

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE SAIEG,

Plaintiff,

v.

U.S. District Court No. 09-12321
Hon. Paul D. Borman

CITY OF DEARBORN; and RONALD
HADDAD, in his official capacity as Chief of
Police, City of Dearborn Police Department,

Defendants.

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DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

NOW COME Defendants, City of Dearborn and Ronald Haddad, through their attorneys LAURIE M. ELLERBRAKE, MATTHEW J. ZALEWSKI, and DEBRA A. WALLING, and in support of their Motion for Summary Judgment brought pursuant to Fed. R. Civ. P. 12(b)(7) and Fed. R. Civ. P. 56, state as follows:

1. Plaintiff has visited the City of Dearborn annually for the past five years during the weekend of the Annual Arab International Festival (“the Festival”) to conduct outreach intended to convert Muslims to Christianity.

2. Plaintiff’s activities have included and will continue to include training programs at sites including a City park, mosque visits, door-to-door visits, and outreach at the Festival that includes speaking to people, and distributing literature, books, and DVDs.

3. At all times relevant to Plaintiff’s Complaint, Plaintiff has been welcomed to the City of Dearborn, and has not been denied access to the public fora in which he seeks to spread his message.

4. The Festival is an annual event occurring on the streets of the City of Dearborn, but which is privately organized by the American Arab Chamber of Commerce. Though the event receives the support of many sponsors, including the City of Dearborn, the event is not a City of Dearborn event.

5. The Festival that occurred in 2009 was the 14th that has occurred. Each year the event grows larger, and planning for the 2009 event was premised on a 300,000-person attendance factor – an increase of approximately 50,000 from the previous year.

6. Due to the expectation of increased attendance, the festival boundaries in 2009 were expanded to include the sidewalks. Accordingly, all activities on the sidewalks were subject to rules and regulations promulgated by the American Arab Chamber of Commerce.

7. To participate in the Festival, any entity or individual must complete an application and pay a nominal registration fee to obtain a booth within the festival grounds. Plaintiff refused to follow this procedure, and instead sought a level of access that far exceeded what all other entities and individuals present at the Festival (including other Christian groups) were allowed to obtain.

8. Plaintiff has been, and will continue to be allowed to convey his message by mingling with the Festival attendees, distributing materials from a fixed Festival location, conducting training on City property, and proselytizing door-to-door during the Festival weekend. He has ample alternative means of communication.

9. The City of Dearborn provides police support to the Festival to ensure public health, safety, and welfare. All enforced regulations are content-neutral and narrowly tailored to serve this legitimate government interest.

10. Plaintiff's First Claim for Relief alleges violation of Plaintiff's First Amendment free speech rights. For the reasons expressed above, and for those stated in Defendants' brief in support, Plaintiff's free speech rights have not been infringed, and his Complaint should be dismissed.

11. Plaintiff's Second Claim for Relief alleges violation of Plaintiff's First Amendment right to freedom of expressive association. For the reasons expressed above, and those stated in Defendants' brief in support, Defendants have not interfered with Plaintiff's freedom to associate, and his Complaint should be dismissed.

12. Plaintiff's Third Claim for Relief alleges violation of Plaintiff's First Amendment right to free exercise. As explained in Defendant's brief in support, Plaintiff is freely exercising his religion, and his Complaint should be dismissed.

13. Plaintiff's Fourth Claim for Relief alleges violation of the Fourteenth Amendment Equal Protection Clause. As discussed in Defendant's brief in support, Plaintiff has been treated as all other entities and individuals at the Festival, and his Complaint should be dismissed.

14. Plaintiff's Complaint seeks an injunction against enforcement of the Festival rules and regulations, and the City's narrowly-tailored police support activity. As fully explained in Defendant's brief in support, Plaintiff does not satisfy the requirements for preliminary or permanent injunctive relief, and his Complaint should be dismissed.

15. As also explained in Defendant's brief in support, Plaintiff has failed to join all necessary parties in this case, and his Complaint should be dismissed.

16. Pursuant to L.R. 7.1(a), Defendants sought Plaintiff's concurrence in this Motion, but concurrence was denied.

WHEREFORE, Defendants City of Dearborn and Ronald Haddad respectfully request that this Honorable Court grant their Motion for Summary Judgment pursuant to Fed. R. Civ. P. 12(b)(7) and Fed. R. Civ. P. 56, dismiss Plaintiff's case with prejudice, grant Defendants attorneys' fees, and grant any other relief deemed appropriate.

Respectfully submitted,

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DATED: April 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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BRIEF IN SUPPORT OF
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STATEMENT OF ISSUES

- I. Should Plaintiff's Complaint be dismissed for failure to join all necessary parties?

Defendants answer "yes."
Plaintiff answers "no."

- II. Do the streets and sidewalks serve as festival grounds during the annual Arab International Festival, and are they properly regulated as a limited public forum?

Defendants answer "yes."
Plaintiff answers "no."

- III. Has Plaintiff suffered an abridgment of his First Amendment right to free speech?

Defendants answer "no."
Plaintiff answers "yes."

- IV. Has Plaintiff's freedom to associate been restricted?

Defendants answer "no."
Plaintiff answers "yes."

- V. Has Plaintiff suffered a violation of his rights under the First Amendment Free Exercise Clause?

Defendants answer "no."
Plaintiff answer "yes."

- VI. Is Defendant Dearborn liable under 42 U.S.C. §1983?

Defendants answer "no."
Plaintiff answers "yes."

- VII. Is Defendant Haddad entitled to summary judgment on the grounds of qualified immunity?

Defendants answer "yes."
Plaintiff answers "no."

- VIII. Is Plaintiff entitled to injunctive relief?

Defendants answer "no."
Plaintiff answers "yes."

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The flow of the crowd and demands of safety are more pressing in the context of the Fair. As such any comparisons to public streets are necessarily inexact.

Heffron, at 651.

Obviously there would be a much larger threat to the State’s interest in crowd control if all other religious, nonreligious, and noncommercial organizations could likewise move freely about the fairgrounds distributing and selling literature and soliciting funds at will.

Heffron, at 654.

Spingola v. Village of Granville,
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The designated speaking area within the festival perimeters, though comprised of public streets, is not serving that function during the festival . . . Clearly, the festival area is more akin to a fair than a normal city street. But, regardless . . . the Ordinance is examined under the same intermediate level of scrutiny.

Spingola, at 983.

Spingola argues that the regulation does not relieve the crowding and pedestrian flow obstructions that take place during the festival regardless. That, however, is not the question. The question is whether preventing uncontrolled public speaking in these areas promotes a significant governmental interest that would be less effectively achieved without the law. That is accomplished by providing a smoother flow of traffic within the festival crowd.

Spingola, at 984.

STATEMENT OF FACTS

This case is about a Plaintiff who already has equal access to a public forum, but now seeks to expand that forum by obtaining a level of access far beyond what any other speaker in the same forum currently enjoys.

Plaintiff's ministry activities

Plaintiff is a Christian who has been ministering to Muslims since 1987. (Transcript of Deposition of George Saieg, p. 21, attached as Exhibit A. [Hereinafter "Saieg Dep."]) In 2003, he founded the California-based nonprofit organization Arabic Christian Perspective ("ACP"), which served to "present the gospel of Jesus Christ to the Muslims in the U.S." (Saieg dep., p. 16.) ACP dissolved in 2009. (Saieg dep., p. 16.) ACP trained people throughout the country to minister to Muslims, and coordinated with other groups to organize large-scale outreach missions such as attending an Arabic Festival in Seattle, Washington, an international festival in St. Louis, Missouri, and an Arab Festival in Dearborn, Michigan. (Saieg dep., p. 27-32.) Additionally, Plaintiff and ACP would orchestrate smaller-scale visits to mosques. (Saieg dep., p. 26-27.) Although ACP has been dissolved, Plaintiff plans to continue ministering, including in Dearborn. (Saieg dep., p. 66.)

Plaintiff regularly seeks the assistance of police departments when planning mission trips to inform the police of his intentions and receive guidance. (Saieg dep., p. 30.) When planning a mosque visit, Plaintiff specifically requests a police presence. (Saieg dep, p. 34.) Plaintiff believes that a police presence is necessary to "keep peace between both side[s]" and to prevent any "false accusations" from being made against him or his colleagues. (Saieg dep., p. 34.)

As part of Plaintiff's outreach, Plaintiff and his missionaries distribute a range of Christian materials including the Gospel of John, a booklet called "How to Know God," religious tracts, and Jesus DVDs. (Saieg dep., p. 29.)

The Annual Arab International Festival

Attending the annual Arab International Festival ("the Festival") in Dearborn is one of Plaintiff's major activities. He has been visiting Dearborn since 2004. (Saieg dep., p. 36.) In conjunction with their Festival attendance, Plaintiff and ACP coordinated an annual event titled "Facing the Muslim Challenge," which in 2009 extended from June 16-21, and included training programs, debates, prayer sessions, mosque visits, and door-to-door outreach. (Exhibit B.) Planning for the program began at least six months in advance. (Saieg dep., p. 66.) Activities took place in a numerous venues, including Dearborn's Hemlock Park. (Exhibit B.) Plaintiff organized approximately 90 people to visit Dearborn that weekend. (Saieg dep., p. 69.)

The 14th Annual Arab International Festival occurred on the streets of Dearborn, Michigan from June 19-21, 2010. The Festival will occur again in 2010. (Transcript of deposition of Fay Beydoun, p. 20, attached as Exhibit C. [Hereinafter "Beydoun dep."]) It is free and open to the public. (Exhibit D.) The purpose of the Festival is to celebrate Arabic culture, build bridges, and "promote the Warren Avenue Business District." (Exhibit E.) Some of the activities that take place include a carnival, music acts, food booths, merchandise vendors, and a fashion show. (Exhibit D.)

The Festival grounds extend approximately fourteen city blocks, east to west, on Warren Avenue in east Dearborn. (Maps attached as Exhibit F.) The Festival occupies the public roads and sidewalks. (Beydoun dep., p. 34, 37.) The main stage

occupies the western edge of the Festival, while carnival rides are on the eastern edge of the Festival. A series of tents line the rest of the street. One of those is the children's tent. (Exhibits D and F.) The other tents are dedicated to festival sponsors, food vendors, artisans, and information tables staffed by community, religious, and corporate organizations. (Exhibit D.) In total, the 2009 Festival featured 14 food vending areas, 17 sponsor areas, 40 artisan booths, and 25 information tables, for a total of 96 booths or tables throughout the Festival area. (Exhibit D.)

The Festival attracts hundreds of thousands of people. The Dearborn Press and Guide reported on June 17, 2009 that more than 250,000 people were expected to attend the 2009 Festival. (Exhibit G.) With such a large number of visitors, close attention is paid by Festival organizers to issues related to street closures, crowd control, and public safety.

The Festival grounds

Street closures are necessary to accommodate the Festival. To ensure an orderly and safe transition from the open streets and the streets occupied by the Festival, Festival organizers requested that a buffer zone be created between the open streets and the area where the core Festival activities were occurring. (Beydoun dep., p. 40; Transcript of deposition of Jeffrey Mrowka, p. 15, attached as Exhibit H. [Hereinafter "Mrowka dep."]) The two perimeters established around the Festival have been termed as the "inner perimeter" and "outer perimeter." Street closures are accomplished by the placement of barricades and "road closed" signs in the streets. (Exhibit I.)

The western inner perimeter boundary was established at Warren and Hartwell (except when it was briefly established at Reuter, one block further west to accommodate a ribbon-cutting ceremony). (Mrowka dep., p. 14, and Exhibit F.) The eastern perimeter boundary was established at Middlepoint (except when it was briefly established at Kingsley). (Mrowka dep., p. 14, and Exhibit F.) The northern and southern “inner” borders were established at the front of the businesses along Warren Avenue – thus encompassing the sidewalks. (Mrowka dep., p. 14, and Exhibit F.) To the extent that the Festival occurred on Miller Road, the northern and southern boundaries extended one block behind the businesses. (Mrowka dep., p. 14, and Exhibit F.) The “outer perimeter” of the Festival was established to the west at Schaefer, to the east at Wyoming, to the north at Morrow Circle South, and to the south at Blesser. (Mrowka dep., p. 16, and Exhibit F.)

Festival-related activities took place within both the inner and outer perimeters. The core Festival activities took place within the inner perimeter, and covered area on both the streets and sidewalks. (Exhibit J.) Ancillary activities, such as parking for Festival vendors, took place within the outer perimeter. (Beydoun dep., p. 43-44.) Thus, while the outer perimeter did not include activities such as carnival rides or vendor booths, the area serviced the Festival by providing a safe, controllable buffer between the bulk of the Festival activities and the outside world.

Festival sponsors and the role of the City of Dearborn

The Festival is organized by the American Arab Chamber of Commerce (“Arab Chamber”), a private organization. (Beydoun dep., p. 14.) Fay Beydoun is the current Executive Director of the Arab Chamber. (Beydoun dep., p. 11-12.) As Executive

Director, Beydoun has the leading role in coordinating Festival logistics. Beydoun became Executive Director in 2009, and consequently the 2009 Festival was the first that she spearheaded. The Festival accepts monetary and in-kind contributions from a wide range of sponsors including AT&T, General Motors, Chrysler, Art Van, Oakwood Hospital, the U.S. Army, and the City of Dearborn. (Exhibit D.)

While the Festival is not a City of Dearborn event, any large-scale event that occurs within the City of Dearborn inevitably requires City services. For example, the Arab Chamber cannot close the streets and sidewalks without the City's permission. (Exhibit E.) Police support is needed for crowd control, to maintain a perimeter around the event, and to ensure public safety. (Transcript of deposition of Ronald Haddad, p. 15, 18, attached as Exhibit K. [Hereinafter "Haddad dep."]) To facilitate this support, the Dearborn Police Department set up a command post within the Festival boundaries. (Haddad dep., p. 52.) Additionally, the City is responsible for maintaining the cleanliness of the streets and sidewalks.

To ensure orderly planning, the City sends representatives to meetings of the Festival committee. Five meetings took place for the 2009 Festival. (Mrowka dep., p. 8.) City participants included Sgt. Jeffrey Mrowka and Deputy Recreation Director Eric Peterson. (Mrowka dep., p. 9.) Mrowka is special events coordinator for the police department. (Mrowka dep., p. 5.) Peterson is the special events coordinator for the recreation department. Mrowka and Peterson ensure that organizations hosting events in the City obtain necessary approvals, and they identify the steps that will need to be taken to maintain the public health, safety, and welfare during the event.

In a memo to the City Council recommending approval of the Arab Chamber's request to stage the Festival, Peterson stated that, as a result of the planning meetings, City officials did not have any immediate concerns about the Arab Chamber conducting the Festival. (Exhibit L.) Accordingly, the City Council granted the Arab Chamber's request via Resolution 5-330-09. (Exhibit M.) In addition to authorizing street closures and the use of several City parking lots, the Council authorized "assistance from the Dearborn Police, Fire, Public Works, Building & Safety and Recreation Departments to insure a safety [sic], healthy, fun and successful event." (Exhibit M.) Significantly, the Resolution does not identify the City as the organizer the Festival.

Improving the 2009 Arab Festival: Expanding and Regulating the Grounds

Peterson's memo noted that the planning meetings addressed "the city/public concerns from previous festival years (traffic safety, parking, temporary food license compliance, issuing of sidewalk sales permits, carnival license, noise and litter). (Exhibit L.) This is consistent with minutes of a Festival meeting held on February 11, 2009, which note concerns about cleanup and sidewalk sales. (Exhibit N.)

The 2009 Festival provided a unique opportunity to implement changes because of the presence of several people new to the planning process. Not only was it Beydoun's first Festival, but it was also the first year Sgt. Mrowka served as special events coordinator for the police (Mrowka Dep., p. 9), and it was Chief Haddad's first year in office. (Haddad dep., p. 14.)

Regarding sidewalk sales, in past years (when the Festival did not extend to the fronts of the businesses), any business located around the Festival area would apply

to the City for a sidewalk sales permit. (Beydoun dep., p. 31.) This changed in 2009. Festival organizers recognized that it was becoming difficult for pedestrians to travel through the Festival and within the business district. (Beydoun dep., p. 34, 37.) To address this concern, the Arab Chamber asked to take control of the sidewalks from the City, including the approval process for sidewalk sales. (Beydoun dep., p. 31.) The City agreed. Consequently, any business along Warren Avenue that wanted to set up a sidewalk sale was required to submit an application to participate in the Festival, just like any other entity or person who sought space within Festival. (Beydoun dep., p. 32.) If it was feasible to allow the sidewalk sale, the Arab Chamber would approve the application. (Beydoun dep., p. 32.) Significantly, this change in procedures caused the sidewalks to become subsumed within the Festival boundaries.

The application process and Festival rules

The application process is straightforward. A potential participant at the Festival must obtain an application from the Arab Chamber and submit it by a deadline, which in 2009 was April 31. (Exhibit O.) The Chamber does not guarantee approval. (Exhibit N.) The application is required for food booths and artisan booths and information tables. All applicants must pay a fee. Information tables require the lowest fee – \$150.00 – which covers the costs associated with being given an assigned area within the Festival. (Exhibit O.)

The application packet includes rules and regulations, including:

Miscellaneous Rules:

2. No unauthorized performances, sales, demonstrations, exhibits, or solicitations of any kind shall be permitted.

* * *

8. No loitering shall be permitted at the Festival entrance points or in any area where such activity would impede pedestrian flow.

(Exhibit O.)

The Festival rules apply to all solicitation and distribution activities. (Beydoun dep., p. 51-52.) Pedestrian flow clearly is a concern of the Arab Chamber, as the Chamber not only referenced pedestrian flow in its “Miscellaneous Rules,” but also in Festival rules regarding political solicitation, which restrict solicitation and materials distribution in order to maintain “an orderly and uninterrupted schedule of Festival activities and a free flow of pedestrian and vehicular traffic.” (Exhibit O.) Thus, regardless of the type of solicitation being conducted, it is subject to rules designed to maintain order at the Festival.

The regulations further warn, “any infraction of above rules will result in immediate ejection from the Festival site and other appropriate enforcement action.”

(Exhibit O.)

Plaintiff’s participation in the 2009 Festival

Despite planning his outreach mission for at least six months, Plaintiff did not attempt to contact the City about participating in the Festival until after the April 31, 2009 deadline for applications had passed. Plaintiff initially left a voice mail for Sgt. Mrowka on or about May 15, 2009. (Mrowka dep., p. 19.) Sgt. Mrowka returned the call within the next few days, at which time Plaintiff told Sgt. Mrowka that he wanted to come to the Festival and distribute literature and materials. (Mrowka dep., p. 20.) Sgt. Mrowka informed Plaintiff that he would only be allowed to hand out materials in a

fixed location. (Mrowka dep., p. 20.) Plaintiff told Sgt. Mrowka that he would not pay for a booth. (Mrowka dep, p. 25.)

Sgt. Mrowka informed Plaintiff that the Festival could accommodate him by allowing him to set up a table on the edge of the festival. (Mrowka dep., p. 25.) However, Plaintiff resisted, stating that he wanted to bring 90 people to the Festival. (Mrowka dep., p. 25.) Sgt. Mrowka assured Plaintiff that his group could be accommodated at a location on Warren Avenue and Kingsley. (Mrowka dep., p. 25.) Plaintiff still protested. (Mrowka dep., p. 25.) Though Plaintiff alleges that he attempted to resolve this issue through Chief Haddad and the City's legal department, neither he nor his counsel followed up on voicemails, nor returned a call made by the City's legal department in the week prior to Plaintiff filing this Complaint.

The Temporary Restraining Order hearing

Plaintiff filed his original Complaint and Motion for a Temporary Restraining Order on June 16, 2010. A hearing on Plaintiff's Motion was held before the Hon. Nancy G. Edmunds on June 18, 2010. Plaintiff argued that the sidewalks should not be considered part of the Festival and that he and his group should have unrestricted access to the sidewalks. (Transcript of hearing on Plaintiff's Motion for a Temporary Restraining Order, p. 13, attached as Exhibit P. [Hereinafter "Tr."].) However, Judge Edmunds disagreed, finding that "there is a significant distinction between a public sidewalk that is a sidewalk during an ordinary weekend . . . and a sidewalk which is contiguous to a festival which . . . involves basically wall-to-wall people, over 250,000 over the three day period. (Tr., p. 34.) She concluded that the "area immediately adjacent to the street, separated only by a curb . . . [is] subject to the same crowd and

safety concerns during the period of the fair as the street area itself.” (Tr., p 35.) Judge Edmunds ruled that the regulation and its enforcement are content-neutral time, place, and manner restrictions that provide an alternative means of communication. (Tr., p., 36.) She cited *Spingola v. Granville*, 39 Fed. Appx. 978 (6th Cir., 2002), for the proposition that the sidewalks are not serving their normal function during the Festival, and that regardless of whether the Festival and sidewalks are considered a traditional public forum or a limited public forum, “the same intermediate level of scrutiny” should apply. (Tr., p. 37.) Accordingly, Judge Edmunds declined to issue a temporary restraining order. (Tr., p. 38.) She concluded by stating,

I assume that the City of Dearborn and the managers of the festival will still provide to the plaintiff the same accommodations that they were willing to provide prior to this hearing.

(Tr., p. 38.)

Dearborn’s counsel agreed. (Tr., p. 38.)

In light of Judge Edmund’s ruling, Plaintiff prepared for the Festival. Initially, the Arab Chamber thought it would be able to provide space inside a tent, but none was available. (Mrowka dep., p. 29.) Plaintiff ultimately was provided the originally-offered location at Warren and Kingsley, pursuant to Judge Edmund’s direction.

Plaintiff was successful in reaching his audience at the Festival. Plaintiff’s own photographs demonstrate that members of his group mingled with the crowd, and that people visited his booth. (Exhibit Q.) Plaintiff does not deny that he distributed literature through the Festival without City interference. He also conducted a training program at Dearborn’s Hemlock Park and canvassed Dearborn’s residential neighborhoods without objection. (Saieg dep., p. 68, 109.)

Plaintiff has vaguely alleged that he was “harassed” by City employees, but when pressed for details, Plaintiff could not identify a single instance of harassment by City employees. Instead, Plaintiff referenced the legal argument in his First Amended Complaint. (Plaintiff’s answer to Defendants’ Second Set of Interrogatories to Plaintiff George Saieg, no. 1, attached as Exhibit R.) While there were some incidents at the Festival that required police intervention, they did not involve any City employees, nor did they arise from City actions, nor did they involve Plaintiff or ACP. Rather, in one instance, two individuals from another Christian outreach group known as Acts 17 Apologetics staged an ambush interview at a booth promoting Islam. As the confrontation got heated, it caught the attention of private Festival security guards (not employed or trained by the City of Dearborn). A crowd gathered and migrated to the Dearborn Police command post, at which time officers asked the two ambush interviewers to leave. (Exhibit S.) In a second instance, an individual got into an argument with a Festival security guard who took exception to the individual calling a woman a “Jezebel,” which means “whore.” (Exhibit T.) These are exactly the types of situations that create the need for a set of rules designed to control the crowds and protect public safety.

Ultimately, these isolated disturbances should not take away from the peaceful experience that Plaintiff and his organization had at the Festival. Plaintiff does not point to any problems at booths, including his own. Perhaps one of the most successful booths was that of Dr. Josh McDowell, another Christian minister to Muslims who properly applied for a booth, and who had such a pleasant time that he wrote a letter to the editor describing his positive experience. (Exhibit U.)

Future festivals

Plaintiff intends to visit Dearborn during the Festival weekend in 2010. (Saieg dep., p. 66.) Likewise, the Arab Chamber is preparing for a successful event in 2010. Ms. Beydoun will be in her second year leading the event. She intends to ask to expand the Festival boundaries to accommodate more vendors and activities. (Beydoun dep., p. 54-55.) Again this year, any individual or organization wishing to distribute literature or other materials will be required to do so from a booth. (Beydoun dep., p. 54-56.) The Arab Chamber also anticipates providing more training to their private security personnel. (Beydoun dep., p. 78.)

The lawsuit

In his Amended Complaint, Plaintiff alleges violation of First Amendment Freedom of Speech, Freedom of Expressive Association and Free Exercise, and Fourteenth Amendment Equal Protection. Plaintiff alleges Defendants are liable pursuant to 42 U.S.C. §1983, and seek an injunction against the City enforcing the Festival rules requiring literature distribution to take place at a booth. Defendants now move for dismissal pursuant to Fed. R. Civ. P. 12(b)(7) for failure to join all necessary parties, and for summary judgment pursuant to Fed. R. Civ. P. 56, on all counts, on the grounds that there is no genuine issue of material fact that the regulation is not a City regulation, the Festival is not a City event, and any enforcement activities are content-neutral and premised on legitimate time, place, and manner regulations.

STANDARD OF REVIEW

Summary judgment is proper under Fed. R. Civ. P. 56(c) where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of

law. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In evaluating a motion for summary judgment, the court must view the evidence and draw all reasonable inferences in favor of the nonmoving party. *Id.* The proper inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 251-52 (1986). When confronted with a properly supported motion for summary judgment, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. *Mitchell v. Chapman*, 343 F.3d 811 (6th Cir. 2003). In this case, the evidence is so one-sided that Defendants should prevail as a matter of law.

ARGUMENT

I. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO JOIN ALL NECESSARY PARTIES.

Fed. R. Civ. P. 19 provides, in pertinent part,

A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

- (A) in that person’s absence, the court cannot accord complete relief among existing parties.

Fed. R. Civ. P. 19.

As a defense to a claim, a party may assert by motion failure to join a party under Rule 19. Fed. R. Civ. P. 12(b)(7).

In the instant case, Plaintiff asks this Court to enjoin Defendants from providing crowd control and public safety services supportive of the Festival and its rules. However, even if it is assumed for purposes of this Motion that Plaintiff is successful

against these Defendants, it would not change the rules of the Festival that require Plaintiff to submit an application, pay a fee, and limit materials distribution to a fixed location. Likewise, it would not prevent the Arab Chamber from deeming the sidewalks to be part of the Festival, and asking for police protection. Ultimately, the Festival is not a City event, no City ordinances are at issue in this lawsuit, and the City does not promulgate the Festival rules and regulations. Consequently, the Arab American Chamber is a necessary party to this lawsuit, without which complete relief cannot be granted. Because Plaintiff failed to join a necessary party, his Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(7) and Fed. R. Civ. P. 19.

II. THE STREETS AND SIDEWALKS SERVE AS FESTIVAL GROUNDS DURING THE ANNUAL ARAB INTERNATIONAL FESTIVAL, AND ARE PROPERLY REGULATED AS A LIMITED PUBLIC FORUM.

The most significant factor in this case is that the sidewalks are part of the Festival, and therefore are properly subject to content-neutral, narrowly-tailored regulations of First Amendment activity.

The instant case is controlled by the Supreme Court's ruling in *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981) and its progeny. In *Heffron*, the International Society for Krishna Consciousness ("ISKCON"), sought to distribute materials during Minnesota's State Fair. *Heffron*, at 645. However, the State Fair promulgated rules requiring that "all persons, groups or firms which desire to sell, exhibit, or distribute materials during the annual State Fair must do so only from fixed locations on the fairgrounds." *Id.*, at 643. The rule did not prohibit speakers from traversing through the Fair and speaking to Fair-goers in face-to-face conversations provided that no materials were distributed. *Id.*, at 643-644.

Though ISKCON compared the Fairgrounds to city streets, the Court recognized distinctions:

A street is continually open, often uncongested, and constitutes not only a necessary conduit in the daily affairs of a locality's citizens, but also a place where people may enjoy the open air or the company of friends and neighbors in a relaxed environment. The Minnesota Fair . . . is a temporary event attracting great numbers of visitors for a short period to see and experience the host of exhibits and attractions at the Fair. ***The flow of the crowd and demands of safety are more pressing in the context of the Fair. As such any comparisons to public streets are necessarily inexact.***

Id., at 651, emphasis added.

In upholding the rule facially and as applied to ISKCON, the Supreme Court noted that the Fairgrounds were a “relatively small area,” that the average daily attendance on weekdays had been 115,000 people (160,000 on weekends), and that at least 1,400 other exhibitors and concessionaires rented space at the fair, including many non-profit and religious organizations representing a broad spectrum of views. *Id.*, at 643-644. The Court also recognized that the First Amendment does not “guarantee the right to communicate one’s views at all times or in any manner that may be desired.” *Id.*, at 647.

Though ISKCON's oral and written distribution of its religious views was protected by the First Amendment and is an important ritual of the religion, the Court declared that ISKCON “and its ritual . . . have no special claim to First Amendment protection as compared to that of other religions who also distribute literature and solicit funds.” *Id.*, at 652. The Supreme Court concluded that, if the rule was found to be invalid with respect to ISKCON, it could not be considered any more valid with

respect to other organizations, and could even call in to question restrictions on commercial activity. *Id.*, at 653. The Court stated,

Obviously, there would be a much larger threat to the State's interest in crowd control if all other religious, nonreligious, and noncommercial organizations could likewise move freely about the fairgrounds distributing and selling literature and soliciting funds at will.

Id., at 654.

Accordingly, the Court upheld the regulation, providing that it was a valid time place, and manner restriction that served a substantial government interest. *Id.*, at 655.

The Sixth Circuit has applied *Heffron* to street fairs. In *Spingola v. Village of Granville*, 39 Fed. Appx. 978 (6th Cir. 2002), the Sixth Circuit reviewed an ordinance in which the village restricted public speaking to a designated area of a street fair. *Spingola* involved a two-block fair, at which the plaintiff – a self-described “confrontational evangelist” – had previously preached at various locations within the fair area. *Spingola*, at 979. After the ordinance was passed, he was restricted to a single location. *Id.*, at 980. During the fair, the streets were closed to vehicular traffic. *Id.* The plaintiff argued that strict scrutiny should apply because he sought to preach on the “public streets,” which are traditional public fora. *Id.*, at 982. However, the Sixth Circuit declared that the plaintiff's argument was “misguided,” stating,

The designated speaking area within the festival perimeters, though comprised of public streets, is not serving that function during the festival . . . Clearly, the festival area is more akin to a fair than a normal city street. But, regardless of whether we would classify the Granville festival area as a traditional public forum or a limited public forum, as a content neutral regulation, the Ordinance is examined under the same intermediate level of scrutiny.

Id., at 983.

In reaching this conclusion, the Sixth Circuit quoted *Heffron*,

The flow of the crowd and demands of safety are far more pressing in the context of the Fair. As such, any comparisons to public streets are necessarily inexact.

Id., at 983.

Thus, the Sixth Circuit ruled that, when public streets are closed off for a fair, they can be regulated like the fairgrounds in *Heffron*. In essence, the public streets are no longer public streets.

Likewise, the Michigan Court of Appeals has acknowledged that regulations restricting picketing on capitol grounds could validly apply to the sidewalks just as they do to the grounds, provided that the sidewalks are included in the area intended to be regulated. *Michigan Up & Out of Poverty Now Coalition v. Michigan*, 210 Mich App 162, 174, n. 7 (1995). Indeed, the sidewalks “command no greater status as a traditional public forum” when they are within a regulated area. *Id.*

In the instant case, as explained in the Statement of Facts, the streets and sidewalks that comprise the Festival grounds do not function as streets or sidewalks during the Festival, and therefore are subject to the type of content-neutral regulations approved in *Heffron* and *Spingola*. Consequently, by seeking to distribute literature on the sidewalks, Plaintiff is seeking access to the Festival grounds, and must follow Festival rules requiring him to distribute from a designated location.

Plaintiff's Complaint suggests that the presence of some Festival activities on the sidewalk frustrates the goals of maintaining crowd control and keeping open passageways through the Festival. This argument parallels the argument of the

plaintiff in *Spingola*, who asserted that “the regulation does not relieve the crowding and pedestrian flow obstructions that take place during the festival.” *Spingola*, at 984. However, the question is not whether the regulation cures all obstructions and pedestrian flow problems, but rather “whether preventing uncontrolled public speaking in these areas promotes a significant governmental interest that would be less effectively achieved without the law.” *Id.* It is sufficient that the rules provide “a smoother flow of traffic within the festival crowd.” *Id.* By taking control of the sidewalks, the Arab Chamber has been able to maintain open spaces throughout the sidewalk system for pedestrian passage from one area to another. (Exhibit V.) If the Arab Chamber were to lose control, then the risks of overcrowding and disorderliness would be multiplied exponentially, especially as other individuals, groups, and vendors migrated to the sidewalks, just as the Supreme Court feared in *Heffron*. This is especially a concern given the fact that as many as 300,000 people attend the Festival, and as the crowds gather, the streets are filled with people from curb to curb. (Exhibit W.) Consequently, the regulation at issue in this case does promote the free flow of pedestrians and traffic through the Festival. Plaintiff’s Complaint should be dismissed.

III. PLAINTIFF HAS NOT SUFFERED AN ABRIDGMENT OF HIS FIRST AMENDMENT RIGHT TO FREE SPEECH.

A. Standards for Content-Neutral Time, Place and Manner Regulations.

“Even protected speech is not equally permissible in all places at all times.” *Frisby v. Schultz*, 487 U.S. 474, 479 (1988). Content-neutral regulations of the time, place, and manner of communicative activity are permitted where necessary to further significant government interests. *Id.* A content-neutral regulation is “justified without

reference to the content of the regulated speech.” *Boos v. Barry*, 485 U.S. 312, 320 (1988). Even where an ordinance has an incidental effect on select speakers or messages, it is considered neutral if it “serves purposes unrelated to the content of the expression.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). “The principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Id.*

Content-neutral regulations are evaluated under intermediate scrutiny. *Phelps-Roper v. Strickland*, 539 F.3d 356, 362 (6th Cir. 2008). The regulation must 1) serve a significant governmental interest; 2) be narrowly tailored; and 3) leave open ample alternative channels of communication. *Perry Education Association v. Perry Local Educator’s Association et. al*, 460 U.S. 37, 45 (1983).

Significant government interests include protecting public safety during a festival, ensuring smooth traffic flow, and balancing one’s free speech against another’s freedom to be free from hindrance. *Spingola*, at 983.

“A statute is narrowly tailored if it targets and eliminates no more than the exact source of the “evil” it seeks to remedy.” *Frisby*, at 485. The means of regulation, however, need not be the “least restrictive alternative.” *Ward*, at 797-798. The regulation will qualify as “narrowly tailored” if it does not “burden substantially more speech than is necessary to further the government’s legitimate interests.” *Id.*, at 799.

Finally, if a speaker is able to reach his “intended audience,” then ample alternative channels of communication exist. *Phelps-Roper*, at 372-373, citing *Prime Media, Inc. v. City of Franklin*, 181 Fed. Appx. 536, 541 (6th Cir. 2006). “Ample alternative channels” does not guarantee a person his “best means of communication.”

Phelps-Roper, at 372. Alternative channels do not need to exist “at every location, or at the most desirable location, within a city.” *Prime Media*, at 541, citing *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 53-54 (1986).

B. The regulations at issue are content-neutral and satisfy intermediate scrutiny.

The regulations at issue in this case are not City ordinances, but rather rules promulgated by the Arab Chamber that are indirectly enforced by the City insofar as the City provides services geared toward public safety and crowd control. As explained in the Statement of Facts, the Arab Chamber requires that all entities seeking to distribute information within the Festival area fill out an application, pay a fee, and limit their activities to a designated location. Inasmuch as these regulations are universally applicable and were passed before the Arab Chamber was aware that the instant Plaintiff would seek access to the Festival, the regulations are not designed in response to Plaintiff’s speech. Accordingly, the regulations are content-neutral, and enforcement of the regulations need only satisfy the intermediate scrutiny standard. *Michigan Up & Out of Poverty Now*, at 173.

As expressly stated in the regulations, they are intended to promote pedestrian traffic and an orderly Festival. (Exhibit N.) To the extent that the regulations are enforced by the City, the City’s significant interest is to keep sidewalks flowing, and maintain crowd safety (Haddad dep., p. 18, 35-36; Mrowka dep., p. 15), each of which is recognized as a legitimate government interest. *Heffron*, at 651. Thus, the enforcement of Festival vendor regulations in this case is akin to the enforcement of similar regulations in *Heffron* and *Spingola*.

The regulations are also enforced in a narrowly-tailored fashion. The evils targeted by the regulations are pedestrian traffic overcrowding, threats to public safety, and disorderliness at the Festival. Requiring distribution of literature from fixed locations and enforcing a perimeter around the Festival prevents these evils without restricting people from mingling with the crowd or distributing literature from a fixed location. In fact, Plaintiff even acknowledges the importance of a police presence, as he asks for a police presence as part of his outreach efforts in order to “keep peace between both side[s].” (Saieg dep., p. 34.) Thus, the Festival rules and regulations are narrowly-tailored toward accomplishing their intended goals, just like the regulation at issue in *Spingola*.

Finally, Plaintiff has ample alternative channels of communication. Even though Plaintiff was late in seeking space at the Festival, the Arab Chamber found a place for his group to set up a booth, without even charging a fee. (Mrowka dep., p. 25, 29.) From the booth, Plaintiff distributed materials and discussed his message with visitors. (Exhibit Q.) Additionally, Plaintiff and his colleagues spread throughout the crowd to talk with Festival attendees. (Exhibit Q.) Members of Plaintiff’s group also held a weekend-long training program at locations that included a City of Dearborn park, and they went door-to-door throughout Dearborn’s residential neighborhoods. (Saieg dep., p. 52, 68, 109.)

Plaintiff does not deny that he is reaching his intended audience. He simply argues that conducting his activities from a booth is not his preferred means of communication. (Saieg dep., p. 75.) While he also argues that the location of his booth in 2009 (near children’s rides) was not ideal, he admits that the presence of

children would not actually deter him from approaching adults who are with children. (Saieg dep., p. 29.) Plaintiff admits that the City did not prohibit him from distributing literature, tracts, DVDs, or any other materials during the Festival. (Saieg dep., p. 89, 90, 109.) Plaintiff's only goal in this litigation is to obtain unfettered access to the Festival. However, the law clearly instructs that Plaintiff is not entitled to his "best" time, place, and manner of expressing himself. *Phelps-Roper, supra*, at 372.

The regulations at issue are valid time, place, and manner restrictions, and Plaintiff's right to free speech has not been infringed. Summary judgment should be granted to Defendants, and Plaintiff's Complaint should be dismissed.

IV. PLAINTIFF'S FREEDOM TO ASSOCIATE HAS NOT BEEN RESTRICTED.

Count II of Plaintiff's Complaint alleges infringement of his First Amendment right to freedom of association, as applied to the states through the Fourteenth Amendment. Freedom of association rights can be summarized as falling into one of two categories: 1) the State is not to intrude in an individual's decision to "enter into and maintain certain intimate human relationships," and 2) an individual has a right to "associate for the purpose of engaging in" activities protected by the First Amendment. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-618 (1984). An infringement of freedom of association may occur, for example, when the government "imposes penalties or withhold[s] benefits from individuals because of their membership in a disfavored group," requires disclosure of the members of an anonymous group, or requires that the group accept members it does not desire. *Id.*, at 622-623. Where freedom of association is implicated, the government action must serve a compelling state interest. *Id.*, at 623-624.

The regulations and enforcement activities at issue in this case do not implicate Plaintiff's right to freely associate. Nobody from the Arab Chamber or the City prevented Plaintiff from being a member of the Arabic Christian Perspective organization or any other missionary organization, nor was Plaintiff told that he could not bring his group of approximately ninety people to conduct a training program, go door-to-door throughout the City of Dearborn, or establish a booth and mingle with Festival attendees. Likewise, Plaintiff was not prohibited from seeking out additional like-minded people through these means, nor was Plaintiff required to associate with anybody who did not embrace his message. Plaintiff's Complaint is devoid of specific facts supporting his freedom of association claim, and no evidence exists in the record to support this claim. Because there has been no government violation of Plaintiff's freedom to associate, Count II of Plaintiff's Complaint must be dismissed.

V. PLAINTIFF HAS NOT SUFFERED A VIOLATION OF HIS RIGHTS UNDER THE FIRST AMENDMENT FREE EXERCISE CLAUSE.

Where a law is "neutral and of general applicability," the law does not need to be justified by a compelling governmental interest even if it has an incidental effect on the exercise of a religious practice. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). An individual's religious beliefs do not excuse him from his obligation to comply with a valid law prohibiting conduct that the state is free to regulate. *Employment Division v. Smith*, 494 U.S. 872, 878-879 (1990). A law will not be considered neutral if the "object of the law, whether overt or hidden," is to interfere with religious practice. *Mount Elliott Cemetery Association v. City of Troy*, 171 F.3d 398, 405 (6th Cir. 1999). The courts generally do not strike down a law solely on free exercise grounds, but rather must find a violation of a hybrid right – e.g., free

exercise plus free speech. *Smith*, at 881. Laws deemed to be neutral and of general applicability include a zoning ordinance enforced against a Catholic cemetery (*Mount Elliott Cemetery Assoc.*, at 405), and denial of tax exemptions to members of the Amish religion who did not believe in participating in governmental support programs (*U.S. v. Lee*, 455 U.S. 252, 258-261 (1982)).

The regulation involved in this case is a content-neutral law of general applicability that does not infringe on Plaintiff's free exercise or a hybrid right. As demonstrated, *supra*, the regulations at issue were enacted prior to, and without reference to, Plaintiff's speech or religion, thus making them content-neutral and generally applicable. Moreover, the regulations have been applied uniformly to Christian groups, Arabic groups, and non-religious groups. Significantly, Plaintiff has not suffered a violation of his rights to free speech or free association, thus negating the key component of his asserted hybrid right.

VI. DEFENDANT DEARBORN IS NOT LIABLE UNDER 42 U.S.C. §1983.

Plaintiff asserts municipal liability under 42 U.S.C. §1983 for all causes of action. A municipality can be held liable under §1983 only if "the municipality *itself* causes the [alleged] constitutional violation at issue." *City of Canton v. Harris*, 489 U.S. 378, 385 (1989), citing *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978). The plaintiff must demonstrate that the municipality, through its deliberate conduct, "was the 'moving force' behind the injury alleged" – i.e., there must be a "direct causal link between the municipal action and the [alleged] deprivation of federal rights." *Board of County Commissioners v. Brown*, 520 U.S. 397, 404 (1997). Specifically, the plaintiff must show a custom or policy of the legislative body or

officials acting on behalf of the municipality that results in the alleged constitutional deprivation. *Id.*, at 403-404. A municipality cannot be held liable merely because it employs an alleged tortfeasor. *Id.*, at 403.

In the instant case, Plaintiff fails to assert a viable claim for municipal liability because his constitutional rights have not been deprived and there is no municipal custom or policy at issue. As clearly explained above, the regulation at issue was promulgated by the Arab Chamber. Neither the City Council, the Dearborn Police Department, Chief Haddad, Sgt. Mrowka, or any other individual or body affiliated with the City of Dearborn designed or endorsed the Festival rules or regulations. To the extent the City enforced the regulations, it did so only to pursue the City's legitimate interests in crowd control and public safety.

Far from denying Plaintiff's First Amendment rights, Defendants *supported* his effort to bring his message to the Arab Festival. Despite the fact that Plaintiff was late in applying for a booth, Sgt. Mrowka worked with Plaintiff to find a place to set up a table within the Festival. Plaintiff was also allowed to participate in the Festival without paying the application fee. Additionally, the Dearborn Police Department assisted Plaintiff's group throughout the Festival, including fielding concerns that were brought by ACP-affiliated individuals to the officers stationed at the police command post. (Mrowka dep., p. 31.)

Because there was no constitutional violation, Plaintiff cannot demonstrate that the City was a "moving force" behind any form of constitutional violation. Defendant Dearborn is not liable under 42 U.S.C. §1983, and summary judgment should be granted in its favor.

VII. DEFENDANT HADDAD IS ENTITLED TO SUMMARY JUDGMENT ON THE GROUNDS OF QUALIFIED IMMUNITY.

Defendant Chief Haddad is also entitled to summary judgment, as Plaintiff cannot show a constitutional violation to defeat his qualified immunity. To overcome a summary judgment motion based on qualified immunity, 1) “the allegations must state a claim of the violation of clearly established law and 2) “a plaintiff must present evidence sufficient to create a genuine issue as to whether the defendant in fact committed the acts that violated the law.” *Secot v. City of Sterling Heights*, 985 F.Supp. 715, 720 (E.D. Mich. 1997). To satisfy the second requirement in a First Amendment context, the plaintiff must show that the police official “would not have engaged in [the] conduct . . . but for the police officer’s intent to interfere with plaintiff’s freedom of speech.” *Id.* It is not enough for the plaintiff to merely allege an improper motive – there must be sufficient evidence to submit the question to a jury. *Id.*, at 721. Indeed, in *Secot*, it was not enough for the plaintiff who was struck by an officer to simply allege he was engaged in speech at the time and that the officer’s motivations were an issue of fact. *Id.*

The instant case resembles *Secot*. Even assuming for this Motion that this case implicates “clearly established law,” Plaintiff cannot show an intentional violation. Plaintiff merely alleges that his speech activity was regulated. The regulations and their enforcement were content-neutral. Chief Haddad has testified that the role of the police department at the Festival is to provide crowd control and ensure public safety. (Haddad dep., p. 35-36.) Plaintiff presents only a bald allegation of improper motive, and the evidence clearly shows that Chief Haddad’s department was simply providing

routine police support to a major event. Summary judgment should be granted for Defendant Chief Haddad on the grounds of qualified immunity.

VIII. PLAINTIFF IS NOT ENTITLED TO INJUNCTIVE RELIEF.

To obtain a permanent injunction, the movant must succeed on the merits of the case by demonstrating that he has suffered a constitutional injury, and must further show that he will suffer “‘continuing irreparable injury’ for which there is no adequate remedy at law.” *Women’s Medical Professional Corporation v. Baird*, 438 F.3d. 595, 602 (6th Cir., 2006).

As already established above, Plaintiff’s claim fails on the merits. Plaintiff failed to join necessary parties, no constitutional violation occurred, and Plaintiff does not meet the thresholds for imposing §1983 liability. Plaintiff has not suffered irreparable harm because he has many alternative channels of communication available to reach his audience. However, threats to public safety and the orderly execution of the Festival would be rekindled if the Festival’s rules and regulations were obliterated and the City was not allowed to provide necessary police support. Finally, the public interest would be harmed, as the City would be prohibited from exercising its police powers, and Plaintiff would be given carte blanche to dictate how individuals and organizations participate in the Festival. Accordingly, none of the facts upon which Judge Edmunds premised her denial of a Temporary Restraining Order have changed, and Plaintiff’s request for a permanent injunction should be denied.

CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated above, Defendants City of Dearborn and Ronald Haddad respectfully request that this Honorable Court grant their Motion for Summary

Judgment pursuant to Fed. R. Civ. P. 12(b)(7) and Fed. R. Civ. P. 56, dismiss Plaintiff's case with prejudice, grant Defendants attorneys' fees, and grant any other relief deemed appropriate.

Respectfully submitted,

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DATED: April 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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