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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELECTRA CRUISES, INC., a
corporation and LYNDA M.
GUINThER, an individual,

Plaintiff,

v.

CAMPING WORLD RV SALES, a
business entity, form unknown, et al.,

Defendants.

Case No.11CV1798 AJB (DHB)

ORDER GRANTING IN PART AND
DENYING IN PART
DEFENDANT’S MOTION FOR
PARTIAL SUMMARY JUDGMENT

Presently before the Court is Defendant Stier’s RV Centers, LLC dba Camping World RV Sales (“Stier’s”) and Defendant Freedom Roads LLC’s (collectively “Defendants”) Motion for Summary Judgment or in the alternative Motion for Summary Adjudication. For the reasons stated, the Court GRANTS in part and DENIES in part Defendant’s Motion for Partial Summary Judgment.

I. BACKGROUND

Plaintiffs commenced this action in the Superior Court of California, County of San Diego, on August 11, 2011. Plaintiffs alleged violations of the Song-Beverly Consumer

1 Warranty Act, Magnuson-Moss Warranty Act (“Magnuson-Moss Act”), and negligent repair
2 against Defendants and other parties who are no longer a part of this action. Defendants
3 removed the action pursuant to 28 U.S.C. § 1441(b). (Doc. No. 1.) Plaintiffs filed an
4 Amended Complaint (“FAC”) on June 12, 2012. (Doc. No. 38.) The FAC contains only the
5 Magnuson-Moss Act and negligent repair causes of action.

6 Plaintiffs are Electra Cruises Inc. (“Electra”), a corporation that operates a fleet of
7 yachts for weddings and corporate events, and Lynda Guinther, the Chief Financial Officer
8 of Electra in her individual capacity. (Doc. No. 85 at 2.) Plaintiffs purchased the 2009
9 American Coach, American Heritage motor home at a recreational show in Pomona
10 California in October of 2008. The motor home was manufactured by American Coach, a
11 division of Fleetwood Enterprises Inc (“Fleetwood”). (*Id.* at 2-3.) Fleetwood has since filed
12 for bankruptcy and has liquidated. (*Id.* at 3.) Defendant Stier’s operates a recreational
13 vehicle dealership and was on site at the Pomona RV show to assist Fleetwood in sales
14 transactions should attendees desire to buy a motor home. (*Id.* at 4.)

15 Plaintiffs wished to purchase the motor home for business purposes, specifically as
16 a groom’s dressing room and wedding rental, as well as personal recreational activities.
17 (Doc. No. 91 at 2). Plaintiffs were unable to identify a suitable motor home onsite, but did
18 identify a floor plan to their liking from an American Heritage brochure. (*Id.*) Specifically,
19 Plaintiffs desired the galley pull out feature. (Doc. No. 85 at 5.) Fleetwood representatives
20 located a unit at a Georgia dealership that purportedly had a galley pull out. (*Id.*) Relying
21 upon the Fleetwood representative, Plaintiffs negotiated a purchase price of \$603,888.63
22 and made a down payment for the motor home payable to Stier’s. (*Id.* at 2, 5-6; Doc. No.
23 91 at 3.) However, when the subject motor home was delivered to a San Marcos, California
24 facility, the parties realized that motor home did not have the desired galley pull out. (*Id.* at
25 6-7.) Moreover, according to Plaintiffs FAC the motor home was delivered with material
26 defects such as blown fuses, house battery not charging, defective slide-outs, defective
27 generator, and so forth. (*Id.* at 3.) Plaintiffs expressed the desire to continue with the
28 transaction but to have the motor home redesigned and reconfigured to meet their

1 expectations. (*Id.* at 7.) Representatives from Fleetwood informed the parties that they
2 would make the necessary changes and Stier’s confirmed this promise in writing. (*Id.* at 7-
3 8.) The price settled upon for the renovations was \$11,000. (*Id.*) Plaintiffs also requested
4 additional work to be completed on the motor home. (*Id.* at 9). Plaintiffs delivered the
5 motor home in December 2009 to Fleetwood for transport to the Fleetwood factory in
6 Indiana. (*Id.* at 8.) Fleetwood completed the work in two months, however it appears that
7 the results were less than satisfactory. Plaintiffs alleged a number of material defects as well
8 as cosmetic problems associated with the reconfiguration. (Doc. No. 38 at 3-4.) The parties
9 were unable to privately negotiate an acceptable arrangement, and thus the instant lawsuit.

10 Numerous cross-claims were filed then dismissed. On February 20, 2013 Defendants
11 filed the instant Motion for Summary Judgment seeking partial summary judgment on a
12 number of issues. (Doc. No. 66) Plaintiffs filed their Response on March 15, 2013. (Doc.
13 No. 91.)

14 **II. DISCUSSION**

15 **A. Legal Standard**

16 Summary judgment is appropriate if the “pleadings, depositions, answers to
17 interrogatories, and admissions on file, together with the affidavits, if any, show that there
18 is no genuine issue as to any material fact and that the moving party is entitled to judgment
19 as a matter of law.” Fed. R. Civ. P. 56(e) (West 2006). A dispute about a material fact is
20 genuine “if the evidence is such that a reasonable jury could return a verdict for the
21 nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505
22 (1986). In considering the motion, the court must examine all the evidence in the light most
23 favorable to the non-moving party and “all justifiable inferences are to be drawn in his
24 favor.” *Id.* at 255, 267.

25 When the moving party does not bear the burden of proof, summary judgment is
26 warranted by demonstration of an absence of facts to support the non-moving party's case.”
27 *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548 (1986). Summary judgment
28 must be granted if the party responding to the motion fails “to make a sufficient showing on

1 an essential element of her case with respect to which she has the burden of proof.” *Id.* at
2 323.

3 **B. Issues for Summary Judgment**

4 **1. Stier’s Alleged Breach of Any Implied Warranty of Merchantability and/or Fitness** 5 **and Subsequently the Magnuson-Moss Act.**

6 The Magnuson Moss Act provides that a consumer may assert a civil cause of action
7 to enforce the terms of an implied or express warranty. 15 U.S.C. §§ 2301-2312, et seq.
8 Section 2310(d) provides that any “consumer who is damaged by the failure of a supplier,
9 warrantor, or service contractor to comply with any obligation under this chapter, or under
10 a written warranty, implied warranty, or service contract” may sue for damages and other
11 legal and equitable relief. Breach of an obligation imposed by state law will support a claim
12 under the Magnuson-Moss Act. *In re Sony Grand Wega*, 758 F. Supp. 2d 1077, 1101 (S.D.
13 Cal. 2010). Defendants contend that Plaintiffs’ Magnuson Moss Act claim must fail as a
14 matter of law as they were: 1) not obligated not given an opportunity to cure; and 2) any
15 duty owed to Plaintiffs to redesign was discharged by novation. (Doc. No. 66 at 10-15.)

16 a. Steier’s was not Obligated nor were they Afforded an Opportunity to Cure.

17 First, Defendants argue Plaintiff’s Magnuson Moss Act claim must fail as Defendants
18 are not obligated to cure nor were they afforded an opportunity to cure as required by the
19 Act:

20 “No action ... may be brought under subsection (d) of this section for failure to
21 comply with any obligation under any written or implied warranty or service
22 contract ... unless the person obligated under the warranty or service contract
23 is afforded a reasonable opportunity to cure such failure to comply.

24 15 U.S.C. 2310(e).

25 Defendants contend that Fleetwood promised to redesign and reconfigure the motor
26 home and that Stier’s merely “memorialized this promise for Plaintiffs in writing. (Doc. No.
27 66 at 11). In support, Defendants attach the Work Authorization Form prepared by Stiers
28 confirming Fleetwood’s promise in writing. (*Id.* Ex. 12) However, in their Response,

1 Plaintiffs repeatedly allege Stier's as the entity that initially made the promise to reconfigure
2 the floor plan. (See Doc. No. 91 at 3-4.) Plaintiffs further allege that all negotiations
3 regarding the sale of the motor home as well as the reconfiguration were with Stier's. (*Id.*
4 at 13.) A review of the Work Authorization Form attached as Exhibit 12 does not indicate
5 that Fleetwood promised to do any redesign or reconfiguration. Indeed, Fleetwood is not
6 even mentioned on the Form. The Form bears Camping World RV Sales logo and indicates
7 the work to be done was to "install galley pull out" and "replace galley sink." (Doc. No. 66,
8 Ex. 12.)

9 Defendants next argue that Plaintiffs failed to give them an opportunity to cure the
10 defect. (Doc. No. 66 at 11.) Notice and an opportunity to cure are required to state a claim
11 under the Magnuson Moss Act. A plaintiff must provide a defendant with an opportunity
12 to cure the alleged breach and the defendant itself must have refused directly to provide a
13 cure. *Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1143 (N.D. Cal. 2010) (citation omitted).
14 As expected, Plaintiffs beg to differ. First, Plaintiffs contend that they did indeed give
15 Stier's an opportunity to install the desired galley pull once the parties realized the motor
16 home purchased and delivered lacked the desired feature. According to Plaintiffs, Stier's
17 initially took responsibility and claimed it was going to order the necessary parts and
18 contract out the labor. (Doc. No. 91 at 4.) However, Stier's later recanted as it did not have
19 the capability to make the necessary modifications and Fleetwood stepped in and agreed to
20 modify the motor home. (*Id.*) Mr. Randall Goodman, president of Electra, testified that a
21 sales representative from Stier's, Mr. Rocky Eldridge, assured him that "we're going to
22 change the motor home." (Doc. No. 91, Ex. 8, Goodman Dep. at 16.)

23 Accordingly, a material issue of genuine fact exists as to whether Defendants are
24 obligated to cure and whether Plaintiffs provided Defendants a reasonable opportunity to
25 cure exists. The Court cannot grant summary judgment on this basis.

26 b. Stier's Has No Duty to Plaintiffs by Novation

27 A novation is a substitution by agreement of a new obligation for an existing one with
28 the intent to extinguish the latter. *Davies Machinery Co. v. Pine Mountain Club, Inc.*, 39

1 Cal. App. 3d 18, 24, 113 Cal. Rptr.784 (Cal. Ct. App. 1974). Whether or not a novation
2 exists depends primarily upon the individual facts of each case. *Olympic Finance Co. v.*
3 *Thyret*, 337 F.2d 62, 66 (9th Cir. 1964). To constitute novation, there must be some
4 evidence of an agreement or contract to substitute and the intent of the parties is a
5 controlling factor. *See Aetna Cas. & Sur. Co. of Hartford, Conn. v. Bettens*, 111 F. Supp.
6 111, 113 (S.D. Cal. 1953).

7 The Court cannot as a matter of law determine that a valid novation occurs. There is
8 insufficient evidence in the record to indicate the intent of the original parties to create a
9 new agreement. Plaintiffs' action of delivering the motor home to Fleetwood does not
10 suffice to show a new agreement. Furthermore, Defendants' arguments are contradictory.
11 On the one hand Stier's claims it was never under a duty to redesign or reconfigure the
12 motor home. (Doc. No. 66 at 11.) Then on the other hand, by claiming a discharge of duty
13 by novation, Stier's implies they indeed owed some duty to Plaintiffs to redesign or
14 reconfigure the motor home. (*Id.* at 13.) Thus, by Defendants' own admissions, a genuine
15 issue of material fact exists precluding the Court from granting summary judgment on this
16 basis.

17 c. Motor Home has been Modified

18 Finally, Defendants argue Plaintiffs' Magnuson Moss claim fails as a matter of law
19 as the motor home was "in a different condition from when Plaintiffs purchased ... [and no]
20 warranty from Stier's attached to any work that Fleetwood performed ..." (*Id.* at 15.) In their
21 response, Plaintiffs do not dispute that Stier's does not owe a warranty for work by a third
22 party. Instead, Plaintiffs repeatedly contend that Stier's breached an implied warranty by
23 supplying a motor home that required subsequent modifications to meet Plaintiffs'
24 expectations. (Doc. No. 91 at 18.)

25 It would then appear that the parties agree Stier's warranty does not cover work
26 performed by Fleetwood. However, the a genuine issue of contention still remains, whether
27 or not Stier's breached an implied warranty at the time of sale for supplying a product that
28 did not meet Plaintiffs' expectation.

1 D. Implied Warranties

2 “Merchantability” generally has been construed as a requirement that a product
3 conforms to its ordinary and intended use. *Stearns v. Select Comfort Retail Corp.*, No. 08-
4 2746 JF, 2009 WL 1635941, at *7-8 (citing *Am. Suzuki Motor Corp. V. Super. Ct.* 37 Cal.
5 App. 4th 1291, 1295, 44 Cal. Rptr. 2d 526 (Cal. Ct. App. 1995). Under California law, a
6 breach of implied warranty of merchantability means the product does not possess even the
7 most basic degree of fitness for ordinary use. Cal. Comm. Code § 2314(2). This implied
8 warranty does not “impose a general requirement that goods precisely fulfill the expectation
9 of the buyer. Instead, it provides for a minimum level of quality. *Stearns*, 2009 WL
10 1635941, at *8. However, this does not mean the alleged defect must preclude any use of
11 the product itself. *See Isip v. Mercedes-Benz USA, LLC*, 155 Cal.App.4th 19, 26, 65 Cal.
12 Rptr. 3d 685 (2007).

13 In addition to an implied warranty of merchantability, the California Commercial
14 Code imposes an implied warranty of fitness for a particular purpose. “Where the seller at
15 the time of contracting has reason to know any particular purpose for which the goods are
16 required and that they buyer is relying on the seller’s skill or judgment to select or furnish
17 suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose.”
18 Cal. Comm. Code § 2315. A particular purposes “envisages a specific use by the buyer
19 which is peculiar to the nature of his business.” *Mills v. Forestex Co.*, 108 Cal.App.4th 625,
20 635 n.4, 134 Cal.Rptr.2d 273 (2003).

21 Defendants argue no evidence of a defect existed in the motor home at the time of sale
22 that renders it unfit for ordinary use. (Doc. No. 66 at 17.) Plaintiffs, on the other hand,
23 contend that there were “numerous defects that were present at the time of sale and that
24 arose during the first year of ownership.” (Doc. No 91 at 15.) The implied warranty of
25 merchantability only requires that the good is “substantially free of defects.” *Mexia v. Rinker*
26 *Boat Co., Inc.*, 174 Cal.App.4th 1297, 1303 (Cal. Ct. App. 2009). The analysis is
27 complicated by the fact that Plaintiffs’ motor home was repaired by third party, Fleetwood,
28 after the sale which may have resulted in new defects and/or exacerbated alleged existing

1 defects. There are inconsistencies in the parties' briefs as to when the Fleetwood Indiana
2 repairs occurred. The UMF states that repairs started in December 2009. (Doc. No. 85.)
3 Some portions of Plaintiffs' Response state the repairs started in late November and
4 December 2009 while other portions imply the repairs started in December 2008. (*See* Doc.
5 No. 91 at 5-7.) The exact date of the Fleetwood repairs, which parties contend created or
6 exacerbated defects, is important for the Court to determine exactly what alleged defects
7 existed before to implicate Stier's breach of any implied warranty. The parties' typos and
8 inconsistencies have made it difficult for the Court to analyze this issue.¹ Plaintiffs state that
9 during their first year of ownership, seventeen (17) repair attempts were made to fix an
10 estimated fifty (50) alleged defects. (Doc. No. 91 at 15-16.) However, because of Plaintiffs'
11 own negligence in preparing their briefs, the Court could not determine from the pleadings
12 whether these repair attempts are for defects that existed prior to or after the Fleetwood
13 Indiana repair and renovation to install Plaintiffs' galley pull. Based upon a review of the
14 record and work orders from Fleetwood, the Court determined the repairs occurred from
15 December 2008 to January 2009. (Def. Mot. Ex. 19-20.)

16 Plaintiffs allege the defects included: 1) the house batteries not charging; 2) a
17 defective rear awning; 3) malfunctioning grey and black water tank gauges; 4) outside light
18 failure ... (Doc. No. 91 at 4.) However, Stier's failed to address most of the items Plaintiffs
19 cited to. (*Id.* at 5.) Based on the Fleetwood work order, there also appeared to be issues with
20 unsecured wires and minor cosmetic problems. (Def. Mot. Ex. 19.) While most of these
21 defects would not render the motor home unfit for intended use or unable to provide a
22 minimum level of quality, the Court does note the concern with the house batteries which
23 would severely hinder the use of the motor home. Stier's contends that its technicians
24 replaced the transfer switch which resolved the house battery problems. (Doc. No. 66 at 17.)
25 Plaintiffs argue the problem still exists and have proffered expert testimony that the

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27 ¹ The Court takes this opportunity to remind parties to proofread briefs submitted.
28 Defendants' briefs were also full of spelling errors and inconsistencies, for example the
table of contents did not match the actual page numbers. Such simple mistakes detracts
from the substance of the briefs and wastes the Court's time in trying to determine
exactly what the parties' meant. (Doc. No. 66.)

1 charging problem still persists. (Doc. No. 91 at 5.) Moreover, there is also a dispute with
2 regards to how the Aqua Hot system was damaged, with experts on both sides arguing
3 different theories. As there are two opposing views on these problems, each supported by
4 expert opinion, the Court is precluded from granting summary judgment on whether Stier's
5 breached an implied warranty of merchantability.

6 Plaintiffs also allege Stier's breached the implied warranty of fitness. According to
7 Plaintiffs, they communicated their intent to use the motor home for their business as a
8 groomsmen dressing room and rental. From the record, it is clear that the primary source
9 of Plaintiffs' dissatisfaction was the lack of galley pull in the motor home purchased.
10 Defendants argue that Plaintiffs' inspection of the motor home precludes an implied
11 warranty except as to latent defects unrevealed by a reasonable examination. (Doc. No. 19).
12 Because the existence of a galley pull is so obvious that means Plaintiffs waived the implied
13 warranty.

14 The Court partly agrees with Defendants argument. The Court fails to see how the
15 lack of a galley pull would severely inhibit the motor home's use as a groomsmen dressing
16 room. A groomsmen dressing room only needs privacy, adequate space, storage, and the
17 like. A galley pull, indeed an entire kitchen, would appear unnecessary to serve as a
18 changing space. However, there is a genuine issue of material fact as to whether the implied
19 warranty of fitness was breached with regards to Plaintiffs' use of the motor home as a
20 wedding rental. Plaintiffs have alleged they represented that particular purpose to Stier's
21 representatives and Plaintiffs have pled they relied upon Stier's to locate a motor home that
22 would serve this commercial purpose. Thus, there is a genuine issue of material fact as to
23 whether the latent defects rendered the motor home unsuitable for rental purposes.

24 Thus, the Court DENIES summary judgment on whether Stier's breached and implied
25 warranties and subsequently the Magnuson Moss Act.

26 **2. Whether Subsequent Modification Bars Plaintiffs' Claims**

27 Defendants next seek summary judgment on whether a third party's modification of
28 the motor home bars Plaintiffs from revoking acceptance and claiming for damages.

1 Furthermore, Defendants argues that Plaintiffs' post revocation use of the motor home
2 nullifies and claim for damages. (Doc. No. 66 at 19-20).

3 Under the California Commercial Code, revocation of acceptance must occur within
4 a reasonable time after the buyer discovers or should have discovered the ground for it and
5 before any substantial change in condition of the goods which is not caused by their own
6 defect. Cal. Comm. Code §2608(2). Plaintiffs attempted to revoke acceptance on March 29,
7 2011. (Def. Mot. Ex. 1.) Plaintiffs learned the motor home did not have the galley pull upon
8 inspection in October 2008. Based on Plaintiffs' own pleadings, they discovered the
9 existence of material defects by November 2008 when Plaintiffs returned the motor home
10 to Stier's for repair, including the house battery defect. (See Doc. No. 91 at 4.) After the
11 Fleetwood repairs, Plaintiffs again had to make several repairs and at least by April 2009,
12 discovered additional issues that allegedly severely limited their use of the motor home,
13 such as the major damage to the Aqua Hot system, water flooding, and so forth. (Doc. No.
14 8.) However, Plaintiffs waited almost two years before attempting to revoke and rescind.
15 Instead, Plaintiffs attempted numerous subsequent repairs at different facilities and even
16 took the motor home on an 8,000 mile trip to Alaska after attempting to revoke. (Doc. No.
17 91 8-9; Def. Mot. Ex. 51.)

18 Generally, the effect of a delay and the corresponding waiver of the right to rescind
19 is a question of fact. *See Mobley v. Richfield Oil Corp.*, 53 Cal. App. 2d 406, 411, 128 P.2d
20 105 (Cal. Ct. App. 1942). However, a Court may rule as a matter of law on the issue when
21 the delay is so palpably unreasonable. *Cf. Garetto v. Almaden Vineyards*, 118 Cal.App.2d
22 99, 102, 257 P.2d 477 (Cal. Ct. App. 1953). In the instant case, Plaintiffs notified Stier's
23 of their intent to revoke and rescind a full two years after discovery of all the defects that
24 allegedly existed at the time of sale. Though Plaintiffs were in fact attempting to repair the
25 problems (first through Stier's, then Fleetwood, then numerous other facilities), the fact
26 remains that Plaintiffs waited a full two years before notifying Stier's of any attempt to
27 revoke and rescind. Moreover, the Plaintiffs' action after attempting to revoke and rescind
28 is inconsistent with any intent to do so. The Court agrees with Defendants that the delay of

1 two years was unreasonable and would find that a rational trier of fact could not disagree.
2 However, the Court cannot conclude as a matter of law that any subsequent post revocation
3 use or subsequent repairs by a third party completely cuts off Stier's liability for the defects
4 Plaintiffs allege existed at the time of sale.

5 Finally, although Defendants argue that the substantial modification made to the
6 motor home bars Plaintiffs' claims for damages, they have failed to cite to any case law that
7 so establishes this rule. (Doc. No. 66 at 19.) Although Defendants cite to the California
8 Commercial Code, this only supports their contention that Plaintiffs' have effectively
9 waived revocation by substantially changing the motor home's condition. (*Id.*) The Court
10 agrees that Plaintiffs have waived their right to revoke and rescind based on the unreason-
11 able delay in notifying Stier's as well as their actions, inconsistent with the intent to revoke
12 or rescind. However, the Court cannot make the next inferential leap Stier's argues for to
13 find that Plaintiffs have also effectively waived their right to claim for damages arising from
14 alleged defects existing at the time of sale.

15 Accordingly, the Court GRANTS summary judgment finding that Plaintiffs waived
16 revocation but DENIES granting summary judgment as to whether subsequent modification
17 completely cuts off Stier's liability for alleged defects that existed prior to the repairs.

18 **3. Stier's Alleged Negligent Repair**

19 Lastly, Defendants seek summary judgment to declare Stier's did not negligently
20 repair the motor home. Defendants argue that Stier's only performed one repair on the
21 motor home, replacing the transfer switch, and that no problem exists with the transfer
22 switch today. (Doc. No. 66 at 22.) However, Plaintiffs argue that the initial problem was
23 the battery charging issue which Stier's attempted to fix by repairing the transfer switch.
24 Plaintiffs contend that Stier's negligently diagnosed the repair as the battery charge problem
25 still persists. As stated above, both parties have proffered differing expert testimony as to
26 the cause and remedy of the battery problem. Thus a genuine issue of material fact exists
27 as to whether or not Stier's negligently repaired the motor home. Based on the record, the
28 Court is precluded from granting summary judgment on this issue.

1 **CONCLUSION**

2 The Court:

3 1. DENIES Defendants' summary judgment motion on whether Stier's breached any
4 implied warranties and subsequently the Magnuson Moss Warranty Act.

5 2. DENIES Defendants' summary judgment on whether a third party's repairs cuts
6 off Stier's liability as to alleged defects existing at the time of sale.

7 3. GRANTS summary judgment on whether Plaintiffs may revoke acceptance and
8 rescind the transaction.

9 4. DENIES summary judgment on whether Stier's negligently repaired the motor
10 home.

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12 IT IS SO ORDERED.

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14 DATED: October 25, 2013

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17 Hon. Anthony J. Battaglia
18 U.S. District Judge
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