IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HENRY HILL, et al.,

Plaintiffs,

Case No. 10-cv-14568

vs.

Hon. Mark A. Goldsmith

RICK SNYDER, et al.,

Defendants.
_____/

PLAINTIFFS' BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Count VI of Plaintiffs' Second Amended Complaint seeks access to rehabilitative programming as a requirement of Plaintiffs' constitutional right to a meaningful opportunity for release. Approximately 200 individuals whose life sentences are void because of *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), are still awaiting resentencing hearings, nearly three years after Mich. Comp. Laws § 769.25a became effective. Defendant Michigan Department of Corrections (MDOC) continues to treat these class members as if they were still serving the void life-without-parole sentences. As a result, MDOC declares them ineligible to participate, as a class, in core rehabilitative programming. Participation in such programming is necessary to ensure that Plaintiffs' resentencing hearings and parole review process, at which demonstrated rehabilitation is a crucial factor, provide them with meaningful opportunities to obtain release. Without such programming, they will be hindered in their ability to demonstrate that they have rehabilitated and matured.

Defendants' motion for summary judgment offers little more than a subjective opinion that the denied programming is unimportant or inconsequential, a view flatly contradicted by the sworn testimony of current and former MDOC and parole board officials. Accordingly, this Court should deny Defendants' motion for summary judgment. And, because there is no genuine dispute of

material fact, the Court may exercise its discretion to grant summary judgment to Plaintiffs. *See* Fed. R. Civ. P. 56(f).[1]

BACKGROUND AND FACTS

Before the Supreme Court's decisions in *Miller* and *Montgomery*, all Plaintiffs and class members were serving mandatory life-without-parole sentences pursuant to Mich. Comp. Laws §§ 750.316 and 791.234(6). Now that these sentences have been declared unconstitutional and void, Michigan courts must resentence all Plaintiffs and class members under Mich. Comp. Laws § 769.25a. Pursuant to this statute, courts may resentence a Plaintiff or class member to another life-without-parole sentence, or to a minimum term of 25 to 40 years and maximum term of 60 years, *see id.* § 769.25a(4)(c), but as the Supreme Court has cautioned: "appropriate occasions for sentencing juveniles to [the] harshest possible penalty will be uncommon," limited to "rare" cases of "irreparable corruption." *Miller*, 567 U.S. at 479-80.

Despite Plaintiffs' sentences having been voided nearly three years ago, approximately 200 Plaintiffs and class members still await resentencing. (Ex. 1, List of Plaintiffs Awaiting Resentencing; Ex. 2, Affidavit of G. Ubillus). Until they

[1] Plaintiffs originally moved for summary judgment on January 16, 2018, but this Court denied their motion without prejudice pending discovery to more fully develop the record. (Dkt. 203, Op. & Order, Pg ID 3195-3196). Discovery is now complete.

are resentenced, Michigan continues to subject them to unconstitutional punishment, i.e. life imprisonment without parole consideration. MDOC officials treat all individuals whom courts have not yet resentenced under Mich. Comp. Laws § 769.25a as if they are still serving a life sentence, including even those for whom prosecutors have conceded may be resentenced to a term of years. All Plaintiffs who courts have still to resentence are listed on the MDOC website as serving life sentences; they continue to be advised by MDOC personnel that they are ineligible for lower custody levels because they are serving a life sentence; and they continue to be denied "core" rehabilitative programming in prison based solely on Defendants' insistence that they are still "lifers." (Ex. 3, Michael Eagen Dep. Tr. 05/17/18, pp. 73-75).

Defendants recommend core programming as necessary for rehabilitation when they first incarcerate an individual. It consists of programs to address an individual's assaultive history, such as Assaultive Offender Program (AOP) or Violence Prevention Program (VPP), and substance abuse programs and counseling for individuals with a history of substance abuse that may have contributed to their offenses. (Ex. 3, Michael Eagen Dep. Tr. 07/16/18, p. 109; Ex. 4, Heidi Washington Dep. Tr. 09/25/18, pp. 33-34).

Defendants' own testimony establishes that completion of recommended core programming is an important component of rehabilitation because they are

valuable programs. It is useful inside prison, improving one's record while incarcerated by reducing incidents of misconduct for those who have received programming for violence prevention and substance abuse. Defendants also recognize completion of such programming as a key indicator of likelihood of a prisoner's successful re-entry into the community after they are released. (Ex. 3, Eagen Dep. Tr. 79-80; Ex. 4, Washington Dep. Tr. 33-35, 82-83).

But while recognizing the importance of these core programs to rehabilitation, Defendants' stated policy is to exclude prisoners if they do not have an Earliest Release Date ("ERD") in their prison file, adhering to the fiction that all class members who have not been resentenced are serving "life" sentences. Numerous class members have requested placement in their recommended core programming, only to be told by Defendants that they are ineligible because of their purported "lifer" status. (Ex. 3, Eagen Dep. Tr. 73-75; Ex. 4, Washington Dep. Tr. 31; Ex. 5, Lynn McNeal Dep. Tr. 09/05/18, pp. 62-64; Ex. 6, Jemal Tipton Dep. Tr. 09/12/18, p. 70; Dkt. 181-8, McNeal Correspondence, Pg ID 2579-2582).

The denial of access to recommended core programming interferes with Plaintiffs' ability to demonstrate that they have rehabilitated and matured, the very demonstration that they need to make in order to have a meaningful opportunity for release. Defendants' conduct harms Plaintiffs at two stages. First, at resentencing,

judges are expected to consider "the individual's record while incarcerated," Mich. Comp. Laws § 769.25(6), before imposing a sentence. (Ex. 7, *People v. Henry Hill*, Saginaw Co. Cir. Ct., Case No. 80-000750-FY-5, Resentencing Tr. 05/04/17, pp. 18-19). Defendants recommend core programming such as AOP, VPP, and substance abuse counseling because it helps prisoners avoid misconducts in prison and prepares them for successful release. (Ex. 3, Eagen Dep. Tr. 79-80; Ex. 4, Washington Dep. Tr. 33-35, 82-83). The ability to complete programming to address these issues is critical at resentencing. In the resentencing of Plaintiff Damion Todd, for example, the prosecutor insisted on Mr. Todd being incarcerated an additional two years to complete core programming in assaultive and substance abuse that was recommended when he was first incarcerated but that he was unable to complete prior to resentencing. Despite Mr. Todd having an institutional record which was stellar and included only four misconducts in 30 years, the Court extended his incarceration by two years to complete core programming. (Ex. 8, *People v Damian Todd*, Wayne Co. Cir. Ct., Case No. 86-05782-01-FC, Resentencing Tr. 03/29/17, p. 15: "The People after reviewing everything feels that an appropriate sentence would be thirty years to sixty years on the first degree murder. That would give Mr. Rucker [sic, Todd] an extra almost two years in prison to get the programming that he hasn't been eligible for to date."). Yet, Defendant MDOC denies Plaintiffs' and class members' access to core

programming before courts resentence them because of their so-called "lifer" status, prejudicing their ability to demonstrate maturation and rehabilitation at the resentencing stage.

Second, the Michigan parole board expects that all prisoners complete recommended core programming, such as VPP, AOP and substance abuse counseling, to demonstrate their suitability for release on parole, further prejudicing Plaintiffs' and class members' ability to demonstrate maturation and rehabilitation, particularly when they are immediately eligible for parole upon resentencing but have been denied access to core programming because of their so-called "lifer" status. The parole board denies release to prisoners who have not completed these recommended core programs and in particular, those prisoners who Defendants have recommended complete programming to address their assaultive behavior offenses. (Dkt. 67-4, Stapleton Aff. ¶ 22, Pg ID 1001; Ex. 3, Eagen Dep. Tr. 167-71). For example, Defendants deferred Christopher Wiley's and Lorenzo Harrell's parole reviews for months because they had not completed recommended core programming. Defendants denied them access to this critical programming while awaiting resentencing, and they remained incarcerated—despite being immediately eligible for parole—solely because they had failed to complete recommended core programs because Defendants denied them access to

it. (Ex. 9, Christopher Wiley Dep. Tr. 09/07/18, pp. 7-8; Ex. 10, Lorenzo Harrell Dep. Tr. 09/07/18, pp. 6, 27-28, 35).

Of the approximately 200 Plaintiffs and class members who are currently awaiting resentencing, at least 88 could be immediately eligible for parole once their resentencing occurs as they have served at least 25 years. Based on Defendants' production of documents, 77 who courts are yet to resentence still have to complete recommended core programming requirements. (*See* Ex. 2, Aff. of Gonzalo Ubillus). In at least seven of those cases, prosecutors are not even seeking life-without-parole sentences, and in the remaining cases "appropriate occasions for sentencing juveniles to [the] harshest possible penalty will be uncommon," limited to "rare" cases of "irreparable corruption." *Miller*, 567 U.S. at 479-80.[2]

ARGUMENT

I. Defendants' policy excluding Plaintiffs from existing rehabilitative programming violates their right to a meaningful opportunity for release.

Defendants repeatedly acknowledge that *Montgomery* voided all the class members' life sentences (*see, e.g.*, Dkt. 147, Defs.' Br., Page ID 1867) but

[2] Throughout the state, prosecutors are withdrawing motions they previously filed to reimpose life-without-parole sentences. And, other than in Kent County, courts have not resentenced any Plaintiff or class member to a life-without-parole sentence. (Dkt. 267, Defs.' Mot. for Summ. J. Ex. A).

continue to deny Plaintiffs core rehabilitative programming important for resentencing and parole consideration, based on the fiction that Plaintiffs are continuing to serve the very sentences that were voided nearly three years ago. Defendants' conduct violates Plaintiffs' right to a meaningful opportunity for release.

A. Plaintiffs have a constitutional right to a meaningful opportunity for release based on their demonstrated rehabilitation and maturity.

In *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court held that, in situations where a state cannot punish a child with a life-without-parole sentence, it must provide them with "a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Miller*, 567 U.S. at 479 (quoting *Graham*, 560 U.S. at 75); *see also Starks v. Easterling*, 659 F. App'x 277, 281 (6th Cir. 2016) (White, J., concurring) ("Together, *Graham* and *Miller* establish that the Eighth Amendment prohibits a sentencing regime that mandates a term of life imprisonment for juvenile homicide offenders without a meaningful opportunity to obtain release.").

Graham and *Miller*'s "meaningful opportunity" protection governs all phases of punishment for juvenile offenders. *Miller*, 567 U.S. at 479. In *Montgomery*, the Court made clear that *Graham* and *Miller* apply equally to sentencing and parole procedures: "Allowing [juvenile] offenders to be considered

for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." *Montgomery*, 136 S. Ct. at 736. In *Montgomery*, therefore, the Court linked *Miller* to the mandatory nature of the life-without-parole sentence imposed in that case, and to the expected *length* of that sentence; the actual time served must not be "disproportionate" to both the offender and the extent to which they have demonstrated maturity and rehabilitation. *Id*.[3]

Under Mich. Comp. Laws § 769.25a(4)(c), except where a court resentences a juvenile to life-without-parole, it must sentence them to a mandatory sentence of 60 years in prison, with the possibility of parole after serving a minimum sentence

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[3] Other courts have recognized that *Graham* and *Miller*'s protections govern parole procedures. *See*, *e.g.*, *Greiman v. Hodges*, 79 F. Supp. 3d 933, 945 (S.D. Iowa 2015):

> It is axiomatic that a juvenile offender could only prove increased maturity and rehabilitation warranting release from custody at some time well after a sentence is imposed. . . .
>
> The responsibility for ensuring that plaintiff receives his constitutionally mandated 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' lies squarely with IBOP and the other state-actor defendants.

(*See also* Dkt. 107, Pg ID 1442-1443, Order Requiring Immediate Compliance with *Miller*).

of 25 to 40 years. Because a 60-year sentence significantly exceeds the expected life span of a Michigan prisoner, parole opportunities during the prison term (after serving the minimum sentence) must be meaningful and realistic. *See Starks*, 659 F. App'x at 283 ("Here, where Starks would become eligible for release at age 68 at the earliest . . . he has been deprived of a 'meaningful opportunity to obtain release' during his lifetime."); *see also Atwell v. State*, 197 So.3d 1040 (Fla. 2016) (mandatory life *with* the possibility of parole violates Eighth Amendment where the parole process fails to consider mitigating factors of youth); *Maryland Restorative Justice Initiative v. Hogan*, 2017 WL 467731, at *19-24 (D. Md. Feb. 3, 2017) (acknowledging lack of inherent right to release on parole, yet concluding that *Graham*, *Miller*, and *Montgomery* require meaningful opportunity for release); *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015) ("If a juvenile offender's life sentence, while ostensibly labeled as one 'with parole,' is the functional equivalent of a life sentence without parole, then the State has denied that offender the 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' that the Eighth Amendment demands.").

The "meaningful opportunity" requirement sounds in both the Eighth Amendment and due process. The Eighth Amendment is implicated because, without a meaningful opportunity for release, hundreds of children who are not the "rarest of children, those whose crimes reflect irreparable corruption,"

Montgomery, 136 S. Ct. at 726, will be punished with life imprisonment, a cruel and unusual punishment prohibited by *Miller* and *Montgomery*. "Thus, there can be no dispute that, under the Eighth Amendment as interpreted by the Supreme Court, one serving a JLWOP sentence is entitled to a meaningful and realistic opportunity to secure release upon demonstrated maturity and rehabilitation." *Brown v. Precythe*, 2018 WL 4956519, at *7 (W.D. Mo. Oct. 12, 2018).

Life-without-parole sentences for children also implicate the Fourteenth Amendment's Due Process Clause because a liberty interest entitled to due process protection "may rise from the Constitution itself." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). For any child, except the "rarest," incapable of rehabilitation, the Eighth Amendment itself creates a liberty interest in release. Although the state may never grant release, it cannot deny release without due process of law. *See Greimen*, 79 F. Supp. 3d at 945 (recognizing due process rights for juveniles in parole proceedings post-*Graham*).

Release opportunities for Plaintiffs and the class must therefore be meaningful and realistic, and the state cannot set up arbitrary roadblocks that unfairly prevent them from demonstrating the maturity and rehabilitation that would entitle them to release. Defendants' policy excluding Plaintiffs from core rehabilitative programming violates this requirement.

B. MDOC unjustifiably excludes Plaintiffs from programming that is most important to demonstrate their maturation and rehabilitation.

The record establishes that MDOC has rehabilitative programming that it recommends for prisoners during their incarceration. (Ex. 3, Eagen Dep. Tr. 109; Ex. 11, Kyle Kaminski Dep. Tr. 07/31/18, pp. 35-45). At resentencing, courts consider prisoners' institutional history, including whether they have demonstrated rehabilitation. During the parole consideration process, the parole board denies release to prisoners who have not completed rehabilitative programming that the board and MDOC has recommended for them. (Dkt. 67-4, Stapleton Aff. ¶ 22, Pg ID 1001). But MDOC limits core programming to parole-eligible prisoners, and Defendants do not categorize the plaintiff class as such. For those class members whom courts have yet to resentence, Defendants' policy treats them as if they are still serving unconstitutional life sentences, and thus excludes them from otherwise available rehabilitative programming. Even Plaintiffs who are certain to receive term-of-year sentences because prosecutors are not seeking to reimpose their initial life-without-parole sentences are being denied such programming, solely because they have no "earliest release date" (ERD) specified in their prison file.

This Court ordered MDOC to make programming available to Plaintiffs over five years ago (Dkt. 107, Pg ID 1443, ¶ 8, Order Requiring Immediate Compliance with *Miller*) but nothing has changed since then. The Supreme Court rejected

Defendants' argument that *Miller* was not retroactive, and therefore, Plaintiffs were not entitled to a meaningful opportunity for release. *Montgomery*, 136 S. Ct. 718 (2016). *Montgomery* rendered all Plaintiffs' life-without-parole sentences void and "emphasized that the sentence of life without parole should be imposed on youth offenders in only the rarest of circumstances." *Hill v. Snyder*, 878 F.3d 193, 202 (6th Cir. 2017). Yet, Defendants have continued to treat the class members as though they are still serving life sentences—and, for that reason alone, continue to exclude them from rehabilitative programming that is otherwise available to prisoners in their custody. Defendants' arbitrary and irrational policy excluding Plaintiffs and other class members from the very programming they will need to demonstrate rehabilitation and maturation to obtain release denies them the meaningful opportunity for release required by *Miller*.

Miller and *Montgomery* confirm that the central consideration for a court at sentencing and a parole board at review is whether the individual has matured and rehabilitated. Plaintiffs' inability to show that they have completed programming undermines their ability to demonstrate rehabilitation and their right to a meaningful opportunity for release at their resentencing hearings. Likewise, the parole board has told Plaintiffs and class members, who upon resentencing were immediately eligible for parole, that it will not parole them until they complete their recommended programming. (Ex. 9, Wiley Dep. Tr. 7-8; Ex. 10, Harrell Dep.

Tr. 6, 27-28, 35). Yet, it is undisputed that Defendants continue to deny non-resentenced Plaintiffs' repeated requests to participate in their recommended programming before resentencing based solely on their so-called "lifer" status. (Ex. 3, Eagen Dep. Tr. 73-75; Ex. 4, Washington Dep. Tr. 31; Ex. 5, McNeal Dep. Tr. 62-64; Ex. 6, Tipton Dep. Tr. 70; Dkt. 181-8, McNeal Correspondence, Pg ID 2579-2582).

Defendants' arguments in their motion for summary judgment are unpersuasive. First, Defendants argue that Plaintiffs' programming history plays no role in their resentencings. But Defendants' only support for this argument is the subjective analysis of their own attorneys, who refer the Court to a chart they created—but notably no affidavits from witnesses—and merely assert that judges "emphasize factors other than programming" at resentencing hearings. (Defs.' Br., Dkt. 267, Pg ID 4327) This is not evidence, and the Court should not consider it a basis for summary judgment. Additionally, Defendants' subjective analysis of resentencing transcripts, in an attempt to derive what the courts considered most important based on the transcript, fails to consider what was and what could not be presented in sentencing memorandums, mitigation submissions, and oral argument. And nearly all the resentencings that have taken place so far are those for whom the prosecutor did not even seek life-without-parole sentences. At the resentencings now underway for individuals for whom prosecutors are seeking

life-without-parole sentences, demonstrating rehabilitation could mean the difference between a meaningful opportunity for release and the reimposition of a life-without-parole sentence. Plaintiffs are not contending that judges at resentencing give exclusive consideration to completion of programming, but where the stakes are so high any significant barrier to Plaintiffs' ability to demonstrate rehabilitation is constitutionally significant.

In any event, Michigan law actually expects judges to consider "the individual's record while incarcerated," Mich. Comp. Laws § 769.25(6), before imposing a sentence. (Ex. 7, Hill Resentencing Tr. 18-19). As the resentencing of Plaintiff Damion Todd demonstrates, prosecutors insist on courts resentencing class members to additional prison time solely to complete core programming that Defendants are intentionally preventing Plaintiffs from accessing before the resentencing takes place. (Ex. 8, Todd Resentencing Tr. 15: "The People after reviewing everything feels that an appropriate sentence would be thirty years to sixty years on the first degree murder. That would give Mr. Rucker [sic, Todd] an extra almost two years in prison to get the programming that he hasn't been eligible for to date."). Additionally, Defendants acknowledge that "the prisoner's misconduct history in the MDOC" is a significant factor at resentencing. (Defs.' Br. 8). Given that core rehabilitative programming is effective at helping prisoners avoid misconduct in prison—for example, by addressing anger and substance

abuse issues—there is a direct connection between the lack of access to this core programming and resentencing outcomes. (Ex. 4, Washington Dep. Tr. 33-35, 82-83). Thus, Plaintiffs are prejudiced in what could be their one and only opportunity to demonstrate rehabilitation because MDOC has denied them the opportunity to participate in rehabilitative programming.

Next, Defendants argue that Plaintiffs' claim fails because they have the ability to participate in *non-core* programming such as self-help classes and prison work assignments. (Defs' Br., Dkt. 267, Pg ID 4318-19) But that argument misses the mark because, again, the subjective views of counsel about what kind of programming is sufficient to demonstrate rehabilitation and maturity for their release is irrelevant. Defendants cite no evidence to support their assertion that non-core programming is an acceptable alternative to the core programming recommended by MDOC. The actual evidence, by contrast, shows that it is the "core" recommended programming that matters. (Ex. 3, Eagen Dep. Tr. 79-80; Ex. 4, Washington Dep. Tr. 33-35, 82-83). Indeed, at resentencing hearings, the importance of prisoners' completion of recommended programing in arriving at a term-of-years sentence is self-evident as institutional records and completion of rehabilitative programs is often the only way an individual can objectively demonstrate their maturity and rehabilitation. (*See*, for example, Ex. 7, Hill Resentencing Tr.)

Defendants also argue that a lack of access to core programming does not negatively affect Plaintiffs' opportunity for release on parole because some class members who the parole board granted parole did not complete core programming. (Defs' Br., Dkt. 267, Pg ID 4326-27) But there is no evidence that core programming was and remained *recommended* for these class members. And some class members who have been incarcerated for decades benefited from robust rehabilitative programming that MDOC provided during the 1970s and 1980s and, unlike today, was open to prisoners serving life sentences. *See, e.g.*, *Glover v. Johnson*, 478 F. Supp. 1075 (E.D. Mich. 1979). The fact that some class members are able to demonstrate their rehabilitation thanks to individualized circumstances does not negate the fact that Defendants' current policy of excluding the entire class from recommended core programming violates Plaintiffs' right to a meaningful opportunity for release.

Defendants further argue that "there are insufficient resources" to provide core programming to the Plaintiff class. (Defs.' Br. 4.) However, MDOC's director has testified only that MDOC wants to prioritize prisoners with earlier ERDs. In fact, Defendants have no policy or practice of allowing Plaintiffs to participate in recommended core programs when there are open and available slots for such participation, and the director was unable to explain why Defendants should exclude Plaintiffs when there is space available. (Ex. 4, Washington Dep. Tr. 32-

34). Thus, excluding Plaintiffs from programming does not appear to be the result of Defendants prioritizing and allocating scarce resources but rather a product of administrative inertia; a policy or practice that Defendants implement only because the class members do not have ERDs in their file. (Ex. 12, Bosie Smith Dep. Tr. 09/13/18, pp. 60-61).

Finally, Defendants argue that they are relieved of any responsibility toward Plaintiffs because MDOC is not directly involved in Plaintiffs' resentencings. This argument is nonsensical because it is the state as a whole that must provide a meaningful opportunity for release upon a demonstration of maturation and rehabilitation. *See Montgomery*, 136 S. Ct. at 736; *Miller*, 567 U.S. at 479. MDOC has exclusive custody of Plaintiffs *and* has existing programming that would enable Plaintiffs to demonstrate the maturation and rehabilitation that would entitle them to release. By unjustifiably denying Plaintiffs access to that programming, MDOC directly participates in the violation of Plaintiffs' right to a meaningful opportunity for release. MDOC's lack of direct involvement in Plaintiffs' actual resentencing hearings is irrelevant.

II. The Court may grant summary judgment to Plaintiffs because the facts are not in dispute.

Under Rule 56(f), the court may grant summary judgment to a nonmovant if there is no genuine dispute as to any material fact. Fed. R. Civ. P. 56(f). That is the case here: it is undisputed that MDOC denies Plaintiffs whom courts have yet to

resentence access to core programming solely because of their lifer status, and lack of access to such programming jeopardizes their opportunity for release on parole. Accordingly, in addition to denying Defendants' motion, the Court may, "after giving notice and a reasonable time to respond," Fed. R. Civ. P. 56(f), enter summary judgment in Plaintiffs' favor on Count VI on their Second Amended Complaint.

CONCLUSION

This Court should deny Defendants' motion for summary judgment (Dkt. 267). Further, the Court may, independent of the motion, grant summary judgment to Plaintiffs.

Respectfully submitted,

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Dated: December 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2018, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing as well as via U.S. Mail to all non-ECF participants.

/s/Deborah LaBelle
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