

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re: Case No. 21-15555 -EPK

PALM BEACH RESORT AND BEACH CLUB Chapter 11  
CONDOMINIUM ASSOCIATION, INC.,

Debtor-in-Possession.

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PALM BEACH RESORT AND BEACH CLUB  
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff.

Adv. Pro. No.: 21-01168-EPK

vs.

HPP HOLDINGS, LLC, *et. al.*,

Defendants.

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**PLAINTIFF'S EX PARTE MOTION FOR AN ORDER APPROVING (A)  
SERVICE OF PROCESS ON CERTAIN FOREIGN DEFENDANTS BY POSTAL  
CHANNELS (FEDEX) AND DIRECTING CLERK OF THE COURT TO EFFECTUATE THE  
SAME; AND (B) SERVICE OF PROCESS ON CERTAIN FOREIGN DEFENDANTS  
BY E-MAIL**

Plaintiff, Palm Beach Resort and Beach Club Condominium Association, Inc. (the "Plaintiff"), by undersigned counsel, pursuant to Bankruptcy Rule 7004 and Fed. R. Civ. 4(f), moves on an ex parte basis (the "Motion"), for the entry of an order approving (a) service of process on certain foreign defendants by postal channels and specifically, FedEx, pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Convention"), and directing the Clerk of the Court office to effectuate the same upon the Defendants listed on **Exhibit "A"** attached hereto and incorporated herein ("FedEx Defendants"); and (b) service of summons by E-Mail to the list

of foreign defendants on **Exhibit “B”** (“E-Mail Defendants”). In support of the Motion, the Plaintiff states as follows:

1. This adversary proceeding was commenced by the filing of the Complaint (“Complaint”) on June 7, 2021 [Adv. ECF # 1].

2. On June 25, 2021 the Court issued its Summons and Order Setting Status Conference and Establishing Procedures and Deadline [Adv. ECF ## 2 and 3].

3. Given the nature of the Plaintiff’s business, the number of defendants named in this adversary proceeding is voluminous. Indeed, the number of defendants surpasses 1,000.

4. There are 21 foreign defendants who have yet to be served, all of whom are in countries such as Canada, United Kingdom, France, and Finland. These foreign defendants make up the combined list of FedEx Defendants and E-mail Defendants.

5. The FedEx Defendants consist of 4 defendants for whom the Plaintiff has valid mailing addresses in their respective jurisdictions.

6. The E-Mail Defendants consist of 17 of the 21 foreign defendants, all of whom are present tenants in common owners of unit weeks (as detailed in the Complaint) that are current their quarterly assessments, and for which the Plaintiff maintains valid e-mail addresses (used in ongoing communication with said E-mail Defendants as part of Plaintiff’s day-to-day operations). Although the Court has previously approved an Opt-In process for service by E-Mail [Main Proceeding, ECF # 37], the E-Mail Defendants are parties who have yet to Opt-Into E-Mail service. Upon information and belief based on review of the list of E-Mail Defendants, many if not all of those parties would Opt-In, but for potential misunderstanding of the process. Many of those parties found on the list are associated with spouses and familial relatives, as well as those with close relationship to other defendants,

all of whom did opt-into the E-Mail service. Logic would dictate that said parties would have likely opt-in, but-for a likely misunderstanding of the technical process.<sup>1</sup>

**The Court Should Permit Service of Summons on FedEx Defendant By Postal Channels (FedEx) Pursuant To Fed. R. Civ. P. 4(f)(1) and 4(f)(2)**

7. Plaintiff requests that the FedEx Defendants be served via FedEx pursuant to Bankruptcy Rule 7004, which incorporates Fed. R. Civ. 4(f). The United States Supreme Court has held that the service of process for international defendants must be made pursuant to the Hague Convention. *Volkswagenwerk Akitengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988). Canada and other countries where the Fedex Defendants and E-Mail Defendants reside are all signatory to the Hague Convention. While a traditional view of the Hauge Convention is to effectuate service of process through the country's central authority, the Supreme Court has held-and resolved a federal circuit split-that service of process through mail is authorized under the Hague Convention and such is proper mechanism to effectuate service on an international defendant under federal law.

8. In short, the traditional tools of treaty interpretation unmistakably demonstrate that Article 10(a) encompasses service by mail. To be clear, this does not mean that the Convention affirmatively authorizes service by mail. Article 10(a) simply provides that, as long as the receiving state does not object, the Convention does not 'interfere with ... the freedom' to serve documents through postal channel. *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1513 (2017) (citing *Brockmeyer v. May*, 383 F.3d 708 803-804, (C.A. 9 2004)). Service by mail is therefore authorized under the Hauge Convention so long as "the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law." *Water Splash*, 137 S. Ct. at 1504.

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<sup>1</sup> Plaintiff is endeavoring at obtaining Opt-In to E-Mail service from the E-Mail service group. However, to extent no Opt-In is received, Plaintiff requests the Court enter the relief requested herein.

9. Additionally, Fed. R. Civ. P. 4. provides that if a party chooses not to serve a defendant abroad using one of the methods directly in Rule 4(f)(1) and (2), then a party may accomplish proof of service “by other means not prohibited by international agreement as the court orders.” *De Gazelle Group, Inc. v. Tamaz Trading Establishment*, 817 F. 3d 747, 750 (11th Cir. 2016).

10. Fed. R. Civ. P. (4)(f)(2)(C)(ii) specifically allows for service to be made on a defendant that is abroad by mail. Fed. R. Civ. P. (4)(f)(2)(C)(ii) states that so long as it is not prohibited by federal law or the foreign country’s law, service may be made “using any form of mail that the clerk addressed and sends to the individual and that requires signed receipt.” Fed. R. Civ. P. 4(f)(2)(c)(ii).

11. Canada and other countries where the Fedex Defendants and E-Mail Defendants reside do not object to Article 10(a) of the Hauge Convention, and accordingly, permits service by mail. Accordingly, service via postal channels, such as FedEx is a proper method of service on the Defendant.

12. Therefore, Plaintiff’s request meets the two requirements the Supreme Court laid out in *Water Splash* and furthermore the Southern District of Florida is replete with cases that are in agreement with the Plaintiff’s request.

***The Court Should Direct Clerk of Court to Send Copy of Summons and Orders Via Fedex and Authorize Plaintiff to File Fedex Records as Proof of Service Pursuant to Fed. R. Civ. P. 4(1)(2)(B)***

13. Based on the foregoing, Plaintiff requests this Court direct the Clerk of the Court to send a copy of the Summons, Complaint, *Order Setting Continued Status Conference* (“Status Conference Continuance Order”) [Adv. ECF # 12], and the Order requested herein, via international FedEx for service upon the FedEx Defendants pursuant to Fed. R. Civ. P. 4(f)(1) and Fed. R. Civ. P. 4(f)(2)(c)(ii). Plaintiff will provide the Clerk of

Court with a prepaid and preaddressed envelope to effectuate service on the FedEx Defendants as requested herein.

14. Plaintiff further request that it be permitted to file a copy of the FedEx proof of signature or other delivery confirmation documents as proof that service has been effectuated pursuant to Fed. R. Civ. P. 4(1)(2)(B), which states that when service of process is made pursuant to Fed. R. Civ. P. 4(f)(2) or 3, that service may be proved “by a receipt signed by the addressed, or by other evidence the court that summons and complaint were delivered to the address.” See *TracFone Wireless, Inc. v. CNT Wireless, LLC*, No. 1:19-CV-24325, 2019 WL 5863911, at \*4 (S.D. Fla. Nov. 08, 2019).

**The Court Should Authorize Service of Summons on  
E-Mail Defendants by E-Mail Service**

15. Plaintiff seeks authority from the Court to deem service of Summons, Complaint, and any other Court Order in this adversary proceeding by E-Mail effective pursuant to Federal Rule of Civil Procedure 4(f)(2)(C)(ii) and (f)(3).

16. As District Court for the Southern District of Florida has noted, service pursuant to Federal Rule of Civil Procedure 4(f)(3) is equally acceptable to service under Federal Rule of Civil Procedure 4(f)'s other subsections, and it includes “no qualifiers or limitations which indicate its availability only after attempting service of process by other means.” *Brookshire Bros., Ltd. v. Chiquita Brands Intern., Inc.*, 2007 WL 1577771, \*2 (S.D. Fla. May 31, 2007); *Nuance Communications, Inc. v. Abby Software House*, 626 F.3d 1222, 1239 (Fed. Cir. 2010) (“Rule 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f)'s other subsections; it stands independently, on equal footing.”).

17. There is no requirement for a party to attempt service of process by way of any of the other methods enumerated in Rule 4(f)(1) or Rule 4(f)(2) before asking the Court for

alternative relief under Rule 4(f)(3). See *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1014–1015 (9th Cir. 2002).

18. In fact, “[c]ourt-directed service under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) or Rule 4(f)(2).” *Id.* at 1015; *Ryan v. Brunswick Corp.*, No. 02-CV-0133E(F), 2002 WL 1628933, \*2 (W.D.N.Y. May 31, 2002) (“subsection (f)(3) is an independent basis for service of process and is neither ‘extraordinary relief’ nor a ‘last resort’ to be used only when parties are unable to effectuate service under subsections (f)(1) or (f)(2).”)

19. The District Court for the Southern District of Florida has authorized service of process via e-mail pursuant to Rule 4(f)(3) on defendants located outside the United States, and it would be an appropriate and effective method in this case. See *U.S. Commodity Futures Trading Com’n v. Aliaga*, 272 F.R.D. 617, 621 (S.D. Fla. 2011) (granting leave, pursuant to Rule 4(f)(3) to serve the summons, complaint, and all subsequent pleadings and discovery on defendant located in Honduras via email); *Chanel, Inc. v. Zhixian*, 2010 WL 1740695, \*3 (S.D. Fla. Apr. 29, 2010) (authorizing service via email); *Tracfone Wireless, Inc. v. Trung Trug*, 281 F.R.D. 692 (S.D. Fla. 2012). Also see *Group One LTD v. GTE GMBH*, 2021 WL 1727611, (E.D. N.Y. February 3, 2021) (service by e-mail is not prohibited by international agreements and meets due process, especially in light of global pandemic).

20. The Plaintiff requests that the Court approve service by E-Mail to the E-Mail Defendants, and to permit Plaintiff to prove the same by filing an e-mail delivery confirmation

WHEREFORE, Plaintiff, by and through undersigned counsel, respectfully requests this Court enter an order on an ex parte basis ( in the form attached hereto as **Exhibit “C”**) that (a) granting the Motion; (b) authorizing service of the summons, complaint, Status Conference Continuance Order, the Order requested herein, and other pleadings in this matter, via FedEx on the FedEx Defendants; (c) directing the Clerk of the Court to send a

copy of the Summons, Complaint, Status Conference Continuance Order, and the Order requested herein, via international FedEx upon the lists of FedEx Defendants pursuant to Fed. R. Civ. P. 4(f)(1) and Fed. R. Civ. P. 4(f)(2)(c)(ii)<sup>2</sup>; (d) authorizing the Plaintiff to file a copy of the FedEx proof of signature/proof of receipt delivery confirmation as proof, pursuant to Fed. R. Civ. P. 4(1)(2)(B), and further authorizing the Plaintiff to serve the FedEx Defendants with a copy of the Order requested herein by sending a copy of the same to the Defendant via FedEx; (e) authorizes the Plaintiff to serve the E-Mail Defendants via electronic mail at email address designated on Exhibit "B"; (f) approving and authorizing the Plaintiff's service effectuated on the E-Mail Defendants by filing the delivery confirmation (or substantially equivalent documents) as proof; and (g) granting such further and other relief as the Court deems just and proper.

Dated: September 26, 2021

LEIDERMAN SHELOMITH ALEXANDER +  
SOMODEVILLA, PLLC  
Counsel for Plaintiff  
2699 Stirling Road, Suite C401  
Ft. Lauderdale, Florida 33312  
Telephone: (954) 920-5355  
Facsimile: (954) 920-5371

By: \_\_\_\_\_ /s/  
IDO J. ALEXANDER, ESQ.  
Florida Bar No. 51892  
[ija@lsaslaw.com](mailto:ija@lsaslaw.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on September 26, 2021 to all parties on the list to receive e-mail notice/service for this case, via the Notice of Electronic Filing (which is incorporated herein by reference).

By: \_\_\_\_\_ /s/  
Ido J. Alexander

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<sup>2</sup> Plaintiff will provide the Clerk of Court with a prepaid and preaddressed envelope to effectuate service on the FedEx Defendants as requested herein.

**EXHIBIT "A"**  
**(FedEx Defendants)**



Index	FIRST NAME	MIDDLE NAME	LAST NAME	ADDRESS 1	ADDRESS 12	CITY	STATE	ZIP	EMAIL	COUNTRY	Abbreviated Name (as entered into Court Filing System)
	Business Accounting Computer Services, Ltd.		*-Entity	7 St. Louis Avenue		Edmonton	New Brunswick	E3V 1C1		Canada	
	Hammermaster, Christine		Hammermaster	25 Circlewood Drive		Sherwood	Alberta	T8A 0K5		Canada	
	Martens, Sonya			189 51268 Range Road 204		Sherwood	AB	T8G 1E9		Canada	
	Sokoliuk, Pamela			1026 Logan Avenue		Toronto,	ON	M4K 3E5		Canada	

**EXHIBIT "B"**  
**(E-Mail Defendants)**

Index	FIRST NAME	MIDDLE NAME	LAST NAME	ADDRESS 1	ADDRESS 12	CITY	STATE	ZIP	EMAIL	COUNTRY	Position	RTS/Undeliverable
Baker, Ross	Ross		Baker	165 Duke Street East #204		Kitchener	ON	N2H 6T8	sbaker123@hotmail.ca	Canada	Owner	
Baker, Ross	Ross		Baker	39 Main Street, P.O. Box 313		New Dundee	ON	N0B 2E0	sbaker123@hotmail.ca	Canada	Owner	
Bakes, Judith	Judith		Bakes	3 Woodlands Close		Bradford	Yorkshire	BD100PF	martyn.bakes@yahoo.co.uk	Great Britain	Owner	
Bakes, Judith	Judith		Bakes	3 Woodlands Close		Apperley Bridge Bradford	Yorkshire	BD100PF	martyn.bakes@yahoo.co.uk	Great Britain	Owner	
Buck, Jane	Jane	M.	Buck	22943 Harwich Road		Chatham	ON	N7M5J4	rbuck@teksavvy.com	Canada	Owner	
Buck, Robert	Robert	A.	Buck	22943 Harwich Road		Chatham	ON	N7M 5J4	rbuck@teksavvy.com	Canada	Owner	
Car-Koivisto	Car-Koivisto		*-Entity	Jokiperantie 42		Horo	ON	64740	car.koivisto@gmail.com	Finland	Owner	
Courivaud-Valle,												
Corrine												
Couture, Jean	Jean	Paul	Couture	9 RUE DE LA MAIRIE		Saint-Forget	Paris	78720	cpragmacom@aol.com	France	Owner	
Dupont-Herbert, Paul	Paul		Dupont-Herbert	6818 Heron Line		Chartham	ON	N7M5J8	janie.couture@teksavvy.com	Canada	Owner	
Dupont-Herbert, Paul	Paul		Dupont-Herbert	4153 Chemin Royal		Quebec	QC	G0A 3W0	mimideschamps_4@hotmail.com	Canada	Owner	
Feltham, Jacqueline	Jacqueline		Feltham	18 Rue Mont-Carmel		Quebec	QC	G1R 4A4	paul.dupont-hebert@tandem.mu	Canada	Owner	
Li, Sing	Sing	W.	Li	158 Sewardstone Road		London		E47PY	c.michael158@yahoo.com.uk	Great Britain	Owner	
Macleod, Alexander	Alexander		Macleod	58 Shaughnessy Blvd.		North York	ON	M2J 1J1	allmyrebs-td@yahoo.com	Canada	Owner	
Marier, France	France		Marier	4 St. Georges Terrace		Herne Bay	Kent	CT68RG	maryjmaclod@me.com	Great Britain	Owner	
Marier, Helene	Helene		Marier	2142 Ch. St. Lo Apt. 115		Quebec	QC	G1T1P7	helenemarier@icloud.com	Canada	Owner	
Marier, Jean	Jean		Marier	2142 Ch. St. Lo Apt. 115		Quebec	QC	G1T1P7	helenemarier@icloud.com	Canada	Owner	
Michael, Costas	Costas		Michael	2142 Ch. St. Lo Apt. 115		Quebec	QC	G1T1P7	helenemarier@icloud.com	Canada	Owner	
Stark, Donna	Donna	M.	Stark	158 Sewardstone Road		London		E47PY	c.michael158@yahoo.com.uk	Great Britain	Owner	
Stark, Terence	Terence	P.	Stark	4274 Ganaraska Road, Rr 1		Cambellcroft	ON	L0A1B0	donnastark@outlook.com	Canada	Owner	
				4274 Ganaraska Road, Rr 1		Cambellcroft	ON	L0A1B0	donnastark@outlook.com	Canada	Owner	

**EXHIBIT "C"**

**(Proposed Order)**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division  
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In re: Case No. 21-15555 -EPK

PALM BEACH RESORT AND BEACH CLUB Chapter 11  
CONDOMINIUM ASSOCIATION, INC.,

Debtor-in-Possession.

\_\_\_\_\_ /

PALM BEACH RESORT AND BEACH CLUB  
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff.

Adv. Pro. No.: 21-01168-EPK

vs.

HPP HOLDINGS, LLC, *et. al.*,

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S EX PARTE MOTION FOR AN ORDER APPROVING (A)  
SERVICE OF PROCESS ON CERTAIN FOREIGN DEFENDANTS BY POSTAL  
CHANNELS (FEDEX) AND DIRECTING CLERK OF THE COURT TO EFFECTUATE THE  
SAME; AND (B) SERVICE OF PROCESS ON CERTAIN FOREIGN DEFENDANTS  
BY E-MAIL**

THIS MATTER having been considered without hearing upon the *Plaintiff's Ex Parte Motion For An Order Approving Service of Summons on Certain Foreign Defendants by Postal Channels (FedEx) and Directing Clerk of the Court To Effectuate The Same; and (b) Service of Process on Certain Foreign Defendants by E-Mail* (the "Motion") [Adv. ECF # \_\_\_\_].

Upon review of the Motion and supported record, and for the reasons set forth herein, the Motion is **GRANTED**.

Plaintiff has requested permission to serve process on the FedEx Defendants (as listed on Exhibit "A", attached thereto the Motion) by postal channels and particularly international FedEx. Federal Rule of Civil Procedure 4(f)(1) provides that service may be effectuated by internationally agreed means of service. Specifically, the transmittal of documents for service abroad must be made pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Convention") *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504 (2017). Canada and other countries of the FedEx Defendants are all signatory countries who have not objected to service by mail.

Pursuant to Article 10(a) of the Convention service by mail is permissible if two conditions are met, "the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise applicable law." *Water Splash* 137 S. Ct. at 1513 (2017). Canada and other countries of the FedEx Defendants do not object to Article 10(a) of the Convention. Since the Canada and other countries of the FedEx Defendants do not object to service by mail, the Court concludes that service of process by international FedEx is adequate service, as long as the delivery services requires a signed receipt or email delivery confirmation (provided by FedEx) as proof that the service as been effectuated. *TracFone Wireless, Inc. v. CNT Wireless, LLC*, No. 1:19-CV-23325-DPG, 2019 WL 5863911, at \*4 (S.D. Fla. Nov. 08, 2019).

Plaintiff further requests service of process by E-Mail to the E-Mail Defendants, as listed on Exhibit B, attached thereto the Motion. Service pursuant to Federal Rule of Civil Procedure 4(f)(3) is equally acceptable to service under Federal Rule of Civil Procedure 4(f)'s other subsections, and it includes "no qualifiers or limitations which indicate its availability only after attempting service of process by other means." *Brookshire Bros., Ltd. v. Chiquita Brands Intern., Inc.*, 2007 WL 1577771, \*2 (S.D. Fla. May 31, 2007); *Nuance*

*Communications, Inc. v. Abby Software House*, 626 F.3d 1222, 1239 (Fed. Cir. 2010) (“Rule 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f)’s other subsections; it stands independently, on equal footing.”). There is no requirement for a party to attempt service of process by way of any of the other methods enumerated in Rule 4(f)(1) or Rule 4(f)(2) before asking the Court for alternative relief under Rule 4(f)(3).

E-Mail service would be an appropriate and effective method in this case in light of its use in the ongoing business relationship by and between the Plaintiff and the E-Mail defendant and since its not prohibited under international agreements, and specifically the Hague Convention. See *U.S. Commodity Futures Trading Com’n v. Aliaga*, 272 F.R.D. 617, 621 (S.D. Fla. 2011) (granting leave, pursuant to Rule 4(f)(3) to serve the summons, complaint, and all subsequent pleadings and discovery on defendant located in Honduras via email); *Chanel, Inc. v. Zhixian*, 2010 WL 1740695, \*3 (S.D. Fla. Apr. 29, 2010) (authorizing service via email); *Tracfone Wireless, Inc. v. Trung Trug*, 281 F.R.D. 692 (S.D. Fla. 2012). Also see *Group One LTD v. GTE GMBH*, 2021 WL 1727611, (E.D. N.Y. February 3, 2021) (service by e-mail is not prohibited by international agreements and meets due process, especially in light of global pandemic).

Accordingly, for the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that that:

- a) The Motion is **GRANTED**.
- b) Pursuant to Article 10(a) of the Hague Convention and Fed. R. Civ. P. 4(f)(1) and Fed. R. Civ. P. 4(f)(2)(c)(ii) as made applicable through Bankruptcy Rule 7004, the Clerk of the Court is authorized and directed to serve the FedEx Defendants (as listed on Exhibit “A”) with process, subpoenas, and any other judicial documents via United States Postal Service international express mail or FedEx international delivery. Plaintiff shall be required to deliver the required documents to the Clerk so that the Clerk can comply with this Order.

c) Plaintiff is authorized to file a copy of the FedEx proof of delivery as proof that service has been effectuated on the FedEx Defendants pursuant to Fed. R. Civ. P. 4((l)(2)(B).

d) Plaintiff shall serve a copy of this Order on the FedEx Defendants by United States Postal Service international express mail or FedEx international delivery, and file notice that the Order has been served.

e) Plaintiff is authorized to serve the E-Mail Defendants via electronic mail at the -mail address for that party as designated on Exhibit "B";

f) Plaintiff is authorized to file a copy of the e-mail delivery confirmation (or substantially equivalent documents) as proof that service has been effectuated on the E-Mail Defendants pursuant to Fed. R. Civ. P. 4((l)(2)(B).

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**Submitted by:**

Ido J. Alexander, Esq.  
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Somodevilla, PLLC  
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Ft. Lauderdale, FL 33312  
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Facsimile (954) 920-5371  
[ija@lsaslaw.com](mailto:ija@lsaslaw.com)

**Copies furnished to:**

Ido J. Alexander, Esq.

Attorney Alexander is directed to serve copies of this order on all interested parties and to file a certificate of service.