

**UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF VIRGINIA**  
**Alexandria Division**

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No.: 1:09-CR-206-GBL
	)	
DINORAH COBOS,	)	
RAYMOND AZAR,	)	
SIMA SALAZAR GROUP,	)	
d/b/a SSG Offshore PLC,	)	
d/b/a SSG,	)	
d/b/a Salazar Co.,	)	
d/b/a Salazarco,	)	
d/b/a Sima International,	)	
d/b/a Pro-Sima,	)	
d/b/a Pro-Sima International,	)	
	)	
Defendants	)	
	)	

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**DEFENDANT DINORAH COBOS' MOTION TO DISMISS INDICTMENT ON**  
**THE BASIS OF GOVERNMENTAL MISCONDUCT**

COMES NOW Defendant Dinorah Cobos, by counsel, pursuant to Fed. R. Crim. P. 12(b)(2), and moves this Honorable Court to dismiss the indictment against her, due to the outrageous conduct and behavior of the United States government during her arrest and interrogation.

On May 6, 2009, Ms. Cobos was indicted on charges of bribery of a public official and conspiracy to commit bribery. The actions and conduct of the United States government in effecting her arrest, through federal law enforcement officers, was so outrageous and shocking to the conscience as to warrant the dismissal of the instant indictment. Ms. Cobos, suspected of a non-violent, financial crime against the

government, after being arrested, deprived of contact with her juvenile daughter, denied information as to the charges against her, and while shackled at the wrists and ankles, was forced to sit in a car and on a transport plane for approximately 18 hours while wearing a non-transparent hood placed over her eyes, nose, and mouth, and earphones placed over her ears. The hood deprived Ms. Cobos of her sense of sight, while the earphones impaired her ability to clearly hear during the duration of the car and airplane transport. Federal law enforcement officials treated Ms. Cobos as someone suspected of or charged with acts of terrorism or other violent crimes, rather than a United States citizen suspected of committing a white collar crime.

The government's actions in this case should not go unnoticed or unaddressed, and warrant dismissal of the indictment against Ms. Cobos.

### **MEMORANDUM OF LAW**

#### **I. STATEMENT OF FACTS**

On April 3, 2009, a criminal complaint was filed against Ms. Cobos and her co-defendants alleging that she participated in a conspiracy to bribe a public official. (Aff. in Supp. of Crim. Compl. ¶ 1.) The government executed the arrest warrant for Ms. Cobos attached to the criminal complaint approximately four days later in Afghanistan.

Ms. Cobos is an American citizen and has been employed by co-defendant Sima Salazar Group ("SSG") since November 2007. SSG is a military contracting company which conducts business in several Middle Eastern countries. (Aff. in Supp. of Crim. Compl. ¶ 6.) Ms. Cobos began working for an entity related to SSG, Pro-Sima International ("Pro-Sima"), as the Afghanistan Country Manager in January of 2009. Her

duties with Pro-Sima include locating potential government business for the company, negotiating payments for these contracts, and general administrative oversight.

On April 7, 2009, Ms. Cobos, along with her colleagues Raymond Azar and Nizar Azar, traveled to a café located on the Camp Eggers base in Afghanistan for a pre-arranged meeting with Kevin Lynch, who was the contract administrative officer in charge of Pro-Sima's requests for equitable adjustment ("REAs") with the United States Army Corps of Engineers. Ms. Cobos and her colleagues arrived at approximately 2:00 p.m. in the afternoon, at which time there were several other people in the café. Upon entering the café, Ms. Cobos was grabbed by the arm by a female who appeared to be a law enforcement officer. Ms. Cobos noticed that there were approximately four federal agents in her immediate vicinity—one female and three males—all of whom were Caucasian and clearly carrying weapons. The female agent was a brunette, in her late 20's or early 30's, and small in stature. The male agents were all large in stature, muscular, and well over six feet tall. Raymond Azar was also apprehended by federal agents at this time, but he was immediately separated from Ms. Cobos and remained mostly out of her sight for the duration of her detention. Ms. Cobos did not know what became of Nizar Azar.

When the female agent grabbed her, Ms. Cobos inquired as to what was happening, believing some mistake of identity had transpired. The female agent wrapped Ms. Cobos' arm around her back and pushed Ms. Cobos through the exterior door of the café to an outdoor courtyard. Once outside, a male agent told Ms. Cobos that "the government of Afghanistan want[ed her] out" of the country. Ms. Cobos was then quickly taken to a hanger, where she was handcuffed and the agents proceeded to conduct

a body search. Next, she was escorted to an area where two to three armored Sports Utility Vehicles (“SUV”) were waiting. Ms. Cobos realized that Mr. Azar had also been arrested when she saw him handcuffed near the waiting SUVs. Ms. Cobos was put in the back seat of one of the SUVs, between two federal agents. The agents did not indicate at any time where they were taking Ms. Cobos or what the alleged charges were against her. While the agents in the SUV were speaking to one another, Ms. Cobos overheard that they were going to Bagram Airbase (hereinafter “Bagram”).

The SUV transport arrived at Bagram at approximately 3:30 p.m. Ms. Cobos was taken into a cold office without windows and told to sit in a chair and face the wall. At all times, Ms. Cobos continued to be bound at the wrists. It was so cold in the office that Ms. Cobos was wearing her coat and gloves. Ms. Cobos observed that there were many other agents in the office, all of whom were in plain clothes.

Approximately 15-20 minutes after Ms. Cobos was placed in the office, she was approached by the same female agent who pushed her out of the café. In an attempt to provoke Ms. Cobos into an admission, the female agent said something to the effect of, “You must be guilty of something because if I were you, I would be screaming and hollering, not just sitting there.” Ms. Cobos replied that she was unaware as to why she had been arrested, and that the agent still had not asked her who she was. The female agent responded that the agents knew who she was and what she had done. Ms. Cobos then asked why the Afghanistan government wanted her out of the country and where she would be taken, to which the agent replied that she would probably be taken to the United States. Ms. Cobos stated that she did not live in the United States and wanted to know why she was not being deported back to Lebanon, where she maintained a residence, or

to Dubai, which Ms. Cobos knew to be a usual stopover point on the way from Afghanistan to Lebanon. The female agent responded by asking Ms. Cobos why she was afraid to go back to the United States. Ms. Cobos replied that she did not currently live in the United States, and that her juvenile-age daughter lived with her and attended school in Lebanon. The female agent then began interrogating Ms. Cobos, asking about her job and if she was married. Ms. Cobos answered that she was divorced and, when questioned as to the whereabouts of her ex-husband, responded that she did not know. The agent then insinuated that Mr. Azar was cooperating with the government. At that point, Ms. Cobos stated that she wanted an attorney, which prompted the female agent to reach into her jacket to pull out what appeared to be a small tape recording device and press the stop button. The female agent told a male agent in the vicinity that Ms. Cobos had requested an attorney, and then the female agent recited what Ms. Cobos understood to be only a partial statement of her *Miranda* rights.

For several hours thereafter, Ms. Cobos was forced to sit, handcuffed, facing the wall without speaking to anyone. After several hours of sitting in silence and solitude, Ms. Cobos' mobile phone rang (vibrated) in her jacket. Ms. Cobos assumed it was her juvenile-age daughter trying to contact her and asked one of the federal agents if she could call her daughter. The agent curtly responded that she could not call her daughter because using the phone was a privilege which the agents did not have to afford Ms. Cobos. Some of the agents also made sexually explicit comments regarding the vibration mechanism on Ms. Cobos' mobile phone.

At some point that afternoon, Ms. Cobos overheard the agents saying that she would be moved to a different location around 9:30 p.m. that evening. This was the only

indication that Ms. Cobos was given about what was happening to her, as she was still not told of the charges pending against her. Later that evening, the agents immediately responsible for Ms. Cobos' detention left the office to eat dinner and returned with food for Ms. Cobos.

At approximately 9:30 p.m., Ms. Cobos was taken, on foot, in the cold rain, to a jail cell located in Bagram. On the way to the jail, Ms. Cobos again inquired as to the charges against her and where the agents were taking her. She was told that she was being taken to a place to sleep. The jail, which was constructed from an unheated metal shipping container, contained three cells and various video cameras, but Ms. Cobos could not see anyone else in the jail. Ms. Cobos continued to be very cold, and wore her gloves and used her jacket as a blanket throughout the night. Ms. Cobos realized that Mr. Azar was also in the jail only when he spoke up to request a blanket and ask that the guards turn off the lights so he could sleep. The guards turned off the lights in Ms. Cobos and Mr. Azar's individual cells, but refused to turn off a light just outside the cells. The guards also spoke in very loud voices throughout the night. Because of the light, the cold, and the noise from the guards, Ms. Cobos slept very little.

Early the next morning, April 8, 2009, Ms. Cobos was taken back to the same office where she spent the majority of the evening before. She was made to strip down to her undergarments and was examined by a doctor and two female agents. During the examination, one of the agents took digital pictures of her body, noting scars and tattoos. After the examination, Ms. Cobos was told to change into army fatigues and was again placed in a chair in the office facing the wall. During this time, Ms. Cobos' handcuffs were extremely tight and were causing her great discomfort, so she asked one of the male

agents to loosen them. Her request was denied. When she again expressed discomfort regarding the handcuffs to a female agent, the agent responded that tight handcuffs were “the least of [her]” problems.

At this point, Ms. Cobos, despite her repeated efforts, was still unaware of why she was being detained. One of the federal agents then told Ms. Cobos that she was going to be transported to another location, specifically an airfield. While still in the office, an agent then told Ms. Cobos that she had to wear a hood during transport so that she could not see where she was going, or see the vehicle in which she was being transported. This agent indicated, however, that the hood would only be temporary, presumably to be removed at the airfield. After this explanation, the agent placed a heavy black hood made of stiff canvas on her head. The hood exposed the top of her head to her forehead, but covered her forehead to her chin and from ear to ear, so that she was unable to see, sense or smell anything. There were no holes in the hood to assist normal breathing through the mouth or nose. The hood was secured to Ms. Cobos’ head with a tight elastic band around the back of her head. If she looked down while wearing the hood, Ms. Cobos could barely see her feet, but she was not able to discern anything else while the hood was in place. The agent also made Ms. Cobos wear large, bulky earphones, further depriving her of the ability to hear. Unlike the hood, Ms. Cobos was offered no explanation as to the necessity of the earphones. With the hood depriving Ms. Cobos of her senses of smell and sight, and the earphones depriving Ms. Cobos of the ability to hear, she was completely disoriented to her surroundings. She remained shackled at the wrists and ankles. Unable to walk, see, or hear, an agent escorted Ms. Cobos out of the office to a waiting vehicle. Ms. Cobos continued to be extremely cold,

as she was not wearing a jacket and had only a short-sleeved military fatigue shirt to cover her arms.

Upon arrival at the airfield, the agents did not remove Ms. Cobos' hood as previously stated, nor did they remove the earphones which had been placed upon her ears with no explanation. Instead, the agents continued to use these tactics to keep her blind and unable to properly hear. Ms. Cobos' hands were handcuffed to a belt around her waist, which was connected to the leg irons at her ankles. Still unable to walk, see, or hear, Ms. Cobos was escorted onto a plane by an agent. Based solely on Ms. Cobos' limited powers of perception, she believed that she was taken onto a small jet. While on the plane, Ms. Cobos attempted to adjust her hood to be more comfortable, at which time she was able to see that she was separated from the others on the plane by a camouflaged curtain. Before Ms. Cobos could see much else, an agent put the hood back in place. An agent finally loosened Ms. Cobos' handcuffs and leg irons at this point.

Ms. Cobos recalled that the plane made one stop that lasted approximately 20-30 minutes, but that she remained hooded and wearing earphones the entire time. The earphones were heavy and began to hurt her ears, so she tried to move them aside several times but an agent just put them back in place. Ms. Cobos also asked if she could take off the hood, but was denied that request as well. Ms. Cobos estimates that the plane trip from Afghanistan to the United States took approximately 18 hours, during which time Ms. Cobos was allowed to go to the restroom twice, but she was still shackled at the ankles, blinded by the hood, and unable to hear due to the earphones she was forced to wear. Her handcuffs were not removed the first time she went to the restroom. During

the flight, Ms. Cobos was afforded an opportunity to stand up in her seat, while remaining blindfolded and shackled, in order to stretch.

At some point during the 18 hour trip, Ms. Cobos was approached by Special Agent Perry Goerish. Though Ms. Cobos cannot recall if Special Agent Goerish identified himself on the plane, she later recognized him to be the same witness who testified on behalf of the government at the combined preliminary hearing and detention hearing in this matter on April 15, 2009. Special Agent Goerish removed her earphones and pulled up her hood so that she could see and speak, and then he knelt down beside her. Ms. Cobos noticed at this point that no one else on the plane was wearing earphones, and that another agent in the vicinity was staring at her in a manner she perceived as intimidating.

Special Agent Goerish began by telling Ms. Cobos that she could waive her right to an attorney, even though she had previously invoked this right. Ms. Cobos declined. Then Special Agent Goerish questioned Ms. Cobos and finally explained to her the charges she would be facing. Special Agent Goerish further stated something to the effect of, "your friend is already talking," implying that Mr. Azar was cooperating with the government. Special Agent Goerish urged Ms. Cobos to do the same, stressing the importance of defending herself immediately. When Ms. Cobos continued to refuse to answer questions from Special Agent Goerish, he placed the hood and earphones back on her head and ears. The conversation with Special Agent Goerish lasted approximately five minutes. No one spoke to Ms. Cobos again until the plane landed.

During her time on the plane, Ms. Cobos was able to hear muffled sounds through her earphones and realized that Mr. Azar was also on the plane. Just as the plane landed,

but before Ms. Cobos disembarked the plane, one of the federal agents removed her hood, the earphones, and the shackles. Once off the plane in Manassas, Virginia, Ms. Cobos was re-cuffed, with her hands behind her back. An agent explained the process Ms. Cobos could expect to go through, and that she was going to be taken to a holding cell until it was time for her first appearance before a federal judge.

## **II. ARGUMENT**

The outrageous conduct of the United States government in transporting Ms. Cobos to the United States was so shocking and offensive to the core principles of this country's criminal justice system that the government must not be allowed to proceed against Ms. Cobos and the indictment against her should be dismissed.

### **A. Standard for Outrageous Government Conduct**

The Supreme Court has long recognized that circumstances might present themselves in which “the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.” *United States v. Russell*, 411 U.S. 423, 431-32 (1973). The Fourth Circuit Court of Appeals likewise acknowledges that “a defendant who has been subjected to outrageous government conduct may be able to raise that in order to defeat a subsequent prosecution.” *United States v. Jones*, 18 F.3d 1145, 1154 (4th Cir. 1994) (citing *United States v. Goodwin*, 854 F.2d 33, 36-37 (4th Cir. 1988)). Government conduct rises to the level of a due process violation when it is “so outrageous as to shock the conscience of the court.” *United States v. Osborne*, 935 F.2d 32, 38 (4th Cir. 1991) (citing *United States v. Jacobson*, 916 F.2d 467, 469 (8th Cir. 1990) (citing *Rochin v. California*, 342 U.S. 165, 172 (1952))).

The conduct of the government, then, must be more than “somewhat offensive” to be deemed outrageous. *Osborne*, 935 F.2d at 36 (citing *Goodwin*, 854 F.2d at 37). To be sure, the Fourth Circuit recognizes that claims of outrageous government conduct will be considered only in rare cases where a party can demonstrate “a high shock threshold in the presence of extremely unsavory government conduct.” *Osborne*, 935 F. 2d at 38; *see also United States v. Dyess*, 478 F.3d 224, 235 (4th Cir. 2007) (finding that the conduct of the agent involved in the sting operation—having a romantic relationship with the informant and then suborning her perjury at the defendants’ sentencing hearing—was improper, but did not rise to the level of outrageous conduct); *United States v. Hunt*, 749 F.2d 1078, 1087 (4th Cir. 1984), *cert denied*, 472 U.S. 1018 (1985) (refusing to find outrageous conduct where a covert investigation of a state judge for corruption included agents posing as criminals seeking protection from the judge, pursuing the judge even after he was hesitant, and “leaning on” on a third party in order to convince the judge to help the agents). When determining if government conduct rises to the level of outrageousness needed to establish a due process, courts should consider the nature of the underlying crime. *Goodwin*, 854 F.2d at 37.

**B. The Government’s Conduct in Torturing Ms. Cobos Shocks the Conscience**

The government’s treatment of Ms. Cobos was more than shocking under the circumstances, and went far beyond the bounds of justice as it is known in this country. Courts have, many times, turned a blind-eye to seemingly shocking government behavior in cases that involve heinous crimes, such as child pornography, or where a criminal enterprise is so entrenched and poses a multitude of risks to society that law enforcement must be given latitude in eradicating these crimes. *See Dyess*, 478 F.3d 224; *United*

*States v. Jones*, 976 F.2d 176 (4th Cir. 1992); *Osborne*, 935 F.2d 32; *Goodwin*, 854 F.2d 33. Noticeably, however, there is a lack of case law regarding hooding, sensory deprivation, and other psychological torture tactics used against arrestees. The reason is apparent. Such tactics as employed against Ms. Cobos are not protocol for most arrestees in this country, and, certainly not protocol for someone arrested for a financial crime with no allegations of violence or depravity attached, because hooding is an act of torture.

Torture is defined in the United Nations Convention Against Torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him...information or a confession, punishing him for an act he...has committed or is suspected of having committed, or intimidating or coercing him.” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. I, G.A. Res. 39/46, 39 U.S. GAOR Supp. (No. 51), U.N. Doc. A/39/51 (Dec. 10, 1984), *available at* <http://www2.ohchr.org/english/law/cat.htm>. President Obama has recently condemned torture in the specific context of due process violations: “What I have said is that my administration is going to operate in a way that leaves no doubt that we do not torture, and that we abide by the Geneva Conventions, and that we observe our traditions of rule of law and due process.” Barack Obama, Press Conference by the President (Feb. 9, 2009), [http://www.whitehouse.gov/the\\_press\\_office/PressConferencebythePresident/](http://www.whitehouse.gov/the_press_office/PressConferencebythePresident/). Hooding, or the prolonged deprivation of sight as utilized by the FBI in Ms. Cobos’ arrest and transport, is a particularly reprehensible method of psychological torture. In fact, the United States Army is expressly prohibited from utilizing hooding techniques during

interrogations. *See* Exec. Order No. 13491, § 3(b), 74 Fed. Reg. 4893 (Jan. 27, 2009) (“Interrogation Techniques and Interrogation-Related Treatment”).<sup>1</sup>

The case at bar distinguishes itself from others before the courts because the government engaged in truly outrageous conduct against an alleged defendant accused of participating in a crime that involved no threats, no violence, and no allegations of vile or depraved acts. Ms. Cobos is not suspected of possessing or distributing child pornography, she is not suspected of being involved in a large scale criminal enterprise to distribute drugs throughout the country, nor is she suspected of being involved in terrorist activities. She poses no threat of violence or danger to the community or any person. Rather, Ms. Cobos is charged with a non-violent, financial crime against the tax payers of the United States. Her alleged transgressions never involved actual or potential physical harm to anyone. The treatment Ms. Cobos received from the United States government is incongruous with the crime she is suspected of committing. Most non-violent offenders are arrested, handcuffed, and processed through the judicial system without much incident. However, it appears that the United States government decided to take certain liberties with Ms. Cobos since she was arrested outside of the United States.

Federal law enforcement officials refused to inform Ms. Cobos of the basis of her arrest and erroneously led her to believe that she had committed some crime against the government of Afghanistan by stating, “the government of Afghanistan wants you out.” Then, after fruitlessly attempting to incite Ms. Cobos into a confession, she was jailed,

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<sup>1</sup> Executive Order 13491 dictates that Army Field Manual 2-22.3 will set the standard for acceptable interrogation techniques. The new Army Field Manual now expressly prohibits the use of hooding in interrogations: “If used in conjunction with intelligence interrogations, prohibited actions include, but are not limited to ... [p]lacing hoods or sacks over the head of a detainee; using duct tape over the eyes....” United States Dep’t of the Army, FM 2-22.3, “Human Intelligence Collector Operations,” at 5-75 (Sept. 6, 2006), *available at* <http://www.army.mil/institution/armypublicaffairs/pdf/fm2-22-3.pdf>.

still without information as to the charges against her. The outrageous and shocking conduct of the government culminated when Ms. Cobos, shackled at the waist and ankles, was forced to wear a hood and earphones under the guise of preventing her from discerning her surroundings during her transport from Bagram to the United States.

Even if, as the agent who placed the hood and earphones upon her had implied, Ms. Cobos was somehow a threat to military security in Afghanistan while still in that country, these devices were certainly no longer necessary once she was onboard the plane. Ms. Cobos requested that the hood and earphones be removed, but her request was summarily denied. Instead, Ms. Cobos was subjected to another 18 hours of this psychological torture with no reasonable explanation as to its necessity. The government has no basis to claim that the purpose of blinding and deafening Ms. Cobos was to protect military secrets on the plane, since the hood and earphone devices were removed before she deplaned in Manassas, Virginia, allowing her ample time to observe and take in the surroundings that the agents purported to hide from her. Furthermore, even though the government has yet to offer concern for Ms. Cobos' hearing as basis for the earphones, it too must be rejected, as Ms. Cobos noted during her brief interrogation by Special Agent Goerish, at which time her hood and earphones were removed, that none of the agents onboard the plane were wearing earphones.

Depriving Ms. Cobos of the basic abilities to see, hear, and speak was not simply unsavory conduct on the part of the government; it was shocking in light of the circumstances of her case and should not be condoned by this Court. The arrest and hooding of a United States citizen, such as Ms. Cobos endured, would elicit a public outcry had it occurred on United States soil. The fact that Ms. Cobos happened to be

arrested in Afghanistan, however, does not strip her of the basic rights and procedures of our criminal justice system. The Fourth Amendment requires that Ms. Cobos' arrest be "reasonable." U.S. Const. amend. IV. A seizure that employs sensory deprivation tactics and the withholding of information involving the nature of the charges for the arrest cannot and should not be condoned by a system that purports to import justice. The arrest of Ms. Cobos, under the conditions she was forced to endure and predicated on allegations of bribery and conspiracy, was "unreasonable" under any standard, but certainly those outlined by the United States Constitution.

The efforts of the agents were nothing more than a bald attempt to "break" Ms. Cobos, coerce through their tactics that which they could not get from her voluntarily in questioning, and violate the rights she has, not only as a United States citizen, but as any person who is brought before the United States criminal justice system. A constitutional right is violated the moment torture or its close equivalents are brought to bear. *Chavez v. Martinez*, 538 U.S. 760 (2003) (Kennedy, J., concurring); *see also Oregon v. Elstad*, 470 U.S. 298 (1985). The assault on Ms. Cobos' rights continued unrelentingly, as Special Agent Goerish, acknowledging that she had previously invoked her right to counsel, ignored that invocation of a constitutional right and began to question her anew on the flight from Afghanistan to Manassas, Virginia. *See United States v. Johnson*, 400 F.3d 187, 193 (4th Cir. 2005) (quoting *Edwards v. Arizona*, 451 U.S. 477, 495 (1981)) (noting that "'it is inconsistent with *Miranda* and its progeny for authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel'").

The failure to inform Ms. Cobos of the charges against her, the shackling, blindfolding and earphones were all designed to deprive Ms. Cobos her basic rights and decency. It is clear that the FBI has failed to embrace the lessons taught to our military in housing prisoners during the wars currently being conducted in the region of the world in which Ms. Cobos' arrest occurred, as evidenced by the torturous treatment she received. The behavior of the government in transporting Ms. Cobos to the United States was antithetical to the expectations placed upon federal law enforcement in this country and shocking to the conscience. The indictment against Ms. Cobos should be dismissed.

### III. CONCLUSION

WHEREFORE, for the reasons stated herein, Ms. Cobos respectfully requests that the Court grant her motion to dismiss the indictment issued on May 6, 2009, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of June, 2009, I will electronically file the foregoing Motion to Dismiss with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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