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Attorneys for Plaintiffs

ARIZONA SUPERIOR COURT
MARICOPA COUNTY

ARIZONA ADVOCACY NETWORK;
SEN. DAVID BRADLEY; SEN. OLIVIA
CAJERO-BEDFORD; SEN. LUPE
CONTRERAS; SEN. ANDREA
DALESSANDRO; SEN. STEVE
FARLEY; SEN. KATIE HOBBS; SEN.
CATHERINE MIRANDA; SEN.
MARTIN QUEZADA; SEN. ANDREW
SHERWOOD; REP. RICHARD C.
ANDRADE; REP. LELA ALSTON; REP.
MARK A. CARDENAS; REP. KEN
CLARK; REP. DIEGO ESPINOZA;
REP. CHARLENE R. FERNANDEZ;
REP. RANDALL FRIESE; REP.
ROSANNA GABALDÓN; REP.
ALBERT HALE; REP. STEFANIE
MACH; REP. MATTHEW KOPEC;
REP. JUAN JOSE MENDEZ; REP.
REBECCA RIOS; REP. MACARIO
SALDATE; REP. CECI VELASQUEZ;
REP. BRUCE WHEELER; and
BRICKLAYERS AND ALLIED
CRAFTWORKERS LOCAL UNION
#3 AZ-NM;

Plaintiffs,

v.

COPY

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T. HARNEY
DEPUTY CLERK

No. CV2017-096705

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

THE STATE OF ARIZONA, a body
politic; MICHELE REAGAN, in her
official capacity as Secretary of State; and
THE CITIZENS CLEAN ELECTIONS
COMMISSION; GOVERNOR'S
REGULATORY REVIEW COUNCIL;

Defendants.

Plaintiffs, by and through their attorneys, hereby allege as follows:

NATURE OF THE ACTION

1. This action seeks a Declaration of unconstitutionality and Injunctive Relief against enforcement of portions of Senate Bill 1516 enacted by the Fifty-second Legislature, Second Regular Session 2016 ("S.B. 1516"), which are unconstitutional because they violate the Voter Protection Act, Ariz. Const. art. IV, 1 § 1(6), the Equal Protection Clause of the United States Constitution, U.S. Const. amend. XIV, Equal Protection under the Arizona Constitution, Ariz. Const. art. II, § 13, and Article VII, § 16 of Arizona Constitution.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Arizona Advocacy Network is a non-profit organization with its principal place of business located in the State of Arizona.

3. Plaintiffs David Bradley, Olivia Cajero-Bedford, Lupe Contreras, Andrea Dalessandro, Steve Farley, Katie Hobbs, Catherine Miranda, Martin Quezada, and Andrew Sherwood, collectively known as Senate Plaintiffs, resided within the State of Arizona during the time of SB 1516's passage, and were members of the Arizona State Senate who opposed S.B. 1516 or refused to vote.

4. Plaintiffs, Richard C. Andrade, Lela Alston, Mark A. Cardenas, Ken Clark, Diego Espinoza, Charlene Fernandez, Randall Friese, Rosanna Gabaldon, Albert Hale, Matthew A. Kopec, Stefanie Mach, Juan Mendez, Rebecca Rios, Macario Saldate, Ceci Velasquez, and Bruce Wheeler, collectively, House Plaintiffs, resided within the State of Arizona during the time of the action, and were members of the Arizona House of Representatives who opposed S.B. 1516.

5. Plaintiff Bricklayers and Allied Craftworkers Local Union #3 AZ-NM ("Local 3") is a labor union organized under Section 501(c)(5) of the Internal Revenue Code and not registered with the Arizona Corporation Commission, They represent bricklayers, sstonemasons, tile layers and finishers, restoration masons and caulkers, marble masons and finisher, terrazzo mechanics and finishers, and refractory bricklayers who work in the State of Arizona.

6. Defendant State of Arizona is a body politic.

7. Defendant Michele Reagan is the Secretary of State, and is named in her official capacity.

8. The Citizens Clean Elections Commission is the body tasked by the Clean Elections Act with enforcing the Act.

9. The Governor's Regulatory Review Council is a State agency.

10. This action arises under state law, the Arizona Constitution, and the U.S. Constitution. This Court has jurisdiction pursuant to A.R.S. §§ 12-123 and 12-1831 *et seq.*

11. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

STATEMENT OF FACTS

The Citizens Clean Elections Act

12. The Citizens Clean Elections Act (the "CEA") was initiated by citizens and was passed by voters in November 1998. Proposition 200, was approved at election Nov. 3, 1998, eff. Nov. 23, 1998.

13. Under the CEA:

The people of Arizona declare[d] our intent to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.

A.R.S. § 16-940(A).

14. The CEA addressed numerous grievances against the campaign finance system at that time, including that it "[h]inder[ed] communication to voters by many qualified candidates; [e]ffectively suppress[ed] the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests; [and] [u]ndermine[d] public confidence in the integrity of public officials." A.R.S. § 16-940(B).

15. The CEA established a system for contributions made to all legislative and statewide candidates. A.R.S. § 16-941 (limiting contributions for participating and nonparticipating candidates).

16. The CEA established the new contribution limits by tying them to those from Article 1 of Chapter 6 of Arizona Revised Statutes and refers to the enforcement procedure from Article 1. *Id.* (B).

17. The CEA required and continues to require that any person who makes independent expenditures beyond a certain threshold “shall file reports with the secretary of state.” A.R.S. § 16-941(D).

18. The CEA required and continues to require that “[a]ny person who has previously reached the dollar amount specified in § 16-941, subsection D for filing an original report shall file a supplemental report each time previously unreported independent expenditures specified by that subsection exceeds one thousand dollars.” A.R.S. § 16-958(A).

19. The CEA incorporated several definitions by reference to A.R.S. § 16-901 as it was written in 1998, the date of CEA’s enactment. A.R.S. § 16-961(A).

20. The CEA enacted these by reference, not as a component in a formula.

21. Among the definitions enacted by CEA was that of political committee as follows:

“Political committee” means a candidate or any association or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election or to determine whether an individual will become a candidate for election in this state or in any county, city, town, district or precinct in this state, that engages in political activity in behalf of or against a candidate for election or retention or in support of or opposition to an initiative, referendum or recall or any other measure or proposition and that applies for a serial number and circulates petitions and, in the case of a candidate for public office except those exempt pursuant to section 16-903, that receives contributions or makes expenditures in connection therewith, notwithstanding

that the association or combination of persons may be part of a larger association, combination of persons or sponsoring organization not primarily organized, conducted or combined for the purpose of influencing the result of any election in this state or in any county, city, town or precinct in this state. Political committee includes the following types of committees:

- (a) A candidate's campaign committee.
- (b) A separate, segregated fund established by a corporation or labor organization pursuant to section 16-920, subsection A, paragraph 3.
- (c) A committee acting in support of or opposition to the qualification, passage or defeat of a ballot measure, question or proposition.
- (d) A committee organized to circulate or oppose a recall petition or to influence the result of a recall election.
- (e) A political party.
- (f) A committee organized for the purpose of making independent expenditures.
- (g) A committee organized in support of or opposition to one or more candidates.
- (h) A political organization.
- (i) An exploratory committee.

A.R.S. § 16-901(19) (West 1998).

22. The CEA provided the Citizens Clean Elections Commission (the "Commission") with broad authority to "adopt rules to carry out the purposes of this article," which includes receiving reports on independent expenditures. A.R.S. § 16-956(B).

23. The Commission has adopted Rule R2-20-109, Independent Expenditure Reporting Requirements, which carries out the purpose of the CEA as related to independent expenditures. A.A.C. R2-20-109.

24. The Commission has adopted Rule R2-20-111, Non-participating Candidate Reporting Requirements and Contribution Limits, which carries out the purpose of the CEA as related to non-participating candidate regulation. A.A.C. R2-20-111.

25. Thus, the CEA was intended to address the statewide problems of corruption, and did so in a variety of ways directed at candidates who agreed to the limitations associated with public funding, those who did not, and any person or entity that chose to spend money to influence Arizona elections.

26. Furthermore, the Commission has taken steps to enact rules to further these purposes.

The Clean Elections Institute

27. The Clean Elections Institute has sued to protect the integrity of the Clean Elections Act. *See, e.g., Clean Elections Inst., Inc. v. Brewer*, 209 Ariz. 241, 99 P.3d 570 (2004).

28. The Clean Elections Institute has intervened to defend the act when the State sought nominal party status in challenges to the CEA. *See, e.g., Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 131 S. Ct. 2806, 2813, 180 L. Ed. 2d 664 (2011); *Ass'n of Am. Physicians & Surgeons v. Brewer*, 363 F. Supp. 2d 1197 (D. Ariz. 2005), *aff'd in part, rev'd in part and remanded*, 494 F.3d 1145 (9th Cir. 2007).

29. Arizona Advocacy Network has taken on the responsibility of protecting the CEA in the absence of the Clean Elections Institute.

Senate Bill 1516

30. On March 8, 2016, S.B. 1516 passed in the Arizona Senate with eighteen ayes, ten nays, and two members not voting.

31. On March 29, 2016, the measure passed in the Arizona House of Representatives with thirty-one ayes, twenty-seven nays, and two members not voting.

32. On March 30, 2016, the Governor signed S.B. 1516 into law.

33. The bill was chaptered as Laws 2016, ch. 79.

34. Section 12 of S.B. 1516 provided *inter alia* that “a filing officer is the sole public officer who is authorized to initiate an investigation into alleged violations of this article and articles 1, 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 of this chapter, including the alleged failure to register as a committee.” 2016 Ariz. Legis. Serv. Ch. 79, § 12 (S.B. 1516) (codified at A.R.S. § 16-938(A)).

35. S.B. 1516 provided no exceptions for reports that are required to be filed with the Secretary of State’s office by the CEA at A.R.S. §§ 16-941-958 or elsewhere.

36. S.B. 1516 created a blanket exception from the reporting requirements for certain entities from being regulated as political committees.

37. Under S.B. 1516, to be a political action committee, an entity must (a) be “organized for the primary purpose of influencing the result of an election,” and (b) receive contributions or make expenditures above a certain threshold. 2016 Ariz. Legis. Serv. Ch. 79, § 12 (S.B. 1516).

38. Section 11 of S.B. 1516 defines primary purpose as “an entity’s predominant purpose. Notwithstanding any other law or rule, an entity is not organized for the primary

purpose of influencing an election if all of the following apply at the time the contribution or expenditure is made:

- a. The entity has tax exempt status under section 501(a) of the internal revenue code.
- b. Except for a religious organization, assembly or institution, the entity has properly filed a form 1023 or form 1024 with the internal revenue service or the equivalent successor form designated by the internal revenue service.
- c. The entity's tax exempt status has not been denied or revoked by the internal revenue service.
- d. The entity remains in good standing with the corporation commission.
- e. The entity has properly filed a form 990 with the internal revenue service or the equivalent successor form designated by the internal revenue service in compliance with the most recent filing deadline established by internal revenue service regulations or policies.”

2016 Ariz. Legis. Serv. Ch. 79, § 11 (S.B. 1516) (codified at A.R.S. § 16-901(43)).

39. Thus, an entity behaving in all ways as a political committee and making independent expenditures, but registered with the Arizona Corporation Commission (“ACC”) and in good standing with the Internal Revenue Service cannot be regulated as a political committee.

40. S.B. 1516 does not provide for any exception for rules passed by the Commission concerning independent expenditures made by such groups.

41. S.B. 1516 limits this exemption from regulation to tax-exempt entities that are registered with the ACC.

42. S.B. 1516 originally contained sections 13 through 19 and 31 that were not enacted because (1) they amended the CEA and (2) the bill lacked sufficient votes to satisfy the VPA's requirement for supermajority in order to enact.

43. The legislature enacted the remaining sections of S.B. 1516, including those sections that attempted to indirectly amend the CEA in violation of the VPA.

44. Upon information and belief, based on its interpretation of S.B. 1516, the Governor's Regulatory Review Council ("GRRC") has determined that Rules R2-20-109 & 111 are invalid, expired or otherwise unenforceable.

45. The GRRC is a division of the Arizona Department of Administration and is responsible for reviewing proposed administrative rules and compiling reports on the rulemaking processes of various agencies.

46. In its recent Notice of Proposed Exempt Rulemaking for its re-issue of Rules 109 and 111 respectively, the Commission explained:

R2-20-109. Independent Expenditure Reporting Requirements This action is being taken because of an invalid notice from the Governor's Regulatory Review Council (GRRC). The rule, which remains in effect, provides guidance and explanation of the application of the Clean Elections Act to persons who make independent expenditures in state and legislative races. See *Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004) (explaining that the Commission is "require[d]" to enforce laws related to independent expenditures).

....

R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits This action is being taken because of an invalid notice from Governor's Regulatory Review Council (GRRC). The rule, which remains in effect, provides guidance and explanation of statutory provisions the commission is "require[d]" to enforce. *Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004); see also *Horne v. Citizens Clean Elections Commission*, CV 2014-009404 (8/19/2014) (dismissing case challenging the Commission's jurisdiction to resolve complaints against a non-participating candidate.).

47. The above rules published by the Commission reinforce the protections put in place by the CEA.

FIRST CLAIM FOR RELIEF
(Voter Protection Act)

48. Plaintiffs incorporate by reference the above paragraphs as though fully set forth herein.

49. Under Ariz. Const. art. IV, Pt. 1 § 1(6)(B), "The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure."

50. The provisions of S.B. 1516 conflict with the CEA and violate the VPA (i) by restricting the enforcement of disclosure requirements under the authority of the Clean Elections Commission as applied to certain political actors, (ii) restricting the enforcement of the CEA as applied to certain types of expenditures and contributions, and, (iii) by removing the Commission's authority to enforce certain components of the Act against anyone.

Redefining Political Committee Using “Primary Purpose”

51. S.B. 1516 excludes entities that do not have a “primary purpose” of influencing elections from the definition of “political action committee.” A.R.S. §§ 16-901(43) - 905(C) as added by S.B. 1516 §§ 11, and 12.

52. It then defines “primary purpose” in such a way as to exclude a class of actors from regulation as a political action committee: those entities in good standing with the Arizona Corporation Commission and registered as a tax-exempt entity with the Internal Revenue Service. *Id.*

53. The CEA specifically requires the Commission to monitor reports made to the Secretary of State’s office concerning independent expenditures.

54. A.R.S. § 16-941(D), added by the CEA, requires “any person who makes independent expenditures” to report such spending to the Secretary of State’s Office.

55. The CEA requires the Commission to make rules to enable enforcing its reporting requirements for independent expenditures, including those made by political committees. A.R.S. § 16-956; *Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004) (explaining the Commission’s duty to enforce laws related to independent expenditures).

56. The Commission has adopted rules to enforce reporting requirements on those who make independent expenditures, including political committees as defined in A.R.S. § 16-961(A), enacted by the CEA.

57. Rule R2-20-109(B)(4)(b) provides: “Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not

persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.”

58. S.B. 1516 deletes the definition of “political committee” from title 16, and thus amends the CEA by eliminating its cross-reference.

59. Furthermore, by amending A.R.S. § 16-901 to eliminate certain tax-exempt organizations in good standing, regardless of the entity’s actual conduct, from the definition of political action committee, A.R.S. § 16-901(43), S.B. 1516 attempts to prevent the Commission from carrying out its mandate under the CEA to monitor independent expenditure reporting required of certain political committees.

60. The CEA requires the Commission to take enforcement action against such entities that fail to comply with the Act.

61. A.R.S. § 16-957(A), added by the CEA, details the enforcement procedures the Commission follows when it “finds that there is reason to believe that a person has violated any provision of [the CEA].” S.B. 1516 purports to allow certain entities to bypass these procedures.

62. By creating a blanket exception for certain entities from being organized for the primary purpose of influencing the outcome of elections for entities exempted under A.R.S. § 16-901(43), S.B. 1516 attempts to remove such entities from regulation by state election regulators including the Commission.

Redefining “Contribution” and “Expenditure”

63. A.R.S. § 16-911(B), added by S.B. 1516, defines exemptions from the definition of contribution, one of which is “the payment by a political party to support its nominee...including [c]oordinated political party expenditures.” A.R.S. § 16-911(B)(4).

Here 'coordinated party expenditures' means those expenditures that are made by a political party to directly pay for goods or services on behalf of its nominee. A.R.S. § 16-901(14).

64. A.R.S. § 16-911(B)(5) exempts "the payment by any person to defray a political party's operating expenses or party-building activities" from the definition of contribution. Additionally, A.R.S. § 16-921 of S.B. 1516, exempts that same category of payments from the definition of expenditure.

65. These conflict with A.R.S. § 16-961 of the CEA, which relies on the former definitions of "contribution" and "expenditure."

66. Furthermore, by exempting what would otherwise be in-kind contributions from the definition of expenditure and contribution, it amends the contribution limits found in A.R.S. § 16-941, and permits unlimited contributions to political parties, who can in turn spend unlimited amounts in support of their nominees.

Restricting Enforcement

67. By limiting enforcement to only filing officers, A.R.S. § 16-938, S.B. 1516 further attempts to explicitly remove all but participating candidates from regulation by the Commission.

68. Because A.R.S. § 16-938 allows for complaints related to failures to make filings with the Secretary to be filed *only with the Secretary*, S.B. 1516 stands in conflict with A.R.S. § 16-943(C) in which the CEA establishes a violation for "[a]ny person who knowingly provides false or incomplete information on a report filed under § 16-958," to be enforced by the Commission, A.R.S. § 16-957.

69. S.B. 1516 also conflicts with A.R.S. § 16-941(D), which applies to “any person who makes independent expenditures.” This section requires the disclosure of independent expenditures cumulatively exceeding \$500 per election cycle. By preventing the Commission from enforcing this provision, and instead vesting complete authority with the Secretary of State, S.B. 1516 skirts around these requirements also.

70. The above identified sections of S.B. 1516 attempt to amend the CEA without satisfying the constitutional requirements to do so and are, therefore, unenforceable.

SECOND CLAIM FOR RELIEF

(Supermajority Requirement)

71. Plaintiffs incorporate by reference the above paragraphs as though fully set forth herein.

72. Under Ariz. Const. art. IV, Pt. 1 § 1(6)(B), “The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure.”

73. The above paragraph applies to S.B. 1516 because it amended the CEA, which was passed on November 3, 1998.

74. Because enough legislators, specifically House Plaintiffs, voted against S.B. 1516 in the Arizona House of Representatives to deny its passage with a three-fourths supermajority, the bill cannot become law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B). The signing of S.B. 1516 into law effectively denied representation to the constituents of those legislators.

75. Because enough legislators, specifically Senate Plaintiffs, voted against S.B. 1516 in the Arizona Senate to deny its passage with a three-fourths supermajority, the bill cannot become law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B). The signing of S.B. 1516 into law effectively denied representation to the constituents of those legislators.

76. Because S.B. 1516 did not further the purpose of the CEA, which it was amending, the bill cannot become law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B).

77. Because S.B. 1516 was not properly approved according to Ariz. Const. art. IV, Pt. 1 § 1(6), the bill is unconstitutional.

THIRD CLAIM FOR RELIEF

(Equal Protection)

78. Plaintiffs incorporate by reference the above paragraphs as though fully set forth herein.

79. S.B. 1516 exempts some tax-exempt groups from the reporting requirements associated with activities to influence Arizona elections.

80. S.B. 1516 therefore impacts the fundamental right of free speech.

81. When an equal protection claim implicates a fundamental right, such as the First Amendment, the standard in analyzing that unequal treatment is strict scrutiny. This remains true regardless of whether or not the unequal treatment is based on membership in a protected class. *U.S. v. Hancock*, 231 F.3d 557.

82. When various 501(c) groups make expenditures to influence Arizona elections, S.B. 1516 treats those that are registered with the Arizona Corporation Commission differently than those that are not.

83. Nonprofit, 501(c) groups are exempt from being classified as “political committees” under S.B. 1516 despite the fact that the I.R.S. does not have the same exemption, as there are 501(c) groups who may still influence elections even if it is not their primary purpose.

84. For example, if an entity that was tax-exempt under I.R.C. 501(c)(4) and was registered with the Arizona Corporation Commission, spent 100% of its funds on political ads, there would be no Arizona elections regulator who could require them to register and report as a political committee.

85. In stark contrast, if a 501(c)(5) organization like Local 3, which is not registered with the Arizona Corporation Commission, spent 100% of its funds on political ads, S.B. 1516 requires it to register as a political action committee and file campaign finance reports.

86. There is no governmental interest in this unequal treatment, much less a compelling one. Thus, S.B. 1516’s exemption from classification as a political action committee for some tax-exempt groups is unenforceable.

FOURTH CLAIM FOR RELIEF

(Article VII § 16 of Arizona Constitution)

87. Plaintiffs incorporate by reference the above paragraphs as though fully set forth herein.

88. The Arizona Constitution has a built-in disclosure requirement. It reads: “The legislature, at its first session, shall enact a law providing for a general publicity, before and after election, of all campaign contributions to, and expenditures of campaign committees and candidates for public office.” Ariz. Const. Art 7, § 16.

89. This applies to A.R.S. § 16-911(4)-(5), A.R.S. § 16-901(43), and A.R.S. § 16-905(C) added by S.B. 1516, which respectively allow for the exemption of political party monies to candidates under expenditures and contributions, and for the allowance of PAC status for tax-exempt organizations based on tax-exempt status, both of which ultimately allow for unpublicized contributions and expenditures.

90. As a result of S.B. 1516, any non-profit corporation or similar entity will be able to make unlimited monetary contributions to a political party committee. In turn that committee may then make unlimited expenditures in support of, and in coordination with, its nominee.

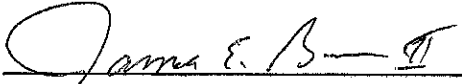
91. Since the reporting of these particular contributions are not required, the built-in disclosure safeguards are broken. This essentially allows for candidates to make expenditures themselves without meeting the “general publicity” requirement of campaign contributions.

WHEREFORE, Plaintiffs request that this Court

- a. Declare that S.B. 1516 violates Article 4, Part 1, § 1(6) of the Arizona Constitution.
- b. Declare that S.B. 1516 violates the Equal Protection Clause of both the Arizona and U.S. Constitutions.
- c. Declare that S.B. 1516 violates Article 7 § 16 of the Arizona Constitution.
- d. Permanently enjoin enforcement of S.B. 1516 sections as codified at A.R.S §§ 16-901(7), -901(8), -901(43), -905(C), -911(4), -911(5), -921, and -938.

- e. Grant Plaintiffs their costs and attorneys' fees.
- f. Grant further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED this 15th day of November, 2017

By:  _____

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