UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:21-cv-21695-KMM

MRC44, LLC, *et al.*,

Plaintiffs,

v.

City of Miami,

Defendant.
_____/

ORDER ON MOTION TO REMAND

THIS CAUSE came before the Court upon Plaintiff MRC44, LLC ("Plaintiff MRC44") and Plaintiff 60 NE 11th, LLC's "(Plaintiff 60 NE") (collectively, "Plaintiffs") Motion for Remand to State Court. ("Mot.") (ECF No. 10). Defendant City of Miami ("City") filed a response, ("Resp.") (ECF No. 11), and Plaintiffs filed a reply ("Reply") (ECF No. 12). The Motion is now ripe for review.

I. BACKGROUND[1]

This case arises from a dispute over the zoning of medical marijuana dispensaries within the City of Miami. *See generally* Am. Compl.

Plaintiff MRC44 and Plaintiff 60 NE each own parcels of land located within the City of Miami ("the Properties"). Am. Compl. ¶¶ 2–6. In the Amended Complaint, Plaintiffs state that they seek to open medical marijuana treatment facilities ("dispensaries") on each of the Properties. *Id*. at 1. However, Plaintiffs have not been able to do so because the City has "taken the position that a

[1] The background facts are taken from the Amended Complaint, ("Am. Compl.") (ECF No. 27), and accepted as true for purposes of ruling on the Motion. *Bacon v. McKeithen*, No. 5:14-CV-37-RS-CJK, 2014 WL 12479640, at *1 (N.D. Fla. Aug. 28, 2014) ("[The Court] must construe all allegations in the complaint as true and in the light most favorable to the plaintiff."). Additionally, the Court has relied upon representations of the City's counsel made at the hearing held on September 8, 2021. Hearing Transcript ("H'rg Tr.") (ECF No. 31) at 4:4–5:19.

Certificate of Use is required for Plaintiffs to operate [a dispensary]" and the City "refuses to issue one because it contends that Plaintiffs' business plans violate federal law." Am. Compl. at 1. The City's refusal comes even though the "City has passed no ordinance either (a) banning [d]ispensaries entirely or (b) specifying the criteria for the location of, and other permitting requirements for, [d]ispensaries located within its boundaries." *Id.* ¶ 18. The City's counsel has informed the Court that the City has no plans to pass a formal ordinance prohibiting the operation of medical marijuana dispensaries in the City of Miami. H'rg Tr. at 4:4–5:19. In the Amended Complaint, Plaintiffs seek "a judicial declaration that Plaintiffs may lawfully operate a [d]ispensary within the City of Miami[,] without obtaining a Certificate of Use from the City," pursuant Fla. Stat. § 86.011(2). *Id.* at 4.

On April 21, 2021, Plaintiffs filed the Complaint seeking declaratory relief in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. *See generally* (Compl.) (ECF No. 1-1). On May 3, 2021, the City removed the above-captioned case to federal court. Not. of Removal (ECF No. 1) at 1. In the Notice of Removal, the City asserts that this Court has jurisdiction because Plaintiffs' request for declaratory relief "necessarily draws into question the interpretation or application of federal law under the Federal Controlled Substances Act, [21 U.S.C. § 801], which criminalizes the activities alleged in the [C]omplaint." *Id.* Thus, the City seeks to avail itself of this Court's jurisdiction over federal questions.

Now, Plaintiffs have filed the instant Motion to Remand, which argues that this case presents no federal question and should, therefore, be remanded for further proceedings in state court. *See* Mot. at 3.

II. LEGAL STANDARDS

The statute governing removal, 28 U.S.C. § 1441, permits a defendant to remove a case brought in state court to federal court if the federal court has federal-question jurisdiction under 28

U.S.C. § 1331 or diversity jurisdiction under 28 U.S.C. § 1332. § 1441. The removing party bears the burden of proving that federal subject matter jurisdiction exists. *See Mitchell v. Brown & Williamson Tobacco Corp.*, 294 F.3d 1309, 1314 (11th Cir. 2002). A district court is required to "'strictly construe the right to remove' and apply a general 'presumption against the exercise of federal jurisdiction, such that all uncertainties as to removal jurisdiction are to be resolved in favor of remand.'" *Scimone v. Carnival Corp.*, 720 F.3d 876, 882 (11th Cir. 2013) (citation omitted).

Federal-question jurisdiction exists when an action "aris[es] under the Constitution, laws, or treaties of the United States." § 1331. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule.'" *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The well-pleaded complaint rule provides that "the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court." *Id*. at 398–99.

In this case, however, there are two relevant exceptions to the well-pleaded complaint rule under which a federal court can exercise jurisdiction, even in circumstances where a federal question does not appear on the face of the complaint. First, under the "complete-preemption doctrine," a case can be removed to federal court where a federal statute "wholly displaces the state-law cause of action." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004) (quoting *Beneficial Nat. Bank v. Anderson*, 539 U.S. 1, 8 (2003). Second, jurisdiction can exist under the "substantial federal question doctrine," which "captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues[.]" *Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005).

III. DISCUSSION

Plaintiffs argue that this case should be remanded to state court because their claim for declaratory relief does not implicate a federal question. Mot. at 3. Specifically, Plaintiffs contend that no jurisdiction exists under the "well-pleaded complaint" rule because Plaintiffs' claim only seeks to determine Plaintiffs' rights "under [§] 381.96, Florida Statutes, and [the City's Charter.]" *Id*. Additionally, Plaintiffs contend that even if Plaintiffs' claim did implicate federal law, the Court should abstain from ruling on this issue because matters of state law could potentially make it unnecessary for the Court to reach a federal constitutional issue. *Id*. at 4. Relatedly, Plaintiffs also believe the Court should abstain from adjudicating this case because "matters of land use and planning are primarily of local concern." *Id*.

In response, the City argues that this Court has federal-question jurisdiction under the complete-preemption doctrine because Plaintiffs' complaint raises issues of federal law. Resp. at 3 (citing *Metropolitan Life Ins. Co. v. Taylor*, 107 S.Ct. 1542, 1546 (1987)).[2] In support of this theory, the City points to the language of the CSA, which states that the CSA does not operate to preempt state law unless there is a "positive conflict" between the state law and the CSA such that "the two cannot consistently stand together." *Id*. (citing 21 U.S.C. § 903). The City argues that the Court should not abstain from hearing this case because it implicates questions of federal law. Resp. at 3.[3] Lastly, the City contends that the denial of a Certificate of Use based on federal law "presents a substantial federal question." Resp. at 5–6.

---

[2] As discussed below, these arguments are properly characterized as being under the "substantial federal question" doctrine.

[3] Originally, the Complaint referenced Plaintiffs' rights under the U.S. Constitution. Compl. ¶ 21. However, this reference has been omitted in the Amended Complaint and therefore the Court need not address whether the reference to the U.S. Constitution is a basis for federal jurisdiction in this case. *See generally* Am. Compl.

In reply, Plaintiffs contend that the Controlled Substance Act does not preempt the relevant portions of the Florida Constitution or Fla. Stat. § 381.986. Reply at 2. Plaintiffs point to several cases in which courts have found that state-level legalization of marijuana does not prohibit the federal government from enforcing the CSA or otherwise authorize violations of the CSA. *Id*. at 2–3 (citing *Ter Beek v. City of Wyoming*, 846 N.W.2d 531 (Mich. 2015); *Reed-Kaliher v. Hoggat*, 347 P.3d 136 (Ariz. 2015); (other citations omitted)). Plaintiffs also note that Florida's Constitutional Amendment which legalized medical marijuana explicitly states that "[n]othing in this section requires the violation of federal law or purports to give immunity of federal law." *Id*. at 3 (citing Fla. Const. art. X, § 29(c)(5)). Lastly, Plaintiffs point out that the City has not identified how exactly the issuance of a Certificate of Use would violate the CSA. *Id*.

A. No Federal Question is Presented in the Complaint.

To begin, the Amended Complaint brings no claim arising "under the Constitution, laws, or treaties of the United States." § 1331. Therefore, this Court would only have jurisdiction under one of the narrow exceptions to the well-pleaded complaint rule. *See Caterpillar Inc.*, 482 U.S. at 392, 398–99. For the reasons discussed below, the Court finds that no exception to the well-pleaded complaint rule applies in this case and the Court is, therefore, without jurisdiction.

B. There Is No Basis for Jurisdiction in This Case Based on the Complete-Preemption Doctrine.

The City believes that, although a federal question does not appear on the face of the Complaint, jurisdiction exists under the Supreme Court's complete-preemption doctrine. Resp. at 3 (citing *Metropolitan Life Ins. Co. v. Taylor*, 107 S.Ct. 1542, 1546 (1987)). Plaintiffs did not address this issue at great length in their Reply, other than to argue that other courts have found that the CSA does not preempt state-level legalization of medical marijuana. Reply at 3–4.

The Parties appear to misunderstand the difference between "complete-preemption" and

"ordinary-preemption." U.S. District Judge Robert N. Scola illuminated the distinction between these terms in *Gonzalez v. United States Ctr. for SafeSport*, which bears quoting at length:

> "Ordinary" preemption is an affirmative defense that "simply allows a defendant to defeat a plaintiff's state-law claim on the merits by asserting the supremacy of federal law." *Cmty. State Bank v. Strong*, 651 F.3d 1241, 1260 n.16. (11th Cir. 2011). As relevant here, "ordinary" preemption is neither a source of federal subject matter jurisdiction, nor a basis for removal to federal court. *Geddes v. Am. Airlines, Inc.*, 321 F.3d 1349, 1352–53 (11th Cir. 2003) ("[A] case may not be removed to federal court on the basis of a federal defense, including that of federal preemption." (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987)).
>
> "Complete" preemption, on the other hand, is a rarely invoked and "narrowly drawn jurisdictional rule for assessing federal removal jurisdiction when a complaint purports to raise only state law claims." *Id.* at 1353. The doctrine is a limited exception to the "well-pleaded complaint" rule and requires a determination that "the pre-emptive force of a statute is so 'extraordinary' that it 'converts an ordinary state common law complaint into one stating a federal claim.'" *Caterpillar*, 482 U.S. at 393. "Complete preemption creates federal subject-matter jurisdiction over completely preempted state-law claims, allowing for removal to federal court." *Strong*, 651 F.3d at 1260 n.16.

374 F. Supp. 3d 1284, 1291 (S.D. Fla. 2019) (internal citations reformatted). "Thus, 'complete' preemption only exists where the federal statute at issue creates a federal cause of action or 'federal remedy.'" *Id*. at 1292 (citing *Anderson*, 539 U.S. at 9 n.5). "A claim may not be removable to federal court based on 'complete' preemption, but nonetheless still [be] subject to dismissal under 'ordinary' preemption." *Id*. at 1291 (quoting *Geddes*, 321 F.3d at 1253 (holding that "a federal law may substantively displace state law under ordinary preemption but lack the extraordinary force to create federal removal jurisdiction under the doctrine of complete preemption")).

Here, the City's assertion that this Court has jurisdiction based on "complete-preemption" is incorrect because the City has not identified, nor is the Court aware of, a federal cause of action or federal remedy under the CSA that preempts applicable state law. *Gonzalez*, 374 F. Supp. 3d at 1292 (citing *Anderson*, 539 U.S. at 9 n.5). The City's reliance on *Metro. Life* is misplaced because in that case, the Supreme Court found that state law was completely preempted by ERISA's creation of an

exclusive federal cause of action governing the issues in that case. 481 U.S. at 63. In this case, the City's argument that the CSA completely preempts state law is based upon the CSA's section entitled "Application of State Law," which provides:

> No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, **unless there is a positive conflict** between that provision of this subchapter and that State law so that the two cannot consistently stand together.

§ 903 (emphasis added). Because this provision does not provide a federal cause of action, it cannot serve as the basis for jurisdiction under the exception to the well-pleaded complaint rule for complete-preemption. *See Gonzalez*, 374 F. Supp. 3d at 1291.[4] Therefore, the Court concludes that the complete-preemption exception does not operate to confer jurisdiction in this case.

C. There Is No Basis for Substantial Federal Question Jurisdiction in this Case.

The City also contends that the denial of a Certificate of Use based on federal law "presents a substantial federal question." Resp. at 5–6. In the Notice of Removal, the City asserts that this Court has jurisdiction because Plaintiffs' request for declaratory relief "necessarily draws into question the interpretation or application of federal law under the Federal Controlled Substances Act, [21 U.S.C. §§ 801], which criminalizes the activities alleged in the [C]omplaint." Not. of Removal at 1. The City also contended at the hearing that this Court has jurisdiction based on "the plain language in the Controlled Substances Act itself." Hr'g Tr. at 7:18–20. Plaintiffs have not offered a specific response to the City's arguments that appear to invoke the substantial federal question doctrine, but Plaintiffs have generally argued that the CSA does not preempt applicable state law in this case. *See* Reply at 2–3.

[4] At the hearing held on September 8, 2021, the City's counsel stated: "We would acknowledge that there is no cause of action created by the Controlled Substances Act per se." H'rg Tr. at 7:10–12.

The City's argument appears to invoke the substantial federal question doctrine, which "captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues[.]" *Grable*, 545 U.S. at 312. "The classic example is *Smith v. Kansas City Title & Trust Co*., 255 U.S. 180 (1921), a suit by a shareholder claiming that the defendant corporation could not lawfully buy certain bonds of the National Government because their issuance was unconstitutional." *Id*. In that *Smith*, the Supreme Court found that federal-question jurisdiction existed because it "appear[ed] from the [complaint] that the right to relief depends upon the construction or application of [federal law]." *Id*. (citing *Smith*, 255 U.S. at 199). In this case, given the City's argument that jurisdiction exists because Plaintiffs' right to relief depends upon the construction or application of the CSA, *see* Resp. at 3–4, the Court will analyze its jurisdiction under the substantial federal question doctrine.[5]

Although medical marijuana is legal under Florida law, municipalities are not required to zone dispensaries and have the following set of options:

> A county or municipality may, by ordinance, ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality. A county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality.

Fla. Stat. § 381.986 (11)(b)(1). Thus, the City has three options: (1) ban medical marijuana dispensaries, (2) permit medical marijuana dispensaries, or (3) do nothing, in which case the City is

[5] Generally, where there is no "complete-preemption," the question of whether there is a "positive conflict" between the CSA and § 381.986 (11)(b)(1) is properly left to state courts. *See Gonzalez*, 374 F. Supp. 3d at 1291. Here, however, because the City asserts that jurisdiction exists based on "the plain language in the Controlled Substances Act itself," the Court must address whether Plaintiffs' "right to relief depends upon the construction or application of [federal law]." *Grable*, 545 U.S. at 312 (citing *Smith*, 255 U.S. at 199).

prohibited from placing specific limits, by ordinance, on the number of dispensing facilities. *Id.*

The Court held a hearing on September 8, 2021, after giving the City's counsel time to confer with the appropriate municipal officials as to the City's stance on medical marijuana dispensaries. At the hearing, the City's counsel represented the City's position on this issue as follows:

> **Mr. Green:** Given the limited parameters of the Sunshine laws, all I can inform the Court is at this time there has been no request for our office to draft an ordinance and there's nothing on the agenda. The last time this came up before the City Commission, it was their intent to have this issue decided by the courts.
> . . . .
>
> **The Court:** So the City is taking the position that -- I just want to be clear on this because I'm now referencing Florida Statute 381.986(11)(b)(1). . . . So you're telling me that the City is choosing not to ban, by ordinance, medical marijuana treatment dispensing facilities; is that correct?
>
> **Mr. Green:** That's correct at this time, Your Honor. The medical marijuana provision in the [s]tate law does not provide any type of immunity under [f]ederal law. The City believes that medical marijuana dispensary is a criminal enterprise under the Controlled Substances Act, and under the [f]ederal laws it is entitled to deny a Certificate of Use because it's in violation of [f]ederal law.
>
> **The Court:** But you have refused to do exactly what the State has given you the opportunity to do in order to protect you from that liability.
>
> **Mr. Green:** That is correct, Your Honor. The City has not chosen to pass an ordinance one way or the other.
>
> **The Court:** Okay. And that could relieve you of any liability.
>
> **Mr. Green:** Understood, Your Honor, yes.

H'rg Tr. at 4:4–5:19. Therefore, even though the City could ban medical marijuana dispensaries under § 381.986 (11)(b)(1), it has declined to do so after having been given time to weigh its options. Yet, the City is now before the Court arguing that it is entitled to withhold a Certificate of Use from medical marijuana businesses due to the CSA's prohibition of marijuana. Thus, through the instant action, the City's elected officials have sought to skirt the performance of their own municipal function by invoking a federal court's jurisdiction to accomplish an outcome that is available to them

under § 381.986 (11)(b)(1) in the first place. Unfortunately, for the City, this Court has no jurisdiction to fulfill their responsibilities on their behalf.

Given the significance of the City's inaction under § 381.986 (11)(b)(1), the Court finds that Plaintiffs' right to relief depends largely upon the construction or application of the state law—not federal law. In other words, this case primarily involves the interaction between a municipality's failure to act and the operation of state law. This alone weighs against finding that Plaintiffs' right to relief depends upon the construction or application of federal law. *Grable*, 545 U.S. at 312 (citing *Smith*, 255 U.S. at 199).

Moreover, the Court finds that Plaintiffs' right to relief does not depend upon the construction or application of federal law because § 381.986 (11)(b)(1) is not preempted by the CSA. In general, state laws must give way to federal laws in two circumstances: (1) where "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance," (2) where "state laws are preempted when they conflict with federal law." *Arizona v. United States*, 567 U.S. 387, 399 (2012)). The later circumstance is implicated by the CSA, under which the federal prohibition of marijuana only preempts state law where the two are in "positive conflict." § 903. The Supreme Court has described two circumstances in which a state law is nullified due to a conflict with federal law:

> Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,"
> *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

Hillsborough Cty., Fla. v. Automated Med. Lab'ys, Inc., 471 U.S. 707, 713 (1985) (citations reformatted). Neither circumstance is presented in this case.

First, it is not impossible for the City to comply with the requirements of the CSA and Florida

law because § 381.986 (11)(b)(1) affords the City the option to ban medical marijuana dispensaries. *Mut. Pharm. Co., Inc. v. Bartlett*, 133 S.Ct. 2466, 2473 (2013) (citing *Florida Lime*, 373 U.S. at 142–43). Moreover, § 381.986 (11)(b)(1) does not require the City to affirmatively zone medical marijuana dispensaries in the event the City opts not to ban dispensaries—rather, it simply prevents the City from "plac[ing] specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality." Fla. Stat. § 381.986 (11)(b)(1). Thus, § 381.986 (11)(b)(1) does not operate to require the City to affirmatively take steps in violation of federal law and the City's inaction on this issue does not render compliance with the CSA an impossibility.

Second, § 381.986 (11)(b)(1) does not frustrate "the accomplishment and execution of the full purposes and objectives" of the CSA because the Florida Constitution explicitly states that the legalization of medical marijuana does not require the violation of federal law or purport to give immunity of federal law. *See* Fla. Const. art. X, § 29(c)(5). The City has not cited to, nor is the Court aware of, any case standing for the proposition that the federal prohibition of marijuana renders any effort to legalize medical marijuana at the state level to be unconstitutional.[6] To the contrary, courts consistently find that there is no positive conflict between the CSA and state laws legalizing medical marijuana because the federal prohibition of marijuana still applies at the federal level—rendering state legalization of medical marijuana to be merely a provision of "limited state-law immunity." *Reed-Kaliher*, 347 P.3d at 136 (quoting *Ter Beek v. City of Wyoming*, 846 N.W.2d 531 (Mich. 2015). The same is true of Florida's Constitution, which states that the legalization of medical marijuana

[6] The Court notes that the City cited to a case which discusses the substantial federal question doctrine in the context of federal jurisdiction over RICO claims involving medical marijuana. Resp. at 4 (citing *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 897 (10th Cir. 2017). However, in *Hickenlooper*, the court did not address the question of whether the CSA preempted Colorado's recreational marijuana laws and it is therefore not instructive on the issues in this case. 859 F.3d at 913.

does purport to confer any immunity under federal law. *See* Fla, Const. art. X, § 29(c)(5). Moreover, courts in other jurisdictions have found that the federal prohibition of marijuana applies, for federal purposes, regardless of the legalization of medical marijuana at the state level. *See United States v. Schostag*, 895 F.3d 1025, 1028 (8th Cir. 2018) (citing *United States v. Johnson*, 228 F. Supp. 3d 57, 62 (D.D.C. 2017) (determining individuals may be "prohibited from using state-sanctioned medical marijuana while under federal court supervision")); *United States v. Meshulam*, No. 15-8001 L-CR, 2015 WL 894499, at *4 (S.D. Fla. Mar. 3, 2015) ("If this Court were to grant Defendant's request to permit him to use medical marijuana while on federal pretrial release, it would be authorizing Defendant to violate federal marijuana laws while a federal criminal prosecution is pending against him."); *United States v. Hicks*, 722 F. Supp. 2d 829, 833 (E.D. Mich. 2010). The Court finds the reasoning of the cases discussed above persuasive and finds no reason to depart from the emerging consensus on these issues. Thus, the Court concludes that § 381.986 (11)(b)(1) does not operate to frustrate the purposes and objectives of federal law and, therefore, there is no positive conflict between the CSA and § 381.986 (11)(b)(1). *Hillsborough Cty*., 471 U.S. at 713.

For these reasons, the Court finds that Plaintiffs' right to relief does not depend upon the construction or application of federal law and, therefore, the Court does not have jurisdiction based upon the existence of a substantial federal question. *Grable*, 545 U.S. at 312 (citing *Smith*, 255 U.S. at 199).

Insofar as the City contends that it may refuse to zone medical marijuana dispensaries solely based on the federal prohibition of marijuana under the CSA, regardless of any conflict between the CSA and § 381.986 (11)(b)(1), that is an issue properly left to state courts to resolve because that

question involves solely an interaction between municipal policies and state law.[7]

Accordingly, the Court finds that there is no basis for federal jurisdiction in this case. This matter is therefore REMANDED to the Eleventh Judicial Circuit, Miami-Dade County, Florida.

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the Response, the Reply, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Plaintiffs' Motion to Remand to State Court (ECF No. 10) is GRANTED. This case is REMANDED to the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The Clerk of the Court is instructed to CLOSE this case. All pending motions, if any, are denied as MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of September, 2021.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record

[7] The Court need not reach the Parties' arguments relating to abstention because the Court has determined that there is no basis for federal jurisdiction in this case.