

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

LEOR EXPLORATION &
PRODUCTION LLC, et al.

CASE NO. 09-60136-CIV-SEITZ/O'SULLIVAN

Plaintiffs,
vs.

GUMA AGUIAR,

Defendant.
_____ /

GUMA AGUIAR,

CASE NO. 09-60683-CIV-SEITZ/O'SULLIVAN

Plaintiffs,
vs.

WILLIAM NATBONY et al.,

Defendant.
_____ /

**CORRECTED MOTION TO HOLD GUMA AGUIAR IN CONTEMPT
AND INCORPORATED MEMORANDUM OF LAW¹**

Guma Aguiar has repeatedly violated this Court's orders and flouted its authority in an effort to frighten, intimidate and harass the parties and witnesses in these cases. Aguiar's conduct has escalated dramatically in the past two weeks despite numerous letters, emails, and calls to Aguiar's counsel requesting their assistance in reining in their client. Such willful conduct is contemptuous and cannot be condoned. The Court should hold Aguiar in contempt.

¹ This motion is filed to correct the reference on page 7 concerning communications "with [Kaplan's] attorneys in these cases."

This Court has entered orders on three separate occasions addressing Aguiar's misconduct, prohibiting Aguiar from witness tampering and barring all contact with certain witnesses in these cases. In direct contravention of these orders, Aguiar not only continues his threatening and intimidating conduct, but has escalated that conduct. Two weeks ago, Aguiar resumed his conduct sending a series of threatening emails and text messages to Tom Kaplan, William Natbony, certain material witnesses in these cases and third parties. Among the witnesses to whom Aguiar sent intimidating emails were Rabbi Tropper (whom he previously assaulted) and Ali Erfan (whom he tried to intimidate at Erfan's deposition in London). Aguiar then appeared at the New York restaurant where Kaplan has lunch on a daily basis and where Kaplan and his wife were at that precise time having lunch, in an effort to confront the Kaplans. Aguiar was accompanied by three security persons. When turned away by the restaurant's owner, Aguiar sent the Kaplans and Natbony obscene text messages, threatening them, their children, their lawyers and others.

Next, on November 27th, once again in violation of the Court's protective orders, Aguiar first distributed an "attorney's eyes only" transcript to several non-attorneys associated with Kaplan (and who knows to whom else) apparently in an effort to embarrass Kaplan, and then "blind copied" Kaplan, Natbony and certain material witnesses on a horribly threatening email purportedly addressed to Aguiar's lawyers and religious counselors. Again on November 28th and November 30th, Aguiar continued his attacks, sending additional intimidating emails. These are merely Aguiar's most recent threatening actions. Aguiar already has demonstrated to the Court, the Kaplans, Natbony and the witnesses in these cases a history of contemptuous conduct intended to

intimidate the Kaplans, Natbony, and those witnesses, in flagrant disregard of this Court's orders.²

The Kaplans prior concerns for their safety have been heightened by reason of Aguiar's recent misconduct. Aguiar's actions directly violate the Court's orders. They are explicitly contemptuous of the judicial process. Their purpose is to intimidate, disrupt and subvert. Aguiar's actions have escalated and he has blatantly ignored all efforts by this Court to compel him to cease and desist from making threats and seeking to coerce parties and witnesses. Aguiar's most recent actions are occurring in the midst of the proceedings on the pending Motion for Sanctions against Aguiar.³ They deserve the severest sanction, primarily to protect the parties and witnesses, but also to vindicate the Court's authority. The Court should therefore certify to the District Court these facts: that Aguiar sent harassing and threatening emails and text messages to parties and witnesses, including Tom Kaplan and his family; that Aguiar violated the Court's June 22, 2009 Order and subsequent orders; that Aguiar's escalating conduct not only is intended to subvert the judicial process, but also creates justifiable concerns of harm to

² Additionally, during the past two weeks Aguiar has also blind-copied Kaplan, Natbony, and others on certain emails between himself and his attorneys, which might otherwise have been privileged. Aguiar's counsel has been notified of this conduct. Certain of these emails themselves further demonstrate that Aguiar has had unauthorized access to Kaplan's AOL email account and Kaplan's privileged communications.

³ As the Court is aware, a motion to strike Aguiar's pleadings as a sanction for Aguiar's obtaining unauthorized access to Thomas Kaplan's email account, including communications between Kaplan and his attorneys in these cases, is currently pending before the Court. [DE 135]. The conduct underlying that motion is another important example of Aguiar's disregard for law and the judicial process. And Aguiar's conduct which is the subject of the instant motion for contempt is yet another basis for consideration by the Court as regards the pending sanctions motion.

Kaplan and his family; and that an order for Aguiar to show cause be issued as to why he should not be held in civil contempt and referred for prosecution for criminal contempt.

FACTUAL BACKGROUND

A. The Court Enjoined Aguiar from Witness Intimidation

This Court entered an Order on June 22, 2009 enjoining Aguiar “from witness intimidation including prohibiting Mr. Aguiar or anyone on his behalf from coming within twenty (20) feet of witnesses Thomas Kaplan, Dafna Kaplan, Jason Kaplan, Patricia Kaplan, William Natbony, Theresa Hilliard, Kenton Holliday, Garrett Smith, Rabbi Leib Tropper, Rabbi David Jacobs or their spouses or children, except in the presence of counsel or with the witnesses’ prior written authorization.” [DE 88.] The need for such an Order was created by conduct that was merely the beginning of a series of actions by Aguiar intended to intimidate parties and witnesses and to disrupt and subvert this litigation and the judicial process.

Aguiar’s actions are not isolated. They began in 2008, when Aguiar attempted to bribe Leor’s president, Kenton Holliday. (*See* Plaintiffs’ Motion for an Order to Prevent Defendant Guma Aguiar’s Further Witness Tampering (hereinafter “Motion for Order to Prevent Witness Tampering”) [DE 55].) Then, in February 2009, in a conversation secretly recorded by Aguiar, Aguiar threatened Holliday in an effort to intimidate him from testifying in these cases. Also in 2009, Aguiar left a series of threatening midnight voicemail messages for Itzhak Dar, a provider of security services to Kaplan and a witness in these cases. *Id* In March 2009, Aguiar telephoned the wife of Rabbi Leib Tropper (a potential witness), telling her that he “didn’t want to have to destroy [her] husband and consequently visit him in jail,” but that “if Rabbi Tropper did not ‘switch

This action by Aguiar prompted an agreement by counsel that Aguiar would not be physically present at Erfan's deposition. (*See* Plaintiffs' Amended Motion to Hold Guma Aguiar in Contempt [DE 153].) Nevertheless, in violation of that agreement, Aguiar appeared at the deposition along with a team of his "security" people. *Id.* Upon being asked to leave the deposition site, Aguiar shouted a stream of obscenities at Erfan and his counsel, screaming that they were "all perjurers, I'll see you in jail, you're going to jail." (*See* Mot. to Hold Guma Aguiar in Contempt at Ex. B [DE 153-2].) Following a telephonic hearing, the Court entered an Order prohibiting Aguiar and his security personnel from having contact with Erfan and his counsel until further order from the Court. [DE 158.]

Aguiar again violated the Court's June 22, 2009 Order in October 2009, when he contacted Jason Kaplan, Tom Kaplan's father, and threatened to have Jason Kaplan, his wife Patricia Kaplan, Tom Kaplan, and Kaplan's two children killed. (*See* Motion of Nonparties Jason and Patricia Kaplan to Hold Guma Aguiar in Contempt [DE 182].) The Court entered yet another order prohibiting Aguiar from having any communications with Jason and Patricia Kaplan. [DE 189, 199.]

C. Aguiar's Most Recent Acts of Intimidation

The Court's clear and direct orders prohibiting Aguiar from engaging in witness intimidation have had no effect on Aguiar. Aguiar continues to ignore them. Examples abound and Aguiar's contemptuous conduct continues at an accelerating pace. On November 17th and 18th, Aguiar sent more than fifteen separate emails to Kaplan, Natbony and witnesses in these cases (many of these emails copy his own counsel and various news and media outlets), in his continuing effort to harass, intimidate and

threaten Kaplan, Natbony and those witnesses and to disrupt this litigation. (*See* Emails from Aguiar to Kaplan, *et al.*, attached hereto as Composite Exhibit A; Notice of Filing Emails [DE 210].) Kaplan's counsel contacted Aguiar's counsel at the commencement of this flurry of emails, asking that some remedial action be taken in order to stop Aguiar from continuing his attempts to intimidate witnesses, parties and lawyers. (*See* Ex. C: Letter from H. Tropin to T. Wiegand dated Nov. 17, 2009 and enclosed emails.) This had no effect on Aguiar. Aguiar continued to send emails throughout the day on November 17th and continued on November 18th, many of which emails contain outright threats to Kaplan, his family, and others, that are chilling, stating for example that "[N]ow its [Kaplan's] turn to suffer!!!!!!!!!!!!!!!!!" and "This email will haunt Tom his whole FUCKING life how ever long it may or may not be." (*See* Notice of Filing Emails at Exs. D & E [DE 201].) Several of these emails were emails purportedly addressed to his own counsel on which he blind-copied parties and witnesses, including Kaplan, Natbony, and Rabbi Tropper. (*See* Notice of Filings Emails at Ex. E [DE 201].) Aguiar's intimidation goals have been clear, his threats have escalated and his messages have been targeted to achieve their desired effect.

It is worthy of note that at least three emails forwarded by Aguiar to Kaplan, Natbony, and others on November 17th were obtained by Aguiar from Kaplan's email account without permission. These emails were never sent by Kaplan to Aguiar and include Kaplan's privileged communications. (*See*, Composite Ex. D: Emails from Aguiar to Kaplan dated Nov. 17, 2009.)⁴ Aguiar was not a recipient of any of these

⁴ Additionally, the parties recently received IP logs from AOL, with which Kaplan maintains his email account, which detail the IP address from every attempt – successful or unsuccessful – to log onto the kaplan600@aol.com account since July 2009 via the

emails. Two of these emails have not been produced in this litigation; the third was produced only in .pdf form, not native form, which would be the only way Aguiar could have forwarded the original message like he did. The only way that Aguiar could have come into possession of these emails is through an unauthorized access to Kaplan's AOL account.⁵

In his continuing efforts to put an end to Aguiar's intimidation, Kaplan's counsel on November 17th again wrote to Aguiar's counsel, informing him of the emails and asking that Aguiar's conduct cease immediately. (*See* Ex. E: Second Letter from H. Tropin to T. Wiegand dated Nov. 17, 2009 and enclosed emails.) Aguiar's misconduct did not stop after this second effort; it intensified.

D. The November 19, 2009 Incident in New York

On November 19, 2009, Aguiar took his misconduct to the next step. In an attempt to frighten and intimidate Tom Kaplan, Aguiar, together with his "security" team, appeared at the New York restaurant where Tom Kaplan has his daily lunch and where Tom and Dafna Kaplan at that precise time were having lunch. (*See* Ex J: New York

AOL webmail interface or the AOL desktop client. (*See* Ex. F: AOL IP Address Log (Bates No. AOL00001-000008.)) This information shows at least 25 unauthorized login attempts associated with IP addresses located in Israel over a 90-day period during which Kaplan was not in Israel. (*Id.*; Ex. G: T. Kaplan Passport; Ex. H: T. Kaplan Travel Documentation.) In addition, the data reveals at least a dozen nearly-simultaneous logins -- one by Kaplan and a second from an unauthorized user in Israel. Moreover, on the day after Kaplan changed his password to the Kaplan600 account (because the hacking had been revealed by the fourteen read receipts discussed in the sanctions hearing), the IP logs show two attempts to log onto the Kaplan600 account from Israel when Kaplan was in New York. Both of those attempts failed

⁵ In addition, in at least one of the emails sent by Aguiar on November 17th, Aguiar altered an existing email from Kaplan to support his assertion that Kaplan arranged for his arrest in Ft. Lauderdale in June 2009 on drug possession charges. (*See* Ex. I: Email from Aguiar to T. Wiegand, *et al.*, dated Nov. 18, 2009.)

City Police Department Complaint Report dated November 19, 2009 (“Police Report”);
Ex. K: Letter from H. Tropin to T. Wiegand dated November 20, 2009.)

Immediately following that confrontation, Aguiar sent a series of threatening text messages to Kaplan and Natbony, threatening not only them, but also Kaplan’s wife and children, the witnesses in these cases, their attorneys and others, stating in part:

Nice move to the “boys” for trying to frame Guma today...to bad their intelligence is worse than his counter intelligence which he had to install because of the lies under oath in front of numerous judges around the world! He has had to endure death threats assassination attempts, cover ups, stalking of his family including kids, sisters, mom, brother grandparents and HIS wife!!! finally they broke GUMA’S mother fucking back!!! They will ALL be exposed along with Harley, Tucker, Dutsi, Patricia, Jason, Leib and Bill...oh, ill happily turn over ALL of my photos of daphne, Little Leandro and Leorianee!!!!

(Composite Ex. L: Text messages from Aguiar to Kaplan dated November 19, 2009 (emphasis added); Ex. J: Police Report at 2.) The references to “Harley [Tropin]” and “Tucker [Ronzetti]” are to Plaintiff’s counsel; “Dutsi” refers to Itzhak Dar, Kaplan’s head of security and a pending witness at that time in the sanctions motion; “Patricia” and “Jason” are Kaplan’s stepmother and father; “Leib” refers to Rabbi Tropper; and “Bill” refers to William Natbony. Aguiar’s promise to “turn over . . . photos” is particularly chilling. It is Jewish tradition to turn over or cover photographs during shiva after a relative has died. (See http://www.chabad.org/library/article_cdo/aid/370616/jewish/The-Shiva-Home.htm.) Thus these text messages are a direct threat to Kaplan’s wife, Dafna, and children, Leonardo, and Orianne.

After receiving these threats, Kaplan on November 19, 2009, filed a police report with the New York City Police Department. (Ex. J: Police Report.)

E. Aguiar Disseminates the Dar Deposition

More recently, Aguiar violated yet another court order, the Agreed Protective Order Governing Confidentiality and Privilege [DE 86]. On November 27th, the day after Thanksgiving, in an apparent effort to embarrass Kaplan, Aguiar sent the transcript of the deposition of Itzhak Dar – a transcript marked and announced on the record as “attorney’s eyes only” – to several persons associated with Kaplan, including Stephen Leeb, Dr. Paul Klotman, and Laurel Blonde (Rabbi Tropper’s sister-in-law). (*See* Ex. M: Email from Aguiar to A. Dershowitz, *et al.* dated Nov. 27, 2009.) Aguiar’s cover email says, “Happy Thanksgiving!!!” *Id.*

F. Aguiar’s Continuing Email Attacks

Aguiar also sent a second email to his counsel on November 27th, blind-copying Natbony and others, which explicitly threatened Tom Kaplan, his father Jason Kaplan, and others on the email chain, stating “I don’t feel I have to wipe everybody out. Just my enemies I’m a superstitious man, and if some unlucky accident should befall Guma Aguiar . . . then I’m going to blame some of the people on this FUCKING email chain; and then I do not forgive.” (Ex. N: Email from Aguiar to Dershowitz, *et al.*, bcc W. Natbony, dated Nov. 27, 2009) (emphasis in original.) Aguiar continued to threaten others through email, sending yet another email to his attorneys and spiritual advisors on November 28th, blind-copying Kaplan, Natbony and presumably others, which improperly accused Kaplan of surveilling Magistrate Judge O’Sullivan. (Ex. O: Email from Aguiar to Dershowitz, *et al.*, bcc Kaplan, dated Nov. 28, 2009.) On November 20th, Aguiar sent yet another defamatory and threatening email purporting to describe

sexual acts by Rabbi Tropper and making additional threats to the parties in these suits as well as their counsel. (Ex. P: Email from Aguiar to Kaplan, et al., dated Nov. 30, 2009.)

MEMORANDUM OF LAW

Guma Aguiar has repeatedly, flagrantly and willfully violated this Court's orders enjoining him from witness intimidation and prohibiting contact with certain witnesses. Aguiar's failure to comply with the Court's clear and unambiguous orders constitutes contempt and his blatant threats and disregard of the Court's orders should not be tolerated. In order to protect the witnesses and parties to these cases, to preserve the efficacy of the judicial process, and to enforce this Court's authority, the Court should enter an order to show cause why Aguiar should not be held in civil contempt and be referred for prosecution for criminal contempt.

Under 28 U.S.C. § 636(e)(6), a magistrate judge may certify facts to the District Court when the magistrate judge considers an act by the party to constitute contempt.⁶ 28 U.S.C. § 636(e)(6)(B); *see also, e.g., Cadles of Grassy Meadows II, LLC v. Swift*, 2007 WL 4171149, *1 (M.D. Fla. 2007) (after party failed to appear at two hearings, magistrate judge certified facts to the district court and recommended issuance of a warrant for the arrest of the defendant and his presence at a hearing to show cause why he

⁶ Pursuant to the statute, the magistrate judge:

shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

28 U.S.C. § 636(e)(6).

should not be adjudged in contempt of court); *Smoliak v. Greyhound Lines, Inc.*, 2006 WL 1029643 (N.D. Fla. Apr. 19, 2006) (certifying facts for a finding of contempt by the district court for the failure to abide by discovery rulings). Such a certification is available where the party has committed an act constituting civil contempt or criminal contempt outside the Court's presence. *See* 28 U.S.C. § 636(e)(6)(B)(ii-iii).

“Courts have inherent power to enforce compliance with their lawful orders and to compensate parties for damages sustained as a result of noncompliance through civil contempt.” *Commodity Futures Trading Comm’n v. Commonwealth Fin. Group, Inc.* 874 F. Supp. 1345 (S.D. Fla. 1994); *see also Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991) (“Courts have inherent power to enforce compliance with their lawful orders through civil contempt.”) (citing *Shillitani v. U.S.*, 384 U.S. 364, 370 (1966)). Civil contempt is remedial in nature and generally designed either to coerce compliance with the Court's order or to compensate the movant for any damages suffered as a result of the contempt. *Feiock v. Feiock*, 485 U.S. 624, 632 (1988); *United States v. Straub*, 508 F.3d 1003, 1009 (11th Cir. 2009). For example, the Court may impose civil contempt sanctions “to coerce the contemnor to comply with the court's order.” *Matter of Trinity Indus., Inc.*, 876 F.2d 1485, 1493 (11th Cir. 1989) (citing *United States v. United Mine Workers*, 330 U.S. 258, 303 (1947)) (imposing civil contempt sanctions for failure to comply with warrants for inspection issued by magistrate judge).

The Court has “broad discretion in fashioning civil contempt sanctions.” *Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1519 (11th Cir. 1990). For example, the court may impose a term of imprisonment or a fine unless and until the defendant

performs an affirmative act that brings the defendant in compliance with the court's order. *See Matter of Trinity Indus., Inc.*, 876 F.2d at 1493; *see generally United Mine Workers*, 330 U.S. 258. Once the defendant changes its conduct to comply with the court's order, the sanctions cease. *United Mine Workers*, 330 U.S. at 331. The court may also award damages to the plaintiff for actual losses sustained as a result of the defendant's contempt in addition to the coercive remedy.⁷ *Howard Johnson*, 892 F.2d at 1519.

Here, Aguiar has demonstrated a history of disrespect for the judicial process constituting contempt of court. He has repeatedly violated this Court's original June 22, 2009 Order prohibiting witness tampering, necessitating further orders to protect the witnesses in this case, and has demonstrated further disregard for the Court's authority by then violating those orders as well. The Court's June 22, 2009 Order was clear: "Mr. Aguiar is enjoined from witness intimidation" [DE 88]. By contacting witnesses in this case, sending threatening messages by telephone, email and text message, and now appearing in person to harass and intimidate Tom Kaplan and his family, Aguiar is in clear contempt of the orders in this case that prohibit this exact conduct.⁸ Aguiar's actions have been and continue to be contemptuous of this Court and of the judicial process.

⁷ The Court should consider the following factors in establishing the amount of such sanctions: "the character and magnitude of the harm threatened by continued contumacy, the probable effectiveness of any suggested sanction in bringing about compliance, and the amount of the contemnor's financial resources and consequent seriousness of the burden to him." *Matter of Trinity Indus., Inc.*, 876 F.2d 1485, 1493-94 (11th Cir. 1989) (citing *United Mine Workers*, 330 U.S. at 303)).

⁸ The knowing use of intimidation to induce a person to withhold testimony is also a federal crime. *See* 18 U.S.C. § 1512(b)(2).

As set forth above, Aguiar's threatening behavior toward Tom Kaplan and his family is but the latest in a pattern of misconduct by Aguiar. As described above, several weeks ago, Aguiar harassed Kaplan's parents, threatening to have them killed. [DE 182.] Just weeks before, Aguiar harassed witness Ali Erfan in London, requiring emergency relief. [DE 158.] Prior to that, Aguiar committed a series of acts that required entry of the original order enjoining Aguiar against witness intimidation. [DE 55, 88.] This Court has entered three orders directed at protecting the witnesses in this case and admonished Aguiar's counsel to impress on him the seriousness of his actions. Despite the Court's attempts to check Aguiar's conduct, his behavior has escalated in frequency and severity, especially as his legal position erodes and the likelihood of dismissal of his pleadings increases.

In light of Aguiar's blatant disregard for the Court's authority and specific orders prohibiting him from engaging in witness tampering, it is evident that Aguiar will not be deterred from committing further violations of the Court's June 22, 2009 Order and subsequent orders unless appropriate sanctions are imposed. There is justifiable concern – in fact, justifiable fear – that unless Aguiar is prevented from following through on his threats, he will indeed escalate his words into violent action, as he did with Rabbi Tropper in a Jerusalem hotel room in April. Accordingly, these sanctions should include imprisonment until it is clear that Aguiar will not engage in further witness tampering, intimidation, and death threats. Additionally, the conduct underlying this motion should also be considered in support of the pending Motion for Sanctions.

Indeed, given Aguiar's history of ignoring prohibitions on witness tampering and intimidation, it is doubtful whether any additional orders prohibiting witness intimidation

will have a deterrent effect on Aguiar. Thus Plaintiffs move that the Court request referral for criminal prosecution of Aguiar pursuant to Federal Rule of Criminal Procedure 42 for the purpose of imposing criminal sanctions against him to prevent him from further gross and willful violations of the Court's June 22, 2009 Order and subsequent orders.

CONCLUSION

Aguiar has repeatedly and willfully violated the Court's order against witness intimidation, engaging in a lengthy course of misconduct that should not be allowed to continue. The Magistrate Judge should therefore certify to District Judge Seitz that Aguiar did in fact threaten and intimidate witnesses, including Tom Kaplan and his family, in violation of the Court's June 22, 2009 Order, and issue an order for Aguiar to show cause why he should not be held in civil contempt, as well as why this matter should not be referred for prosecution for criminal contempt.

Respectfully submitted this 2nd day of December, 2009.

s/ Brian J. Stack
Brian J. Stack, Esq. (Fla. Bar No. 0476234)
STACK FERNANDEZ ANDERSON &
HARRIS, P.A.
1200 Brickell Avenue, Suite 950
Miami, Florida 33131
Tel. (305) 371-0001
Fax. (305) 371-0002

Attorneys for William Natbony

s/ Thomas A. Tucker Ronzetti
Harley S. Tropin, Esq.
(Fla. Bar No. 241253) hst@kttlaw.com
Thomas A. Tucker Ronzetti, Esq.
(Fla. Bar No. 965723) tr@kttlaw.com
KOZYAK TROPIN & THROCKMORTON, P.A.
2525 Ponce de Leon Boulevard, 9th Floor
Coral Gables, Florida 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
*Attorneys for Leor Exploration & Production
LLC, Pardus Petroleum L.P., Pardus Petroleum
LLC, and William Natbony, as Trustee of the
Dafna Kaplan 2003 Eight-Year Grantor Retained
Annuity Trust and Thomas Kaplan 2004 Ten-Year
Grantor Retained Annuity Trust, Thomas Kaplan,
and William Natbony*

CERTIFICATE OF COUNSEL

Pursuant to Rule 7.1 of the Local Rules for the United States District Court for the Southern District of Florida, undersigned counsel certifies that he conferred with Guma Aguiar's counsel regarding this Motion. Aguiar opposes the Motion.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Thomas A. Tucker Ronzetti