

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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|------------------------------|---|----------------------------|
| OLIVER LUCK, | : | CASE NO. 3:20-cv-00516-VAB |
| | : | |
| Plaintiff, | : | |
| v. | : | |
| | : | |
| VINCENT K. MCMAHON and ALPHA | : | |
| ENTERTAINMENT LLC, | : | |
| | : | |
| Defendants. | : | FEBRUARY 18, 2021 |

DEFENDANT ALPHA ENTERTAINMENT LLC’S AMENDED COUNTERCLAIMS

Counterclaimant Alpha Entertainment, LLC (“Alpha”) hereby brings the following Amended Counterclaims against Counterclaim-Defendant Oliver Luck (“Luck”).

THE PARTIES

1. Counterclaimant Alpha is a citizen of Connecticut and Delaware because its members are Vincent McMahon (“McMahon”), a citizen of Connecticut, and World Wrestling Entertainment, Inc. (“WWE”), a citizen of Connecticut and Delaware.
2. Counterclaim-Defendant Luck is a citizen of Indiana.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.
4. This Court has personal jurisdiction over Luck because he commenced this action in this District and expressly consented to jurisdiction in this District with respect to any dispute or controversy related to, arising under, or in connection with the Employment Contract.
5. Venue is proper in the District of Connecticut under 28 U.S.C. § 1391(b) because Luck expressly consented to venue in this District with respect to any dispute or controversy

related to, arising under, or in connection with the Employment Contract and because a substantial part of the events or omissions giving rise to the counterclaims occurred in this District.

BACKGROUND FACTS

Alpha's Employment of Luck

6. On May 30, 2018, Luck entered into an Employment Contract with Alpha.
7. The Employment Contract provided that Luck was to serve as the “Commissioner and CEO” of a new professional football league known as the XFL.
8. The Employment Contract provided that Luck was the “senior-most executive of the XFL” and was responsible for “all football and business-related operations” of the XFL.
9. The Employment Contract required Luck to “devote ***substantially all*** of his business time to the performance of his duties to the XFL, provided that he may (i) continue to serve as a member of the board of American Campus Communities, Inc. and (ii) serve on not-for-profit boards and participate in other civic and charitable activities, so long as such activities ***do not interfere*** with the performance of his duties to the XFL” (emphasis added).
10. The Confidentiality, Non-Solicitation, and Non-Competition Agreement (“CNNA”) incorporated into the Employment Contract also required Luck to “devote substantially all of Employee’s business efforts and time to Employer and to the performance of his duties to Employer under the Employment Contract.”
11. The Employment Contract provided that, in exchange for the performance of Luck’s obligations under the Employment Contract, Alpha would pay Luck a Base Salary of \$5 million per Contract Year and a “Guaranteed Annual Bonus” of \$2 million if he was still employed “on the last day of each Contract Year,” which was June 30 of each year.

12. The Employment Contract provided that Luck's employment "may be terminated by Alpha *at any time*, with or without cause" (emphasis added).

13. The Employment Contract provided that Alpha had "Cause" to terminate Luck's employment for several reasons, including Luck's "gross negligence of his duties (other than due to illness or disability), *including an intentional failure to follow any applicable XFL policies or directives*" (emphasis added).

14. On April 9, 2020, Alpha notified Luck that he was terminated for Cause under the Employment Contract.

Luck Violates XFL Policy and McMahon's Directives by Hiring Antonio Callaway

15. From the inception of the XFL, McMahon made clear that the league would only hire quality football players with good character.

16. Luck knew that McMahon's position requiring the hiring of only quality football players with good character was deemed by McMahon to be critically important to the development of the XFL's brand.

17. As a result, the XFL instituted a policy of requiring background checks for all potential players in the league and McMahon's approval for all players with bad reputations due to questionable or problematic backgrounds.

18. Luck knew of the XFL's policy and McMahon's directive not to hire players with bad reputations due to questionable or problematic backgrounds.

19. Luck repeatedly acknowledged the XFL's policy and McMahon's directive not to hire players with bad reputations due to questionable or problematic backgrounds in public statements.

a. On or about December 9, 2018, Luck publicly acknowledged that McMahon had made it “clear to me” that he only wanted to hire football players with “good character” and did not want to employ players who had a “track record of bad behavior.”

b. On or about January 7, 2020, Luck again publicly acknowledged that McMahon had made it “clear to me” that he only wanted football players of “good character” and that all potential players would be required to pass “background checks.”

20. Luck also knew of the XFL’s policy and McMahon’s directive to obtain McMahon’s approval before hiring any players who had bad reputations due to questionable or problematic backgrounds.

21. On multiple occasions, Luck disclosed to McMahon accusations of misconduct against potential players and sought McMahon’s approval to hire those players.

22. In each case, McMahon did not approve the hiring of such players and told Luck that they could not play in the XFL because they did not meet the XFL’s policy.

a. Luck repeatedly sought McMahon’s approval to hire a wide receiver who had been banned from the campus on which his XFL team practiced because of a prior sexual assault allegation. After Luck provided McMahon with this information about the player’s background, McMahon told Luck that he could not play in the XFL.

b. Luck also sought McMahon’s approval to hire Martavis Bryant, another wide receiver, to play in the XFL. Prior to hiring Martavis Bryant, Luck informed McMahon that Martavis Bryant had drug problems while he was in the NFL. As a result, McMahon told Luck that Martavis Bryant could not play in the XFL.

23. Because Luck was concerned about poor wide receiver play, Luck decided to violate the XFL's policy and McMahon's directive by attempting to hire wide receivers who would not be hired under the XFL's policy and McMahon's directive.

24. Despite his knowledge of the XFL's policy and McMahon's prior directives not to sign players with bad reputations due to questionable or problematic backgrounds, Luck proceeded to sign a contract with Antonio Callaway, a wide receiver with a lengthy history of misconduct allegations, and affirmatively concealed from McMahon the history of Callaway's misconduct known to Luck.

25. Luck was aware of the following information concerning Antonio Callaway before he signed the contract for Antonio Callaway to play in the XFL.

a. Callaway was reportedly suspended from the University of Florida's team in January 2016 after being accused of sexual assault.

b. Callaway was reportedly suspended from the University of Florida's football team for the entire 2017 season due to an investigation for felony credit card fraud.

c. In May 2017, Callaway was cited for possession of marijuana and drug paraphernalia during a traffic stop in Florida.

d. In April 2018, Callaway tested positive for marijuana at the NFL combine.

e. In August 2018, Callaway was cited for possession of marijuana and driving with a suspended license. The police also reportedly found bullets and a gun part while searching his vehicle. He was ultimately sentenced to probation for driving with a suspended license.

f. In August 2019, Callaway was suspended from the first four games of the NFL season for violating the league's drug policy.

g. In November 2019, Callaway's contract with the Cleveland Browns was waived following a 10-game suspension for violating the NFL's substance abuse policy.

26. Despite his awareness of these issues, Luck approved offering Antonio Callaway a draft contract promising a \$125,000 signing bonus not offered to other wide receivers and included him in the pool of players to be drafted by XFL teams before even mentioning him to McMahon.

27. When Luck advised McMahon that he had signed Antonio Callaway, he did not reveal any of the above information to McMahon and acted to conceal it from McMahon.

28. Luck also misled other XFL executives who questioned Luck's decision to sign Antonio Callaway into believing that he had told McMahon about Callaway's history.

29. Luck also agreed to the terms of a contract with Antonio Callaway before his background check was even completed.

30. On January 13, 2020, when Luck advised McMahon that an XFL team had claimed Antonio Callaway, Luck failed to disclose to McMahon any of the known instances of Callaway's misconduct, including those set forth in Paragraph 25. At the same time, Luck requested that McMahon revisit his prior decision not to sign the wide receiver who had been banned from campus because of sexual assault allegations.

31. On January 16, 2020, when Luck again mentioned Antonio Callaway's signing to McMahon, Luck once more failed to disclose to McMahon any of the known instances of Callaway's misconduct, including those set forth in Paragraph 25.

32. On January 16, 2020, at the same time that Luck concealed Antonio Callaway's history of misconduct from McMahon, Luck asked for McMahon's approval to sign Martavis Bryant and informed McMahon that he had drug issues while in the NFL. As a result, McMahon did not approve the hiring of Martavis Bryant. At the same time, Luck again asked McMahon to

revisit his prior decision not to sign the wide receiver who had been banned from campus because of sexual assault allegations, and McMahon refused to reconsider that decision.

33. On January 16, 2020, Antonio Callaway signed his contract to join the XFL and play for the Tampa Bay Vipers.

34. Luck countersigned Antonio Callaway's XFL contract on January 23, 2020.

35. Luck countersigned Antonio Callaway's XFL contract without first advising McMahon of any of the known instances of Callaway's misconduct, including those set forth in Paragraph 25.

36. Luck knew that McMahon would not have approved of Luck's decision to hire Antonio Callaway if Luck had disclosed his lengthy history of misconduct to McMahon as required by the XFL's policy.

37. Although Luck knew that Antonio Callaway should not have been hired under the XFL's policy, he intentionally disregarded the XFL's policy and McMahon's directive by hiring him.

Luck Disregards McMahon's Directives by Failing to Terminate Antonio Callaway

38. After Antonio Callaway's signing with the XFL became public, news reports surfaced noting Callaway's history of misconduct.

39. After learning of Antonio Callaway's problematic history, McMahon directed Luck to immediately terminate Callaway from the XFL.

40. Luck failed to immediately terminate Antonio Callaway in accordance with McMahon's directive.

41. Despite receiving the directive from McMahon to terminate Antonio Callaway, Luck spoke to the head coach of the Tampa Bay Vipers, Marc Trestman, on January 29, 2020 and told Trestman that Callaway should continue to practice with the team that day.

42. As a result, Antonio Callaway was still practicing with the Tampa Bay Vipers on January 29, 2020 after McMahon had directed Luck to terminate Callaway.

43. While practicing on January 29, 2020, Antonio Callaway sustained a serious knee injury.

44. On January 29, 2020, Luck knew that Antonio Callaway had been injured during practice at approximately 12:30 p.m.

45. Despite knowing that Antonio Callaway had been injured during practice at approximately 12:30 p.m., Luck did not inform McMahon of the injury when he texted McMahon that evening at approximately 6:37 p.m. Instead, Luck falsely told McMahon that he was “in the process of removing Callaway from TB” which Luck knew was not true in light of Callaway’s injury earlier in the day.

46. Luck never terminated Antonio Callaway’s contract.

47. Luck’s failure to follow McMahon’s directive and promptly terminate Antonio Callaway from the XFL had significant financial consequences for Alpha.

48. As a result of this incident, Alpha was required to honor Antonio Callaway’s contract, including payment of the \$125,000 signing bonus, and pay for the costs of surgery on Callaway’s knee.

49. Luck did not inform McMahon that he intended to and did cause the XFL to pay Antonio Callaway’s contract in an attempt to conceal the financial consequences of disregarding McMahon’s directives.

Luck Violates the XFL Technology Policies

50. Luck knew that the XFL had policies prohibiting the use of company technology for matters unrelated to the business of the XFL.

51. Luck knew of the XFL Employee Handbook & Code of Business Conduct.

52. The XFL Employee Handbook & Code of Business Conduct was distributed to XFL employees and included a letter to XFL employees signed by Luck himself.

53. Luck also knew of the XFL Technology Acceptable Use Policy.

54. The XFL Technology Acceptable Use Policy was distributed to XFL employees.

55. Both the XFL Employee Handbook & Code of Business Conduct and the XFL Technology Acceptable Use Policy provided: “All XFL Technology is the ***property of the XFL. Use of such XFL Technology is to be used for XFL related business only; users must not store or transmit any non-business-related files, including but not limited to personal data*** such as documents, spreadsheets, reports, presentations, images, videos or music files, databases and application source code” (emphasis added).

56. XFL Technology included company-issued iPhones that were used to make phone calls, send text messages, and store and transmit emails and documents.

57. Alpha issued Luck a company iPhone.

58. The iPhone owned and issued by Alpha to Luck was XFL Technology within the meaning of the XFL Employee Handbook & Code of Business Conduct and the XFL Technology Acceptable Use Policy.

59. As an employee, and indeed as the CEO of the XFL, Luck was obligated to adhere to and enforce all of the above policies.

60. Luck regularly and routinely used the iPhone issued to him by Alpha for purposes that were unrelated to the business of the XFL.

a. Luck used the iPhone issued to him by Alpha to make phone calls and send text messages that were unrelated to the business of the XFL.

b. Luck used the iPhone issued to him by Alpha to send emails concerning matters that were unrelated to the business of the XFL.

c. Luck used the iPhone issued to him by Alpha to store and transmit documents concerning matters that were unrelated to the business of the XFL.

d. Luck used the iPhone issued to him by Alpha to conduct business for persons or entities other than the XFL.

61. Luck did not inform McMahon that he regularly and routinely used the iPhone issued to him by Alpha for purposes that were unrelated to the business of the XFL.

62. Luck concealed from McMahon his use of the iPhone issued to him by Alpha for purposes that were unrelated to the business of the XFL.

63. In the termination letter Alpha sent to Luck dated April 9, 2020, Alpha directed Luck to return the iPhone issued to him back to Alpha.

64. Luck continued to use the iPhone issued to him by Alpha even after receiving his termination letter and the directive to return the phone.

65. Luck delayed returning the iPhone to Alpha for nearly a month.

66. Before returning the iPhone to Alpha, Luck's counsel asked Alpha's bankruptcy counsel whether Alpha had a policy that prohibited personal use of the iPhone issued by Alpha.

67. After Luck received his termination letter and before he returned the iPhone to Alpha, data was deleted from the iPhone.

68. Luck knew that the data on the iPhone that was deleted proved that he used the iPhone for purposes prohibited by the XFL's technology policies.

69. After such data was deleted from the iPhone, Luck authorized and knew that his lead counsel was representing to defense counsel in this case, Alpha's bankruptcy counsel, and the Court that no data had been deleted from the iPhone.

70. Luck's lead counsel's representations to defense counsel in this case, Alpha's bankruptcy counsel, and the Court that no data had been deleted from the iPhone were false.

71. Luck did not send the iPhone back to Alpha until May 5, 2020.

72. Although Luck was asked to provide the passcode to unlock the iPhone issued by Alpha, Luck refused to provide the passcode as required by Connecticut law until he was ordered to do so by the Court. *See* Conn. Gen. Stat. § 31-40x(c)(1).

73. Accordingly, Luck knowingly and repeatedly violated the XFL's technology policies by using XFL Technology for matters unrelated to the XFL's business.

74. Luck's repeated use of XFL Technology for matters unrelated to the XFL's business evidenced his failure to devote substantially all of his business time to the XFL.

75. Luck's repeated use of XFL Technology for matters unrelated to the XFL's business breached his duty not to use Alpha's property for his own benefit.

76. In addition, Luck violated the XFL's technology policies by forwarding XFL information to personal email accounts.

77. The XFL Employee Handbook & Code of Business Conduct and the XFL Technology Acceptable Use Policy required employees to "ensure through legal or technical means that proprietary information remains within the control of the XFL at all times. Conducting XFL business that results in the storage of proprietary information on personal or non-XFL

controlled environments, including devices maintained by a third party with whom the XFL does not have a contractual agreement, is prohibited. This specifically prohibits the use of an e-mail account, storage device, cloud storage or computers or mobile devices that are not provided by the XFL for company business.”

78. The XFL Employee Handbook & Code of Business conduct also provided that users shall not “[s]hare, upload, copy, email, or transfer any data or software to a portable medium (e.g. USB drives, CD, etc.) or to an external source (e.g. personal email account, ftp account, etc.) without proper authorization.”

79. Luck repeatedly violated this policy by forwarding XFL information, including confidential information, to his personal email accounts and his wife’s personal email account.

80. Luck did not inform McMahon that he was forwarding XFL information to personal email accounts.

81. Luck concealed from McMahon the fact that he was forwarding XFL information to personal email accounts.

Luck Violates the CNNA and the XFL’s Confidentiality Policies

82. Luck’s Employment Contract prohibited him from disclosing the confidential information of the XFL.

83. The CNNA incorporated into Luck’s Employment Contract provided: “Employee shall not, during his employment by Employer or at any time thereafter, directly or indirectly use, divulge, disseminate, discuss, disclose, lecture upon, or publish any Confidential Information without having first obtained the prior written consent from Employer to do so.”

84. The CNNA defined “Confidential Information” as “all information disclosed or made available to Employee or otherwise known by Employee as a consequence of or through

Employee's employment by, or affiliation with, Employer about Employer's or any of its Affiliates' business, products, processes, facilities, and services.”

85. Luck also knew that the XFL had additional policies prohibiting him from disclosing the confidential information of the XFL.

86. The XFL Employee Handbook & Code of Business Conduct prohibited Luck from disclosing the confidential information of the XFL.

a. The XFL Employee Handbook & Code of Business Conduct prohibited employees from “disclosing confidential information which [employees] may create, produce or obtain in the course of their employment to outsiders.”

b. The XFL Employee Handbook & Code of Business Conduct provided: “Employee shall not, at any time (whether during Employee's employment with the XFL or at any time thereafter) disclose directly or indirectly in any manner to any person or organization, or publication, or utilize for the benefit or profit of Employee or for any other person or organization, any sensitive, private or otherwise confidential information, idea, proposal, secret, or information obtained while employed by the XFL concerning, regarding or referring to the XFL or its subsidiaries and affiliates, and its and their respective employees, agents, stockholders, principals, officers, directors, independent contractors, customers, subscribers and end-users of any kind, and the McMahon family.”

c. The XFL Employee Handbook & Code of Business Conduct strictly prohibited “procuring or transmitting material” that “violates the XFL policies” against the “safeguarding of confidential or proprietary information.”

d. The XFL Employee Handbook & Code of Business Conduct identified “[u]nauthorized use or disclosure of confidential business information” as an example of conduct

that violates the employee conduct policy and could result in “disciplinary action, up to an including termination.”

87. The XFL Technology Acceptable Use Policy similarly prohibited “procuring or transmitting material” that “violates the XFL policies” against the “safeguarding of confidential or proprietary information.”

88. The XFL Conflict of Interest and Code of Conduct policy also provided: “Employee understands, acknowledges and agrees that he/she shall not disclose confidential information which they may create, produce or obtain in the course of their employment to outsiders.”

89. Luck repeatedly disclosed the confidential information of the XFL to third parties in violation of the CNNA and the XFL’s policies.

90. Luck repeatedly disclosed the confidential information of the XFL to William Wilson, his brother-in-law and an employee of the Wasserman Media Group, a sports agency that represented professional athletes.

91. Luck’s unauthorized disclosure of the confidential information of the XFL to William Wilson included, but was not limited to, XFL requests for proposals, meeting notes, presentations, draft contracts, and analysis of players.

92. Luck also repeatedly disclosed the attorney-client privileged information of the XFL to William Wilson, including draft contracts and analysis of contracts.

93. Luck did not inform McMahon of Luck’s repeated disclosure of the confidential and privileged information of the XFL to third parties, and he neither sought nor obtained McMahon’s prior written consent to do so.

94. Luck concealed from McMahon his disclosure of the confidential and privileged information of the XFL to third parties.

95. The CNNA also provided that “[u]pon termination of Employee’s employment with Employer, or upon written request by Employer, Employee shall deliver to Employer all materials containing Confidential Information then in Employee’s possession or under Employee’s custody or control, including all copies.”

96. Luck violated the CNNA by not promptly returning the Alpha-issued iPhone containing confidential information of the XFL in response to Alpha’s directive to return the iPhone in the termination letter.

Luck’s Abandonment of His Duties After March 13, 2020

97. In March 2020, the XFL was forced to suspend its first season in order to comply with venue restrictions arising from the COVID-19 pandemic.

98. Instead of providing the leadership expected from a CEO during such challenging times, Luck abruptly left the XFL’s headquarters in Connecticut and disengaged from the XFL’s operations.

99. On March 13, 2020, Luck returned to his home to Indiana and did not return to the XFL’s headquarters in Connecticut.

100. Luck did not seek or obtain the approval of McMahon to leave the XFL’s headquarters on March 13, 2020 and not return to Connecticut.

101. Between March 13, 2020 and his termination for cause on April 9, 2020, Luck did not personally call McMahon or speak directly with him.

102. After March 13, 2020, Luck did not send McMahon any report regarding his daily activities or his weekly activities.

103. After March 13, 2020, Luck failed to devote substantially all of his business time to the XFL or to the performance of his duties to the XFL.

104. After March 13, 2020, Luck allowed other business activities to interfere with his business obligations to the XFL.

105. After March 13, 2020, Luck failed to attend important meetings of the XFL's COVID-19 Working Group that were held by videoconference.

a. Luck did not participate in the XFL's COVID-19 Working Group meeting held by videoconference on the evening of March 15, 2020.

b. Luck did not participate in the XFL's COVID-19 Working Group meeting held by videoconference on March 18, 2020.

c. Luck did not participate in the XFL's COVID-19 Working Group meeting held by videoconference on March 20, 2020.

d. Luck did not participate in the XFL's COVID-19 Working Group meeting held by videoconference on March 27, 2020.

e. Luck did not participate in the XFL's COVID-19 Working Group meeting held by videoconference on April 1, 2020.

106. After March 13, 2020, Luck failed to attend important weekly XFL business operations meetings that were held by Zoom.

a. Luck did not participate in the XFL's weekly operations meeting held by Zoom on March 16, 2020.

b. Luck did not participate in the XFL's weekly operations meeting held by Zoom on March 23, 2020.

c. Luck did not participate in the XFL's weekly operations meeting held by Zoom on March 30, 2020.

107. Luck failed to attend these important meetings to determine whether there was a viable path forward for the XFL in the face of the threat presented by the COVID-19 pandemic.

108. Luck failed to demonstrate the work ethic expected of a CEO of a start-up league in the face of the threat presented by the COVID-19 pandemic.

109. Instead, Luck prioritized other business ventures over his obligations as Commissioner and CEO of the XFL.

COUNT ONE – BREACH OF CONTRACT

110. Alpha repeats and incorporates by reference each of the preceding paragraphs as if fully set forth herein.

111. The Employment Contract, including the CNNA, was a legally binding and enforceable contract.

112. Alpha performed all of its obligations under the Employment Contract and the CNNA.

113. Luck's actions and omissions described herein breached the Employment Contract and the CNNA.

114. Luck's breaches of the Employment Contract and the CNNA caused monetary damages to Alpha in an amount to be proven at trial.

COUNT TWO - BREACH OF FIDUCIARY DUTY

115. Alpha repeats and incorporates by reference each of the preceding paragraphs as if fully set forth herein.

116. As Commissioner and CEO and the most senior employee and agent of the XFL, Luck had a fiduciary relationship with Alpha.

117. Luck owed fiduciary duties to Alpha, including a duty of loyalty, a duty of good faith and honesty, a duty to disclose material facts, a duty of obedience, and duties of care, competence, and skill.

118. Luck's actions and omissions described herein breached his fiduciary duties to Alpha and advanced his own interests at Alpha's expense.

119. Alpha suffered monetary damages as a result of Luck's breaches of fiduciary duty in an amount to be proven at trial.

120. Alpha is further entitled to the equitable remedy of an accounting for Luck's use of XFL property and any benefits obtained from his work on other activities during company time.

121. Alpha is further entitled to the equitable remedies of disgorgement and forfeiture of compensation paid to Luck as a result of his breaches of fiduciary duties.

PRAYER FOR RELIEF

WHEREFORE, Alpha requests that the Court enter judgment in favor of Alpha and against Luck and award the following relief to Alpha:

- (a) Monetary damages;
- (b) An accounting;
- (c) Disgorgement of profits and forfeiture of compensation previously paid to Luck;
- (d) Prejudgment and post-judgment interest;
- (e) Reasonable attorney's fees, expenses, and costs;
- (f) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Alpha requests a trial by jury on all issues so triable.

DEFENDANT ALPHA ENTERTAINMENT
LLC

By: /s/ Jerry S. McDevitt
Jerry S. McDevitt
Curtis B. Krasik
K&L GATES LLP
K&L Gates Center
210 Sixth Avenue
Pittsburgh, PA 15222
Phone: (412) 355-6500
Fax: (412) 355-6501
Email: jerry.mcdevitt@klgates.com
Email: curtis.krasik@klgates.com

Jeffrey P. Mueller (ct27870)
DAY PITNEY LLP
242 Trumbull Street
Hartford, CT 06103
Phone: (860) 275-0100
Fax: (860) 275-0343
Email: jmueller@daypitney.com

CERTIFICATION OF SERVICE

I hereby certify that, on February 18, 2021, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jeffrey P. Mueller
Jeffrey P. Mueller (ct27870)