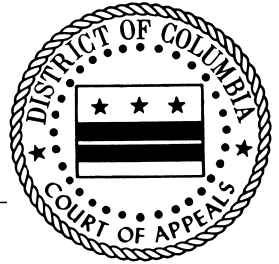


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**District of Columbia
Court of Appeals**

LUKMAN AHMED,

Plaintiff-Appellant,

v.

**BRITISH BROADCASTING CORPORATION and
BBC WORLDWIDE AMERICAS, INC.,**

Defendants-Appellees.

ON APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA,
CIVIL DIVISION, CASE No. 2020-CA-004660-B, BEFORE THE HONORABLE JUDGES
FLORENCE Y. PAN, JOSE M. LOPEZ, AND YVONNE WILLIAMS

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DATE: August 7, 2024

RULE 28 STATEMENT

To enable the judges of this court to consider possible recusal, Appellees disclose the following list of all parties and their counsel in both the D.C. Superior Court and in this Court:

- Plaintiff-Appellant Lukman Ahmed represented by Raymond C. Fay, Esq. of Fay Law Group PLLC and Dionna Maria Lewis Esq. of District Legal Group, PLLC; and
- Defendant-Appellee British Broadcasting Corporation and Defendant-Appellee BBC Worldwide Americas, Inc., represented by John T. McDonald, Esq., Noah S. Oberlander, Esq., and Daniel Z. Herbst, Esq. of Reed Smith LLP. Mark Passero, Esq. formerly of Reed Smith LLP participated in the proceedings before the Superior Court until he withdrew as counsel on June 29, 2021.

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to D.C. Ct. App. R. 26.1, Appellees British Broadcasting Corporation and BBC Worldwide Americas, Inc., by and through their undersigned attorneys, state as follows: (i) British Broadcasting Corporation has no parent or publicly-held corporation that owns 10 % or more of its stock; and (ii) BBC Studios Americas, Inc. (formerly known as BBC Worldwide Americas, Inc.) is a subsidiary of BBC Studios Ltd. No publicly-held corporation owns 10% or more of BBC Studios Americas, Inc.'s stock.

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I. COUNTERSTATEMENT OF JURISDICTION

On April 24, 2023, Appellant Lukman Ahmed (“Ahmed”) filed this appeal seeking review of the Amended Order Granting Defendants’ Motion for Summary Judgment (A142-70) entered by the D.C. Superior Court on February 22, 2023, which is a final order dismissing all of Ahmed’s claims and closing his case.¹

II. COUNTERSTATEMENT OF THE ISSUES

1. Whether the Superior Court abused its discretion by denying Ahmed’s Motion to Enforce Settlement where Ahmed himself acknowledged the BBC had not approved any settlement?
2. Whether the Superior Court abused its discretion by denying Ahmed’s Motion to Compel where he failed to abide by Rule 37, the records did not exist, and the records had no bearing on the lawsuit?
3. Whether the Superior Court erred by granting summary judgment in favor of

¹ While Ahmed seeks reversal of the Superior Court’s Order entered on January 13, 2022 denying his Motion to Enforce settlement (A79-83) and Omnibus Order entered on May 12, 2022 denying, in part, his Motion to Compel (A86-93), contrary to the requirements of D.C. Ct. App. R. 28(a)(5), Ahmed does **not** include in Appellant’s Corrected Brief any statement whatsoever establishing this Court’s jurisdiction over those Court orders. Thus, this Court should summarily dismiss Ahmed’s appeal of those Court orders for failure to comply with this Court’s Rules. Further, given that those orders are **not** final orders such that jurisdiction merely cannot be assumed, by omitting any argument establishing jurisdiction Ahmed has waived any argument as to jurisdiction. *See Drake v. McNair*, 993 A.2d 607, 615 (D.C. 2010) (deeming an issue waived where party failed to include in her brief any substantive argument related to the issue). For that additional reason, this Court should summarily dismiss Ahmed’s appeal of those non-final Court orders.

the BBC dismissing all of Ahmed's claims?

III. COUNTERSTATEMENT OF THE CASE

A brief history of this case is vitally important when evaluating Ahmed's instant appeal. After Ahmed filed this lawsuit in November 2020 (A20), Ahmed left the United States, remained absent throughout the proceedings before the D.C. Superior Court, and has continued to remain out of the country during the course of this appeal. Throughout the course of the Superior Court proceedings below, and the instant appellate proceedings, Ahmed's absence from the United States led to numerous delays and significant periods of Ahmed and/or Ahmed's counsel entirely failing to prosecute his case, prejudicing the BBC, and unnecessarily increasing the costs of litigation for the BBC. Ahmed and his counsel also engaged in a repeated pattern of stonewalling in discovery requiring the BBC to repeatedly seek Court intervention, compounding the prejudice to the BBC. Despite repeated warnings from the Superior Court, neither Ahmed nor his counsel altered their behavior and subsequently the trial court issued sanctions against both in the amount of \$27,571.97. While Ahmed bemoans those sanctions in Appellant's Corrected Brief ("Br."), he does not seek their reversal on appeal. (*See Br. at 5, 32.*)

Nonetheless, now on appeal, Ahmed seeks reversal of three Court orders entered by two separate judges on the Superior Court essentially regurgitating his arguments raised below. This Court should affirm the appropriate and correct

decisions of the trial court below.

A. Ahmed's Baseless Attempt to Force the BBC Into a Settlement the BBC Never Agreed To

One month after Ahmed filed this lawsuit, the BBC served initial discovery. (A190-216). After over three months of repeated and broken promises by Ahmed's counsel to provide discovery responses, the BBC filed a Motion to Compel on April 6, 2021. (A175-216.) Rather than produce the requested discovery, Ahmed instead filed a Motion for Extension of Time in which to respond to the Motion to Compel (A217-19), which the BBC opposed. (A220-32.) When Ahmed did respond, he asserted he was in Sudan and just too busy to provide any discovery responses. (A233-37.)

On June 21, 2021, while the Motion to Compel was under advisement with the trial court, the parties filed a Consent Motion for Stay asking that all deadlines be stayed for 45 days as the parties had reached a "settlement in principle" that was "subject to final approval from [the BBC's] representatives" and that "[i]n the event the parties cannot reach a final agreement, the parties will file a status report with the Court within the 45 day period." (A244-46.) On August 6, 2021, the Parties updated the Superior Court that "the Parties have been unable to reach a settlement," had scheduled mediation later that month, and requested the stay be extended to September 8, 2021. (A248-50.) On September 16, 2021, the Parties again updated the Superior Court that the mediation concluded "without reaching settlement" and

proposed a new scheduling order. (A25-52.)

The next day, during a status conference with Judge Florence Y. Pan to set the scheduling deadlines, Ahmed's counsel indicated he planned to file a Motion to Enforce settlement to which the BBC's counsel reiterated the reality that "there was no settlement reached." (A253-59.) On October 7, 2021, Ahmed's counsel filed his baseless Motion to Enforce Settlement in an inappropriate attempt to force the BBC into a settlement to which, by Ahmed's own briefing, the BBC never agreed. (A260-85.) Given the egregious nature of Ahmed's motion, the BBC sought sanctions against Ahmed under Rule 11. (A286-316; A321-334.)

On January 13, 2022, Chief Judge Lopez signed an Order denying Ahmed's Motion to Enforce Settlement, and granting the BBC's Motion to Compel discovery. (A79-83.) Notably, while the Superior Court mercifully did not award sanctions against Ahmed, Chief Judge Lopez stated whether to award sanctions was a "close call" given the questionable basis for Ahmed's Motion and his significant discovery delays. (A81-82.) The Superior Court gave Ahmed until January 20, 2022 to provide complete discovery responses. (A83.)

B. Ahmed's Egregious Misbehavior Throughout Discovery

Despite Chief Judge Lopez's warning and express deadline for discovery responses, Ahmed failed to provide complete responses, and after months of the BBC attempting to meet-and-confer to avoid additional motions practice, the BBC

filed a Rule 37 Motion on March 4, 2022. (A352-423.) During this time, Ahmed's counsel revealed that Ahmed continued to remain out of the country since filing his lawsuit, and it was unclear when, if ever, he would return to the United States. Moreover, the BBC served their second set of discovery requests on February 4, 2022, to which Ahmed did not produce any responsive documents nor respond to the interrogatories. Therefore, the BBC informed Ahmed of their intent to file a Second Motion to Compel (which the BBC filed on March 25, 2022 after Ahmed continued to refuse to cooperate in discovery). (A501-18.)

Two days before the BBC filed its Second Motion to Compel, without engaging in any meet-and-confer with the BBC,² Ahmed filed his own Motion to Compel against the BBC on March 23, 2022, which was nothing more than a tit-for-tat for the BBC's previously filed and forthcoming motions. (A487-500.) Indeed, the BBC had produced answers and documents to Ahmed's discovery requests subject to its objections, and from Ahmed's Motion to Compel it was unclear what additional discovery he was even seeking. (*Id.*; A591-625.) Moreover, Ahmed had served a second set of discovery on February 24, 2022, and the BBC timely responded to those requests on March 28, 2022, which clarified that one of the items he sought, deployment and scheduling summaries, did not exist in any regular,

² The meet-and-confer identified in Ahmed's Motion to Compel was actually the meet-and-confer the BBC conducted for their Rule 37 Motion. (A353; A592-93.)

centralized deployment database or log maintained by the BBC. (A603.) Despite this, Ahmed did not withdraw his Second Motion to Compel, including as to these records that do not exist.

On May 11, 2022, Judge Williams held a hearing on the BBC's Rule 37 Motion and Motion to Compel, as well as on Ahmed's Motion to Compel. (SA13-67.) During that hearing, Judge Williams expressed dismay with Ahmed's behavior during discovery (SA38-40; SA58; SA62-65), frustration with Ahmed's inability to articulate what precise records he was seeking to compel (SA44-50), and noted that she could not compel the BBC to produce records that do not exist (SA54). When Ahmed's counsel indicated he also wanted emails from the BBC, the BBC's counsel indicated those had not been produced because Ahmed's counsel failed to provide a list of custodians and search terms for the BBC, and Judge Williams indicated to Ahmed's counsel that he needed to provide those to the BBC. (SA55-56.)

The next day, on May 12, 2022, the Court entered an Omnibus Order granting in part the BBC's Rule 37 Motion and Second Motion to Compel, and ordering Ahmed to make full discovery responses by June 1, 2022, and to pay the BBC's reasonable fees and costs as a sanction. (A86-93.) The Court also granted Ahmed's Motion to Compel with respect to the BBC producing the emails based on search terms, but denied the motion in all other respects. (*Id.*)

The BBC timely produced over 3,000 pages of emails by the Court-ordered

deadline. However, Ahmed defied the Omnibus Order by refusing to produce complete discovery responses. After the BBC engaged in additional meet-and-confer attempts, the BBC was forced to file a Second Rule 37 Motion. (A699-708.)

On September 14, 2022, the Court entered an Order granting in part the BBC's Second Rule 37 Motion, ordering Ahmed to produce certain documents by September 20, 2022, and to pay the BBC's reasonable fees and costs as a sanction. (A94-100.) When Ahmed refused to pay the BBC's reasonable fees and costs as ordered by the Court, the BBC filed a Motion to Compel Payment on September 30, 2022. (A1362-77.) On November 9, 2022, the Court entered an Order granting in part the BBC's Motion to Compel Payment whereby the Court entered a sanctions award of \$27,571.97 "to be evenly split between Mr. Ahmed and his counsel due to their joint and untimely efforts" and to be paid by December 9, 2022. (A129-34.) When Ahmed and Ahmed's Counsel failed to pay by the deadline, the BBC made multiple meet-and-confer attempts whereafter the payments slowly trickled in during January and February 2023. (A1465-69.)

C. The Superior Court Appropriately Dismisses Ahmed's Lawsuit

On July 27, 2022, the BBC filed a Motion for Summary Judgment. (A770-1227.) Initially, on November 9, 2022, the Superior Court granted summary judgment as to all of Ahmed's claims under the D.C. Human Rights Act ("DCHRA"), but denied summary judgment as to his limited claim alleging late

payment of his final wages under the D.C. Wage Payment and Collection Law (“WPCL”). (A101-128.) On November 29, 2022, the BBC filed a Motion for Reconsideration with regard to Ahmed’s sole remaining claim under the WPCL. (A1397-1414.) On February 22, 2023, the Superior Court granted the Motion for Reconsideration (A135-41) and issued an Amended Order Granting Defendants’ Motion for Summary Judgment dismissing all of Ahmed’s claims (A142-70.)

IV. COUNTERSTATEMENT OF FACTS

The BBC offers the following counterstatement of undisputed material facts for purposes of this appeal:

A. Ahmed’s Employment With the BBC

In July 2007, the BBC hired Ahmed as Chief Washington Correspondent at its Arabic Service Desk working out of the Washington D.C. Bureau. (A829-31; *see also* A1014-15; A1075 ¶ 37.) Throughout Ahmed’s employment with the BBC, the Arabic Service Desk was headquartered in London with journalists assigned to headquarters or various bureaus throughout the world, including Cairo, Beirut, Jordan, and Washington D.C., among other locations. (A1075 ¶ 37; *see also* A1024-26.) In his position, Ahmed was responsible for reporting on key news events in the Americas, including in the United States, for the Arabic Service Desk of the BBC via radio, television, and online. (A837-39.)

B. The BBC’s Equal Employment Policies

The BBC is an equal employment opportunity employer and maintains strict

policies against unlawful discrimination, harassment, or discrimination, including prohibiting discrimination based on race and national origin. Such policies were in place throughout Ahmed's employment. (A1068 ¶¶ 5-6; A1078-80; *see also* A843-45.) Under such policies, any employees who believe they are being subjected to discrimination, harassment, or retaliation, or who have witnessed such conduct, are required to report the conduct immediately to the BBC. (A1080-81.) The BBC also prohibits retaliation against any employee for making a complaint under such policy. (A1080.) Ahmed admits that he was aware of the BBC's equal employment opportunity policies while employed by the BBC and was trained on such policies and standards. (A843-45.)

C. The BBC's Conflict of Interest and Competitive Broadcasting Policies

The BBC is a well-established and trusted source for news known for its reliable and impartial journalism. As such, the BBC maintains a *Conflict of Interest* policy, in place throughout Ahmed's employment, which broadly prohibits employees from having actual and potential conflicts of interests and requires BBC employees to ensure that their outside activities neither conflict, nor could reasonably be regarded by others, as presenting a conflict of interest. (A1068 ¶ 7; A1083; *see also* A843-45.)

Specifically, under the BBC's *Conflict of Interest* policy, employees are required to complete a *Declaration of Personal Interest* form for a number of

particular activities, including (i) outside work which would or might interfere with their BBC work or gives or might give rise to a conflict of interest (actual or potential), (ii) membership services for, or acting on a board of directors or governing body of any charitable, not-for-profit, voluntary organizations or statutory bodies etc. which gives or might give rise to a conflict of interest (actual or potential), or (iii) any political involvement. (A1068-69 ¶ 8; A1085-86; A1091-96; *see also* A845.) Ahmed admits that he was aware of the BBC's Conflicts of Interest policy and requirements. (A843-45.)

In addition to the BBC's *Conflict of Interest* policy, the BBC also maintains a specific *Competitive Broadcasting* policy, which prohibits employees from participating in broadcasting by a competitor without express permission, confirmed in writing by the employee's Bureau Chief, **and** furthermore where such approval could **only** be granted in limited circumstances. This policy was in place in 2019. (A1069 ¶ 9; A1099; *see also* A843-45.) Ahmed admits that he was aware of the BBC's policy on *Competitive Broadcasting* and requirements. (A846; A851-52.)

Employees are required to report to BBC Human Resources ("HR") or certain other authorized individuals if they learn of violations of the BBC's *Conflicts of Interest* and *Competitive Broadcasting* policies. (A1069 ¶ 10.) Additionally, the BBC maintained specific editorial guidelines that required that an employee's external activities not undermine the public's perception of the BBC's impartiality,

integrity, independence, and objectivity, and to avoid external activities that could bring the BBC into disrepute. (A1069 ¶ 11; *see also* A847-48, 849-50; A1128-1174.) Ahmed admits that he was familiar with the BBC's editorial guidelines and requirements. (A847-50.) Consistent with those guidelines, for an authorized BBC interview of a head of state, consistent with its editorial guidelines and practices, the BBC editorial staff will review, plan, and vet an interviewer's line of questioning, coordinate with the other news desks, and ensure that at least one challenge question is asked. (A1069 ¶ 11; *see also* A1047-50; A1063-67; A847-48; A1128-1174.)

In 2015, Ahmed emailed the Washington D.C. Bureau Chief, Paul Danahar, to indicate that he was volunteering for a non-profit organization called Malam Darfur Peace and Development (“MDPD”), yet Ahmed never made any further written disclosure to the BBC about his charity work for MDPD, never disclosed to the BBC that he was the Founder and President of MDPD, and never completed the BBC's Declaration of Personal Interest form. (A1070 ¶ 13.) Ahmed was aware that he needed to divulge such non-BBC work to his Bureau Chief as he did here in 2015. (*Id.*) In or around April 15, 2019, Ahmed emailed various revolution leaders in Sudan, including the Minister of Culture and Information Faisal Muhammed Salih, about his vision for reforming Sudan state television and radio. (A875-76; A949-50; A989-90; A1128-74.) During his employment, Ahmed did not report this to the BBC. (A1070 ¶ 14.) Notably, Faisal was (and remains) a trustee of Ahmed's non-

profit, non-governmental organization, MDPD. (A882-83.) During his employment, Ahmed did not report this to the BBC. (A1070 ¶ 15.) In September 2019, Sudan TV contacted Ahmed asking if he was interested in helping build a public broadcasting system in Sudan and Ahmed further admits he explored assisting in that project while he was employed by the BBC. (A938-34; A1211.) During his employment, Ahmed did not report this to the BBC. (A1070 ¶ 16.)

D. Ahmed's Work at the BBC and Annual Vacation to Sudan

A few months after Ahmed joined the BBC in 2007, the only other reporter working at the Arabic Service Desk in the BBC's Washington D.C. Bureau left the BBC, and therefore Ahmed was only reporter at the Arabic Service Desk based in the BBC's Washington D.C. Bureau from that point forward through his termination. (A826-31.) Around that time, Ahmed began asking management from "time to time" to hire a second reporter to replace the reporter who had left the BBC and would also complain about his deployments "for a long time." (A930-37; A970-80.) Ahmed further admits that during his employment with the BBC he never complained of discrimination based on his race and/or national origin, and "never used the word discrimination." (A799; A951-53; A970-80.) Rather, Ahmed admits that the first time he asserted discrimination based on race and/or national origin or retaliation to anyone other than himself was with the filing of this lawsuit (*i.e.*, approximately one year after his termination) and noting "I said in myself I believe

it's discrimination but I did not spell it out." (*Id.*)

Throughout Ahmed's employment, the BBC provided Ahmed a Producer, Nadia Al Huraimy, (non-Black, non-Sudanese) who would support Ahmed, and she who would travel with him "[a]ll of the time" during his deployments outside of Washington D.C. (A831-33.)

From around 2010 through his termination, Ahmed's direct supervisor was Bassam Andari, Senior News Editor of BBC Arabic, who was based in London. (A831-33; *see also* A1027-28.) During this same period, Ahmed's Producer also reported to Andari. (A836-37.) During this same period, Andari reported to Sam Farah, Head of BBC News Arabic, who was based in London. (A835.) Ahmed was the only reporter in the Washington D.C. Bureau who reported to Andari. (A987-88.) Ahmed admits that during his employment with the BBC he lost his credentials at the White House after he did not go to the White House frequently enough to retain them. (A944-48.)

Since 2011, every year Ahmed would take an annual paid vacation to visit Sudan, typically lasting 4-5 weeks in length. (A991-92.) Given such length, the BBC would need to send a reporter from headquarters in London to the United States to be based in the Washington D.C. bureau to backfill Ahmed's position in his absence. (*Id.*) Ahmed admits that he is not aware of any other BBC employee, including any other employees at the Arabic Service Desk, who were permitted to

take a similar prolonged block of annual paid vacation. (A994-1002.)

E. Ahmed's Unauthorized Interview of Sudanese Prime Minister Hamdok for Competitors

In 2019, the BBC approved Ahmed's request to take his annual paid vacation to Sudan from approximately October 11 until December 12—a period of nearly two months. (A1070 ¶ 17.) On or around October 31, 2019, while Ahmed was on his paid vacation to Sudan, Andari contacted Ahmed about a Twitter post he had received announcing that Ahmed was the new Director of Sudanese National Television and picturing Ahmed in a meeting seated next to the Sudan Minister of Culture and Information, Faisal Muhammed Salih. (A868-81; A1175-87.) Ahmed responded to Andari by denying the report as just a “rumor” and told Andari that if he were to accept such a new position, he would give the BBC advance notice. (*Id.*; *see also* A1029-30.) That same day, Ahmed called Andari. (A864-65.)

Andari recounts that on the phone call Ahmed again denied the “rumor” that he had been appointed the new Director of Sudanese National Television, and while on the phone also asked Andari if he could be interviewed by a local TV station about the charitable work he was doing in his hometown Al Malam in Darfur. (A1031-33; A1071 ¶¶ 19-20, A1103; *see also* A864-65.)

On or around November 5, 2019, Ahmed conducted a more than 18-minute-long interview of the newly appointed Prime Minister of Sudan, Abdullah Hamdok (appointed in approximately August 2019). (A854-58; A1188-95; *see also* A1071 ¶

18.) Ahmed admits that the interview was broadcast locally on Al Fashir TV³ and later rebroadcast on Sudanese TV. (A855.) Ahmed admits that there is no mention of his charity MDPD or Ahmed conducting charitable work in the entire transcript of the interview, noting “I didn’t mention my charity.” (A855-59; A1188-95.) Indeed, a review of the broadcasted interview, or the English translated transcript provided by Ahmed, both reveal that: (i) Ahmed is conducting an interview of the Prime Minister—that is, Ahmed asking questions of the Prime Minister that the Prime Minister then answers; and (ii) that Ahmed’s charity is **not** mentioned at any point. (A1188-95.)

F. The BBC’s Investigation into Ahmed’s Unauthorized Interview and Ahmed’s Termination

On November 5, 2019, colleagues alerted Andari to various social media posts mentioning an interview conducted by Ahmed of Sudan Prime Minister Hamdok that was broadcast on Al Fashir TV in Darfur and broadcast on all national satellite channels later that same evening. (A1071 ¶ 19; A1102-12; *see also* A1034-46.) Also that day, the interview was posted online,⁴ available worldwide, and went viral.

³ Ahmed’s deposition transcript incorrectly states “Al Jazeera TV” rather than “Al Fashir TV”, however Ahmed did not make any errata to correct this error.

⁴ The broadcast of the interview was posted on Sudania 24 TV’s YouTube Channel on or around November 5, 2019, remains available to this day at https://www.youtube.com/watch?v=Dp4EYgP88_g, and has received more than 91,000 views and elicited hundreds of viewer comments. (A1071-72 ¶ 23.)

(A1071-72 ¶ 23.)

Andari promptly emailed BBC HR Manager Jill Wookey to report this information and attached a video clip from the interview along with various social media posts about Ahmed's interview of Prime Minister Hamdok. (A1071 ¶ 19; A1102-12.) Specifically, Andari indicated in his email to BBC HR that he had reached out to Ahmed about reports that he was chosen to head the Sudanese Radio and TV network, and that same day Ahmed had called him denying such reports as a rumor and asking if it was OK for him to be interviewed by a local TV station about the charitable work he was doing in his hometown Al Malam in Darfur. (A1071 ¶ 20; *see also* A1030; A1031-33.) Andari indicated that he told Ahmed he could be interviewed if he stuck to talking about this particular activity (*i.e.*, his charity work). (*Id.*) Andari also indicated in his email to BBC HR that he had been alerted about social media posts that Ahmed had interviewed Sudanese Prime Minister Hamdok on Al Fashir TV in Darfur and set to be broadcast on all national satellite channels. (A1071 ¶¶ 21-22; *see also* A1034-46.) Andari indicated he had verified the broadcast using BBC Ring Main (a BBC application providing access to the broadcasts of international television stations) and attached a clip of the broadcast interview showing the logo of Al Fashir TV. (*Id.*) Andari attached to his email to BBC HR (i) a Twitter post from Sudan TV that "veteran TV presenter" Ahmed's interview of Prime Minister Hamdok would be aired at 8:00 PM on

satellite channels with a picture from the interview, (ii) a Twitter post from the Prime Minister's official account announcing that the interview would be broadcast on a number of TV channels at 8:00 PM, and (iii) a post from Ahmed's own Facebook account, which lists Ahmed as the BBC Chief Washington Correspondent, announcing his interview of the Prime Minister with a picture from the interview. (A1071-72 ¶ 23; *see also* A1034-46.) Andari also indicated in his email to BBC HR that he had concern Ahmed's actions violated his obligations to the BBC and carried reputational damage to the BBC as Ahmed's interview was praiseworthy of the Sudanese Prime Minister who had been appointed by a military government in a country that is not known for its clean human rights record. (A1072 ¶ 24; *see also* A1034-46.)

On November 6, 2019, the BBC notified Ahmed via email that the BBC had become aware of his interview of the Prime Minister of Sudan on behalf of a Sudanese TV channel and demanded that he cease and desist from any and all competitive activity. (A892-95; A1196-97; *see also* A1072 ¶ 25.) The BBC also notified Ahmed that they were placing Ahmed on paid administrative leave with pay pending the outcome of the investigation into his activities. (*Id.*)

As part of the BBC's investigation, BBC HR coordinated with Ahmed to schedule a telephone interview with him. (A1003-06; A1222-24; *see also* A1072 ¶ 26.) On November 7, 2019, the BBC interviewed Ahmed over the telephone as part

of its investigation. (A890-92; A1073 ¶¶ 27-29; A1124-26.) During the interview, Ahmed told HR personnel that he had spoken with his supervisor, Andari, on October 31, and told Andari that he was going to have a “talk” with the Prime Minister of Sudan for his charity, and that it would be broadcast on local TV and that Andari said it was ok as long as Ahmed was not receiving any money. (A1073 ¶ 28; A1124-26; *see also* A864-68.) Notably, during the investigation interview, Ahmed insisted that he did not “interview” the Prime Minister of Sudan but merely had a “talk” with him. (A1073 ¶ 29; A1124-26.) While HR presented to Ahmed his own Facebook post referring to the “interview,” Ahmed insisted it was not an interview. (*Id.*)

As part of the BBC’s investigation, HR personnel also interviewed Andari. (A1073 ¶ 27; A1124-26.) During the interview, Andari indicated to the BBC that (i) Ahmed’s assertion that he had received permission for the interview was false, (ii) Ahmed never mentioned to Andari the Prime Minister or an interview of him of any kind, (iii) Andari would have never granted permission for such an interview, and (iv) if Andari had known that Ahmed had access to the Prime Minister of Sudan, he would have had Ahmed obtain an interview on behalf of, and to be broadcast by, the BBC. (A1073 ¶ 30; A1124-26.)

Based on its investigation, HR personnel concluded that Ahmed had engaged in competitive activities that seriously breached BBC policy and its editorial

guidelines amounting to gross misconduct and warranting immediate termination.

(A1073-74 ¶¶ 31-33.) Specifically, HR personnel determined that:

- Ahmed’s assertion that what was broadcast was not an “interview” but rather a “talk” was not credible;
- Ahmed’s assertion that his supervisor authorized the interview was not credible, particularly given that the alleged call during which Ahmed claimed he received permission from Andari followed an exchange of messages regarding rumors that Ahmed had taken a senior post in the Sudanese state television (something Andari was concerned about), and it simply did not make sense that Andari would be concerned about Ahmed leaving to join a Sudan broadcaster, but then authorize Ahmed to conduct an interview of the Prime Minister for such a broadcaster;
- Andari’s statement that Ahmed only told him that he would be interviewed about his charity work and denial that Ahmed had never mentioned the Prime Minister was credible;
- Ahmed’s interview was not consistent with BBC editorial guidelines and practices, including for a head of state interview not coordinating with BBC editorial staff to review, plan, and vet his line of questioning, coordinating with the other news desks, and ensuring that at least one challenge question is asked, which overall harmed the BBC’s reputation and perception of impartiality;
- Ahmed’s interview of the Prime Minister was newsworthy, broadcast on a number of competitive local and national television stations bearing the logo of such stations, and was promoted by both the Prime Minister and Ahmed on social media; and
- Sudan was an important media market to the BBC in the region and having a long-standing BBC journalist conduct an interview for competitors undercut the BBC’s business operations and reputation in the region and worldwide.

(A1073-74 ¶¶ 31-33.) Also, HR personnel determined that Ahmed’s conduct had seriously and grossly violated its *Conflict of Interest* and *Competitive Broadcasting* policies alongside its editorial guidelines, and that immediate termination of

employment was warranted given these circumstances. (*Id.*)

Subsequently, HR presented its findings and termination recommendation at a meeting with BBC Legal, Farah, and Farah's supervisor, Tarik Kafala, Head of Language, World Service Languages. (A1075 ¶ 34; *see also* Farah Dep. 21:3-22:10, 40:19-41:12.) Ultimately, Kafala accepted and approved the termination recommendation. (A1075 ¶ 35.)

On November 12, 2019, the BBC notified Ahmed that HR had concluded its investigation into Ahmed's interview and the BBC had decided to terminate his employment effective immediately. (A896-99; A1199; *see also* A1075 ¶ 36.) Ahmed admits that the BBC told him they terminated his employment for conducting an interview of Prime Minister Hamdok without approval for a competitive TV organization/broadcasting entity. (A853.) Ahmed admits that he did not have written permission from Andari to conduct the interview of Prime Minister Hamdok and further admits that he did not have the permission of the Washington D.C. Bureau Chief. (A860-63.) Ahmed admits that shortly after his termination in March 2020, Prime Minister Hamdok appointed Ahmed to be the head of the Sudan Broadcasting Corporation with responsibility for reforming and transforming state television and radio. (A841.) Ahmed admits that in that position, his boss was Faisal. (A882.) Ahmed now admits that his "talk" with the Prime Minister was in fact an interview, in front of a television camera, broadcast on

television. (A855.) To the BBC's knowledge, on no previous trips had Ahmed engaged in any similar competitive activity. (A1075 ¶ 38.) Ahmed admits that he does not know of any non-Black, non-Sudanese employees at the BBC who interviewed a politician in another country for a non-BBC affiliated TV station, but were not fired. (A930; A965-69.) Ahmed admits that his interview of Prime Minister Hamdok would be considered newsworthy by the BBC. (A864.)

Ahmed admits he cannot recall how much he was deployed by the BBC, including in 2019. (A840; A928.) Ahmed admits he has no knowledge of any deployment schedule for anyone else in the Arabic Service Desk or at the Washington D.C. Bureau. (A908-15; A917-29.) Ahmed admits he has been paid all of his wages by the BBC and is not owed any wages from the BBC and further admits "I didn't make any [wage] claim." (A953-54.)

V. STANDARD OF REVIEW

Despite the explicit requirements of D.C. Ct. App. R. 28(a)(10)(B), Ahmed does **not** identify anywhere in Appellant's Corrected Brief the standard of review that this Court should apply when reviewing either (i) the Superior Court's denial of his Motion to Enforce Settlement (Br. at 35-38), or (ii) the Superior Court's Amended Order Granting Defendants' Motion for Summary Judgment (Br. at 11-30.) Ahmed's failure to abide by the appellate requirements required by this Court for his appeal brief warrants this Court's summary dismissal of his appeal of each of

those issues on that basis alone. *See* D.C. Ct. App. R. 28(a)(10)(B).

Even if this Court forgives Ahmed’s refusal to comply with this Court’s Rules, the appropriate standard of review is an “abuse of discretion” standard for Ahmed’s challenge to the Superior Court’s Order denying Ahmed’s Motion to Enforce Settlement and Omnibus Order denying, in part, Ahmed’s Motion to Compel. *See Juul v. Rawlings*, 153 A.3d 749, 756-57 (D.C. 2017). The appropriate standard of review is a *de novo* standard for Ahmed’s challenge to the Superior Court’s Amended Order Granting Defendants’ Motion for Summary Judgment. *See Hsieh v. Formosan Ass'n for Pub. Affs.*, 316 A.3d 448, 453 (D.C. 2024).

VI. SUMMARY OF THE ARGUMENT

Applying the appropriate standards of review, this Court should affirm the correct decisions of the Superior Court. **First**, Chief Judge Lopez correctly exercised his discretion to deny Ahmed’s baseless Motion to Enforce Settlement given that Ahmed himself, through counsel, repeatedly admitted a critical condition of settlement was not satisfied—the BBC’s approval. **Second**, Judge Williams correctly exercised her discretion to not compel production of requests for certain records that did not comply with Rule 37, did not exist in the format sought, and had no bearing on the case. **Third**, Judge Williams did not err by granting summary judgment in favor of the BBC and dismissing all of Ahmed’s claims.

VII. ARGUMENT

A. The Superior Court Correctly Exercised Its Discretion to Deny Ahmed’s Baseless Motion to Enforce Settlement Given That Ahmed Himself Admitted a Critical Condition of Settlement Was Not Satisfied—the BBC’s Approval.

Even if this Court were to forgive Ahmed’s failure to include any statement establishing jurisdiction over Chief Judge Diaz’s Order in violation of D.C. Ct. App. R. Proc. 28(a)(5), this Court should affirm that Order on the substance. The Superior Court correctly exercised its discretion to deny Ahmed’s baseless Motion to Enforce Settlement given that Ahmed himself admitted that a critical pre-condition of settlement was not satisfied—the BBC’s approval. (A79-83.) Likewise, Chief Judge Diaz’s decision not to hold an evidentiary hearing and instead decide the motion on the papers, was not only a wholly appropriate exercise of his discretion, but also an entirely sensible preservation of judicial resources. (A80-81.)

First, Ahmed’s argument on appeal that Chief Judge Diaz applied the wrong legal standard by requiring Ahmed to establish a settlement by “clear and convincing” evidence is flat wrong. Indeed, Ahmed’s own cited authority in *Blackstone* expressly states that “[t]he party moving to enforce the purported agreement bears the burden of showing, **by clear and convincing evidence**, that the parties in fact formed a binding agreement.” *Blackstone v. Brink*, 63 F. Supp. 3d 68, 76 (D.D.C. 2014) (Jackson, J.) (emphasis added). Likewise, Ahmed’s argument that the “clear and convincing” evidentiary standard only applies to a hearing and not

motion papers is not only entirely unsupported by *Blackstone*, but also a made-up distinction without a difference. Ahmed completely ignores the reality that when deciding the Motion to Enforce Settlement, Chief Judge Diaz had before him (i) Ahmed’s declaration (A270-71), (ii) Ahmed’s counsel’s declaration and exhibits (A273-84),⁵ (iii) the BBC’s counsel’s declaration and exhibits (A301-16), and (iv) the parties’ joint court filings (A244-46; A248-49)—**all** which constitute evidence in their own right. Based on that ample evidence, Chief Judge Diaz properly exercised his discretion to deny the Motion to Enforce Settlement determining that Ahmed could not meet his “clear and convincing” burden as to the existence of a settlement in the first instance. *See Proctor v. Liberty Mut. Auto & Home Servs.*, 308 F. Supp. 3d 175, 176-77 (D.D.C. 2018) (“[S]uch a hearing is not necessary if the Court is persuaded on the basis of the briefing that a settlement agreement

⁵ While Ahmed’s counsel filed his declaration with the Superior Court under seal given that it contained specific monetary amounts of the parties’ settlement discussions and the Superior Court issued an Order sealing that record (A72), **in a flagrant disregard for the confidentiality of the record and to harass the BBC on appeal Ahmed has filed Mr. Fay’s declaration in open court in his joint appendix.** Ahmed’s abuse and harassment is intentional as he expressly identifies in his appeal brief that this declaration was “filed under seal by Order dated November 15, 2021, A72.” (Br. at 36.) Notably, Chief Judge Diaz expressly warned Ahmed and Ahmed’s counsel when sealing this record that “the Court is also cognizant of the fact that the parties have discussed this matter and that the sensitive nature of settlement discussions warrants caution when filing statements relating to such negotiations.” (A72.) This Court should promptly grant the BBC’s Motion to Seal filed contemporaneously with this brief, and further sanction Ahmed and Ahmed’s Counsel for their flagrant disregard of the confidentiality of this record.

exists.”). Indeed, Ahmed’s own cited authority contradicts his assertion that he was entitled to an evidentiary hearing:

[T]he existence or lack of factual disputes concerning the validity of a settlement agreement cannot, *ex ante*, require that the Court hold an evidentiary hearing to resolve a motion to enforce that agreement. Rather, the Court must first determine whether, despite whatever factual disputes may exist, the moving party has nevertheless carried the burden of proving the existence of a settlement agreement by clear and convincing evidence.

Samra v. Shaheen Bus. & Inv. Grp., Inc., 355 F. Supp. 2d 483, 494 (D.D.C. 2005).

Here, Chief Judge Diaz correctly determined a hearing was not necessary given that Ahmed could not meet his burden to show by “clear and convincing” evidence the existence of a settlement.⁶

Second, Chief Judge Diaz correctly concluded that Ahmed failed to meet his burden to show by “clear and convincing” evidence the existence of a settlement given that all of the evidence in the record—including Ahmed’s own evidence—indicated any settlement **was subject to the BBC’s approval** and that the BBC **never** approved such settlement. Specifically, the evidence in the record showed:

⁶ Indeed, federal courts routinely apply this same rubric. *See e.g., Hayes v. Safe Fed. Credit Union*, Civil Action No. 3:19-00881, 2020 U.S. Dist. LEXIS 124671, at *4-5 (D.S.C. July 15, 2020) (concluding “there was no settlement agreement to enforce, thus no evidentiary hearing was necessary” because “[t]he hearing is to protect a party from enforcement of a disputed agreement without an opportunity to be heard, rather than resolve a dispute over a Court’s determination of the lack of an agreement”); *Tang v. Putruss*, No. 06-12624, 2007 U.S. Dist. LEXIS 74567, at *9 (E.D. Mich. Oct. 5, 2007) (same).

- While Mr. Fay’s declaration asserts that a “settlement” was reached during a June 17, 2021 telephone call, in the very same paragraph of his declaration, he admits that on this same phone call the BBC’s counsel explained that settlement was “subject to approval” by the BBC’s corporate committee. (A274 ¶ 7.)
- Mr. Fay’s declaration further admits that the very next day he emailed the BBC’s counsel expressly qualifying—in *his own words*—that “[t]he settlement was subject to BBC corporate approval” (A274-75 ¶ 8).
- Mr. Fay’s declaration further admits that on June 21, 2021, the BBC’s counsel wrote to say “I expect to hear back regarding whether we have BBC approval by the end of the week.” (A275 ¶ 10).
- Mr. Fay’s declaration further admits that on June 25, 2021, the BBC’s counsel conveyed orally and in writing that the BBC committee did **not** approve the settlement. (A276 ¶ 13).
- The Consent Motion for Stay filed by the parties on June 21, 2021, expressly stated that any settlement was “subject to final approval from Defendants’ representatives.” (A244.)
- The Joint Motion for Continued Stay filed by the parties on August 6, 2021, expressly stated “[t]o date the Parties have been unable to reach a settlement in the above-captioned lawsuit but are still continuing to talk in earnest.” (A248-49.)
- The Joint Status Report filed by the parties on September 16, 2021, expressly stated the parties were still in “settlement discussions” and were attending mediation. (A251-52.)
- The declaration by the BBC’s counsel explicitly stated that at no point was any settlement reached or agreed to by the BBC. (A301-02.)

Relying on Mr. Fay’s own sworn words, Chief Judge Diaz correctly concluded that any settlement was expressly “subject to approval” by the BBC and that Ahmed failed to show by “clear and convincing evidence that this condition of a settlement

was satisfied.” (A80, citing *Blackstone*, 63 F. Supp. 3d at 76.) See *Golden v. Mgmt. & Training Corp.*, Civil Action No. 16-1660, 2019 U.S. Dist. LEXIS 198306, at *11-12 (D.D.C. Nov. 15, 2019) (“When the parties to the agreement themselves are not certain as to what was negotiated and agreed upon, the Court cannot find that the burden of proving the meeting of the minds by clear and convincing evidence was met.”). In fact, given that all of the evidence—including Ahmed’s own evidence—supported the BBC’s position, Chief Judge Diaz noted it was “a close call” on whether to sanction Ahmed and his counsel for bringing such a motion in the first place (albeit Chief Judge Diaz graciously decided not to sanction them). (A81-82.) Therefore, the Superior Court properly exercised its discretion to deny Ahmed’s Motion to Enforce Settlement and this Court should affirm that correct decision.

B. The Superior Court Correctly Exercised Its Discretion to Not Compel Production of Requests for Records That Did Not Comply with Rule 37, Did Not Exist in The Format Sought, and Had No Bearing on The Case.

Even if this Court were to forgive Ahmed’s failure to include any statement establishing jurisdiction over Chief Judge Williams’ Omnibus Order in violation of D.C. Ct. App. R. Proc. 28(a)(5), this Court should affirm that Order on the substance.

As a threshold matter, Ahmed asserts on appeal that Judge Williams refusing to compel production of certain deployment records and work schedules prevented him from being able to establish a *prima facie* case of discrimination to defeat summary judgment. (Br. at 13-14, 32-34.) Yet **nowhere** in Ahmed’s opposition

papers to the BBC's Motion for Summary Judgment before the Superior Court did Ahmed ever raise such an argument or suggest his defenses were hampered by that discovery ruling. Rather, Ahmed has engineered this argument for the first time on appeal. Therefore, the Court must reject Ahmed's argument as improper being raised for the first time on appeal. *See Thornton v. Norwest Bank of Minn.*, 860 A.2d 838, 842 (D.C. 2004) ("It is fundamental that arguments not raised in the trial court are not usually considered on appeal").

Even were the Court to consider this argument, Judge Williams correctly exercised her discretion to not compel production of certain deployment and/or work schedule records and her decision should be affirmed. *See Franco v. District of Columbia*, 39 A.3d 890, 896 (D.C. 2012) ("The trial court has broad discretion to weigh the factors in deciding whether discovery should be compelled." (internal quotations and citation omitted)). As an initial matter, Ahmed's characterization of Judge Williams' discovery ruling is incorrect. The reality is that Judge Williams' May 12, 2022 Omnibus Order explicitly references the representations Ahmed's counsel made at the May 11, 2022 hearing as an integral part of her ruling and the Omnibus Order summarizes her rulings from the bench at that hearing. Yet Ahmed entirely omits from his appeal brief this broader context and, despite the BBC's repeated requests, Ahmed refused to obtain or include the May 11, 2022 hearing transcript in the joint appendix. Ahmed's omission is intentional. Judge Williams

Omnibus Order read alongside her rulings from the bench at the May 11, 2022 hearing reveal the baselessness of Ahmed’s false assertion of error on appeal. Accordingly, the BBC has obtained and includes the May 11, 2022 hearing transcript in its supplemental appendix.⁷

First, Judge Williams was absolutely correct that Ahmed’s Motion to Compel did **not** comply with the D.C. Rules of Civil Procedure concerning discovery motions, and she properly exercised her discretion to dismiss Ahmed’s motion for such failure. Specifically, Rule 37(a)(1)(D) requires:

(D) Format of Motion to Compel. Any motion to compel discovery must set out verbatim the question propounded and the answer given, or a description of the other discovery requested and the response to this request. The motion must also set out the reason or reasons the answer or response is inadequate.

D.C. Super. Ct. Civ. R. 37(a)(1)(D). Despite these explicit requirements, Ahmed’s Motion to Compel did not set out **any** of the disputed interrogatories or document requests, let alone any of the BBC’s objections and answers. (A487-500.) Rather, Ahmed’s Motion to Compel reads as a convoluted stream of consciousness, that neither identifies what specific answers and/or records he was seeking or how what

⁷ Early in this appeal, after Ahmed’s counsel filed his Statement Regarding Transcripts on May 5, 2023, indicating “[n]o transcripts needed for this appeal”, the BBC filed a Notice Concerning Appellant’s Statement Regarding Transcripts identifying the importance of the May 11, 2022 hearing transcript. Despite this, Ahmed refused to include the May 11th transcript in his joint appendix, forcing the BBC to incur the cost of obtaining the transcript for its supplemental appendix.

the BBC had produced was insufficient. In fact, specifically for Request Nos. 2 and 3 (the only request for which Ahmed focuses on appeal), Ahmed merely argued in his Motion to Compel:

As noted, in Plaintiffs Complaint, he alleges that part of the discriminatory and retaliatory treatment that he was subjected to includes a disproportionate number of deployments, in comparison to non-Black and non-African employees at BBC. *See* Compl., ¶¶ 36-40. It follows, that in his Request No. 2 and 3, Plaintiff asks about documents responsive to the deployments and work schedules of BBC Washington Bureau personnel during his employment, limited to a start date of 2012. Unsurprisingly, Defendants refuse to respond to each request entirely and deny that such production has any bearing on Plaintiff's claim. *See* Exh. 5 at 3-4. Additionally, despite Defendants' balking, conditioning production upon the signatures of Plaintiff's counsel to a confidentiality agreement, they now seek to shield production due to its confidential nature, thereby raising questions as to the purpose of their previous delay. *Id.*

(A495.) Obviously, Ahmed failed to comply with the verbatim requirement of Rule 37. Yet remarkably, Ahmed argues on appeal that Judge Williams “was simply wrong” and that she abused her discretion by denying his motion because he directed the court to Request Nos. 2 and 3 in his brief and attached the full responses as an exhibit. (Br. at 32-33.) Putting aside that Ahmed cites entirely no legal authority whatsoever to support this baseless argument, the reality is that judges on the D.C. Superior Court—just like Judge Williams—routinely and appropriately deny motions to compel where the moving party fails to follow this verbatim requirement in Rule 37. *See e.g., Bet Acquisition Corp. v. District of Columbia*, Civ. Act. Nos. 2018 CA 002023 B, 2018 CA 006351 B, 2019 D.C. Super. LEXIS 118, at *3 (Jul.

10, 2019) (Puig-Lugo, J.) (“[T]he District failed to set out verbatim the question propounded and the answer given to illustrate the reason or reasons the answer or response was inadequate pursuant to Rule 37(D).”); *Bell v. Taplin*, Civ. Act. Nos. 2017 CA 005643 M, 2017 CA 006386 M, 2019 D.C. Super. LEXIS 192, at *4 (Aug. 19, 2019) (Higashi, J.) (same).

Further, as a practical matter, Ahmed’s Motion to Compel not only failed to abide by Rule 37 (making the discovery he was seeking unclear), but also at the May 11, 2022 hearing Judge Williams gave Ahmed’s counsel an opportunity to articulate what discovery he was seeking with specificity and Ahmed’s counsel could **not** articulate what that was. (SA44-49.) In fact, when Judge Williams gave Ahmed’s counsel this opportunity to provide specificity, he responded saying “[s]ome of this has been superseded, I don’t know if satisfactorily or not, by the production that [the BBC] did give us after [filing our Motion to Compel].” (SA49-50.) In other words, while Ahmed’s counsel was arguing the BBC should produce more records, he was unaware of what records the BBC had already produced and whether or not they were satisfactory. Quite simply, Ahmed’s failure to provide clarity and to abide by Rule 37 cannot constitute reversible error. Rather, the Superior Court’s denying Ahmed’s Motion to Compel for Ahmed’s failure to abide by Rule 37 or to provide specificity on the discovery sought, was wholly appropriate and within its discretion, and this Court should affirm that correct decision. (A90-91.)

Second, Judge Williams correctly exercised her discretion to not compel production of certain compilations, summaries, and reports of deployment and scheduling records because those records did not exist. It is well established that “[t]o the extent that documents do not exist, they are not discoverable.” *Davis v. Mnuchin*, No. 1:08-cv-00447, 2018 U.S. Dist. LEXIS 233962, at *45 (D.D.C. Nov. 13, 2018); *see also Ascom Hasler Mailing Sys. v. United States Postal Serv.*, 267 F.R.D. 1, 8 (D.D.C. 2010) (finding “parties produce documents that ‘are already in existence’” and “a party cannot be required ‘to prepare, or cause to be prepared,’ documents not already in existence solely to satisfy the requests of an opposing party” (citations omitted)).

At the May 11, 2022 hearing, the BBC’s counsel directed the Court to the BBC’s certified answer to Ahmed’s requests indicating there is no way to get the requested information. (SA51.) The BBC’s counsel also indicated that they had met with the person at the BBC who would have knowledge of those records, who indicated there is no centralized database and no way to obtain accurate and complete information for the requested summaries of deployment records for the journalists, largely due to nature of breaking news. (SA50-51.) The BBC’s counsel also indicated that when Ahmed’s counsel brought up these records to various BBC witnesses that he deposed, each witness confirmed there was no way to get that information. (*Id.*) In light of that, Judge Williams explained to Ahmed’s counsel

that the Court could not compel records that do not exist:

THE COURT: I think the problem, Mr. Fay, is that the person to whom they spoke, who would be in charge of sending out or keeping track of those deployments, has indicated -- and it seems that other folks have indicated under oath -- that there is no track of it. There's breaking news. They tell someone to go, they have to go. So at most, there will probably be a travel agency who keeps all these -- who has documentation of a bunch of different plane tickets, perhaps. But we have no way of knowing what those were for, under what circumstances they were sent. And I think it's ideal -- Mr. Fay, it would be ideal, I guess, if the BBC wrote down every time they sent someone somewhere, and how long they were there, and what they were covering, and how much it cost. But it sounds like, according to Mr. McDonald and the witnesses that were deposed, that just doesn't exist.

(SA53-55.) Judge Williams appropriately exercised her discretion to deny Ahmed's impossible request and this Court should affirm that correct decision. *See Ascom Hasler Mailing Sys.*, 267 F.R.D. at 8 ("Lack of evidence showing that a producing party is in fact in possession of a document is grounds to deny a motion to compel.").⁸

Third, Judge Williams correctly exercised her discretion to not compel production of the certain deployment and scheduling records because those records had no bearing on the case. "A request may be denied if it is overly broad or is 'not warranted by [the] facts and circumstances' of the case." *Sibley v. St. Albans Sch.*,

⁸ Even worse, while the BBC produced to Ahmed the name of the current and former BBC employees with knowledge of those records and also the name of the BBC's third-party travel agency, Ahmed never deposed those persons or subpoenaed those third-party records. (SA50-52.) Ahmed's failure to prosecute discovery on these avenues further warrants denying his appeal on this issue. (*Id.*)

134 A.3d 789, 799 (D.C. 2016) (alteration in original) (citation omitted). At the May 11, 2022 hearing, the BBC's counsel explained that Ahmed was the only correspondent at the Arabic Service Desk in Washington D.C. and so comparing him to others in different departments in Washington D.C. was completely irrelevant. (SA52-53.) When the Court questioned Ahmed's counsel about the relevance of the request, Ahmed's counsel was unable to articulate a cogent reason why a journalist being deployed more than his colleagues supported his discrimination claim. (SA45-49.) In fact, the Court observed that "some would argue that [a journalist] being deployed more and sent out on more stories is actually a good thing and not discriminatory." (SA48.) This Court should reject Ahmed's appeal on this issue on that basis alone.

C. The Superior Court Did Not Err By Granting Summary Judgment in Favor of the BBC and Dismissing All of Ahmed's Claims.

The Superior Court correctly granted summary for the BBC and dismissed all of Ahmed's claims. *First*, the Superior Court correctly determined that Ahmed cannot establish a *prima facie* case of discrimination because he lacks any competent, admissible evidence supporting a finding of an inference of race and/or national origin discrimination. *Second*, the Superior Court correctly determined that Ahmed cannot establish a *prima facie* case of retaliation as Ahmed did not engage in any protected activity, nor can he establish any causal connection to his termination. *Third*, the Superior Court correctly determined that even if Ahmed

could somehow establish a *prima facie* case of discrimination and/or retaliation (which he cannot), dismissal of his DCHRA claims was still warranted because the BBC terminated Ahmed for legitimate, non-retaliatory, and non-discriminatory reasons, and he cannot establish pretext. *Finally*, the Superior Court correctly determined that Ahmed's wage claim fails as Ahmed admitted he received all wages owed and did not bring a wage claim, and Ahmed's counsel's declaration cannot be used to contradict his client's testimony to save his claim from dismissal.

1. The Superior Court Correctly Determined Ahmed Cannot Establish a *Prima Facie* Case of Discrimination.

During his deposition, Ahmed testified that his discrimination claim is based on only three purported circumstances: (1) his assertion that the BBC's investigation into his misconduct was unfair, (2) his assertion that he heard, via hearsay, a rumor that his boss's boss, Sam Farah, wanted to get rid of him, and (3) his assertion that he was excessively deployed (i.e., sent away from D.C. to cover news for the BBC). (A885-89; A908.) Now on appeal, Ahmed abandons reason #2, and largely regurgitates his arguments below with regard to #1 and #3. Yet as the Superior Court correctly determined, Ahmed's arguments fail, and this Court should affirm the Superior Court's correct dismissal of Ahmed's discrimination claim.

a. *The Superior Court Correctly Rejected Ahmed's Speculative Deployment Theory of Discrimination.*

The Superior Court correctly determined that Ahmed's assertion that he had

excessive deployments due to his race and/or national origin is speculative, unsupported, and faulty as a matter of law. (A158-59.) **First**, Ahmed admitted he cannot recall how often he was deployed during the relevant period. As such, his characterization of his deployments as “excessive” is entirely speculative, unsupported, and baseless for evidencing discrimination under the DCHRA. *See Johnson v. District of Columbia*, 225 A.3d 1269, 1281 (D.C. 2020) (affirming summary judgment for employer on employee’s discrimination claim finding employee’s assertion that her workload was excessive was a “mere conclusory allegation[.]” and she failed to produce “nearly enough evidence to demonstrate that her workload increased to the point where it would become an act of discrimination cognizable under the DCHRA”). While on appeal Ahmed makes much of “Exhibit 3 to his Opposition” purportedly summarizing Ahmed’s deployments, a close review of “Exhibit 3” reveals it is nothing more than an unauthenticated summary of discovery records prepared by Ahmed’s counsel without even attaching the underlying discovery records themselves (only Bates numbers). (A1298-1301.) In other words, “Exhibit 3” is hearsay and the Bates records are not in the record, warranting dismissal. Yet even taking “Exhibit 3” at face value, what is listed can hardly be said to be “excessive” but rather shows from August 2018 to October 2019, Ahmed was assigned to approximately 3-6 news stories a month, and then deployed

only approximately 6 times (5 of which were in North America and 1 to France).⁹

Second, Ahmed not only admitted that he has no knowledge of his own deployment schedule, but also the deployment schedule for *anyone else* in the U.S. Arabic Desk or at any other desk in the Washington, D.C. Bureau. In other words, by his own admission, he cannot point to any similarly situated comparator concerning deployments. *See Miller v. United States*, 603 F. Supp. 1244, 1249 n.15 (D.D.C. 1985) (concluding that summary judgment was appropriate where the plaintiffs “rely upon sweeping and conclusory allegations of discrimination, and they have largely failed to allege specific names, dates, or underlying facts to establish timely *prima facie* claims.”).

Rather, the record contains a counter-comparator that undermines Ahmed’s speculative theory. Ahmed admitted that his non-Black, non-Sudanese Producer (reporting to the same supervisor as Ahmed) had the same deployment schedule as him. Thus, the only person as to whom Ahmed has any personal knowledge of deployments is outside both protected classes, and had the same deployments. This fact sinks Ahmed’s claim.

⁹ Moreover, as a logical matter, Ahmed’s deployment assertions make no sense. How can BBC’s alleged decisions to provide Ahmed more deployment opportunities than others, and giving him sole responsibility for coverage over the entire Americas for the Arabic Service Desk, be discriminatory? What journalist would not want more news coverage opportunities? Such alleged circumstances actually cut against any inference of discrimination.

Third, Ahmed’s deployments cannot possibly support an inference of discrimination for additional reasons. It is undisputed that Ahmed was the only reporter at the U.S. Arabic Desk, such that there are no similarly-situated comparators.¹⁰ Ahmed’s conclusory, speculative assertions attempt to compare his deployments to other reporters **at the Washington D.C. Bureau** (**not** the Arabic Service Desk for which he worked), but those reporters worked at entirely different news desks, did not hold the same title, and had different supervisors. Indeed, Ahmed was the **only** reporter at the U.S. Arabic Desk reporting to Andari in London (who oversaw reporters at the Arabic Service Desk in bureaus worldwide). (A826-33; *see also* A1027-28.) Thus, the other reporters at the Washington D.C. Bureau for whom Ahmed bases his entire theory of discrimination, are not similarly-situated as a matter of law. *See Johnson*, 225 A.3d at 1280 (concluding that a comparator is “similarly situated” only “when all of the relevant aspects of the plaintiff’s employment situation are nearly identical to those of the other employee.”).

Put simply, Ahmed has no evidence that any difference in deployments

¹⁰ Unlike Ahmed’s cited *Abdu-Brisson v. Delta Air Lines, Inc.*, 239 F.3d 456 (2d Cir. 2001), where 488 former Pan Am pilots established a *prima facie* case of age-discrimination without comparator evidence by offering evidence of repeat discriminatory comments made by a supervisor, Ahmed offers no admissible record evidence of any discriminatory remarks made by his supervisors. Contrary to Ahmed’s argument that the Superior Court “ignored” *Abdu-Brisson* (Br. at 17), Judge Williams specifically considered that authority and found Ahmed failed to make the requisite *prima facie* showing.

existed, let alone being related to his race or ethnicity. Thus, this Court should affirm the Superior Court's correct decision dismissing Ahmed's discrimination claim.

b. The Superior Court Correctly Concluded the Sequence of Events Surrounding Ahmed's Termination Did Not Support Any Inference of Discrimination.

The Superior Court correctly concluded the sequence of events surrounding Ahmed's termination did not support any inference of discrimination. (A159-60.) While on appeal Ahmed attempts to reframe the independent HR investigation led by BBC HR as "Farah's investigation" (Br. at 18-21), this is a red herring as the undisputed record shows Farah was **not** involved in HR's investigation **nor** the ultimate decision-maker. Rather, the undisputed record shows that BBC HR (not Farah) investigated and recommended termination, and that Tarik Kafala (not Farah) approved that termination recommendation. These undisputed facts destroy Ahmed's argument on appeal and underscore the correct decision of the Superior Court.

Moreover, as the Superior Court determined, Ahmed cannot point to any evidence whatsoever that the BBC's investigation or his termination were motivated by his race and/or national origin beyond his own conclusory, unsupported statements. *See Stoyanov v. Winter*, 643 F. Supp. 2d 4, 13 (D.D.C. 2009) ("naked opinion, without more, is not enough to establish a *prima facie* case of [] discrimination" and "[c]onclusory assertions that [defendant's] state of mind and

motivation are in dispute are not enough to withstand summary judgment.” (first and third alteration in original) (emphasis added) (internal quotations and citation omitted)). Rather, the undisputed record shows that, even though Ahmed’s misconduct was obvious, **because it was broadcast on local and national competitor TV networks and online**, the BBC still conducted an independent investigation, over a 7-day period, and then presented the investigation findings to BBC management and legal for review before reaching the termination decision. During the investigation, the BBC placed Ahmed on paid administrative leave, called Ahmed to schedule a telephone interview at a convenient time, and subsequently interviewed him to get his side of the story. HR also interviewed Ahmed’s supervisor, Andari. These undisputed events not only fail to support any inference discrimination, but also show the BBC acted in a non-discriminatory manner. *See Parker v. Amtrak*, 214 F. Supp. 3d 19, 29 (D.D.C. 2016) (granting summary judgment to employer finding employee’s “[s]imply saying the investigation was fundamentally flawed does not make it so.”). Thus, this Court should affirm the Superior Court’s correct decision.

2. The Superior Court Correctly Determined Ahmed Cannot Establish a *Prima Facie* Case of Retaliation.

The Superior Court correctly determined that Ahmed did not establish a *prima facie* case of retaliation as he did not engage in protected activity and could not establish causation. This Court should affirm that correct decision.

a. The Superior Court Correctly Determined Ahmed Did Not Establish Any Protected Activity.

The Superior Court correctly determined Ahmed did not establish any protected activity. (A161-63.) To constitute “protected activity” under the DCHRA, Ahmed must establish that (i) he had a “reasonable good faith belief” that the BBC violated the DCHRA, and (ii) the BBC “must be aware of the activity.” *See Ukwuani v. District of Columbia*, 241 A.3d 529, 546 (D.C. 2020) (internal quotations and citation omitted). “In short, the onus is on the employee to clearly voice [his] opposition to receive the protections provided by the [DCHRA].” *Howard Univ. v. Green*, 652 A.2d 41, 48 (D.C. 1994) (finding for employer because plaintiff did not engage in protected activity when she complained of favoritism, and only later claimed discrimination). Ahmed cannot meet his burden.

The Superior Court correctly determined that Ahmed admitted that at no point during his employment did he complain of race and/or national origin discrimination and “never used the word discrimination.” In fact, Ahmed stated that the first time he raised any such complaints to anyone was with the filing of this lawsuit noting “I said in myself I believe it’s discrimination but I did not spell it out.” (A799; A951-53; A970-78; A970-80.) Therefore, by his own admission, Ahmed cannot establish that he engaged in any protected activity as a matter of law. *See Ukwuani*, 241 A.3d at 547 (concluding that “[e]ven if appellant believed that the new position discriminated against [him] because of race or national origin, his actual complaint

to his employer did not reveal any such belief; thus, the 2013 complaint was not a protected activity under the [DC]HRA and it cannot support appellant's retaliation claim." Ahmed's mere conclusory assertion that he made general complaints to his supervisor about deployments and/or regarding the BBC hiring an additional reporter at the U.S. Arabic Desk is not "protected activity" under the DCHRA. *See Vogel v. D.C. Off. of Planning*, 944 A.2d 456, 464 (D.C. 2008) ("It is not enough for an employee to object to favoritism, cronyism, violation of personnel policies, or mistreatment in general, without connecting it to membership in a protected class....").

On appeal, Ahmed heavily relies on a federal Maryland district court case *Jones v. United Health Grp.*, Civil No. JKB-17-3500, 2019 U.S. Dist. LEXIS 71704, at *33-43 (D. Md. Apr. 29, 2019) to argue that because the BBC's news desks were organized by language (i.e. Arabic, Persian, English-speaking, Russian), that makes Ahmed's purported workplace complaints now protected activity. (Br. at 22-23.) This is a red herring. Not only does Ahmed fail to identify any admissible evidence that staffing decisions at the Arabic or other language desks were made based on race, but the reality is that organizing news desks by language is based on the purely lawful reasons, such as ensuring target audience can understand the content. Likewise, the fact that a journalist works at a particular language desk does not necessarily indicate anything about their race and/or national origin (i.e. being

assigned to the Russian desk does not necessarily mean the journalist is Caucasian or of Russian origin). As the Superior Court explained, *Jones* is completely distinguishable from Ahmed given that none of Ahmed's complaints "were accompanied by comparisons between himself and other individual reports in the D.C. Bureau," but rather were "related to the general nature of the workplace." (A122.) Thus, this Court should affirm the Superior Court's correct decision.

b. The Superior Court Correctly Determined Ahmed Did Not Establish Causation.

The Superior Court correctly determined Ahmed did not establish causation. (A164.) Ahmed asserts that he began asking the BBC to hire another reporter for the U.S. Arabic Desk circa 2007, more than 12 years *prior* to his termination. Similarly, Ahmed indicated that he complained of his deployments "for a long time." (A952.) Such an attenuated timeline cannot support any causal connection whatsoever. *See e.g., Best v. District of Columbia*, No. 20-1134, 2022 U.S. Dist. LEXIS 48120, at *23-25 (D.D.C. Mar. 17, 2022) (gap of 3.5 months too attenuated to support a causal connection for retaliation under DCHRA); *Taylor v. Solis*, 571 F.3d 1313, 1322 (D.C. Cir. 2009) (2.5 month interval insufficient to show causal connection). Given that attenuated timeline, Ahmed cannot establish causation and this Court should affirm the Superior Court's correct decision.

3. The Superior Court Correctly Determined the BBC Terminated Ahmed for a Legitimate, Non-Discriminatory, Non-Retaliatory Reason and Ahmed Failed to Establish Pretext.

The Superior Court correctly determined that even if Ahmed could somehow establish a *prima facie* case of discrimination and/or retaliation (which the Superior Court found he could not), Ahmed's DCHRA claims still fail because the BBC terminated Ahmed for the legitimate, non-discriminatory, non-retaliatory reason that Ahmed conducted an unauthorized, competitive interview of the Sudan Prime Minister in violation of BBC policies, and Ahmed cannot establish such reason is pretextual. (A164-65.) On appeal, Ahmed does not argue that the BBC did not honestly believe its articulated reason for his termination. In fact, he concedes this is precisely the reason the BBC gave him for his termination. Rather, Ahmed argues that the BBC's proffered reason for his termination is false. Ahmed's argument misses the point.

When "[e]valuating an employer's asserted reason for a discharge, [the Court] ask[s] not whether the employer was objectively correct in discharging the employee but instead whether 'the employer honestly believes in the reasons it offers.'" *Chan Chan v. Children's Nat'l Med. Ctr.*, No. 18-2102, 2021 U.S. Dist. LEXIS 3550, at *21 (D.D.C. Jan. 8, 2021) (alterations in original) (citations omitted). Put another way, Ahmed had to show that the BBC "lacked an honest belief" in the basis for the termination decision. *Mosleh v. Howard Univ.*, No. 1:19-cv-0339, 2022 U.S. Dist.

LEXIS 55650, at *40-41 (D.D.C. Mar. 28, 2022) (dismissing an employee’s retaliation claim under the DCHRA noting that even if the employer violated the procedures outlined in its policy the employee failed to present evidence that the employer did not honestly believe the non-retaliatory basis for its decision). As the Superior Court properly determined, Ahmed failed to meet this burden.

Ahmed does not dispute that BBC HR conducted an investigation, determined that Ahmed did not have Andari’s permission, and recommended termination to Kafala who approved same. Ahmed offers **no** evidence to dispute any of these facts, and Ahmed actually admits that the BBC’s stated reasons are precisely what it communicated to him when it terminated him. Instead, Ahmed argues on appeal that the Superior Court should have credited his version of events—that he had oral permission from Andari to interview Prime Minister Hamdok for a competitor network (Br. at 26-27)—yet under the law pretext is focused on what the BBC honestly believed and Ahmed can point to no evidence of such. *See George v. Leavitt*, 407 F.3d 405, 415 (D.C. Cir. 2005) (“[A]n employer’s action may be justified by a reasonable belief in the validity of the reason given even though that reason may turn out to be false.”).

Even so, the undisputed record shows that the BBC’s *Competitive Broadcasting* policy explicitly required anyone seeking to work for a competitor obtain permission “confirmed in writing by their Bureau Chief,” and Ahmed admits

that he did **not** have **written** permission from anyone (only purportedly oral permission from Andari), and **no permission (oral or written) from the D.C. Bureau Chief whatsoever.** In other words, even putting aside what the BBC honestly believed when it terminated Ahmed (which is the correct legal analysis), by Ahmed's own admission he violated the BBC's policies. This ends Ahmed's case and warrants this Court affirming the Superior Court's correct decision.

Moreover, under the law, BBC HR is absolutely permitted to use its business judgment to determine that Andari's statement was credible and that Ahmed had **not** received permission to conduct the competitive interview¹¹ (only permission from Andari for Ahmed to be interviewed by a local TV station about his charitable work).¹² This is the BBC's prerogative, to use its good faith, business judgment to decide between two competing versions of events. *See Bilal-Edwards v. United*

¹¹ Despite repeatedly referring in his Complaint (A22 ¶¶ 15-16) and deposition (A855-58) to his "interview" of the Prime Minister, and his own produced transcript being titled an "interview" (A1188-95), Ahmed argues his interview was not actually an "interview" but more "casual." (Br. at 27.) This Court must reject this "sham" distinction contradicting his own testimony and documents. In any case, the label Ahmed chooses is irrelevant, as the BBC is entitled to use its business judgment to determine it was an interview in violation of its policies.

¹² Ahmed wrongly asserts that when Farah deciding to terminate Ahmed he "erroneously believed Ahmed's discussion with Prime Minister Hamdok was the first interview with Hamdok since" he became Prime Minister. (Br. at 26.) **First**, Ahmed's cited portions of Farah's deposition testimony are not in the record. **Second**, this is a red herring as the undisputed record shows Farah was **not** involved in HR's investigation **nor** the ultimate decision-maker.

Planning Org., 15 F. Supp. 3d 1, 13 (D.D.C. 2013) (“[A] court ‘may not second guess an employer’s personnel decision absent demonstrably discriminatory motive.’” (citation omitted)). Ahmed’s position amounts to his self-serving dispute **not** with the veracity of BBC’s reasons, but with whether the BBC should have come to that conclusion. Most terminated employees disagree with their employer’s decision to terminate, but such disagreement does not raise an issue of pretext as a matter of law. Nonetheless, Ahmed admits to virtually all of the underlying conduct that led to his termination—while on paid vacation, he conducted an interview of an important political figure that was broadcast by BBC competitors and promoted by Ahmed on social media (with more than 91,000 views). This Court should affirm on that basis.

Finally, Ahmed admits that he cannot identify any other BBC employee (similarly situated or otherwise) who was not terminated for engaging in similar misconduct (*i.e.*, interviewing a politician in another country for another TV station). *See McGill v. Munoz*, 203 F.3d 843, 848 (D.C. Cir. 2000) (holding plaintiff failed to establish pretext where she “offered no evidence” of any employees with similar misconduct who were treated differently). This reason alone forecloses Ahmed from establishing pretext further warranting that this Court affirm the decision below.

4. The Superior Court Correctly Dismissed Ahmed’s Wage Claim.

While the Superior Court initially denied summary judgment on Ahmed’s

wage claim based on a declaration from Ahmed's counsel characterizing as wages a supposed deposit from the BBC on an unauthenticated bank record (not attached to any of the summary judgment papers), upon reconsideration, the Superior Court appropriately granted summary judgment on Ahmed's wage claim acknowledging that Ahmed's counsel's speculation about the bank statement was insufficient to create a genuine issue of material fact. (A167-69.) Now on appeal, Ahmed asks this Court to errantly rely on his counsel's speculative declaration to revive his wage claim. This Court must reject Ahmed's invitation and instead affirm the Superior Court's correct dismissal.

During his deposition, Ahmed testified, under oath, that he was paid all wages by the BBC and "didn't make any [wage] claim." (A954.) Ahmed's testimony accords with his damages calculation he produced in discovery showing **no** asserted WPCA damages. (A1221) This evidence alone ends the inquiry on Ahmed's wage claim and warrants affirming the Superior Court's dismissal of the claim.

Likewise, a declaration from Ahmed's counsel contradicting his client's testimony cannot create a triable issue and must be completely disregarded. (A1452-53.) Under the well-established "sham affidavit" doctrine, "a party 'cannot create or resurrect a genuine issue of material fact and thereby defeat summary judgment by filing a self-serving affidavit that contradicts previous sworn testimony.'" *Am. Postal Workers Union, AFL-CIO v. United States Postal Serv.*, 65 F. Supp. 3d 134,

148 (D.D.C. 2014) (citations omitted). Here, the circumstances are even more objectionable than the typical “sham affidavit” scenario. Ahmed is not offering a declaration to contradict his sworn deposition testimony that he abandoned his WPCA claim or his damages exhibit showing no WPCA damages, but rather it is Ahmed’s counsel offering his own “sham” declaration to try to contradict his client’s testimony. *See Bruder v. Moniz*, 51 F. Supp. 3d 177, 196 (D.D.C. 2014) (“But defense counsel’s unsworn statements made during a client’s deposition are not evidence.”). This is dispositive of Ahmed’s WPCA and this Court should affirm on that basis alone.

Even more fundamental, Ahmed’s counsel’s characterization of a bank record is merely a statement from Ahmed’s counsel—not Ahmed—and as such he lacks personal knowledge of what the record is or what it signifies, rendering his statements on the subject inadmissible speculation. *See Kelley v. Eli Lilly & Co.*, 517 F. Supp. 2d 99, 104 (D.D.C. 2007) (“Furthermore, affidavits provided by attorneys not made on personal knowledge are not considered during the granting of summary judgment.”). In fact, Ahmed’s counsel himself tacitly acknowledges his bald speculation stating that the deposit “**likely** bears on Plaintiff’s [WPCA] claim” (A1453 (emphasis added)) and is “**ostensibly**” wages owed to Ahmed (A1231 ¶13 (emphasis added)). *See Hickey v. Scott*, 738 F. Supp. 2d 55, 59 (D.D.C. 2010) (noting that “the non-moving party cannot rely on mere speculation or compilation

of inferences to defeat a motion for summary judgment” nor “rely on hearsay statements or conclusory statements with no evidentiary basis to establish a genuine issue of material fact.”). Further, Ahmed’s counsel indicates he “asked Defendants to explain the deposit”—thereby **admitting he himself does not actually know what the deposit is**. As such, the Superior Court properly rejected the declaration as nothing more than speculative hearsay and this Court should affirm that decision.

VIII. CONCLUSION

In light of the foregoing reasons, this Court should affirm the aforementioned decisions of the Superior Court, specifically (i) affirming Chief Judge Lopez’s Order appropriately denying Ahmed’s Motion to Enforce Settlement, (ii) affirming Judge Williams’ Omnibus Order appropriately denying, in part, Ahmed’s Motion to Compel, and (iii) affirming Judge Williams’ Amended Order Granting Defendants’ Motion for Summary Judgment appropriately dismissing all of Ahmed’s claims.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 7, 2024, a true and correct copy of the foregoing Brief of Appellees was filed and served electronically via this Court's Appellate E-Filing System upon all counsel of record.

/s/ Daniel Z. Herbst

Daniel Z. Herbst