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DOUGLAS F. CUBBERLEY
2025 CV0739

IN THE COURT OF COMMON PLEAS
WOOD COUNTY, OHIO

STATE OF OHIO,

Plaintiff

v.

BATES RECYCLING INC.,

Defendant.

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JUDGE

JUDGE MACK

STATE OF OHIO'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff, the State of Ohio, Ohio Environmental Protection Agency ("Ohio EPA"), moves this Court pursuant to Civ.R. 65 for the issuance of a Temporary Restraining Order and Preliminary Injunction against Defendant Bates Recycling Inc., ("Bates"). Bates has created a nuisance at its torch cutting operations at the property located at 12729 Jerry City Road, Cygnet, Ohio 43413, ("the Bates facility"). In addition, Bates has prevented Ohio EPA staff from inspecting the Bates facility for compliance with Ohio's air pollution control laws and regulations. A Memorandum in Support is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Bates Recycling is endangering residents of this community through torch cutting operations that are resulting in rusty colored orange and brown plumes of “horrible” smelling emissions that are visible for miles from its facility, causing respiratory irritation, skin irritation, and low visibility on nearby roadways. The emissions are suspected of being the result of unpermitted torching of metals. Bates’ defiance has made a bad situation worse by thwarting timely inspections of the facility.

Ohio EPA is authorized by law to inspect properties when situations like this arise, but the facility owner of Bates Recycling, Mr. Christopher Bates, has refused Ohio EPA reasonable access to the site, even when the Sheriff’s Office has told him they have the right to inspect the property. He has refused to comply with Ohio law, has refused to comply with the terms of an administrative

search warrant issued by this Court, and has even built a scrap wall, presumably in an attempt to block Ohio EPA inspectors from seeing Bates' torching operations. Worse still, he himself has intimidated and physically harassed inspectors as they have observed the site from an adjacent property. Prior to filing this motion, the State has attempted to resolve these issues with Bates to no avail.

For these reasons, the State comes before this Court seeking an injunction requiring Bates to temporarily cease any metal cutting, torching, or open burning operations at the facility until a permit is obtained, and to allow Ohio EPA inspectors to inspect the facility, including reviewing records of operations.

II. BACKGROUND

Bates Recycling has caused a nuisance in the local community on and off for years, avoiding compliance with Ohio's air regulations that other Ohio businesses comply with every day. Ohio law requires that companies engaged in activities that result in air contamination apply for and receive permits to operate, which require emissions limits, testing, record keeping, reporting requirements, and other best management practices to keep permittees from denigrating Ohio's air quality. *Ray Aff.* ¶6. This is true unless the amount and type of emissions at a company's operations are so minuscule that they qualify for an exemption like a de minimis exemption. *Ray Aff.* 7.

In August 2023, Bates submitted emissions calculations that demonstrated emissions from its torching operations would meet the de minimis exemption and would therefore not need a permit to operate. Bates submitted paperwork and calculations alleging that the emissions from the facility would be less than ten pounds per day, and less than one ton of hazardous air pollutants per day, and therefore Bates would not need a permit to operate the facility. *Ray Aff.* ¶ 14. On September 13, 2023, Ohio EPA sent a letter agreeing that Bates' calculations, if accurate,

demonstrated that for most of the metal cutting operations the calculations met the de minimis exemption, and stated that if Bates wanted to cut railroad steel or other materials that cause excessive emissions they needed to apply for and receive a permit. Bates has never applied for this permit, and has operated the facility in such a way that it is clear they are exceeding the de minimis levels it alleged. *Ray Aff.* ¶ 15; *Affidavit of Aniyah Woodley Aff.* ¶ 41.

From late 2023 to the present, residents of Wood County and passersby on I-75 have complained to Ohio EPA that thick plumes of smoke, observable from several miles away from the facility, in shades of brown, yellow, orange, or rusty tones, are emanating from Bates' operations. The Northwest District Office has received dozens of these complaints on and off, with the complaints escalating in recent months. *Woodley Aff.* ¶ 8 (attached as Exhibit 1); *2023, 2024, and 2025 Ohio EPA Complaint list* (attached as Exh. 1-A). From the beginning of this year alone, Ohio EPA has received more than 40 complaints from the residents of Wood County and passersby—some of which reported symptoms such as foul smells, headaches and skin irritation. *Ray Aff.* 18. *Woodley Aff.* ¶ 17; *2025 Ohio EPA complaint list*. Even Ohio EPA's own staff experienced throat irritation during one of their investigations of Bates' operations from an adjacent property. *Woodley Aff.* ¶ 13. Those inspectors also observed what appeared to be torching of metals, and/or open burning of material, as well as emissions that are consistent with torching heavy metals- actions which require a permit and all the safety precautions that go along with that permit. *Woodley Aff.* ¶ 30.

On August 21, 2025, following complaints of large plumes of emissions, Ohio EPA staff, attempted to inspect the Bates facility to determine compliance with Ohio's air pollution control laws to protect public health and environment. *Woodley Aff.* ¶ 18. An employee contacted the facility owner, Christopher Bates, and he denied access to Ohio EPA staff. *Woodley Aff.* ¶ 19-20.

Bates' owner called the sheriff's office requesting Ohio EPA be trespassed from the facility if they proceeded beyond the weigh scales. *Id. at* ¶ 20. After consulting with the prosecutor's office, the sheriff informed the owner that trespass enforcement was not applicable in this situation because Ohio EPA was conducting a public duty. *Id. at* ¶ 21. Instead of complying with the access request, the owner continued to deny access. *Id. at* ¶ 22.

Shortly thereafter, Ohio EPA received a letter from counsel for Bates indicating that Ohio EPA could not inspect the facility without making a prior arrangement with Bates and not until after Bates' attorney returned from his trip out of country nearly a month later—on September 22, 2025. *Woodley Aff.* ¶ 24. Ohio EPA and counsel attempted to negotiate a timelier inspection, Bates refused, and Ohio EPA suspected that Bates was delaying in order to allow the facility sufficient time to complete the operations that are generating the complaints, thereby eliminating the evidence of their cause. *Woodley Aff.* ¶ 25-26.

After the attempted inspection on August 21, 2025, Ohio EPA observed a significant increase in the facility's operational activity. *Woodley Aff.* ¶ 28. In just the two days from September 10 to September 12, Ohio EPA received 11 complaints regarding a thick orange plume of smoke coming from the facility. *Woodley Aff.* ¶ 29; *see Ohio EPA complaint list for Sep. 10–Sep. 12.*

On September 12, 2025, from an adjacent property, Ohio EPA staff observed two torching operations occurring, alongside simultaneous open burning, which created a plume of orange smoke that rose above the Facility. *Woodley Aff.* ¶ 30. The following photographs were taken by Ohio EPA during the September 12, 2025 off-site investigation and show the excessive emissions coming from the facility.



Woodley Aff. ¶ 30. These emissions coupled with Defendant’s refusal to comply with Ohio laws authorizing access for inspection caused the State to seek and receive an administrative warrant from the Court on September 17, 2025. The State’s purpose was to perform an inspection of the facility as part of its enforcement and monitoring of compliance with Ohio’s air pollution

control laws. Ohio EPA needed to inspect the property to determine the sources, amounts, contents, and extent of emissions, by observing the site and facility records, and to ascertain whether there is compliance with Ohio's air pollution control laws found in R.C. Chapter 3704. *Woodley Aff.* ¶ 31.

A warrant was issued by this Court under R.C. 3704.03(L) based upon the Court's reviewing the application and evidence submitted by Ohio EPA. *See* warrant attached as Exhibit 3. The warrant authorized Ohio EPA to investigate the Bates facility, including to review and make copies of facility records. The review of the facility records was especially important, as these records would detail what Bates was torching and what that was emitting into the air. The same day, Ohio EPA, alongside of Wood County Sherriff Department, served the warrant to Bates Recycling and attempted to inspect the property. *Woodley Aff.* ¶ 32.

During the inspection, employees and contractors ceased operations, packed up equipment, and waited in the break room of the facility. *Woodley Aff.* ¶ 33. One employee followed Ohio EPA inspectors, filming them in an intimidating manner, until they were stopped by a Sheriff's Officer. *Woodley Aff.* ¶ 34. When asked to review the facility records, the office employee claimed not to know where they were located, and put Mr. and Mrs. Bates on a telephone call. *Woodley Aff.* ¶ 35. Instead of telling staff or inspectors the location of the facility records that were authorized to be viewed under Ohio law and court order, Mrs. Bates stated she would provide records if provided with a list of what Ohio EPA wanted to review. *Id.* Mr. Bates came onto the line and would not reveal the location of the records. *Id.* These records are required by law to be available to staff upon request so that facilities cannot "cherry pick" what records they choose to send to Ohio EPA to show their facilities activities in a favorable, yet not wholly truthful, light. *Woodley Aff.* ¶ 36; *Ray Aff.* ¶ 20.

On October 1, 2025, Ohio EPA received additional complaints from community members regarding emissions from the Bates facility. *Woodley Aff.* ¶ 37. Ohio EPA staff went to a nearby property and observed from that offsite location that Bates had constructed a scrap wall which blocked visibility of its property from the adjacent lot. *Woodley Aff.* ¶ 38. Additionally, Mr. Bates drove to the neighbor's property where the Ohio EPA inspectors were located and used his vehicle to deliberately and hostilely block the state vehicle as Ohio EPA inspectors attempted to exit the area, further demonstrating a pattern of defiance, interference, and intimidation. *Woodley Aff.* ¶ 39; *Ray Aff.* ¶ 24. Mr. Bates took photographs of Ohio EPA employees in their vehicle. When Ohio EPA moved their vehicle to get past, he moved his vehicle further in front of them. *Ray Aff.* 24. He only moved when he realized that he was blocking a school bus from completing its route, at which point Ohio EPA employees were able to leave the site. *Woodley Aff.* ¶ 39; *Ray Aff.* ¶ 24.

Mere days later, Ohio EPA received a tip from a community member that the Bates facility was emitting large plumes of smoke every day of the week at 3:00 a.m. *Ray Aff.* ¶ 25. An Ohio EPA inspector went to a location nearby the site at approximately 3:00 a.m. on October 6th and observed that Bates was operating torching equipment causing large amounts of emissions coming from the facility for several hours. *Ray Aff.* ¶ 26. Mrs. Ray took the photographs below detailing the emissions and burning at the Bates facility.



Ray Aff. ¶ 27. On October 7th, 8th, 9th, and 10th, Ohio EPA inspectors parked off site in the early morning hours and observed the same—torching operations with large amounts of metallic smelling, orange-tinged emissions coming from the Bates facility. *Woodley Aff.* ¶ 40; *Ray Aff.* ¶ 28.

In the normal course of Ohio EPA business, Ohio law authorizes inspectors to access the site when complaints arise, speak with employees or the owner, and request information as to what is being burned and why. However, Mr. Bates has made clear that he will not cooperate with Ohio EPA, the Sheriff's Office, or even an administrative warrant. Bates is conducting torching operations in the night hours, presumably to avoid Ohio EPA oversight, Bates is refusing staff access to the property in a reasonable time frame, and Mr. Bates is intimidating and harassing Ohio

EPA employees even when they are not on the Bates facility property. The facility is producing emissions that spread for miles around with no permit. This is not the behavior of a legally operating business, and a Court Order is necessary to protect the public, and ensure compliance with Ohio's air pollution control laws.

III. LAW AND ARGUMENT

A. Standard for authorizing an injunction sought by the State.

Where a statute grants statutory relief to the State, the State may obtain an injunction from a court merely by showing that a defendant has violated the statute. *Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51, 56-57, 378 N.E.2d 145 (1978). In *Ackerman*, the Ohio Supreme Court held that the Director of Health, acting as a government agent, could enjoin an unlicensed nursing home by merely showing the nursing home violated the statute authorizing injunctive relief. *Id.* at 56. To obtain injunctive relief, the State only has to establish that “the statutory conditions exist.” *Id.* “It is established law in Ohio that, when a statute grants a specific injunctive remedy * * * to the state, the [state] need not aver and show, as under ordinary rules in equity, that great or irreparable injury is about to be done for which he has no adequate remedy at law.” *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St.3d 367, 768 N.E.2d 619, 2002-Ohio-2427175, citing *Ackerman*, 55 Ohio St.2d at 57.

By demonstrating the statutory condition is present, the State establishes, “the conditions which the General Assembly has deemed worthy of injunctive relief exists.” *Id.* at 57. This is because unlike equitable-injunctions, which were developed as a response to inadequate common law remedies, statutory injunctions were “designed by the General Assembly to benefit society by proscribing behavior which the General Assembly has determined not to be in the public interest.” *Id.* at 57. The Supreme Court reasoned that it would be redundant to require governmental agents to establish the elements of a private action, such as irreparable damage or lack of adequate legal

remedy, because “activities deemed harmful by the General Assembly are not designed primarily to do justice to the parties but to prevent harm to the general public.” *Id.* at 57.

Courts have consistently applied the *Ackerman* rule in actions brought to enforce Ohio's environmental protection laws. *See, e.g., State ex rel. Brown v. Chase Foundry & Manufacturing Co.*, 8 Ohio App.3d 96, 100-101 (10th Dist. 1982) (involving the enforcement of Ohio's air pollution control laws); *State ex rel. Celebrezze v. Ohio Oil Field Servs.*, 7th Dist. Mahoning App. No. 82 C.A. 95, 1984 Ohio App. LEXIS 10812 (Sept. 1, 1984) (involving the enforcement of Ohio's water pollution laws). Moreover, the rule from *Ackerman* applies to all forms of injunctive relief-temporary restraining orders, as well as preliminary and permanent injunctions. *See, e.g., State v. Alexander Bros., Inc.* 43 Ohio App. 2d 154, 155-156 (5th Dist., 1974).

Defendant is violating multiple Ohio laws, any one of which is grounds for this Court to grant an injunction against Defendant.

B. RC 3704.06 authorizes injunctive relief against Defendant for violating R.C. 3704.05 (G) and Adm.Code 3745-15-07.

Defendant has violated Ohio's air pollution control laws by creating a public nuisance when it emitted miles of emissions, colored smoke, or other substances which resulted in foul odors, headaches, skin irritation, and irritated throats of those inhaling the emissions.

Revised Code 3704.06 states that the Attorney General:

“...shall bring an action for an injunction, a civil penalty, or any other appropriate proceedings in any court of competent jurisdiction against any person violating or threatening to violate section 3704.05 or 3704.16 of the Revised Code. The court shall have jurisdiction to grant prohibitory and mandatory injunctive relief ... upon the showing that the person has violated this chapter or rules adopted thereunder.”

Therefore, as *Ackerman* dictates, if the State can prove that the Defendant violated Ohio's air pollution control laws under Chapter 3704.05, the State is entitled to injunctive relief. The State's evidence in the attached affidavits proves it is entitled to immediate injunctive relief.

Ohio Administrative Code 3745-15-07 sets forth the air pollution prohibitions that give rise to a public nuisance:

(A) The emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

(B) The emission or escape into the open air from any source or sources of odors whatsoever that is subject to regulation under Chapter 3745-17, 3745-18, 3745-21, or 3745-31 of the Administrative Code and is operated in such a manner to emit such amounts of odor as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

This code provision is precisely why conduct like that of Bates is considered a public nuisance. The volume of complaints alone demonstrates why the prohibition warrants this Court's intervention— 58 complaints from residents and passersby on and off since late 2023, with an escalation in the frequency and severity of those complaints in recent months. *Woodley Aff.* ¶ 9. Ohio EPA has received complaints about “horrible smells,” large amounts of emissions extending for miles from the facility, headaches, as well as skin and throat irritation. *Woodley Aff.* ¶ 11. An

Ohio EPA inspector herself reported that being near the Bates facility and breathing in the substances emitted from the facility resulted in foul odors and throat irritation. *Woodley Aff.* ¶ 13. A separate Ohio EPA inspector observed emissions from a nearby roadway smelled an unpleasant metallic scent from the emissions at the Bates facility. *Ray Aff.* ¶ 33.

Emissions like these are regulated because when not properly controlled, they can irritate respiratory systems of the public breathing in the ambient air. *Woodley Aff.* ¶ 15; *Ray Aff.* 34. Breathing in these emissions are especially harmful to the respiratory systems of vulnerable populations like pregnant women, young children, the elderly, and those with underlying respiratory conditions. *Ray Aff.* ¶ 34; *Woodley Aff.* ¶ 16. These emissions have also reportedly caused visibility issues to drivers along interstate 75. *Woodley Aff.* ¶ 14; *Ray Aff.* 35.

These unpermitted air emissions are a nuisance, and this Court is authorized to issue an injunction accordingly.

C. Revised Code 3704.06 authorizes injunctive relief against Defendant for violating R.C. 3704.05 (E) and 3704.03(L) for failing to provide access for timely inspection or records to Ohio EPA inspectors.

By law, Ohio EPA is entitled to inspect Bates facility at any reasonable time to ascertain the types and sources of air emissions, inspect records, take samples, etc. R.C. 3704.03(L). Likewise, the law prohibits Bates from refusing Ohio EPA inspectors access to the facility. R.C. 3704.05(E) (“no person to whom a permit *or variance* has been issued shall refuse entry to an authorized representative of the Director or the environmental protection agency as provided in division (L) of section 3704.03 of the Revised Code or hinder or thwart the person making an investigation”).

The Bates facility demonstrated it qualified for an exemption to the general rule that they are required to have an air permit. *Ray Aff.* ¶ 14-15. They did this by providing self-reported calculations that they were operating as a de minimis source – meaning their emissions are under

ten pounds per day of particulate emissions, and under one ton of hazardous air pollutants. *Ray Aff.* ¶ 7. Part of that exemption means that when asked, they are required to provide Ohio EPA staff access to records to prove that they continue to meet these de minimis requirements. *Ray Aff.* ¶ 20. Access to the Bates site is necessary for the Director to enforce the terms of Ohio's air pollution control statute in R.C. Chapter 3704 to protect the public health, safety, and environment from the possible harms arising from the recycling and/or open burning of metals from unallowed sources.

Mr. Bates has refused Ohio EPA access multiple times. Bates' unrealistic offer to allow Ohio EPA to wait for a month to conduct their inspection is nothing short of defiant conduct. Even when this Court issued an administrative search warrant, Mr. Bates refused to provide Ohio EPA staff access to records they are entitled to by law. *Woodley Aff.* ¶ 35. While Bates claims they offered to provide the records at a later date through an attorney – that is not what Ohio law or the administrative search warrant stated. Ohio EPA law requires these records to be maintained at the facility and available upon request so that facilities cannot cherry pick favorable records to produce, and hold back those that show their facility operating in an unfavorable light. The administrative search warrant also authorized access to records *during* the site visit – not at an unspecified time subsequent to the inspection. When asked to provide records as required by the administrative search warrant, owners of Bates refused to identify the location of the facility's records, and told Ohio EPA inspectors if they wanted the records, they should produce a written request and Bates' attorney would send them. *Woodley Aff.* ¶ 35. When asked when records would be sent, Mr. Bates would not respond. *Id.* Subsequent to the inspection, counsel for Bates filed a motion arguing the inspection was unlawful. Even when a list was provided to Bates counsel on Monday October 13th, no records have been provided to date.

Additionally, Mr. Bates recently attempted to intimidate and harass staff when they were observing his facility from a nearby property. *Ray Aff.* ¶ 24; *Woodley Aff.* ¶ 39. He approached Ohio EPA staff in his vehicle while they were at a neighbor's property, and intentionally parked his truck so that they could not leave the site. *Ray Aff.* ¶ 24; *Woodley Aff.* ¶ 39. While he was parked preventing their exit, he took their photographs. *Ray Aff.* ¶24. When staff moved forward to attempt to edge past them, he moved forward to block their exit. *Id.* While he was parked in the road, a school bus approached and was prevented from proceeding along its route, which ultimately led to Defendant moving his vehicle from blocking traffic. *Id.*

It is abundantly clear to Ohio EPA inspectors that the Bates facility is exceeding the de minimis exemption that they alleged they met, and that they are operating without a permit in violation of Ohio law. *Woodley Aff.* ¶ 41; *Ray Aff.* 37. This Court is authorized by law to issue an injunction for Defendant's refusal to allow entry to the site and access to the records.

D. R.C. 3704.06 authorizes injunctive relief against Defendant for violating R.C. 3704.05(G) and Adm.Code 3745-31-02(A) for operating without a permit.

Revised Code 3704.05(G) provides that “[n]o person shall violate any rule of the director issued, adopted, or made under” R.C. Ch. 3704. Adm.Code 3745-31-02(A)(l)(b) prohibits any person from causing, permitting, or allowing the installation and subsequent operation of any new source unless a Permit to Install and Operate has been applied for and obtained, except as otherwise provided by rule or law. There are exemptions to this rule, which Defendant purported to meet, but did not abide by the conditions of the exemption. *See* R.C. 3704.011(C). If the potential to emit of an air contaminant source exceeds ten pounds per day of any type of air contaminant, the exemption does not apply—unless the owner or operator of the source maintains records that are adequate to demonstrate that actual emissions have not exceeded ten pounds per day. *Id.* It is clear to Ohio EPA inspectors that the Defendant is exceeding the emissions for a de minimis

exemption. *Woodley Aff.* ¶ 41 ; *Ray Aff.* ¶37. Defendant refused to reveal the location of the records during the administrative search warrant, despite this Court's Order to do so, claiming he would produce the records only after Ohio EPA provided a list specifying what they wanted. *Woodley Aff.* ¶ 35.

From the beginning of Defendant's operations at the Bates facility, Defendant has had compliance issues with the de minimis exception it sought. On March 1, 2023, prior to a de minimis showing, Ohio EPA inspected the Facility and determined Defendant was causing excessive emissions from cutting metal parts from the railroad industry, including railroad frogs and railroad tracks. *Ray Aff.* ¶11. Staff verbally told Mr. Bates that this activity required an air permit. *Ray Aff.* ¶11. Ohio EPA issued a letter to Defendant stating that in order to continue these torch cutting operations Bates had to provide emission calculations that demonstrate that emissions meet the de minimis exemption or apply for and receive a permit-to-install and operate. Ohio EPA sent another letter, and Defendant submitted what are now believed to be false, or at least no longer applicable, documentation purporting to show that the Facility's emissions were de minimis. *Ray Aff.* ¶14, 34.

On September 13, 2023, Ohio EPA determined, as a result of complaints and investigations, that the metal cutting operations at Defendant's facility were causing fugitive emissions in excess of the calculated emissions and asked Defendant to apply for a permit in order to continue cutting railroad tracks. *Ray Aff.* ¶15. To date, despite continued emissions and torch cutting operations, Defendant has failed to apply for a permit even though it continued to produce excessive emissions, with 40 complaints just this year. *Ray Aff.* 18; *Woodley Aff.* ¶ 17, 41.

Because Defendant's emissions exceed de minimis standards, and because Defendant has failed to maintain records required by R.C. 3704.011, the exemption provided in that section does not apply; therefore, Defendant is required to and has failed to obtain a permit in violation of

Adm.Code 3745-31-02(A)(1)(b), R.C.3704.011 (C) and R.C. 3704.05 (G) for which this Court can issue an injunction.

IV. CONCLUSION

For the reasons set out in this motion, the State hereby requests that this Court schedule a hearing on its Motion for Temporary Restraining Order against the Bates Facility, and grant the State's proposed requested injunctive relief, a proposed Order of which is attached to this Motion as Exhibit 4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *State's Motion for TRO and Preliminary Injunction* has been served via electronic mail on 16th day of October, 2025 upon the following:

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