ¶ 6.8). There are no refunds for "date or time changes." (*Id.* ¶ 6.8.) viagogo's website, pre- and post-COVID-19, reinforces this by stating that there are no refunds for postponed events. (*See* FAQs, attached as Ex. 3.) The T&C makes clear that viagogo may offer a refund, but it is at viagogo's sole discretion. (*E.g.*, *id.* ¶ 6.8.) As a policy, however, viagogo "generally" provides refunds for cancelled events. (*See* FAQs.)

[redacted]. (Kai Dep. 29:5-7, attached as Ex. 4.) [redacted] (*Id.*) [redacted] (*See id.* 56:13-57:7.)

COVID-19 changed that. [redacted]. (Descamps Dep. 67:17-20.) [redacted]. (Kai Dep. 48:2-50:22.) [redacted]

[redacted]. (Descamps Dep. 92:3-7 [redacted] (Kai Dep. 156:12-14.) [redacted] (Scuteri Dep. 58:13-15, attached as Ex. 5.) [redacted] (*Id.* 58:9-10.)

Additionally, viagogo began offering customers a choice for a voucher instead of a refund. Buyers could accept a 125% voucher for cancelled events, [redacted] (*Id.* 95:13-95 [redacted] Jain Decl. ¶ 11 & Tbl. 3, attached as Ex. 6.)[1]

[1] Those transactions, and other data discussed herein, are contained in viagogo0004023, a spreadsheet [redacted] (Jain Decl. ¶¶ 4-5.) Under Federal Rule of Evidence 1006, viagogo uses summaries and calculations to prove the spreadsheet's contents. The spreadsheet has been provided to Plaintiff.

Once viagogo determines an event is cancelled, viagogo informs buyers for that particular event of the cancellation. (COVID-19 Policies, attached as Ex. 7.) Buyers receive an email notifying them of the availability of their 125% voucher. (*Id.*) Buyers are asked to click a hyperlink if they would like a refund instead. (Pl.'s Resp. RFAs ("RFA") 1-3, attached as Ex. 8.) viagogo also notifies buyers if an event is postponed, as well as any new date once it is announced. (COVID-19 Policies.)

Plaintiff received an email informing her that the Tool concert had been cancelled. (Doc. 18-1 at 8.) She was given a 125% voucher and informed that she could request a refund by clicking a link. (*Id.* at 8, 10.) She understood that email, knew that she could click the link to request a refund, but refused to do so. (RFAs 1-4.) [redacted] (Scuteri Dep. 104:6-105:11.) [redacted] (Jain Decl. ¶ 41.) [redacted] (*Id.*)

MEMORANDUM OF LAW

"[T]he presumption is against class certification because class actions are an exception to our constitutional tradition of individual litigation." *McArdle v. City of Ocala*, 2020 WL 8482692, at *3 (M.D. Fla. Nov. 23, 2020) (Moody, J.). Thus, only after a "rigorous analysis" may a class be certified. *Id.*

The proposed class must be adequately defined, must satisfy all of the requirements of Rule 23(a) and at least one of the requirements of Rule 23(b). To meet this high standard, plaintiff must do more than simply assert that the requirements have been satisfied—she must "affirmatively demonstrate" that they are "in fact" satisfied. *Brown v. Electrolux Home Prods.*, 817 F.3d 1225, 1233 (11th Cir. 2016) (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013)). If the court "has doubts," it "should refuse certification." *Id.*

Plaintiff's Cancelled Event Class includes all individuals whose events were classified as cancelled by viagogo but did not receive a refund within 30 days. (Mot. 12.) The Postponed Event Class includes all individuals whose events did not occur within 90 days of the originally-scheduled date. (Mot. 13.) The FDUTPA subclass includes members of the other two classes residing in Florida. (Mot. 13.) Excluded are individuals "who held tickets to a cancelled event and thereafter *affirmatively* indicated their preference to receive a voucher." (Mot. 13.)

Plaintiff's theory of liability for these classes would require viagogo to refund all buyers who received a voucher instead of a refund or who hold tickets to events rescheduled 90-plus days after the original dates. (Jain Decl. ¶¶ 17-24.) Although left unsaid, this would also necessarily require viagogo to cancel buyers' unused vouchers and require buyers to return tickets for their postponed events to prevent double-recovery. (Jain Decl. ¶ 26.)

I. The class definitions are not adequately defined or ascertainable.

A proposed class must be "adequately defined and clearly ascertainable." *PB Prop. Mgmt., Inc. v. Goodman Mfg. Co.*, 2016 WL 7666179, at *19 (M.D. Fla. May 12, 2016). This requires that class members can be identified with reference to "objective criteria." *Id.* A class is not adequately defined where it requires substantial individual inquiry to determine membership. *See Ohio State Troopers Ass'n v. Point Blank Enters.*, 247 F. Supp. 3d 1207, 1232 n.12 (S.D. Fla. 2018).

A. Plaintiff's class is not defined with reference to objective criteria.

Whether an individual falls into or out of any of any class depends on subjective criteria—preference. This includes an individual's preference for a voucher as opposed to a refund (in the case of a cancelled event) and a usable ticket as opposed to a refund (in the case of a postponed event).[2] (*See* Shiflett Dep. 66:2-5, attached as Ex. 9 [redacted] Plaintiff's definition also requires assessment of whether someone in any class "affirmatively indicated" her preference to receive a voucher. But this begs the question: what does an "affirmative[] indicat[ion]" of preference look like for someone who receives an email informing her of a voucher and the need to do nothing to be entitled to it?

[2] Although Plaintiff's proffered exclusion is only for the Cancelled Events Class, as a practical matter, anyone preferring to keep tickets for a future date of a postponed event over a refund must be excluded to prevent double recovery.

A few examples illustrate the myriad problems with ascertaining buyer's preferences for vouchers or refunds for cancelled events:

- [redacted] (Jain Decl. ¶ 37.a [redacted]
- [redacted] Jain Decl. 37.b [redacted]
- [redacted] (Jain Decl. 37.c [redacted]

These examples show putative class members exist [redacted] (*See* Jain Decl. ¶ 39 & Fig. 1.)[3]

For postponed events, buyers are informed that their tickets remain valid for the rescheduled dates. (COVID-19 Policies.) How does one know that an individual does not simply prefer to keep those tickets instead of having a refund forced upon her (as would be required under Plaintiff's theory)?

[redacted]

[3] Carving out those who have cashed in their vouchers would not solve this problem. One cannot assume that anyone who has not cashed her voucher by a date-certain does not prefer the voucher. There likely exist individuals who prefer the voucher and are waiting for the right event to redeem it on, but Plaintiff has proposed no way of identifying those individuals – nor is there any way to do so short of contacting each and every individual to determine their preference.

[redacted] (Shiflett Dep. 31:16-32:15.) [redacted] (Shiflett Dep. 32:16-18), [redacted] (Shiflett Dep. 32:22-33:4.) [redacted] (Shiflett Dep. 33:12-16.) It stands to reason that many who still hold valid tickets for postponed events have exactly what they want—a valid ticket for a later date.

Thus, Plaintiff has not met her burden in demonstrating ascertainability.

B. Plaintiff's class definition is based on arbitrary criteria.

A class definition based on arbitrary criteria fails Rules 23 scrutiny. *See Boca Raton Community Hosp., Inc. v. Tenet Healthcare Corp.*, 238 F.R.D. 679, 689 (S.D. Fla. 2006). Criteria are arbitrary where no rational legal or factual basis supports a specific threshold to determine class membership. *See id.*; *see, e.g., Brooks v. Darling Intern'l, Inc.*, 2017 WL 1198542, at *8 (E.D. Cal. Mar. 31, 2017).

Plaintiff demarcates that buyers should have received refunds within 30 days of cancellation or that viagogo should have marked an event cancelled if it has not occurred within 90 days of the original date. But she offers absolutely zero discussion or support as to why 30 days—not 29, not 31—is the rational, objective

dividing line for refunds.[4] Nor does she explain why 90 days—not 89, not 91—is the rational, objective dividing line for declaring an event "cancelled," when it is in fact postponed. While "in a literal sense," 30 days and 90 days may be "objective," this does not solve the problem. *Brooks*, 2017 WL 1198542, at *8.

The court in *Boca Raton Community Hospital, Inc.* rejected a plaintiff's attempt to define membership in a class based on whether a hospital fell below a "National Threshold" line. 238 F.R.D. at 689. Plaintiff "simply assume[d]" that hospitals falling below this threshold engaged in culpable behavior while those above that threshold did not. *Id.* Without sufficient explanation or authority as to why, plaintiff's class was impermissibly arbitrary. *See id.*

Just as in *Boca Raton*, Plaintiff simply assumes, without any explanation or discussion, that if a buyer has not received a refund within 30 days of cancellation, she is injured. The same goes for postponed events not marked cancelled within 90 days. Plaintiff provides no factual, legal, or expert analysis supporting either position. [redacted] (*See* Jain Decl. ¶¶ 23.a, 37.a.) Thus, Plaintiff's class definition is arbitrary, warranting denial.

[4] [redacted] hiflett Dep. 76:10-13.)

C. Plaintiff's classes include those who suffered no injury or damages.

An overbroad class that includes individuals that suffered no injury or damages is impermissible. *See Varnes v. Home Depot USA*, 2015 WL 5190648, at *3 (M.D. Fla. Sept. 4, 2015); *see also Walewski v. Zenimax Media, Inc.*, 502 F. App'x 857, 861 (11th Cir. 2012) (affirming denial of class certification). Such is the case here.

[redacted] (*See* Jain Decl. ¶ 37.) [redacted] (*See* Jain Decl. ¶ 20.) [redacted] (*See* Section I.A.)

Thus, Plaintiff's Motion should be denied.

II. Plaintiff is not adequate.

Rule 23 requires that a plaintiff be adequate. Fed. R. Civ. P. 23(a)(4). A plaintiff cannot be if she has a "fundamental" conflict with putative class members. *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003). One "exists where some party members claim to have been harmed by the same conduct that benefited other members of the class." *Id.* That is the case here.

For the Cancelled Event Class, Plaintiff is in conflict with members who [redacted]

[redacted] (Jain Decl. ¶ 37.) [redacted] (*See* Jain Decl. ¶ 39 & Fig. 1.) [redacted] (*See* Jain Decl. ¶ 38; Shiflett Dep. 67:17-25 [redacted]

For the Postponed Event Class, Plaintiff is in conflict with members who (1) had tickets to events that have *already* occurred or (2) have tickets to events that *will* occur. [redacted] (*See* Jain Decl. ¶¶ 19-24.) Unlike Plaintiff's event, [redacted] (*See* Section I.A.)

Thus, Plaintiff is an inadequate class representative.[5]

III. Predominance dooms Plaintiff's claims.

Common questions "predominate *only* if they have a direct impact on every class member's effort to establish liability." *Coffey v. WCW & Air, Inc.*, 2020 WL 3250744, at *2 (N.D. Fla. Mar. 25, 2020).[6] The purpose of this requirement is to

[5] Her "varying facts and circumstances" also render her atypical. *O'Neil v. The Home Depot, U.S.A., Inc.*, 243 F.R.D. 469, 478 (S.D. Fla. Dec. 27, 2006). Deepening the problem, [redacted] (Scuteri Dep. 104:6-105:11.)

[6] To satisfy Rule 23(a), a plaintiff must demonstrate common questions of law or fact. This requires identification questions with the capacity "to generate common *answers* apt to drive

determine "whether the individual questions in a case are so overwhelming to destroy the utility of the class action." *O'Neil*, 243 F.R.D. at 479. Where the court will have to conduct a series of mini-trials to resolve the factual disputes to determine liability, individual questions predominate and a plaintiff cannot satisfy Rule 23(b)(3)'s predominance requirement. *See Coffey*, 2020 WL 3250744, at *6.[7]

A. Plaintiff has failed to put forth a viable damages model.

Plaintiff must put forth a viable damages model tied to her theory of the case. *Randolph v. J.M. Smucker Co.*, 303 F.R.D. 679, 698-99 (S.D. Fla. 2014). Plaintiff's theory of liability supposes two forms of damages: "(1) a full refund for anyone who has not received one; or (2) interest for the periods of time viagogo's retention of buyers' full payment amounts were determined to be wrongful," (Mot. 22), presumably tied to the arbitrary 30- and 90-day limits in her class definitions. Plaintiff offers that this can simply be calculated using "no particular skill" based on viagogo's data. (Mot. 22.) Nothing could be further from the truth.

1. Plaintiff's damages model does not isolate the value of the voucher or account for the value of attending any event.

First, individuals who declined to request a refund and instead chose a

resolution of the litigation." *Wal-Mart Stores v. Dikes,* 564 U.S. 338, 350 (2011). Questions like "Is that an unlawful . . . practice?" or "What remedies should we get?" are not enough. *Id.* at 349. Those are exactly the types of questions Plaintiff asserts here. (*See* Mot. 17-18.) This fails Rule 23(a). *E.g.*, *Alvarez v. Loancare, LLC*, 2021 WL 184547, at *1 (S.D. Fla. Jan. 19, 2021).

[7] Where, as here, individual questions would predominate, a class action cannot "fairly and efficiently adjudicat[e] th[e] controversy," dooming superiority as well. *Sliwa v. Bright House Networks, LLC*, 333 F.R.D. 255, 281 (M.D. Fla. 2019)

voucher actually received something of value in return—a voucher worth 25% more. (Jain Decl. ¶¶34-35; Shiflett Dep. 67:17-25.) Plaintiff has not attempted to isolate the voucher's value to account for anyone who received—much less used—one.

[redacted]

Plaintiff also fails to address that some people [redacted] may value holding their tickets to events that have been rescheduled. (Jain Decl. ¶¶ 19, 23 ([redacted]); Shiflett Dep. 32:22-33:16 [redacted].) This is especially likely with pent-up demand for live events surging; buyers may find their chosen event sold out or may be unable to find more attractive tickets available elsewhere.

In *In re Motions to Certify Classes Against Court Report Reporting Firms for Charges Relating to Word Indices*, the court denied class certification in FDUTPA litigation concerning "the fair pricing of the word indices included with transcripts." 715 F. Supp. 2d 1265, 1267 (S.D. Fla. 2010). The "potential value of

indices to users varies greatly." *Id.* at 1278. For longer transcripts, "an index may be extremely valuable." *Id.* For shorter ones, "the value of the index may be comparatively small." *Id.* Some lawyers "place little or no value on word indices and refuse to use them, while others consider them a very valuable part of the transcript." *Id.* The "fairly obvious conclusion" was that "word indices have a subjective value depending on the user and the circumstances." *Id.*

Despite the presence of all of these permutations of subjective motivations related to individual choice, Plaintiff has failed to attempt to isolate or account for any of them through expert testimony or otherwise. Calculating damages here is a far cry from requiring "no particular skill" because significant work is necessary to even attempt to account for the value associated with valid tickets and vouchers.

Accordingly, individual questions regarding damages will predominate.[8]

B. Individual liability questions predominate.

1. The FDUTPA subclass

To impose liability under FDUTPA, a plaintiff must prove that the act or practice in question is one that is "likely to deceive a consumer acting reasonably

[8] Plaintiff's "model" also includes damages that are simply unavailable. "Interest" is a consequential damage. *See Bartram, LLC v. C.B. Contractors, LLC*, 2011 WL 1299856, at *3 (N.D. Fla. Mar. 31, 2011). Both FDUTPA, *Fort Lauderdale Lincoln Mercury, Inc. v. Cognati*, 715 So.2d 311, 315 (Fla. 4th DCA 1998), and the T&C, (T&C ⁋ 9; RFA 9), prohibit recovery of consequential damages. The T&C are also clear that there are no refunds for postponements. *See* T&C ⁋ 6.8. This deepens the problem. *PB Prop. Mgmt., Inc.*, 2016 WL 7666179, at *21 (denying class certification for class limiting membership to those who suffered damages that were unavailable as matter of law).

in the same circumstances." *In re Motions*, 715 F. Supp. 2d at 1282. This is a "hybrid standard that may be objective[ly] established as to mindset but subjectively established as to context." *Id.* Courts regularly find that individual questions predominate under FDUTPA's hybrid standard. *See, e.g.*, *Townhouse Rest. of Ovideo, Inc. v. NuCO2, LLC*, 2021 WL 230021, at *2 (S.D. Fla. Jan. 22, 2021); *In re Motions*, 715 F. Supp. 2d at 1282. That is the case here.

In re Motions is again illustrative. Individual questions predominated because "[s]ome putative class members were obviously aware of the indices [and] valued them." *In re Motions*, 715 F. Supp. 2d at 1283. Some may have had "little understanding" of the practices related to the indices, while others had significant understanding. *Id.* at 1283-84. Thus, the reasonableness of a consumer's conduct depended on "many individualized factors." *Id.* at 1284.

The same holds true here. Unlike Plaintiff, [redacted]

(*E.g.*, Jain Decl. 20.b [redacted] Context matters because the supposedly-common question asks whether a "delay in refunds" of [redacted] "months" violated FDUTPA. [redacted] (Shiflett Dep. 42:1-9.) Unlike Plaintiff, [redacted]

[redacted] (*E.g.*, Jain Decl. 20.b.) Again, context matters here because a supposedly-common question is whether viagogo should be liable for having a voucher system. (Mot. 17.) It would be important to know whether any buyer who knew about the potential of a voucher when buying tickets and placed value in it. (*See* Jain Decl. ¶ 36 [redacted]

Just as in *In re Motions*, individual questions predominate.

2. The "wrongful" withholding of funds theory

Plaintiff premises her liability and damages theories on the contention that viagogo "wrongfully" withheld a buyer's funds if viagogo did not provide any refund within 30 days of cancellation for cancelled events or 120 days from the originally-scheduled date for postponed events.[9] (*See* Mot. 13.) Plaintiff's theory ignores the complexity of determining an event's status.

The uncertain course of the pandemic caused events to be postponed, rescheduled, relocated, or cancelled. [redacted] (Jain Decl. ¶¶ 45-47.) [redacted] (*Id.*) [redacted]

[9] Marking an event cancelled at the 90-day mark would entitle buyers to refunds if they wanted one. Plaintiff's Motion ([redacted]) believes that a reasonable time for a refund is 30 days after cancellation. Logically, Plaintiff's position is that viagogo "wrongfully" withholds buyers' funds for postponed events at the 120-day mark.

[redacted]. (*Id.*)

These changes were often made based on conflicting information. Plaintiff's own concert provides an example of the uncertainty. [redacted] (viagogo Resp. Interrog. 21, attached as Ex. 10 .) But buyers reported on August 26, 2020, that Ticketmaster classified Tool events as postponed. (*See* Ex. 11 at 5.)[10] LiveNation *still* marks her concert as postponed. (*See* viagogo Resp. Interrog. 21.)[11] To establish whether viagogo withheld funds "wrongfully," requires that the factfinder must weigh conflicting evidence to determine the date that an event "rightfully" should have been cancelled. Put differently, was it "wrongful" for viagogo to withhold refunds past July 18, 2020 (90 days after the originally-scheduled date) or September 12, 2020 (30 days after cancellation) when evidence suggests that other sources of information indicated that the event still to this day has not been cancelled? Such a determination is inherently individualized. And Plaintiff agrees. (*See* RFA 21.) Thus, thousands of mini-trials must be conducted to determine liability. Common questions cannot predominate. *See Coffey*, 2020 WL 3250744, at *6.

3. The unjust enrichment alternative claim

An essential element for unjust enrichment includes an analysis of

[10] Additionally, several fans expressed that they did not want refunds and would have preferred to keep their tickets to a future show. (Ex. 11 at 7, 14.)
[11] A screenshot is attached as Exhibit 12.

defendant's retention of any "benefit under circumstances that make it inequitable for him to retain it without paying the value thereof." *In re Motions*, 715 F. Supp. 2d at 1284. This element requires individualized inquiry.

Whether "retention of the benefit under the circumstances . . . make it inequitable" is inherently individualized. Before granting relief, the court "must examine the particular circumstances of an individual case and assure itself that, without a remedy, inequity would result or persist." *Id.* (citations omitted). This "inquiry into equities is individualized," making class treatment inappropriate. *Id.*

Assuming inequity may persist for Plaintiff, it does not follow that inequity would for others. Does inequity persist for the purchaser [redacted], (*see* Jain Decl. ¶ 37.1), if viagogo retains his original purchase price? Does inequity persist for the [redacted], (*see id.* ¶ 20.a), who has tickets that remain valid for a future date? Those are all case-by-case judgment calls that would result in thousands of mini-trials. *See Coffey*, 2020 WL 3250744, at *6.

Accordingly, this Court must deny any unjust enrichment class.

IV. Plaintiff does not have standing to pursue claims for other events.

It is "axiomatic that [plaintiff] suffered no injury from products he did not buy." *Blobner v. R.T.G. Furniture Corp.*, 2019 WL 3808130, at *2 (M.D. Fla. July 24, 2019) (Moody, J.). [redacted]

[redacted] (*See* Shiflett Dep. 31:16-32:15; RFA 11.) And she agrees that putative class members can only have suffered damages related to their particular event's alleged misclassification. (*See* RFA 23 (agreeing that putative class members who did not purchase tickets to Tool concert suffered no damages from alleged misclassification of the Tool concert).) Without damages for any other event's alleged misclassification, she lacks Article III standing.

V. Plaintiff cannot pursue any nationwide class.

The Eleventh Circuit is clear: "in cases implicating the law of all fifty states, '[t]he party seeking certification . . . must provide an *extensive analysis* of state law variations to reveal whether these pose insurmountable obstacles.'" *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1180 (11th Cir. 2010) (citations omitted). Although Plaintiff seeks to assert nationwide classes, (*see* Mot. 12-13), she nowhere provides any analysis of state law variations that may impact her classes. Thus, she cannot pursue any nationwide class.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Court should deny Plaintiff's Motion, and grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 2021, a true copy of the foregoing was filed with the Court using the CM/ECF system, which will send notice to the following:

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