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Attorneys for Defendant Hospital District No. 1 of Yuma County

SUPERIOR COURT OF THE STATE OF ARIZONA

IN THE ARIZONA TAX COURT

RICHARD OGSTON,

Plaintiff,

v.

ARIZONA DEPARTMENT OF REVENUE, an agency of the State of Arizona; YUMA COUNTY, political subdivision of the State of Arizona; HOSPITAL DISTRICT NO. 1 OF YUMA COUNTY, ARIZONA, a special taxing district and political subdivision of the State of Arizona,

Defendants.

Case No: TX2023-000342

REPLY TO PLAINTIFF TAXPAYER'S RESPONSE TO HOSPITAL DISTRICT'S MOTION TO DISMISS

(Assigned to Hon. Sara Agne)

(Oral Argument Requested)

Defendant Hospital District 1, Yuma County (the "**District**") hereby submits its Reply to Plaintiff Richard Ogston's ("**Taxpayer**") Response to the District's Motion to Dismiss (the "**Response**").[1]

[1] In its original Motion to Dismiss Taxpayer's Complaint (the "**MTD**"), the District argued that the Complaint was subject to dismissal for failure to file a Notice of Claim in accordance with A.R.S. § 12-821.01 (the "**Procedural Deficiency**") and for failure to state a claim upon which relief can be granted (the "**Substantive Deficiency**"). Support for the District's contention that the Complaint fails to state a claim upon which relief can be granted (the

I. INTRODUCTION

Taxpayer seeks to invalidate T/A # 1069901 (the "**Tax**"), a secondary property tax levied by Defendant Yuma County (the "**County**") for the benefit of the District under A.R.S. § 48-1914 "to pay the District's legal fees for its ongoing litigation against the Yuma County Medical Center" ("**YRMC**"). Complaint at ¶¶ 1, 15. Taxpayer also seeks a refund of the full amounts he paid towards the Tax, and any future installments. *Id.* at ¶ 31. The District is a public entity, which requires Taxpayer to provide notice of its claims to "the person or persons authorized to accept service" on behalf of the District "as set forth in the Arizona rules of civil procedure" before commencing this action pursuant to A.R.S. § 12-821.01(A). Taxpayer was also required to send the District notice of his claim "within one hundred eighty days after [his] cause of action accrue[d]." Taxpayer failed to provide any such notice, and this Court must dismiss Taxpayer's Complaint. Further, more than 180 days have elapsed since Taxpayer's cause of action against the District accrued. Therefore, Taxpayer's Complaint against the District must be dismissed with prejudice as time barred pursuant to A.R.S. § 12-821.01(A).

Taxpayer's Complaint should also be dismissed for substantive reasons. Specifically, Taxpayer contends that the Tax could not be levied without separate voter approval under A.R.S. § 48-1907(A)(6). That section, however, only requires voter approval for taxes levied "for the purpose of funding the operation and maintenance of a hospital." *Id.* The District maintains that the Tax was not for the purpose of funding the operation and maintenance of a hospital, but instead, was authorized under a separate statute, A.R.S. § 48-1914(A)-(B), which contains no requirement to hold a vote to levy a tax and for more than 70 years, has been interpreted as authorizing a district to request that the County levy a secondary property tax to enable the hospital district to cover its operating expenses. *See Prescott Newspapers, Inc. v. Yavapai Cmty. Hosp. Ass'n*, 163 Ariz. 33, 35 (App. 1989) (noting prior tax in 1960

Substantive Deficiency) is more particularly set forth in the District's separate Response to Plaintiff's Cross-Motion for Summary Judgment ("**MSJ Response**"), filed concurrently herewith. The arguments on the Substantive Deficiency are briefly discussed herein simply to preserve them for purposes of the District's Motion to Dismiss.

(presumably pursuant to § 1914(B)) to cover the payment of organizational expenses); *Roberts v. Spray*, 71 Ariz. 60, 67 (1950) (holding that the language in § 1914 provides for a tax to "to take care of items set up in the budget presented by the board of directors of the district to the board of supervisors").

II. HAVING FAILED TO FILE A NOTICE OF CLAIM IN ACCORDANCE WITH A.R.S § 12-821.01(A) PRIOR TO FILING THIS ACTION, AND THE PERIOD FOR DOING SO HAVING NOW EXPIRED, TAXPAYER'S COMPLAINT MUST BE DISMISSED FOR IT SEEKS MONETARY RELIEF FROM THE COUNTY AND/OR DISTRICT WHICH MAY RESULT IN THEIR SUFFERING SUBSTANTIAL LIABILITY AND THERE EXISTS NO MORE SPECIFIC NOTICE OF CLAIM REQUIREMENT THAN THAT FOUND IN § 12-821.01(A) APPLICABLE TO THIS NON-ADMINISTRATIVE REFUND ACTION

Before commencing this action, Taxpayer was required to provide notice of its claims to "the person or persons authorized to accept service" on behalf of the District, a public entity, "as set forth in the Arizona rules of civil procedure." *See* A.R.S. § 12-821.01(A) (the "**Notice of Claim Statute**"). Taxpayer's Response does not claim that Taxpayer complied with the Notice of Claim Statute. *See* Response at 12. Instead, Taxpayer asserts that he does not need to comply with the Notice of Claim Statute because, he argues, it does not apply to taxpayer refund actions, and it does not apply to claims for declaratory relief. As set forth below, Taxpayer is mistaken on both counts.

A. Taxpayer Seeks More than Mere Declaratory Relief

Where "a claim for declaratory or injunctive relief is merely a predicate to a damage claim, the notice of claim statute still applies." *UMB Bank, NA v. Parkview Sch., Inc.*, 254 Ariz. 383, 386 (App. 2023); *see also Arpaio v. Maricopa Cnty. Bd. of Supervisors*, 225 Ariz. 358, 361-62 (App. 2010). In *Arpaio* the plaintiff alleged that the Maricopa County Board of Supervisors "seized more than $24 million from special revenue funds established for the use and administration of the County Sheriff, the County Attorney, and other Maricopa County elected officials, agencies, and departments." 225 Ariz. at 361 ¶ 3. While the Complaint purported to only ask for declaratory and injunctive relief, the prayer for relief asked the

court to order the Board to "reinstate" the subject funds. *Id.* at 362 ¶ 12. Since the plaintiff would presumably be asking for these funds to be "replenished" either through amendment of the complaint or by separate action, the court deemed it "logical to treat the Sheriff's contention as the equivalent of a damages claim, seeking recovery of funds he argues were inappropriately taken." *Id.* As explained by other courts, "because the plaintiffs' claim against the state was effectively a request for an injunction requiring a public entity to transfer money out of its coffers, 'such a claim would indeed constitute the type of claim requiring compliance with the notice of claim statute.'" *Spectrum Pac. W. LLC v. City of Yuma*, 507 F. Supp. 3d 1186, 1190 (D. Ariz. 2020).

Here, Taxpayer seeks a refund of the Tax he paid pursuant to A.R.S. § 42-11005, and a declaration that the Tax is "ultra vires, void, illegally collected, and of no effect because it was imposed without authority of law." Complaint at 5. Taxpayer also seeks attorneys' fees under A.R.S. § 12-348 and the private attorney general doctrine. *Id.* The private attorney general doctrine permits fee awards to private parties who have vindicated rights that benefit large numbers of people, require private enforcement and are of societal importance. *See* Parties Stipulated Statement of Facts ("**PS-SOF**"), ¶ 22. This is like the relief requested in *Arpaio* as Taxpayer seeks to declare a public entity's collection of funds unlawful, which is an express predicate to having the Tax refunded to all persons who have paid the Tax. *See* A.R.S. § 42-11005 (allowing a refund if the court determines that the tax was illegally collected). However, Taxpayer definitively seeks more that declaratory relief as Taxpayer is directly asking the County and perhaps even the District, both public entities, to transfer money from their coffers to Taxpayer. Complaint at 5.

Taxpayer attempts to distinguish *Arpaio* by contending that Taxpayer's request is "genuinely prospective." However, Taxpayer is directly seeking funds from the "coffers" of public entities. Moreover, declaratory judgment in favor of Taxpayer would require the reimbursement of the Tax to Taxpayer. *See Rosenkrantz v. Arizona Bd. of Regents*, No. CV-20-00613-PHX-JJT, 2020 WL 4346754, at *3 (D. Ariz. July 29, 2020) ("More fundamental to Arizona's notice of claim statute, the relief requested for all six of Plaintiffs' claims—

regardless of the label Plaintiffs use or theory they assert—directly involves government funds and would undoubtedly affect financial planning. The claims are therefore subject to the notice of claim statute."). Indeed, if the Tax is declared invalid, the practical result will be that the Tax will then be rescinded and the District will not only lose its only means of covering its operating expenses but each of the County's taxpayers will have a claim for a refund, which if pursued, *will amount to more than a million dollars in damage to the County alone*. That the instant action seeks such relief is evident by the fact that Taxpayer has specifically sought an award of fees pursuant to the private attorney general doctrine, which permits fee awards to private parties who have vindicated rights that benefit large numbers of people, require private enforcement and are of societal importance. PS-SOF, ¶ 22. Thus, the purpose of the Notice of Claim Statute is served by enforcing it here. *See Humphrey v. State*, 249 Ariz. 57, 65 (App. 2020) ("The purpose of a notice of claim is to 'allow the public entity to investigate and assess liability, ... permit the possibility of settlement prior to litigation, and ... assist ... in financial planning and budgeting.'"). Therefore, the notice of claim statute should apply to Taxpayer's claims.

B. Section 12-821.01 Applies to this Non-Administrative Proceeding and No More Specific Notice Requirements Are Found in the Taxpayer Refund Statutes

By its terms, Section 12-821.01 applies to "all causes of action that accrue on or after July 17, 1994." A.R.S. § 12-821.01(F). Despite this, Taxpayer argues that the Notice of Claim Statute cannot apply to a tax refund case like his. Taxpayer cites to various claim requirements in Title 42 of the Arizona Revised Statutes in support of this position. Specifically, Taxpayer argues that the "specific, distinct, and often more stringent requirements" in Title 42 apply to his claims because the "specific governs the general." However, Taxpayer also admits, in a footnote, that the more specific and stringent administrative requirements in Title 42 *do not apply to his* claims because Taxpayer is not disputing the classification or valuation of his property pursuant to the administrative procedures governing claims subject to adjudication by the Department of Revenue—

instead, Taxayer here is disputing the legality of the Tax itself in proceedings pending before the Arizona Tax Court. Response at 12 note 7.[2] Taxpayer's claim is brought pursuant to A.R.S. § 42-11005, but that merely provides a one-year limitations period for bringing a tax refund claim and neatly coincides with the general limitations period for claims against public entities set forth in A.R.S. § 12-821. Section 42-11005 does not speak to or even address any notice of claim. And as Taxpayer admits, there are no more specific provisions in Title 42 that apply to Taxpayer's claims, which are brought directly before the Tax Court and not subject to the administrative procedures set forth in Title 42, which apply to administrative actions before the Department of Revenue. As a result, the Notice of Claim Statute (A.R.S. § 12-821.01) should apply.

Taxpayer's reliance on *Arizona Dep't of Revenue v. Dougherty*, 200 Ariz. 515, 517 & n.4, 520–22 (2001), does not change this conclusion. *Dougherty* involved a class action asserting a claim for a refund pursuant to the administrative procedures set forth in Title 42, and the court explicitly decided the following "narrow" issue: "Once the tax court judge decides that the requirement for a class action have been met, may the class include taxpayers who have not filed individual administrative claims?" *Id.* ¶ 6. Answering that question in the negative, the court did not consider whether the Notice of Claim Statute, A.R.S. § 12-821.01, can apply to tax refund cases outside the context of an administrative proceeding before the Department of Revenue. *See id.* ¶¶ 6, 14 & 22. Instead, the court reasoned that (i) because tax refund claims pending before the Department of Revenue must comply with the mandatory administrative procedures set forth in the tax codes, (ii) the legislature has specifically provided that "[e]ach claim for refund shall be filed with the department [of revenue] in writing" and (iii) the legislature has required individualized refund claims rather than "administrative class actions," each taxpayer must exhaust his/her administrative remedies before bringing a tax court action for refund, even in the context of a class action. *Id*. at 15 & 23.

[2] For example, A.R.S. § 42-16051 requires a petition within 60 days after the notice of valuation is mailed in order to bring an administrative action to contest the valuation.

Dougherty did consider the holding in a different case, *Andrew S. Arena v. Superior Court in and For County of Maricopa*, 163 Ariz. 423 (1990), where one of the questions presented was whether the Notice of Claim statute applied to class actions against public entities. *Arena* held that while compliance with the Notice of Claim Statute was required for a class action to be certified, each member of the class was not required to file a Notice of Claim so long as a Notice of Claim was filed on behalf of the class. *See* 163 Ariz. at 426. In contrast, *Dougherty* held that since the administrative procedures set forth in Title 42 required individualized consideration of each claimant's demands, each member of the class in a proceeding pending before the Department of Revenue had to request relief pursuant to the Department's administrative procedures before being eligible for membership in the class pending in the Tax Court. *Dougherty*, 200 Ariz. at 517 n. 4. Notably, however, *Dougherty* involved administrative proceedings before the Department of Revenue, where specific notice and claim provisions in Title 42 were at issue. This is very different from Taxpayer's claims, where no administrative action was required and no administrative procedures akin to the Notice of Claim Statute seemingly apply. Therefore, *Daugherty* is of no help to Taxpayer, and the Notice of Claim Statute should apply since *Daugherty* did not address its application in a non-administrative context such as that here.

C. Taxpayer Failed to Provide the District Notice of His Claims Within One Hundred Eighty Days After His Cause of Action Accrued as Required Under Arizona's Notice of Claims Statute.

Arizona's Notice of Claim Statute requires persons with claims against a public entity to provide notice of those claims "within one hundred eighty days after the cause of action accrues." *See* A.R.S. § 12-821.01(A). "If a notice of claim is not properly filed within the statutory time limit, a plaintiff's claim is *barred* by statute." *Falcon ex rel. Sandoval v. Maricopa Cnty.*, 213 Ariz. 525, 527 (2006) ("Actual notice and substantial compliance do not excuse failure to comply with the statutory requirements of A.R.S. § 12–821.01(A)."). Under the Notice of Claim Statute, "a cause of action accrues when [1] the damaged party realizes he or she has been damaged and [2] knows or reasonably should know the cause, source, act, event, instrumentality, or condition that caused or contributed to the damage. *See*

A.R.S. § 12-821.01(B).

Here, Taxpayer does not assert in his Response that he complied with A.R.S. § 12-821.01 or that less than one hundred eighty days have passed since his cause of action accrued. To the extent this Court considers facts outside the pleading, it is undisputed that Taxpayer filed this action without first sending the District a Notice of Claim concerning the illegality of the Tax and a specific sum to settle Taxpayer's claim in accordance with A.R.S. § 12-821.01(A). *See* PS-SOF, ¶ 28. Moreover, it is undisputed that more than 180 days have elapsed since Taxpayer first believed the Tax to be unlawful. PS-SOF ¶ 30. Therefore, Taxpayer's claims are barred pursuant to A.R.S. § 12-821.01 and Taxpayer's Complaint should be dismissed with prejudice.

III. BECAUSE THE TAX WAS NOT LEVIED TO OPERATE THE HOSPITAL, IT WAS NOT REQUIRED TO BE APPROVED BY THE ELECTORATE

Taxpayer's Response argues that the Tax is illegal because the District did not hold a separate election approving the Tax before the Tax was levied by the County. Specifically, Taxpayer relies on subsection (A)(6) of A.R.S. § 48-1907, which requires voter approval for taxes levied to operate and maintain a hospital owned by a hospital district. However, Taxpayer alleges that the Tax was levied to pay for legal fees and public outreach in connection with two lawsuits against YRMC (the District's tenant) and its affiliates, not to fund the operation and maintenance of the Hospital. Complaint ¶ 17. The Tax was not levied for the purpose of funding the operation and maintenance of a hospital simply because the District does not operate and maintain the Hospital. The Tax was levied by the County pursuant to another statute, A.R.S. § 48-1914. Because the Tax was not levied for the purpose of operating and maintain a hospital, the voter approval provisions in § 48-1907(A)(6) do not apply and the Tax was lawfully levied.

A. The District Leases Its Hospital to YRMC and Does Not Operate and Maintain the Hospital or Fund the Hospital's Operations.

When the Hospital District Act of 1949 (the "**Act**") was originally passed, hospital districts *only* had the authority to *lease* hospitals; they had no authority to operate and

maintain a hospital. *Roberts*, 71 Ariz. at 66. In 1981, the Act was amended and for the first time, hospital districts were given the authority to operate and maintain a hospital, as well as authority to "impose secondary property taxes to fund their operation and maintenance." *Atchison, Topeka & Santa Fe Ry. Co. v. Arizona Dep't of Revenue*, 162 Ariz. 127, 134 (App. 1989), *disapproved of on a different issue by Bromley Grp., Ltd v. Arizona Dep't of Revenue*, 170 Ariz. 532 (App. 1991); *see also* A.R.S. § 48–1907(A)(5) and (6). In *Atchison*, the court found that a hospital district may **either** lease its hospital **or** it may operate and maintain the hospital itself, as these are "**two mutually exclusive approaches.**" *Id.* at 135–36 (emphasis added). The court further found that lease terms requiring a lessee to operate the hospital and indemnify the district showed that the district was not operating the hospital. *Id.* at 136. Likewise, the District leases its hospital facilities (the "**Hospital**") to YRMC, and it is YRMC that operates and maintains the Hospital. On that basis alone, pursuant to *Atchison*, the District does not operate and maintain the Hospital. Like in *Atchison,* the Lease also specifies that YRMC operates and maintains the Hospital, pays rent to the District, and must indemnify the District. MTD Exhibit F, Lease §§ 3.2, 6.1, 8.1, 10.1. There is also no allegation in the Complaint that the revenues from the Tax have been passed on to YRMC. Therefore, the Tax was not for the purpose of operating and maintain the Hospital.

Taxpayer argues that *City of Phoenix v. Orbitz Worldwide Inc.* supports a finding that the District indirectly operates the Hospital, but the holding in *Orbitz* is limited to whether online travel companies operate a hotel by assisting customers with lodging by advertising rooms, processing payments, and confirming reservations. 247 Ariz. 234, 240 ¶¶ 18–19 (2019). The facts in *Orbitz* are very different from the facts alleged here, where the District leases the Hospital to a third party and does not assist with operating the Hospital. Applying *Orbitz* to hospital districts also ignores 70+ years of caselaw finding that leasing a hospital to a third-party operator is **not** operating and maintaining a hospital. *See Roberts*, 71 Ariz. at 66; *Atchison*, 162 Ariz. at 135–36; *El Paso Nat. Gas Co. v. Arizona Dept. of Revenue*, 174 Ariz. 470, 478–79 (App. 1992).

B. A.R.S. § 48-1914 Directly Authorizes the Tax Without a Separate Vote

The plain language of A.R.S. § 48-1914(A) directly authorizes the Tax. Section 48-1914(A) provides that the District "shall furnish to the board of supervisors of the county in which the district . . . is located a report of the operation of the district for the past year together with an estimate in writing of the amount of money needed **to be raised by taxation <u>for all purposes</u>** required or authorized by this article [A.R.S. §§ 48-1901 to 1919] during the next year." (emphasis supplied, with material in brackets added for clarity). The County Board then "**shall thereupon levy upon the taxable property** of the district a tax which will, together with other funds on hand or which will accrue during the ensuing fiscal year, exclusive of reserves, provide sufficient funds to meet the financial needs of the district as provided under subsection A." *See* A.R.S. § 48-1914(B) (emphasis supplied). There is no voter approval requirement in A.R.S. § 48-1914(A) and (B). The County has the explicit power to levy this tax for the District, as the County is authorized to levy such taxes "as are required to be levied by law." A.R.S. § 11-251(12). For well over 70 years, the provisions in A.R.S. § 48-1914 have been interpreted as "provid[ing] how and for what purposes [hospital district] taxes may be levied, specifically limiting the amount of the levy to take care of items set up in the budget presented by the board of directors of the district to the board of supervisors." *Roberts*, 71 Ariz. at 67 (brackets added for clarity). Taxpayer's contention that the District is arguing for "implied" tax authority has, therefore, already been rejected by the Arizona Supreme Court in *Roberts*.

The later amendments to A.R.S. § 48-1907(A)(5)–(6), specifically granted new powers to the District to operate and maintain the hospital, and to tax for that specific purpose. *El Paso Nat. Gas Co. v. Arizona Dep't of Revenue*, 174 Ariz. 470, 479 (App. 1992). That new power was conditioned on voter approval. *See* § 48-1907(A)(6). As the purpose of the amendments were to grant new powers to the District, they certainly did not abrogate the existing taxing authority under A.R.S. § 48-1914, and there is no general provision requiring a separate vote to secure a tax levy under §1914. Instead, it is only when the purpose of the tax is to operate and maintain the hospital that a vote is required. A.R.S. § 48-1907(A)(6). Here, the purpose of the Tax is to fund the District's defense of lawsuits brought against it by

its tenant and other litigants. No separate voter approval is required to tax for that purpose.

C. The History of the Hospital District Statutes Show that A.R.S. § 48-1907 Is Not the Sole Method that Tax Revenues Can Be Raised for the District.

To the extent there is any ambiguity in the Act's provisions, history shows that the tax provisions in § 48-1914 do not merely establish procedural requirements for how the District must exercise its Section 1907 powers because *prior to 1981*, counties could, and did, levy taxes to reimburse hospital district's for their operating expenses pursuant to § 1914. *See Prescott Newspapers, Inc. v. Yavapai Cmty. Hosp. Ass'n*, 163 Ariz. 33, 35 (App. 1989) (noting prior tax in 1960 (presumably pursuant to § 1914(B)) to cover the payment of organizational expenses). Taxpayer's argument ignores the timing of the amendments to § 1907 and asks the Court to ignore any pre-1981 caselaw and events. *See Roberts*, 71 Ariz. at 67 (holding that the language in § 1914 provides for a tax to "to take care of items set up in the budget presented by the board of directors of the district to the board of supervisors").

Taxpayer nevertheless argues that "the *only* taxing power the District can legitimately claim" is found in A.R.S. § 48-1907(A)(6) (MSJ at 4), but Taxpayer's contention is plainly incorrect as multiple provisions authorizing hospital districts to levy taxes are found throughout § 48-1901 *et seq*. *Atchison* also does not support Taxpayer's arguments, as that case dealt with the District's new powers under § 48-1907, not the existing authority to tax for other purposes under § 48-1914. *See Atchison*, 162 Ariz. at 131–132; *see also Prescott Newspapers, Inc.*, 163 Ariz. at 35. The canon *expression unius est exclusio alterius* does not support Taxpayer's contention, as the text of § 48-1907(A)(6) does not support the conclusion that § 48-1907(A)(6) is the sole taxing authority. *See* A.R.S. §§ 48-1910(C), -1912(B), -1914, each of which sets forth additional taxing authority. As just one example, pursuant to § 48-1912(A)-(B), a hospital district must levy a tax to repay bond reserves whether or not there is separate voter approval. And clearly, since the tax provisions in § 48-1914 do not subsume the voting requirements in § 1907(A)(6), a hospital district will be required to obtain voter approval whenever taxes are levied for the purpose of operating and maintaining a hospital.

D. The Language in § 48-1914 Is Consistent with Taxing Language for Other Special Taxing Districts

No less than 22 special taxing districts authorize the assessment of taxes to cover a district's expenses *without a prior vote of the electorate*. *See* compendium attached to the MSJ Response as Exhibit B. The language used among all of these provisions is remarkably similar to that employed by § 48-1914(A)-(B), and these similar statutes can be considered *in pari materia*. *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017). Finally, while § 48-1907(A) expressly notes that a hospital district "*may*… [i]mpose a secondary property tax on all taxable property within the district," the legislature's use of the permissive "may" is no more of an indication that a hospital district is vested with authority to impose a tax than the command in § 1914(A)-(B) that, upon a hospital districts' delivery of a report estimating the amount of money needed to be raised by taxation, a tax "shall" thereupon be levied to meet the financial needs of the district.

IV. CONCLUSION

Having failed to file a Notice of Claim against the District in accordance with A.R.S. § 12-821.01, and the time allowed for doing so has now expired, this Court must dismiss Taxpayer's Complaint with prejudice. Taxpayer's rationale for failing to provide the Notice of Claim is unavailing, as is his claim that § 48-1907(A)(6) requires a majority of the electorate to pre-approve all tax levies made for a hospital district. Taxpayer has failed to allege sufficient facts showing that the Tax was unlawfully imposed on Taxpayer and for all these reasons, Taxpayer's claims should be dismissed with prejudice.

Respectfully submitted this 2nd day of May 2024.

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By */s/ Marc R. Lieberman*

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