

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA DIVISION

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

vs.)

DAVID TANNER, Individually, and d/b/a)

CAPITAL ENHANCEMENT CLUB, ROCKY)

D. SPENCER, MARROC CORP., and)

RICHARD P. KRINGEN,)

Defendants,)

and)

MARGARET F. SPENCER, OMNIBUS LLC,)

VECTRA RESOURCES LLC, and DYNAMIC)

ENVIRONMENTAL SOLUTIONS, INC.,)

Relief Defendants.)

Civil Action No. 05-4057-SAC

ANSWER OF DEFENDANT DAVID TANNER

COMES NOW defendant David Tanner (“Tanner”) for his answer to the complaint. Pursuant to Fed. R. Civ. P. Rule 8(d), all matters are denied about which Tanner is without knowledge or information sufficient to form a belief concerning the truth thereof. Tanner states:

Summary

COMPLAINT ¶ 1. From at least October 2004, Defendants defrauded investors of \$15 million through their fraudulent offer and sale of securities referred to as a “private joint venture investment.”

ANSWER: Tanner denies the allegations contained in Paragraph 1 of the Complaint. As it relates to other defendants, Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 1.

COMPLAINT ¶ 2. Operating under the name Capital Enhancement Club (“CEC”), Defendants falsely claim that CEC will pay monthly interest of approximately 7% to 11% (120% to 260% annually) from “trading in international markets.” In reality, CEC’s trading program is nonexistent and the investor funds are being pocketed by the Defendants or transferred to an offshore bank designated under the USA Patriot Act as a “primary money-laundering concern,” because of its facilitation of the movement of “dirty money.”

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the designations under the USA Patriot Act and denies the rest of the allegations contained in Paragraph 2 of the Complaint. As it relates to other defendants, Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 2.

COMPLAINT ¶ 3. In offering and selling the CEC securities, Defendants directly and indirectly, make misrepresentation and omissions of material facts concerning the nature of the investment, projected returns and the use of investor funds.

ANSWER: Tanner denies the allegations contained in Paragraph 3 of the Complaint. As it relates to other defendants, Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 3.

COMPLAINT ¶ 4. Of the \$15 million invested, approximately \$300,000 remains in the domestic accounts, with no additional assets and no legitimate business activity. At

least \$1.5 million was misappropriated by Defendants Rocky D. Spencer (“Spencer”), a convicted felon and recidivist fraudster, and Richard P. Kringen, one of CEC’s salesman. Following Defendant David Tanner’s (“Tanner’s”) instructions, CEC investors transferred at least \$10.3 million to suspect offshore accounts at the above-referenced bank.

ANSWER: Tanner denies the allegations contained in Paragraph 4 of the Complaint. As it relates to other defendants, Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 4.

COMPLAINT ¶ 5. By engaging in the conduct described in the Complaint, Defendants directly or indirectly, singly or in concert, have engaged, and unless enjoined and restrained, will again engage in transactions acts, practices, and courses of business that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77(a), (c), & 11q(a)] and Section 10(b) of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

ANSWER: Tanner denies the allegations contained in Paragraph 5 of the Complaint. As it relates to other defendants, Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 5.

COMPLAINT ¶ 6. In order to protect the public interest, the Commission seeks to stop this fraudulent scheme and to preserve assets pending the final disposition of this litigation. The Commission therefore requests that the Court issue the following orders: 1) temporary restraining order and preliminary and permanent injunctions against future violations by Defendants, 2) an immediate freeze of assets of Defendants and Relief

Defendants, 3) an order requiring an accounting from Defendants and Relief Defendants, 4) an order prohibiting Defendants and Relief Defendants from destroying records, 5) an order permitting expedited discovery, 6) an order appointing a temporary receiver, 7) an order for the repatriation of funds, 8) an order allowing alternate service for Defendant Tanner, who resides outside the United States, and 9) an order providing such other equitable relief that may be deemed appropriate.

ANSWER: Tanner denies the allegations in first sentence and admits the allegations in the second sentence of paragraph 6 of the Complaint.

Jurisdiction and Venue

COMPLAINT ¶ 7. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78(aa)]. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices (a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77(a), (c), & 11q(a)] and Section 10(b) of the Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

ANSWER: Tanner denies the allegations contained in Paragraph 7 of the Complaint. As it relates to other defendants, Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 7.

COMPLAINT ¶ 8. Venue is proper because any of the transactions, acts, practice and courses of business described below occurred within the District Court of Kansas, and defendant Kringen resides in Topeka, Kansas.

ANSWER: Tanner denies the allegations contained in Paragraph 8 of the Complaint. As it relates to other defendants, Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 8.

COMPLAINT ¶ 9. David Tanner, age unknown, was last purported to reside in the Turks and Caicos Islands in the Carribean. Tanner formed CEC as early as 2001 and still controls CEC; he is listed as CEC's managing partners and as its webmaster. In April 2001, Tanner registered the CEC website (www.ceclub5u.com) and then posted it on the Internet in June 2001. From at least 2001 through December 2003, Tanner listed one of his e-Gold accounts in CEC newsletters as a depository for investor funds. At Tanner's instruction, hundreds of CEC investors transferred \$10.3 million to a Riga, Latvia, bank account. Currently, CEC is raising investor funds at a rate of \$10,000 to \$20,000 per day. Neither Tanner nor CEC are registered with the Commission in any capacity.

ANSWER: Tanner denies the allegations contained in Paragraph 9 of the Complaint.

COMPLAINT ¶ 10. Rocky D. Spencer, age 43, is a resident of Newport News, Virginia, and is Marroc's president and secretary. On July 22, 1994, Spencer plead guilty to conspiracy to defraud the United States, money laundering, wire fraud and structuring transactions to evade reporting requirements. Spencer served 60 months. In 2003, Spencer filed for bankruptcy. Spencer is not registered with the Commission in any capacity.

ANSWER: Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 10.

COMPLAINT ¶ 11. Marroc Corp. is a Virginia corporation, controlled by Spencer, with its principal place of business at Spencer's residence in Newport News, Virginia. Since inception of CEC's website, which lists Marroc's bank account as an option for funding a CEC investment, the company received at least \$5 million from investors. Marroc is not registered with the Commission in any capacity.

ANSWER: Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 11.

COMPLAINT ¶ 12. Richard P. Kringen, age 68, a resident of Topeka, Kansas, is a CEC salesman who received at least \$11,000 in apparent commission payments from Marroc. Kringen is the subject of a 1994 cease-and-desist order issued by the State of Kansas for previously operating a fraudulent high-yield investment scheme. Kringen is not registered with the Commission in any capacity.

ANSWER: Tanner denies the allegation that Krigen is a CEC salesman who received commission payments and does not possess knowledge or information sufficient to form a belief as to the rest of the allegations contained in Paragraph 12 of the Complaint.

Relief Defendants

COMPLAINT ¶ 13. Margaret F. Spencer ("M. Spencer") is the mother of Rocky Spencer and resides at the same address as Spencer in Newport News, Virginia. During January and February 2005, M. Spencer received at least \$68,000 of CEC investor funds for no apparent consideration. M. Spencer is listed as a signatory on Marroc bank accounts.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13 of the Complaint.

COMPLAINT ¶ 14. Omnibus LLC is a Nevada limited liability company that, without providing any known services, received \$100,000 of CEC investor funds from Maroc.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14 of the Complaint.

COMPLAINT ¶ 15. Vectra Resources, LLC is a Nevada limited liability company with its registered office in Las Vegas, Nevada. For no apparent consideration, Vectra received \$160,000 in investor funds from Maroc in February 2005.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 15 of the Complaint.

COMPLAINT ¶ 16. Dynamic Environmental Solutions, Inc. (“DES”) is located in Ponce, Puerto Rico. For no apparent consideration, Dynamic received \$400,000 in investor funds from Maroc.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 16 of the Complaint.

Statement of Facts

COMPLAINT ¶ 17. CEC relies primarily on current investors, acting as “sponsors,” to offer its investments in private, invitation-only meetings. Many of the attendees and prospective CEC investors are senior citizens.

ANSWER: Tanner denies the allegations contained in Paragraph 17 of the Complaint.

COMPLAINT ¶ 18. Kringen hosted CEC meetings, including one as recently as February 3, 2005 in Overland Park, Kansas.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 18 of the Complaint.

COMPLAINT ¶ 19. In these meetings, Kringen tells attendees that CEC is a nine-year old, invitation-only, private investment club with over 80,000 members located in 120 countries. According to Kringen, CEC is operated by four partners: David Tanner and three unnamed partners, two who live in England and one who lives in Germany.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 19 of the Complaint.

COMPLAINT ¶ 20. Kringen tells prospective investors at CEC meetings that the minimum investment is \$500, but that \$2000 is recommended. According to Kringen, investors will receive interest of 6.79% to 11.26% interest, compounded monthly.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 20 of the Complaint.

COMPLAINT ¶ 21. Prospective investors are also told that they will be further rewarded for bringing in new “downline” investors. According to Kringen, investors will receive increased monthly interest of between .0058% and .0083%, depending on the number of investors recruited. Investors, however, are not allowed to withdraw funds for 6 months and, after that, are limited to withdrawals of \$1,000 per month. Kringen also boasts of many CEC investors and claims that his initial \$5000 investment now generates \$65,000 a month.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 21 of the Complaint.

COMPLAINT ¶ 22. Kringen further promotes the secretive nature of the CEC investment. He claims that the partners have not revealed to him the exact nature of the investments made by CEC, only disclosing that the investments involve “trading in international markets.” And according to Kringen, CEC accounts are maintained offshore. Prospective investors are further told that CEC safeguards its privacy by changing fax numbers every month and by using Internet based e-currencies for transactions. Finally, to provide a sense of urgency to invest, prospective investors are told that the investment program expires in 2008, so “time is of the essence.”

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 22 of the Complaint.

CEC’S Offering Materials and Internet Website

COMPLAINT ¶ 23. At the meetings, Kringen distributes offering materials to prospective investors. These materials highlight CEC features including free membership, a low minimum investment of \$500, monthly interest from 6.79% to 11.26% to be compounded monthly or withdrawn, and the ability to conduct business with CEC in private and with anonymity.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 23 of the Complaint.

COMPLAINT ¶ 24. Kringen and other CEC sponsors do not collect investment funds at the meetings. Instead, prospective investors are directed to CEC’s website,

where they can apply for membership by providing personal contact information and the sponsor's name.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 24 of the Complaint.

COMPLAINT ¶ 25. To maintain CEC's privacy, investors are required to establish an e-mail account with Safe-Mail (www.safe-mail.net), the sole medium of communication between CEC and its investors. Safe-Mail, an Israeli company, offers private email accounts.

ANSWER: Tanner denies the allegations contained in Paragraph 25 of the Complaint.

COMPLAINT ¶ 26. Once registered, each investor receives a CEC account number, instructions on funding the account and an electronic copy of a Joint Venture Agreement ("JVA"). The JVA includes, among other things, an attestation that the new investor is neither an "informant" nor "associated with any governmental agency." CEC requires each new investor to execute the JVA and return it to CEC via facsimile.

ANSWER: Tanner denies the allegations contained in Paragraph 26 of the Complaint.

COMPLAINT ¶ 27. Upon establishing an account, CEC provides the investor, via e-mail, three options for funding the account. First, with prior notice by e-mail to Tanner, the investor may wire transfer funds directly to CEC's offshore account in Riga, Latvia without any service charges or fees. Second, the investor may open an e-currency account and transfer the amounts into Maroc's e-currency account. Third, the investor may send a cashier's check or money order to Maroc's address in Newport News,

Virginia or wire transfer funds directly to Marroc's bank account in Virginia. Before transferring e-currency or sending a cashier's check or money order to Marroc, the CEC investor is required to send an email to sales@instantgold.net, one of Spencer's e-mail accounts, indicating the CEC JVA number and the amount of the deposit.

ANSWER: Tanner denies the allegations contained in Paragraph 27 of the Complaint.

COMPLAINT ¶ 28. CEC investors receive a monthly newsletter and Monthly Financial Reports ("MFRs") from Tanner through their Safe-Mail e-mail account. Generally, these newsletters provide the new facsimile numbers and reiterate the three options that investors can utilize to send additional funds to CEC. The MFRs typically show that investors earned approximately 7% to 11% monthly and list downline investors and additional earnings derived from recruitment.

ANSWER: Tanner denies the allegations contained in Paragraph 28 of the Complaint.

Misrepresentations and Omissions

COMPLAINT ¶ 29. The Defendants, in furtherance of their scheme to defraud, have made numerous misrepresentations and omissions of material fact including but not limited to the following:

- (a) That CEC generates returns from a secret trading program run by the United States Federal Reserve.
- (b) That CEC has been successful in this type of secret trading for 8 ½ years.

- (c) Monies invested in CEC are earning approximately 7% to 11% monthly (120% to 260% annually).
- (d) Non-affiliated investors were made rich by CEC's secret trading activity.
- (e) Defendants fail to disclose to investors that their funds will not be used in a secret trading program, but rather will be misappropriated by Tanner, Spencer, Kringen and others and used to pay Ponzi-type payments to earlier investors.
- (f) Defendants fail to disclose to investors that monies sent to Marroc Corp. are under the control of Spencer, a convicted felon and recidivist fraudster who, in 2002, filed for bankruptcy protection.
- (g) Defendants fail to disclose to investors that Kringen was the subject of a 1994 cease-and-desist order issued by the State of Kansas.
- (h) The Defendants fail to disclose that the Latvian bank to which they wire funds has been designated by the United States Treasury Department as a primary money laundering concern.

ANSWER: Tanner denies the allegations contained in Paragraph 29 of the Complaint.

Misappropriation of Investor Funds

COMPLAINT ¶ 30. Once in control of investor funds, Tanner and Spencer direct a series of transfers inconsistent with any legitimate investment.

ANSWER: Tanner denies the allegations contained in Paragraph 30 of the Complaint. As it relates to other defendants, Tanner is without knowledge or information sufficient to form a belief concerning the truth of paragraph 30.

COMPLAINT ¶ 31. For example, account records from Tanner's electronic "e-gold" account show that he routinely paid "monthly earnings" to prior investors immediately from deposits received from later investors. Additionally, Marroc's bank records show over \$1.1 million newly deposited investor funds have been used to make payments to other investors. This type of activity is the hallmark of a fraudulent Ponzi scheme.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief as to the contents of Marroc's bank records and denies the rest of the allegations contained in Paragraph 31 of the Complaint.

COMPLAINT ¶ 32. From investor funds deposited into Marroc bank accounts, Spencer has misappropriated over \$350,000 for his personal use, including \$170,000 in cash, \$69,000 to his brokerage account, \$21,000 to purchase a car, and \$6,100 for plastic surgery. Kringen received at least \$11,000 from Marroc in apparent sales commissions. The Relief Defendants also received payments from Marroc for no apparent consideration, including \$68,000 to M. Spencer, \$160,000 to Vectra Resources, \$100,000 to Ominbus and \$400,000 to DES.

ANSWER: Tanner does not possess knowledge or information sufficient to form a belief concerning the truth of paragraph 32.

Claims

**First Claim
Violations of Section 17(a) of the Securities Act
(All Defendants)**

COMPLAINT ¶ 33. Plaintiff Commission repeats and incorporates paragraphs 1 through 32 of this Complaint by reference as if set forth *verbatim*.

ANSWER: Tanner repeats responses set forth above.

COMPLAINT ¶ 34. Defendants, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

ANSWER: Tanner denies the allegations contained in Paragraph 34 of the Complaint.

COMPLAINT ¶ 35. As part of and in furtherance of their scheme, Defendants directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading, including, but not limited to, those statements and omissions set forth in paragraphs 1 through 32 above.

ANSWER: Tanner denies the allegations contained in Paragraph 35 of the Complaint.

COMPLAINT ¶ 36. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth. Defendants were also negligent in their actions regarding the representations and omissions alleged herein.

ANSWER: Tanner denies the allegations contained in Paragraph 36 of the Complaint.

COMPLAINT ¶ 37. By reason of the foregoing, Defendants have violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

ANSWER: Tanner denies the allegations contained in Paragraph 37 of the Complaint.

Second Claim

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 (All Defendants)

COMPLAINT ¶ 38. Plaintiff Commission repeats and incorporates paragraphs 1 through 32 of this Complaint by reference as if set forth *verbatim*.

ANSWER: Tanner repeats responses set forth above.

COMPLAINT ¶ 39. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts

and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

ANSWER: Tanner denies the allegations contained in Paragraph 39 of the Complaint.

COMPLAINT ¶ 40. As a part and in furtherance of their scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of materials facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in paragraphs 1 through 32 above.

ANSWER: Tanner denies the allegations contained in Paragraph 40 of the Complaint.

COMPLAINT ¶ 41. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth.

ANSWER: Tanner denies the allegations contained in Paragraph 41 of the Complaint.

COMPLAINT ¶ 42. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

ANSWER: Tanner denies the allegations contained in Paragraph 42 of the Complaint.

Fourth Claim

**Violations of Sections 5(a) and 5(c) of the Securities Act
(All Defendants)**

COMPLAINT ¶ 43. Plaintiff Commission repeats and incorporates paragraphs 1 through 32 of this Complaint by reference as if set forth *verbatim*.

ANSWER: Tanner repeats responses set forth above.

COMPLAINT ¶ 44. Defendants, directly or indirectly, singly or in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and has been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

ANSWER: Tanner denies the allegations contained in Paragraph 44 of the Complaint.

COMPLAINT ¶ 45. As described in paragraphs 1 through 32, Defendants' securities were offered and sold to the public through a general solicitation for investors. No registration statements were ever filed with the Commission or otherwise in effect with respect to these transactions.

ANSWER: Tanner denies the allegations contained in Paragraph 45 of the Complaint.

COMPLAINT ¶ 46. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

ANSWER: Tanner denies the allegations contained in Paragraph 46 of the Complaint.

Fifth Claim

Claim Against Relief Defendants as Custodian of Investor Funds

COMPLAINT ¶ 47. Plaintiff Commission repeats and incorporates paragraphs 1 through 32 of this Complaint by reference as if set forth *verbatim*.

ANSWER: Tanner repeats responses set forth above.

COMPLAINT ¶ 48. Relief Defendants received funds and property from one or more of the Defendants, which are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged in paragraphs 1 through 32, above.

ANSWER: Tanner denies the allegations contained in Paragraph 48 of the Complaint.

COMPLAINT ¶ 49. Relief Defendants obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 32 and under circumstances in which it is not just, equitable or conscionable for them to retain the funds and property. As a consequence, Relief Defendants have been unjustly enriched.

ANSWER: Tanner denies the allegations contained in Paragraph 49 of the Complaint.

AFFIRMATIVE DEFENSES

Pursuant to Fed. R. Civ. P., Rule 8(c), Tanner reserves the right to assert affirmative defenses or any other matters constituting an avoidance as may become known through discovery as justice shall allow.

Respectfully submitted,

/s/ Thomas D. Haney
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2005, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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