IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LITTLE ROCK SCHOOL DISTRICT PLAINTIFF

v. 4:82-CV-0866-DPM

PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1, ET AL DEFENDANTS

MRS. LORENE JOSHUA, ET AL INTERVENORS

KATHERINE KNIGHT, ET AL INTERVENORS

MEMORANDUM BRIEF IN SUPPORT OF
LITTLE ROCK SCHOOL DISTRICT'S
MOTION TO DISMISS

I. Introduction.

The State's Motion for Release should be dismissed for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). The State fails to allege facts sufficient to support a finding that the State has in good-faith complied with the whole of the decree and that the State has eliminated the vestiges of its past discrimination to the extent practicable. In fact, the State admits that it has not complied in good-faith and does not address whether it has eliminated the vestiges of its past discrimination to the extent practicable. Instead, the State argues that "changed circumstances" justify its release, but this argument must be rejected as a matter of law. For these reasons and based on the discussion below, LRSD respectfully requests that the State's Motion for Release be dismissed for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6).

II. Motion to Dismiss Standard.

Dismissal is proper if the State's motion fails to state a claim upon which relief can be granted. *See Schaaf v. Residential Funding Corp.,* 517 F.3d 544, 549 (8th Cir.2008) (citing Fed.R.Civ.P. 12(b)(6)). A complaint fails to state a claim upon which relief may be granted if it fails to allege facts supporting the relief it seeks. *See id.* The State's Motion for Release should be dismissed because it does not allege facts satisfying the standard for termination of a desegregation consent decree.

III. Termination of a Desegregation Consent Decree.

The State's Motion for Release does not address the well-settled standard for termination of a desegregation consent decree which was reaffirmed by the Court of Appeals for the Eighth Circuit in this case just four month ago:

> A constitutional violator seeking relief from a desegregation plan adopted as a consent decree must show that it "complied in good faith with the desegregation decree since it was entered" and that "the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." *Freeman v. Pitts,* 503 U.S. 467, 492, 112S.Ct. 1430, 118 L.Ed.2d 108 (1992) *(quoting Bd. of Educ. of Okla. City Pub. Sch. v. Dowell,* 498 U.S. 237, 249–50, 111 S.Ct. 630, 112 L.Ed.2d 715 (1991)).

*Little Rock Sch. District v. State of Arkansas*, 664 F.3d 738, 744 (8th Cir. 2011). As a result of the State's failure to apply the appropriate standard, the State fails to allege facts necessary to justify the relief sought, and accordingly, the State's Motion for Release should be dismissed for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6).

To be released from its obligations under the 1989 Settlement Agreement, M-to-M Stipulation and Magnet Stipulation, the State must allege facts demonstrating that it has complied in good faith with those agreements *and* that it has eliminated the vestiges of its past discrimination to the extent practicable. *Id.* The State's motion to terminate the M-to-M and

magnet stipulations fails as a matter of law because the State does not allege facts sufficient to establish that it has eliminated the vestiges of state-imposed residential segregation to the extent practicable. Similarly, the State's motion to terminate the 1989 Settlement Agreement fails as a matter of law because the State does not allege facts sufficient to establish that it has made a good faith effort to remediate the racial achievement disparity.

The State argues that the education system in Arkansas has "changed dramatically" since 1989 and that "[t]hese changes are sufficient to warrant release of the State from the 1989 Settlement Agreement." *DN 4724, State's Brief, p. 1*. Relying on *Horne v. Flores*, 557 U.S. 433, 129 S.Ct 2579 (2009), the State contends that "plan compliance is not the touchstone of consent decree release decisions." The State argues instead for a "flexible standard" for terminating the consent decree – one that does not require the Court to give close scrutiny to the State's record of compliance. *See DN 4724, State's Brief, p. 39*. The State's argument must be rejected as a matter of law because termination of a desegregation consent decree is directly controlled by *Freeman* and *Dowell. See Agostini v. Felton*, 521 U.S. 203, 237-38 (1997) (where there is directly controlling precedent from the Supreme Court, lower courts must follow that precedent unless and until the Supreme Court overrules it).[1]

The Eighth Circuit recently rejected the State's argument when it was made by PCSSD on appeal of the Court's denial of unitary status. *See LRSD v. State,* 664 F.3d 738, 748-49. PCSSD, relying on *Horne v. Flores*, argued that its failure to comply with its intradistrict desegregation plan should be excused because of "virtually undisputed evidence that PCSSD

[1] In *Agostini v. Felton*, *supra,* five Supreme Court justices had expressed the view that the precedent at issue in *Agostini* should be reconsidered or overruled. *Id*. at 217. Even so, the Supreme Court held that this was not a changed circumstance justifying termination of a consent decree, *id.,* and that the lower courts were correct to follow the precedent, "leaving to [the Supreme Court] the prerogative of overruling its own precedent." *Id*. at 237.

exceeds the accomplishments of most other districts that have been declared unitary" and because parts of its intradistrict desegregation plan involved matters that were "never found to offend the Constitution in the first place." *PCSSD Eighth Circuit Reply Brief filed 14 September 2011, pp. 8-9.* PCSSD faulted the district court because it "narrowly focused" on plan compliance rather than recognizing that "PCSSD has attained achievement, discipline and staffing outcomes which more than exceed constitutional dimension . . ." *PCSSD Eighth Circuit Reply Brief filed 14 September 2011, p. 9.* The State, also relying on *Horne v. Flores*, made similar arguments in support of PCSSD's unitary status. *State Eighth Circuit Brief filed 2 September 2011, pp. 52-58.*

The Eighth Circuit firmly rejected "the proposition that we can excuse a school district's broad failure to comply with a desegregation plan to which it agreed, even if its desegregation statistics appear favorable relative to other unitary districts." *LRSD v. State*, 664 F.3d at 749. The Eighth Circuit also rejected the idea that PCSSD could be excused from its obligations, simply because its efforts might not have been successful. PCSSD was required to meet its obligation to implement programs to remediate the racial achievement disparity, for example, notwithstanding a previous finding that "socioeconomic factors are the root cause for most, if not all, of the achievement gap." *Id.* at 756. The Eighth Circuit explained, "Regardless of whether specific intervention programs required by Plan 2000 eventually bear fruit, however, PCSSD cannot disavow it agreed-upon obligation to make a good faith effort." *Id*. at 757.

The Eighth Circuit's order awarding fees to Joshua as a prevailing party on appeal also included a reference to PCSSD's argument that *Horne* had modified *Freeman*'s requirement of good-faith compliance. The Eighth Circuit described PCSSD's argument for a more flexible termination standard with less emphasis on compliance as "PCSSD's novel legal theory for

avoiding its desegregation obligations." *DN 4725, p. 10*. Thus, the Eighth Circuit has clearly rejected the argument now being advanced by the State that it may be released from its obligations under the 1989 Settlement Agreement, M-to-M Stipulation and Magnet Stipulation without showing good-faith compliance with the whole of the decree.

Good-faith compliance serves two unique purposes in the desegregation context. First, "A history of good-faith compliance . . . enables the district court to accept the school board's representation that it has accepted the principle of racial equality and will not suffer intentional discrimination in the future." *Freeman*, 503 U.S. at 498-99 (*citing Morgan v. Nucci,* 831 F.2d 313, 321 (1st Cir. 1987)("A finding of good faith ... reduces the possibility that a school system's compliance with court orders is but a temporary constitutional ritual")). Second, a school district must show its "good-faith commitment to the entirety of a desegregation plan so that parents, students, and the public will have assurance against further injuries or stigma . . . ." *Id*. at 498; *LRSD v. State*, 664 F.3d at 475. "When a school district has not demonstrated good faith under a comprehensive plan to remedy ongoing violations, [the Supreme Court has] without hesitation approved comprehensive and continued district court supervision." *Id*. at 499.

In sum, the State is a constitutional violator. *See LRSD v. State*, 664 F.3d at 758 (referring to the 19 May 2011 Order ending the State's funding obligations, the Eighth Circuit said, "[N]otice and a formal hearing are required before the Court terminates a constitutional violators desegregation obligations."). The standard for release of a constitutional violator requires that the State show *both* good-faith compliance with the entirety of the consent decree *and* that it has eliminated the vestiges of its past discrimination to the extent practicable, but the State fails to allege facts sufficient to show either. As a matter of law, the State cannot be

released on the basis of a "novel legal theory for avoiding its desegregation obligations" which was so recently and so soundly rejected by the Eighth Circuit.

IV. Termination of the M-to-M and Magnet Stipulations.

The State argues that "the fact that all three districts are unitary as to assignment of students to schools means that the State's obligations to fund the Magnet and M-to-M programs should end." *DN 4724, State's Brief, p. 7*. Accepting the State's factual allegations as true,[2] the districts' unitary status provides no basis for terminating the M-to-M and magnet stipulations. This argument fails as a matter of law for three reasons. First, this argument fails to recognize the distinction between interdistrict and intradistrict remedies in school desegregation cases. Second, the districts' unitary status cannot be the basis for terminating the M-to-M and magnet stipulations because the consent decree contemplated the districts becoming unitary. Third, the State has failed to allege facts sufficient to show that it has eliminated the vestiges of its past discrimination to the extent practicable and to overcome the presumption that current residential segregation in Pulaski County is vestige of the defendants past constitutional violations. *See Jenkins v. Missouri*, 216 F.3d 720, 725 (8th Cir. 2000) ("[O]nce there has been a finding that a defendant established an unlawful dual system in the past, there is a presumption that current disparities . . . are the result of the defendant's unconstitutional conduct.").

A. The Distinction between Interdistrict and Intradistrict Remedies.

The law makes a clear distinction between interdistrict and intradistrict remedies in school desegregation cases. *See Milliken v. Bradley*, 418 U.S. 717, 744-45 (1974) (An interdistrict remedy requires proof that "racially discriminatory acts of the state or local school

[2] LRSD denies that PCSSD is unitary with regard to student assignment. *See Little Rock Sch. District v. State of Arkansas*, 664 F.3d at 750.

districts, or a single school district have been a substantial cause of interdistrict segregation."). Where the interdistrict remedy is based on state-imposed residential segregation, the interdistrict remedy does not end upon a school district remedying its intradistrict constitutional violations and attaining unitary status. *See United States v. Bd. of School Comm'rs of the City of Indianapolis*, 128 F.3d 507 (7th Cir. 1997). *See also Berry v. Sch. Dist. of the City of Benton Harbor*, 195 F.Supp.2d 971 (W.D. Mich. 2002).

In *Bd. of School Comm'rs of the City of Indianapolis, supra,* the district court held that the school district attaining unitary status was "irrelevant" to the continued validity of the interdistrict busing remedy based on state-imposed residential segregation. *Bd. of Sch. Comm'rs of the City of Indianapolis*, 128 F.3d at 510 ("The postponed hearing on 'unitary status' is, in the district judge's view, irrelevant to the continued validity of the interdistrict busing order."). The Seventh Circuit agreed and stated that any argument to the contrary "would border on the frivolous" because of "the fundamental difference between interdistrict and intradistrict remedies in school desegregation cases." *Id.*

An interdistrict remedy derives from different constitutional violations and serves a different purpose than an intradistrict remedy. *Bd. of Sch. Comm'rs of the City of Indianapolis*, 128 F.3d at 510. *See Missouri v. Jenkins*, 515 U.S. 70, 97 (1995) ("A district court seeking to remedy an *intra*district violation that has not 'directly caused' significant interdistrict effects [citation omitted] exceeds its remedial authority if it orders a remedy with interdistrict purpose.") (emphasis in original). The M-to-M and magnet stipulations remedy state-imposed residential segregation by allowing LRSD's African-American students to leave their predominately one-race, neighborhood schools and to attend a racially-balanced LRSD magnet school or a majority-white PCSSD school via an M-to-M transfer. *See Little Rock Sch. Dist. v. Pulaski County*

*Special Sch. Dist.,* 778 F.2d 404, 428 and 436 (8th Cir. 1985). The districts' intradistrict desegregation plans remedied past intentional discrimination *by the districts* against African-Americans by requiring the districts to implement certain policies and programs to ensure fairness and equity in the operation of the districts, including intradistrict student assignments. *See, e.g., Dowell*, 498 U.S. at 250 ("In considering whether the vestiges of past discrimination have been eliminated as far as practicable, the District Court should look not only to student assignments, but to every facet of school operations-faculty, staff, transportation, extra-curricular activities and facilities." [internal quotes and citations omitted]). There is no legal or practical reason why the districts' unitary status should impact the need for the interdistrict remedy (magnet schools and the M-to-M transfer program) to address the lingering effects of state-imposed residential segregation. Even if all three districts were now unitary, magnet schools and M-to-M transfers would remain necessary in order to bring about the "desegregative effect" of "reducing the number of black students in LRSD and the number of white students in PCSSD." *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.,* 921 F.2d 1371, 1379-80 (8th Cir. 1990).

Therefore, the districts' unitary status is "irrelevant" to the continued validity of the M-to-M and magnet stipulations. *Bd. of Sch. Comm'rs of the City of Indianapolis*, 128 F.3d at 510. The State's argument to the contrary "border[s] on the frivolous" because of "the fundamental difference between interdistrict and intradistrict remedies in school desegregation cases." *Id.*

B. Unitary Status is not a Changed Circumstance Justifying Termination.

Similarly, the districts' unitary status provides no basis for modifying the consent decree and terminating the M-to-M and magnet stipulations because the parties anticipated the districts' unitary status when they entered into the decree. *Rufo v. Inmates of Suffolk County Jail,* 502

U.S. 367, 385 (1992) ("[M]odification should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree."); *White v. National Football League*, 585 F.3d 1129, 1138 (8th Cir. 2009) ("When, as here, changed conditions have been anticipated from the inception of a consent decree, they will not provide a basis for modification . . . ."). The introduction to the 1989 Settlement Agreement notes that the districts' intradistrict desegregation plans "hold excellent promise for achieving unitary school systems in these three districts which are free from the vestiges of racial discrimination." *DN 4440, LRSD Ex. 3, § I.* The 1989 Settlement Agreement limits the State's liability for funding to remediate the racial achievement disparity, and it makes clear that this limitation is not dependant on the districts' attaining unitary status. It provides, "The settlement of the State's liability, while contingent on the district court's approval, is not contingent upon court approval of any District's plan or a finding of unitary status for any District." *DN 4440, Ex. 3, § IV, ¶ A*. Thus, the districts' unitary status is not a changed circumstance justifying termination of the M-to-M and magnet stipulations.

C. State Fails to Allege that it has Remedied State-Imposed Residential Segregation.

Finally, the M-to-M and magnet stipulations remedy the effects of state-imposed residential segregation. *See LRSD v. PCSSD*, 778 F.2d at 434 ("segregated housing" included in list of violations that the Eighth Circuit's remedial principles were intended to address). In 1984, this Court (the Honorable Henry Woods presiding) found that the State participated in numerous schemes that were "major contributing factors to the residential segregation in Pulaski County which exists today." *See Little Rock Sch.Dist. v. Pulaski County Special Sch. Dist.,* 584 F.Supp. 328, 353 (E.D. Ark. 1984). Judge Woods concluded that the State's "goal of preserving

residential segregation has been successful." *LRSD v. PCSSD*, 584 F. Supp. at 353. The State appealed Judge Woods' findings, and the Eighth Circuit affirmed stating:

> The district court made detailed and extensive findings regarding the existence of segregated housing in the Little Rock metropolitan area and regarding the causal role of the State of Arkansas and PCSSD in creating and perpetuating this condition. After reviewing these findings for clear error, we find none, and conclude that the record amply supports the district court's determination.

*LRSD v. PCSSD*, 778 F.2d at 423. The Eighth Circuit considered the issue of whether it was proper for the district court to order an interdistrict remedy based, in part, on residential segregation. After reviewing precedent from the Supreme Court and two courts of appeal, the Eighth Circuit affirmed "imposition of remedial liability upon the State of Arkansas." *Id.* at 426. In so doing, the Eighth Circuit distinguished cases relied upon by the State because they did not involve "state-imposed residential segregation." *Id.* at 428-29.

The State argues that the "underlying goal of the 1989 Settlement Agreement is unitary status, primarily for LRSD, but also for NLRSD and PCSSD."[3] *DN 4724, State's Brief, p. 21*. This argument has no merit. LRSD could have obtained unitary status without filing this interdistrict desegregation case by eliminating the vestiges of its past discrimination "to the extent practicable." *Freeman,* 503 U.S. at 492; *Dowell,* 498 U.S. at 249–50. Although LRSD would have been unitary, it would have been a one-race, all-black school district. *See Clark v. Bd. of Educ. of Little Rock Sch. Dist.,* 705 F.2d 265, 271 (8th Cir. 1983). LRSD filed this case "to ensure a complete and constitutional remedy that will eradicate the vestiges of Arkansas' prescribed racially dual structure of public education and a century and a half of racial

[3]The 1989 Settlement Agreement does not say, as the State claims, that its "purpose and goal" is "achieving unitary school systems in these three districts." *See DN 4724, State's Brief, p. 23.* The 1989 Settlement Agreement simply notes that the districts' intradistrict desegregation plans "hold excellent promise for achieving unitary school systems in these three districts." *DN 4440, LRSD Ex. 3, § I.*

discrimination in Pulaski County." *DN 1, ¶ 15*. State-imposed residential segregation was a key component of Arkansas' prescribed racially dual structure of public education. *LRSD v. PCSSD,* 584 F.Supp. at 353. LRSD filed this case, in part, to obtain a remedy for state-imposed residential segregation, and that remedy must remain in place until the State pleads and proves good faith compliance and that current residential segregation "is not traceable, in a proximate way, to the prior violation," *Freeman*, 503 U.S. at 494.

The State has failed to allege facts sufficient to overcome the presumption that current residential segregation in Pulaski County[4] is vestige of the defendants' past constitutional violations. *See Jenkins*, 216 F.3d at 725. Accordingly, the State's motion to terminate the M-to-M and magnet stipulations should be dismissed for failure to state a claim.

IV. Termination of the 1989 Settlement Agreement.

The State's argument for terminating the 1989 Settlement Agreement should be dismissed because it ignores the well-settled standard for termination of a desegregation consent decree. The State fails to allege that it complied with the 1989 Settlement Agreement or that the vestiges of its past discrimination have been eliminated to the extent practicable. *See Freeman*, 503 U.S. at 492; *Dowell,* 498 U.S. at 249–50. Instead, the State argues that the 1989 Settlement

[4]The Court (the Honorable Brian S. Miller presiding) acknowledged continuing residential segregation in Pulaski County in ruling on PCSSD's motion for unitary status. Discussing PCSSD's obligations related to school facilities, the Court explained that "Chenal Elementary and Maumelle Middle rely on majority to minority transfers from the Little Rock School District to keep them racially balanced." *DN 4507, Unitary Status Order, p. 75.* These schools relied on M-to-M transfers to "artificially inflate" their black population because they "are located in very affluent, predominately white communities." *DN 4507, Unitary Status Order, p. 76.* The Court concluded that "[w]ithout [M-to-M] transfers, the schools in Maumelle and Chenal would be overwhelmingly white." *DN 4507, Unitary Status Order, p. 77.* The Court also discussed PCSSD's failure to improve facilities of "historically black schools." *DN 4507, Unitary Status Order, p. 74*. The Court concluded, "Children who live in predominately black zones of the district attend older and smaller schools that are less instructionally functional and are less aesthetically attractive." *DN 4507, Unitary Status Order, p. 77.*

Agreement should be terminated because of "changed circumstances" and points to alleged changes in the education system in Arkansas that "increase support and accountability for students in the State, including low performing students." *DN 4724, State's Brief, p. 8*. After discussing the alleged changes in more detail, the State concludes that "the 1989 Settlement Agreement is superfluous." *DN 4724, State's Brief, p. 19*.

The underlying goal of the consent decree is to eliminate the vestiges of the defendants' past constitutional violations to the extent practicable. *See LRSD v. PCSSD,* 778 F.2d at 433 ("The overriding goal of [a desegregation remedy] is to eradicate all vestiges of state-imposed segregation."); *LRSD v. PCSSD,* 921 F.2d at 1384 ("[I]t is the duty of the court, when fashioning a comprehensive remedy, to prescribe a level of relief, including, where appropriate, transportation of students, that will achieve integration to the maximum practicable extent."). There can be no dispute that one goal of the 1989 Settlement Agreement was remediation of the racial achievement disparity. *See DN 4440, LRSD Ex. 3, § III, ¶¶ A, F and G.*

While the 1989 Settlement Agreement resolved funding issues related to the M-to-M and magnet stipulations and other ancillary issues, many of the State's fundamental substantive commitments related to remediation the racial achievement disparity. In exchange for capping the State's liability for compensatory education programs designed to remediate the racial achievement disparity (*DN 4440, LRSD Ex. 3,§§ VI, VII and VIII*), the State agreed to monitor the districts' implementation of compensatory education programs "to ensure that the State will have a continuing role in satisfactorily remediating achievement disparities." *DN 4440, LRSD Ex. 3, § III, ¶ A.* The State committed to the principle that "[t]here should be a remediation of the racial academic achievement disparities for Arkansas students." *DN 4440, LRSD Ex. 3, § III, ¶ F.* To fulfill that commitment, the State promised to identify or develop "programs to

remediate achievement disparities between black and white students." *DN 4440, LRSD Ex. 3, § III, ¶ G.* Finally, the State promised that "[t]he remediation of racial achievement disparities will remain a high priority with ADE." *DN 4440, LRSD Ex. 3, § III, ¶ G. See LRSD Ex. 3, § II, ¶ I* (release days to include "specialized training in strategies designed to reduce the level of achievement disparity between black and white students." ); *§ VII, ¶ B* ("PCSSD is exploring and evaluating this concept to facilitate its efforts to reduce the achievement disparity between black and white students.").

LRSD does not contend that the State agreed to eliminate the racial achievement disparity. Instead, the State agreed to engage in a systematic effort to evaluate programs intended to remediate the racial achievement disparity until it found or developed something that works. *DN 4440, LRSD Ex. 3, § III, ¶¶ A and G.* Section III, paragraph G of the 1989 Settlement Agreement provides:

> G. Remediation of Disparities in Academic Achievement
>
> The ADE, with the assistance of the Court's desegregation expert(s), will develop and will search for programs to remediate achievement disparities between black and white students. If necessary to develop such programs, the ADE will employ appropriately trained and experienced consultants in the field of remediation of racial achievement disparities and/or hire as staff members persons with such training and experience. The remediation of racial achievement disparities shall remain a high priority with the ADE.

*DN 4440, LRSD Ex. 3.* To support its Motion for Release, the State does not name any programs identified or developed by ADE to remediate the racial achievement disparity. The State also does not name any ADE staff members or "experienced consultants" hired to identify or develop programs to remediate the racial achievement disparity. In short, the State fails to allege that it complied with Section III, Paragraph G of the 1989 Settlement Agreement.

Rather than hire an expert to identify or develop programs to remediate the racial achievement disparity, the State hired an expert to opine that "there is no known, existing program or policy that enables a school district or a state to close, or even substantially reduce, the achievement gap between African-American and white students." *DN 4704, LRSD Ex. 78, Armor Report, p. 2.* The State cannot be excused from making a good faith effort simply because it might have been unsuccessful. *See LRSD v. State,* 664 F.3d at 757 ("Regardless of whether the specific intervention programs required by Plan 2000 eventually bear fruit, however, PCSSD cannot disavow its agreed-upon obligation to make a good faith effort."). Therefore, the State's allegation that there are no programs that remediate the racial achievement disparity provides no basis for terminating the 1989 Settlement Agreement and the effort to remediate the racial achievement disparity.

V. Conclusion.

The State has asked the Court to release it from its commitments under the 1989 Settlement Agreement, the M-to-M Stipulation and the Magnet Stipulation without requiring it to show good-faith compliance with those agreements or that it has eliminated the vestiges of its constitutional violations to the extent practicable. The State's request must be denied as a matter of law. There is no point in proceeding to develop the factual record under the wrong legal standard. The State's Motion for Release should be dismissed for failure to state a claim. Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 30, 2012, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to the parties of record.

*/s/ Christopher Heller*