UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MITCHELL WAX, Individually and on Behalf of All Other Similarly Situated, Plaintiff, v. CROSS RIVER BANK, Defendant.	Case No. 2:24-cv-09510 (ES) (JRA) Document Electronically Filed Oral Argument Requested

REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM BY DEFENDANT CROSS RIVER BANK

DLA PIPER LLP (US)
Steven M. Rosato
steven.rosato@us.dlapiper.com
1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500

Attorneys for Defendant Cross River Bank

Of Counsel:

John J. Clarke, Jr.*
john.clarke@us.dlapiper.com
1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500

Richard Zelichov*
richard.zelichov@us.dlapiper.com
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067
(310) 595-3000

*Admitted *pro hac vice*

Dated: July 23, 2025

Table of Contents

Table of Authorities

Page(s)

Cases

Page(s)

PRELIMINARY STATEMENT

The private right of action implied under Rule 10b-5 "does not include suits against aiders and abettors." *Janus Cap. Grp., Inc. v. First Deriv. Traders*, 564 U.S. 135, 144 (2011) (citing *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 180 (1994)). Plaintiff's opposition brief confirms his securities fraud claims against CRB are predicated entirely on public statements made by Sunlight Financial Holdings, Inc. – not by CRB. *Central Bank* and its progeny require dismissal of those claims.

Plaintiff is not the first to argue that he can sidestep *Central Bank* by pleading his claims as a "scheme." That was what the plaintiffs argued in *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc*., 552 U.S. 148 (2008), where the Court held that allegations about undisclosed conduct by a supplier of set-top boxes to an issuer in the cable television business were "too remote to satisfy the requirement of reliance." *Id.* at 161. The opposition's circular attempt to distinguish *Stoneridge* is unavailing. Opp. at 18-20. As in *Stoneridge*, nothing about CRB's financial dealings with Sunlight made it "necessary or inevitable" for Sunlight to make disclosures about those dealings that plaintiff claims were fraudulent. *Id.* at 19 (quoting *Stoneridge*, 552 U.S. at 161).

Nor did CRB commit any manipulative or deceptive act. The opposition argues that CRB profited by "enabl[ing]" Sunlight to originate loans "of dubious credit quality," Opp. at 20, but plaintiff asserts he was misled only because *Sunlight* allegedly used the arrangement to make its "financial health appear stronger." *Id.* That is just an impermissible aiding and abetting claim. Similarly, allegations that CRB "increased its loan limits and enabled Sunlight to exceed those limits," Opp. at 23, support the inference that CRB was acting to help Sunlight navigate a difficult financial situation – the opposite of scienter.

For these and other reasons addressed below, the opposition further confirms plaintiff's failure to plead any claim against CRB. The complaint should be dismissed with prejudice.

ARGUMENT

I. PLAINTIFF DOES NOT, AND CANNOT, ALLEGE AN ACTIONABLE CLAIM.

A. Plaintiff's Claim Is Barred by Supreme Court Decisions.

1. *Central Bank* Categorically Bars Aiding and Abetting Claims.

The opposition demonstrates that plaintiff's "scheme" claim against CRB is, in reality, a claim for "aiding and abetting" securities fraud by Sunlight. Section 10(b) and Rule 10b-5 do not provide a private right of action for that claim. *Central Bank*, 511 U.S. at 185, 191; *see Pac. Inv. Mgmt. Co. v. Mayer Brown LLP*, 603 F.3d 144, 152-53 (2d Cir. 2010) (securities plaintiffs may not evade the "prohibitive bar of *Central Bank*[]" through creative pleading); *Copland v. Grumet*, 88 F. Supp. 2d 326, 334 (D.N.J. 1999) (dismissing claims against defendants who allegedly "participated in" preparation of "false financial statements").

The opposition avoids mentioning *Central Bank* until page 33, where plaintiff mistakenly contends that the decision supports his position. To the contrary, even if there ***could*** be a circumstance where a "secondary actor," such as "a lawyer, accountant, or bank," ***could*** be "liable as a primary violator under 10b-5," that claim still would need to satisfy "*all* of the requirements for primary liability under Rule 10b-5" – including that the plaintiff "relie[d]" on the secondary actor's statements or conduct. *Central Bank*, 511 U.S. at 191 (emphasis in original). The complaint against CRB does not meet that test on a number of different grounds, because plaintiff only has asserted claims against CRB for "secondary liability" that depend on actions and disclosures by *Sunlight*, as the alleged primary violator.

2. Under *Stoneridge*, Plaintiff Cannot Plead Reliance.

Plaintiff agrees that reliance is a required element of any claim under Rule 10b-5, including "scheme" claims under Rule 10b-5(a) and (c). Opp. at 17-20; *see Stoneridge,* 552 U.S. at 159. He erroneously contends the complaint pleads reliance because CRB's alleged conduct "made

Sunlight's misstatements and omissions inevitable[.]" Opp. at 20. Even if that assertion were not transparently false, it would not be enough to avert dismissal.

The opposition fails to acknowledge, much less explain away, plaintiff's admission that Sunlight investors "were unaware of" the alleged CRB conduct that is the basis for plaintiff's securities fraud claims. Compl. ¶¶ 3, 93. Under *Stoneridge*, that admission is dispositive. *See* CRB Br. at 15-18. In *Stoneridge*, the Court held that undisclosed "deceptive acts" by third-party business partners of a securities issuer, as CRB was to Sunlight here, were "too remote to satisfy the requirement of reliance." *Stoneridge*, 552 U.S. at 160-61; *see, e.g.*, *Mayer Brown*, 603 F.3d at 159 ("[T]he mere fact that the ultimate result of a secondary actor's deceptive course of conduct is communicated to the public through a company's financial statements is insufficient to show reliance on the secondary actor's *own* deceptive conduct.") (emphasis in original).

The similarities between this case and *Stoneridge* are undeniable. CRB Br. at 16-17. Plaintiff strains, and fails, to distinguish the case. Opp. at 18-19. Plaintiff asserts that in *Stoneridge*, the defendants were "suppliers, and later customers, of the issuer[,]" which he contrasts with CRB's role as the "indirect channel provider" for Sunlight's solar lending business. *Id.* at 18 (internal quotations omitted). But plaintiff offers no reason to suggest these contrasting types of business relationships matter under *Stoneridge*. The similarities are what matter. Just like the plaintiff in *Stoneridge*, plaintiff alleges that: (i) CRB "agreed to arrangements that allowed" the issuer to make public misstatements, *Stoneridge*, 552 U.S. at 152-53; *see* Compl. ¶¶ 1, 9, 12, 23; (ii) these arrangements supposedly had "no economic substance," *Stoneridge*, 552 U.S. at 154; *see* Compl. ¶¶ 23, 48, 75; (iii) CRB made no "public statement" and had no role "in preparing or disseminating" Sunlight's statements, *Stoneridge*, 552 U.S. at 155; *see* Compl. ¶ 91;

and (iv) CRB's alleged "deceptive acts" "were not disclosed to the investing public," *Stoneridge*, 552 U.S. at 161; *see* Compl. ¶¶ 3, 93.

In both *Stoneridge* and the complaint here, the plaintiffs asserted claims for "scheme liability" under Rule 10b-5(a) and (c) to "answer the objection that [plaintiff] did not rely upon [CRB's] own deceptive conduct." *Id.* at 160. The Court in *Stoneridge* was not persuaded – for good reason. Because the defendants were not involved "in preparing or disseminating" the issuer's challenged statements, *id.* at 155, there was no basis to conclude that their "acts were immediate . . . . to the injury." *Id.* at 160. Nothing about the defendants' conduct "made it necessary or inevitable for [the issuer]" to publicly file misleading financial statements, *id.* at 161. The issuer alone was responsible for them, just as Sunlight was here. Compl. ¶ 91. That shows plaintiff's claim is just one for aiding and abetting, which the securities laws do not permit.

CRB's lack of involvement in the challenged Sunlight disclosures distinguishes this case from *In re Cognizant Tech. Sols. Corp. Sec. Litig.*, 2020 WL 3026564 (D.N.J. June 5, 2020), which plaintiff relies on in error, Opp. at 16-18. In *Cognizant*, the "scheme" claims were asserted against Cognizant's own chief legal officer – not a third-party business partner – who was accused of "devising, advising, and concealing [a] bribery scheme" *and also* of participating in the "dissemination of the financial misstatements" by Cognizant that obscured that misconduct. *Cognizant*, 2020 WL 3026564, at *19. In contrast with CRB in this case, the "acts" of the insider defendant in *Cognizant* "were immediate . . . to the injury." *Stoneridge*, 552 U.S. at 160. *Cognizant* offers no assistance to plaintiff here.[1]

[1] The same applies for *In re Eletrobras Sec. Litig.*, 245 F. Supp. 3d 450, 472 (S.D.N.Y. 2017), *see* Opp. at 17, 26, which also involved allegations that a senior executive of the issuer "organized an illegal kickback scheme" that "resulted in misleadingly overstated" financials.

Plaintiff admits CRB made no false or misleading statement, Compl. ¶ 91, and he admits his claim is premised on the idea that CRB "enable[d] Sunlight to make its financial health appear stronger than it was." Opp. at 14; *see* Compl. ¶¶ 10, 73. That is an aiding and abetting claim. Reframing the same allegations as a claim for "scheme liability" cannot save it from dismissal. *Stoneridge*, 552 U.S. at 159-60.

B. Plaintiff Has Not Pleaded a "Scheme" Claim in Any Event.

1. The Complaint Does Not Allege "Inherently Deceptive" Conduct Distinct from Alleged Sunlight Misstatements.

Plaintiff does not dispute that "scheme" claims require allegations of "inherently deceptive conduct" specifically "employed to deceive investors." *Trustcash Holdings, Inc. v. Moss*, 668 F. Supp. 2d 650, 662 (D.N.J. 2009); *see* Opp. at 25. Even if such a claim can cover "a wide range of conduct[,]" Opp. at 13, a plaintiff cannot assert a scheme claim when the "primary purpose and effect" of the alleged "scheme [was] to make a public misrepresentation or omission[.]" *Takata v. Riot Blockchain, Inc.*, 2023 WL 7133219, at *11 (D.N.J. Aug. 25, 2023) (quoting *In re Mindbody, Inc. Sec. Litig.*, 489 F. Supp. 3d 188, 216 (S.D.N.Y. 2020)). As CRB previously noted, "inherently deceptive conduct" generally is limited to "sham transactions" or "market manipulation." CRB Br. at 21-22; *see Trustcash*, 668 F. Supp. 2d at 663, *S.E.C. v. Lucent Techs., Inc.*, 610 F. Supp. 2d 342, 360 (D.N.J. 2009). The opposition offers no response.

Plaintiff concedes his claim against CRB is based on alleged efforts *by Sunlight* "to conceal" or "hide" "Sunlight's exposure to [CRB's] loan portfolio" from investors. Opp. at 25; *see also id.* at 1, 5 n.2, 14, 17. That is what the complaint repeatedly alleges. *See* Compl. ¶¶ 1, 9-10, 23, 44-45, 48, 60, 73, 75, 91 (generally alleging CRB enabled Sunlight to "conceal[]" and "consistently omit[]" information from Sunlight public filings to "cause[] Sunlight stock to trade at artificially inflated levels"). That amounts to nothing more than a "scheme to withhold the truth about" an issuer's financial condition, which is an omission claim that "falls under the purview of Rule 10b-5(b)." *Stichting Pensioenfonds ABP v. Merck & Co.*, 2012 WL 3235783, at *10 (D.N.J. Aug. 1, 2012). Indeed, if Sunlight had made the disclosures that plaintiff alleges it should have made, the entire underlying premise of plaintiff's complaint necessarily collapses.

The conduct alleged in the complaint does not come close to qualifying as a "sham." It alleges that CRB engaged in arm's-length financing transactions with Sunlight, which were facially "legitimate business transactions." *Lucent*, 610 F. Supp. 2d at 360. Plaintiff's assertion that "[t]here would be no legitimate reason for CRB" to do business with Sunlight on the terms alleged is not supported by a single factual allegation. Opp. at 26. Plaintiff seems to be asserting that CRB should not have loaned additional money to Sunlight over the course of 2022 and 2023, as Sunlight worked to overcome the negative effects of rising interest rates. But that is not "deceptive" conduct. Banks and other lenders regularly waive defaults and restructure loans – including by increasing borrowing capacity – as an alternative to forcing their borrower into bankruptcy. When plaintiff's "bluster is stripped away," it is clear that "[t]hese transactions were not shams. Nor did they depend on any fictions." *In re Parmalat Sec. Litig.*, 376 F. Supp. 2d 472, 505 (S.D.N.Y. 2005). There is no allegation "that the transactions were something other than what they appeared to be." *Id.*

Contrary to plaintiff's contention, the decision in *Lucent* is on point. The fact that *Lucent* involved allegations against company ***insiders*** who agreed to business terms on sale transactions that ultimately were not disclosed to the investing public only strengthens the case for dismissal here. As the *Lucent* court observed, "[t]he sales at issue were legitimate business transactions and the customers purchased the product from Lucent with every intention of using it or selling it to end customers." 610 F. Supp. 3d at 360-61.

The opposition ignores the decisions in *Stichting* and *In re Turquoise Hill Res. Ltd. Sec. Litig.*, 625 F. Supp. 3d 164 (S.D.N.Y. 2022), which further illustrate the point. In *Stichting*, the court rejected the contention that "manipulation of data and clinical studies" by company insiders constituted the kind of "sham" necessary to support a scheme claim. 2012 WL 3235783, at *8. In *Turquoise Hill*, the court found allegations of "a sham internal investigation" and "destruction of documents" did not plead "an inherently deceptive act." 625 F. Supp. 3d at 253. If conduct of those types did not rise to the level of a "sham," it is difficult to see how CRB's arm's-length commercial arrangements with Sunlight could be one.

2. Plaintiff Alleges No Facts to Support a "Strong Inference" of Scienter.

To plead a "strong inference" of scienter, plaintiff was required to allege facts supporting an inference of fraudulent intent that is "cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *In re Hertz Glob. Holdings Inc.*, 905 F.3d 106, 114 (3d Cir. 2018); *see* 15 U.S.C. § 78u-4(b)(2)(A). The parties agree that scienter allegations must be analyzed "holistically." *Hertz*, 905 F.3d at 114. CRB previously showed that a holistic review of the complaint's scienter allegations yielded no inference of scienter, much less a strong one. CRB Br. at 19-21. Plaintiff's response fares no better. Opp. at 22-24.

First, the opposition does not explain plaintiff's failure to allege that CRB had "motive and opportunity" to *defraud Sunlight investors*. The allegations that CRB "was earning substantial profits as Sunlight's Bank Partner," "benefitted financially" from the relationship, and earned "substantial fees[,]" Opp. at 24, do not plead a motive to defraud. Plaintiff asserts his allegations go beyond generic "allegations that [CRB] stood to benefit from wrongdoing," *GSC Partners CDO Fund v. Washington*, 368 F.3d 228, 237 (3d Cir. 2004), but he does not explain how they do. Nor does the opposition show how earning fees and profits could constitute anything other than a "legitimate business motive[]" that is insufficient "to establish an inference of scienter." *Nat'l*

Junior Baseball League v. Pharmanet Dev. Grp. Inc., 720 F. Supp. 2d 517, 552 (D.N.J. 2010); *see, e.g.*, *Kalnit v. Eichler*, 264 F.3d 131, 140 (2d Cir. 2001) (same).

The opposition does not meaningfully address plaintiff's failure to plead even ***one*** transaction in Sunlight securities by CRB in an effort to take advantage of the supposed fraud. As courts have "consistently" held, the absence of any stock sales by a defendant weighs "against an inference of scienter." *Lewakowski v. Aquestive Therapeutics, Inc.*, 2023 WL 2496504, at *12 (D.N.J. Mar. 14, 2023) (collecting cases). Plaintiff offers no citation to support his argument that the principle recognized in *Lewakowski* and many other decisions should be disregarded because he is asserting a "scheme" claim. Scienter is required for "scheme" claims as much as it is for claims based on alleged misrepresentations.

Second, as to conscious misbehavior or recklessness, the opposition merely quotes the same conclusory allegations from his complaint that CRB's opening brief showed were insufficient. Opp. at 23 (quoting Compl. ¶¶ 23, 45, 48, 73); *see* CRB Br. at 20. Plaintiff has not identified any allegation that CRB was even aware of the challenged Sunlight public statements, CRB Br. at 21, and the complaint admits that CRB had no involvement in making them, Compl. ¶ 91. "Conclusory allegations" of knowledge, such as plaintiff's here, do not support even a *plausible* inference of scienter, much less the required "strong inference." *In re Bio-Technology Gen. Corp. Sec. Litig.*, 380 F. Supp. 2d 574, 595 (D.N.J. 2005); *see, e.g.*, *Baer v. Shift4 Payments, Inc.*, 2024 WL 3836676, at *15 (E.D. Pa. Aug. 14, 2024) (dismissing scheme claim for failure to plead scienter "[f]or the same reasons addressed" with respect to Rule 10b-5(b) claim).[2]

---

[2] The opposition relies heavily on *Cognizant*. Opp. at 22, 25. But the unique facts of that case, involving allegations of bribery and corruption against company insiders, are far different than the allegations here. *See supra* at 4. Plaintiff's citation of *Waterford Twp. Police & Fire Ret. Sys. v. Smithtown Bancorp. Inc.*, 2014 WL 3569338 (E.D.N.Y. July 18, 2014), is similarly

Finally, the opposition does not make any attempt to weigh any inference of scienter against "any opposing inference of nonfraudulent intent." *Rahman v. Kid Brands, Inc.*, 736 F.3d 237, 242 (3d Cir. 2013) (quoting *Tellabs v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007)). Plaintiff admits his case depends on his belief that CRB should have "let Sunlight fail" instead of allegedly making concessions as interest rates increased. Opp. at 7. But working with a troubled borrower is standard practice – the "inference of nonfraudulent intent" is the only reasonable one here. *Rahman*, 736 F.3d at 242. The contrary inference, that CRB was intentionally throwing good money after bad to deceive Sunlight investors – without receiving any apparent benefit as Sunlight collapsed into bankruptcy – "defies economic reason." *ECA, Loc. 134 IBEW Joint Pension Tr. of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 203 (2d Cir. 2009).

3. Plaintiff Lacks Standing and Fails to Plead Loss Causation.

Plaintiff does not contest that he "*only* has standing to assert claims based on activity *prior* to the date [he] purchased [his] stock." *In re Dr. Reddy's Lab. Ltd. Sec. Litig.*, 2019 WL 1299673, at *13 (D.N.J. Mar. 21, 2019) (quoting *Winer Family Tr. v. Queen*, 503 F.3d 319, 325 (3d Cir. 2007)) (emphasis in original). He admits his last alleged purchase of Sunlight stock was on September 29, 2022. Compl., Sched. A. The complaint alleges that CRB did not begin to "grant[] ever-increasing amounts of credit to Sunlight and its contractors," "lift[] loan caps, and waive[] defaults under its agreements with Sunlight" – the alleged conduct at the heart of plaintiff's claim – until ***December 2022***. Compl. ¶¶ 48, 54. Consequently, ***none*** of the challenged conduct occurred before plaintiff purchased Sunlight stock, requiring dismissal for lack of standing. *Dr. Reddy's*, 2019 WL 1299673, at *14.

---

misplaced. The claims in that case were asserted against the issuer itself (which happened to be a bank) and its officers, not a third-party business partner. *See* Opp. at 20, 24.

In an effort to escape that conclusion, plaintiff argues that the alleged "fraudulent scheme commenced on January 25, 2021[.]" Opp. at 27. But the complaint contains no allegations concerning any allegedly fraudulent conduct by CRB from that date through December 13, 2022; in fact, the only alleged event on January 25, 2021 was the announcement of the business combination that would lead to Sunlight's formation six months later. Compl. ¶¶ 30-32.

Even if plaintiff could overcome his lack of standing, his failure to plead loss causation also requires dismissal. *McCabe v. Ernst & Young, LLP*, 494 F.3d 418, 425 (3d Cir. 2007). Contrary to plaintiff's contention, Opp. at 28, private securities plaintiffs are required to plead loss causation for every claim they assert under section 10(b). 15 U.S.C. § 78u-4(b)(4). Plaintiff does not do so. He purports to describe "a series of partial disclosures through which [p]laintiff . . . learned of CRB's scheme to artificially inflate the price of Sunlight's shares," Opp. at 30, but he does not explain how any of them coincided with "a market correction of the artificial inflation caused by" prior "misrepresentations[.]" *Nat'l Junior Baseball League*, 720 F. Supp. 2d at 561. For example, an alleged disclosure on September 28, 2022 about a contractor to whom Sunlight chose to advance funds said nothing about CRB, Compl. ¶ 49, and plaintiff does not tie it – or any other purported corrective disclosure – to any prior alleged misrepresentation. *Id.* ¶¶ 50-70. Even under the most lenient pleading standard, these threadbare allegations do not establish loss causation. *See, e.g.*, *Born v. Quad/Graphics, Inc.*, 521 F. Supp. 3d 469, 494 (S.D.N.Y. 2021).

II. THE SUNLIGHT BANKRUPTCY PLAN INJUNCTION AND SECURITIES CLASS ACTION RELEASE BAR PLAINTIFF'S CLAIM.

A. The Sunlight Bankruptcy Plan Injunction Bars Plaintiff's Claims.

Plaintiff does not dispute that the broad injunction in the Sunlight plan of reorganization covers plaintiff's claims. Exh. 4, Sunlight Plan § 10.6; *see* CRB Br. 24. Nor does plaintiff dispute that CRB generally is entitled to indemnification from Sunlight. *See* Exh. 5, Loan Program Agmt.

§ 10.1; Exh. 6, Loan & Sec. Agmt. § 11.3. Instead, plaintiff points to an exception in those broad indemnity provisions where it is "determined by a court of competent jurisdiction by final and nonappealable judgment" that CRB's losses resulted from its own "gross negligence, willful misconduct or bad faith . . . ." Opp. at 35-36. There has been no final and nonappealable judgment here. But more to the point, ***Sunlight already has publicly acknowledged its indemnification obligations to CRB*** in connection with this matter. *See* Exh. 9 at 1, 10.

B. The Class-Wide Release in the Sunlight Securities Class Applies.

Finally, the Court should reject plaintiff's effort to circumvent the class-wide release in the Sunlight securities class action. Opp. at 36-39.

First, CRB is a released party. The release broadly covers Sunlight's "shareholders" and "partners," and CRB qualifies as both ***according to the complaint itself***. *See, e.g.*, Compl. ¶¶ 6, 35, 61, 71; Exh. 8, Sunlight Settlement ¶¶ 1.6, 1.27, 1.28, 1.35, 5.1. Plaintiff argues that CRB did not become a Sunlight shareholder until after the class period, but the definition of released parties includes all "past, present, or ***future***" shareholders and partners. Exh. 8, Sunlight Settlement ¶ 1.28 (emphasis added).

Second, plaintiff also is mistaken in contending that the release somehow does not cover the conduct he alleges. The release is very broad, Exh. 8, Sunlight Settlement ¶¶ 1.6, 1.35, and plaintiff's focus on slight variations between the factual allegations in his complaint and those in the Sunlight complaint is misplaced. Plaintiff's claims, for the period from January 25, 2021 and September 28, 2022, "fall within the release's terms. So the release bars them." *In re Nanthealth, Inc. S'holder Deriv. Litig.*, 2021 WL 1909885, at *2 (D. Del. May 12, 2021) (citing *In re Prudential Ins. Co. of Am. Sales. Prac. Litig.*, 261 F.3d 355, 366-67 (3d Cir. 2001)).

CONCLUSION

For the foregoing reasons and those set forth in CRB's opening brief, the complaint should be dismissed in its entirety and with prejudice.

Dated: New York, New York
July 23, 2025

DLA PIPER LLP (US)

By: */s/ Steven M. Rosato*

Steven M. Rosato
steven.rosato@us.dlapiper.com
1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500

Attorneys for Defendant Cross River Bank

Of Counsel:

John J. Clarke, Jr.*
john.clarke@us.dlapiper.com
1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500

Richard Zelichov*
richard.zelichov@us.dlapiper.com
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067
(310) 595-3000

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2025, I caused the foregoing document to be served on all counsel of record by email, in accordance with the parties' stipulation permitting email service and the Court's May 23, 2025 text order concerning the briefing schedule on defendant's motion to dismiss [ECF No. 38].

Dated: New York, New York
July 23, 2025

/s/ Steven M. Rosato
Steven M. Rosato